

# Frumandfit.com Terms Of Use

## 1. Introduction

Welcome to the Internet site of Frumandfit.com. The Frumandfit.com sites include Frumandfit.com and other Internet sites on which these terms of use are posted. Frumandfit.com sites are collectively referred to herein as "Site," "Sites," "we," "us" or "our."

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING ANY SITE. By using any Site or by clicking a box that states that you accept or agree to these terms, you signify your agreement to these terms of use. If you do not agree to these terms of use, you may not use the Sites.

Note that special terms apply to some services offered on certain Sites, like rules for particular contests or sweepstakes or other features or activities. These terms are posted in connection with the applicable service. Any such terms are in addition to these terms of use, and in the event of a conflict, prevail over these terms of use.

You acknowledge that these terms of use are supported by reasonable and valuable consideration, the receipt and adequacy of which are hereby acknowledged. Without limiting the generality of the foregoing, you acknowledge that such consideration includes your use of the Sites and receipt of data, materials and information available at or through the Sites, the possibility of our use or display of your Solicited Submissions (as defined below in Section 3, entitled "SUBMISSIONS") and the possibility of the publicity and promotion from our use or display of your Solicited Submissions.

## 2. Use Of Content

All information, materials, functions and other content (including Submissions, as defined in Section 3, entitled "SUBMISSIONS") ("Content") contained on Sites are our copyrighted property or the copyrighted property of our licensors or licensees. All trademarks, service marks, trade names, and trade dress are proprietary to us and/or our licensors or licensees. We may change the Sites or delete Content or features at any time, in any way, for any or no reason.

Except as we specifically agree in writing, no Content from any Site may be used, reproduced, transmitted, distributed or otherwise exploited in any way other than as part of the Site, except that where a Site is configured to enable the download of particular Content, you may download one copy of such Content to a single computer for your personal, noncommercial home use only, provided that you (a) keep intact all copyright and other proprietary notices, (b) make no modifications to the Content, and (c) do not use the Content in a manner that suggests an association with any of our products, services or brands. Any business use, "re-mailing" or high-volume or automated use of any Site is prohibited.

In the event that we offer downloads of software on a Site and you download such software, the software, including any files, images incorporated in or generated by the software, and data accompanying the software (collectively, the "Software") are licensed to you by us or third-party licensors for your personal, noncommercial home use only. We do not transfer title to the Software to you. You may not distribute or otherwise exploit the Software or decompile, reverse engineer, disassemble or otherwise reduce the Software to a human-readable form.

## 3. Submissions

In these terms of use, we use the word "Submissions" to mean text, messages, ideas, concepts, pitches, suggestions, stories, artwork, photographs, drawings, videos, audiovisual works, musical compositions (including lyrics), sound recordings, characterizations, your and/or other persons' names, likenesses, voices, usernames, profiles, actions, appearances, performances and/or other biographical information or material, and/or other similar materials that you submit, post, upload, embed, display, communicate or otherwise distribute (collectively, "Distribute") on or through a Site.

There are two types of Submissions: Solicited Submissions and Unsolicited Submissions. "Solicited Submissions" means those Submissions (a) that we expressly request or enable you to provide to us via any feature or activity on a Site for our review or display and possible specifically-defined consideration or compensation (collectively, "Consideration") (such as prizes or other value in games, sweepstakes, contests and promotions); and (b) that you Distribute on or through any Site for which you do not seek Consideration (such as in our Forums (as defined below in Section 6, entitled

"FORUMS AND COMMUNICATION")). "Unsolicited Submissions" are any and all Submissions that do not fall within subparagraphs (a) or (b) of this paragraph.

Our company policy does not allow us to accept or consider Unsolicited Submissions so please do not Distribute Unsolicited Submissions on or through any Sites. We want to avoid the possibility of future misunderstandings when projects developed by us or under our direction might seem to others to be similar to their own creative work. We therefore ask that you not Distribute any Unsolicited Submission. In any event, you agree that any Submission you make is not being made in confidence or trust and that no confidential or fiduciary relationship is intended or created between you and us in any way, and that you have no expectation of any review, compensation or consideration of any type (other than any stated Consideration).

Except as expressly stated in these terms of use, the provisions of these terms of use apply equally to Unsolicited Submissions and Solicited Submissions. Accordingly, we, our licensees, distributors, agents, representatives and other authorized users shall be entitled to exploit and disclose all Submissions, and we shall not be liable to you or to any person claiming through you for any exploitation or disclosure of any Submission.

#### **4. Licenses And Representations**

You hereby grant us and our licensees, distributors, agents, representatives and other authorized users, a perpetual, non-exclusive, irrevocable, fully-paid, royalty-free, sub-licensable and transferable (in whole or part) worldwide license under all copyrights, trademarks, patents, trade secrets, privacy and publicity rights and other intellectual property rights you own or control to use, reproduce, transmit, display, exhibit, distribute, index, comment on, modify (including removing lyrics and music from any Submission or substituting the lyrics and music in any Submission with music and lyrics selected by us), create derivative works based upon, perform and otherwise exploit such Submissions, in whole or in part, in all media formats and channels now known or hereafter devised (including on our Sites and third party web sites) for any and all purposes including entertainment, news, advertising, promotional, marketing, publicity, trade or commercial purposes, all without further notice to you, with or without attribution, and without the requirement of any permission from or payment to you or to any other person or entity (the "Submissions License").

By communicating a Submission, you represent and warrant that the Submission and your communication thereof conform to the Rules of Conduct (set forth below in Section 7 labeled "RULES OF CONDUCT") and other requirements of these terms of use and that you own or have the necessary rights, licenses, consents and permissions, without the need for any permission from or payment to any other person or entity, to exploit, and to authorize us to exploit, such Submission in all manners contemplated by these terms of use (including the Submissions License). These terms of use (including the Submissions License) do not limit any past or future grant of rights, consents, agreements, assignments and waivers you may have made or make with respect to Submissions.

To the extent that any Submissions you Distribute on or through the Sites contain original songs or recordings, you hereby represent that you are a member of ASCAP, BMI, SESAC or any other applicable performing rights society and that all musical compositions (including lyrics) and sound recordings contained in such Submissions are available for licensing to us (and our licensees, distributors, agents, representatives and other authorized users) directly from such societies. Notwithstanding the foregoing, regardless of whether you are a member of any performing rights society, you grant the Submissions License with respect to each and every musical composition (including lyrics) and sound recordings contained in such Submissions.

To the extent that we solicit Submissions through features or activities on or through Sites (including games, sweepstakes, contests, promotions and Public Forums (defined below in Section 6, labeled "PUBLIC FORUMS AND COMMUNICATION")) that require the use of our copyrighted works (in whole or in part), we hereby grant you a non-exclusive license to create a derivative work using our copyrighted works (in whole or in part) as required (but only as required, and only for the purpose of creating your Submissions); provided however, that such license shall be conditioned upon your assignment of all rights in the work you create to us. If such rights are not assigned to us, your license to create derivative works using our copyrighted works (in whole or in part) shall be null and void. You agree to the foregoing grant of rights, consents, agreements and assignments whether or not your Submissions are used by us.

You hereby appoint us as your agent with full power to enter into and execute any document and/or do any act we may consider appropriate to confirm the grant of rights, consents, agreements, assignments and waivers set forth in these terms of use.

To the extent any "moral rights," "ancillary rights," or similar rights in or to the Submissions exist and are not exclusively owned by us, you agree not to enforce any such rights as to us or our licensees, distributors, agents, representatives and other authorized users, and you shall procure the same agreement not to enforce from any others who may possess such rights.

Without limiting the scope of the Submissions License or any future grant of rights, consents, agreements, assignments, and waivers you may make with respect to Submissions, you hereby ratify any prior grant of rights, consents, agreements, assignments and waivers made by you with respect to Submissions submitted by you to us.

## **5. Accounts**

Some services on the Sites permit or require you to create an account to participate or to secure additional benefits. You agree to provide, maintain and update true, accurate, current and complete information about yourself as prompted by our registration processes (the "Registration Data"). You shall not impersonate any person or entity or misrepresent your identity or affiliation with any person or entity, including using another person's username, password or other account information, or another person's name, likeness, voice, image or photograph. You also agree to promptly notify us of any unauthorized use of your username, password, other account information, or any other breach of security that you become aware of involving or relating to any Site.

We may suspend or terminate your account and your ability to use any Site or portion thereof for failure to comply with these terms of use or any special terms related to a particular service, for infringing copyright, or for any other reason whatsoever.

## **6. Public Forums And Communication**

"Forum" means an area, site or feature offered as part of any Site that offers the opportunity for users to Distribute Submissions for viewing by one or more Site users, including a chat area, message board, instant messaging, mobile messaging, social community environment, profile page, conversation page, blog, e-mail function (including electronic greeting cards and send-a-friend e-mails).

You acknowledge that Forums and features offered therein are for public and not private communications, and you have no expectation of privacy with regard to any Submission to a public Forum. We cannot guarantee the security of any information you disclose through any of these media; you make such disclosures at your own risk.

You are and shall remain solely responsible for the Submissions you Distribute on or through any Site under your username or otherwise by you in any Forum and for the consequences of submitting and posting same. We have no duty to monitor any Forum.

Also, you should be skeptical about information provided by others, and you acknowledge that the use of any Submission posted in any Forum is at your own risk. For example, we are not responsible for, and we do not endorse, the opinions, advice or recommendations posted or sent by users in any Forum and we specifically disclaim any and all liability in connection therewith.

We owe you no obligation, and therefore may refuse to post, deliver, remove, modify or otherwise use or take any action with respect to Submissions you Distribute.

## **7. Rules Of Conduct**

The following Rules of Conduct apply to the Sites. By using the Sites, you agree that you will not Distribute any Submission that: (a) is defamatory, abusive, harassing, threatening, or an invasion of a right of privacy of another person; (b) is bigoted, hateful, or racially or otherwise offensive; (c) is violent, vulgar, obscene, pornographic or otherwise sexually explicit; or (d) otherwise harms or can reasonably be expected to harm any person or entity; (e) is illegal or encourages or advocates illegal activity or the discussion of illegal activities with the intent to commit them, including a Submission that is, or represents an attempt to engage in, child pornography, stalking, sexual assault, suicide, fraud, trafficking in obscene or stolen material, drug dealing and/or drug abuse, harassment, theft, or conspiracy to commit any criminal activity; (f) infringes or violates any right of a third party including: (1) copyright, patent, trademark, trade secret or other proprietary or contractual rights; (2) right of privacy (specifically, you must not distribute another person's personal information of any kind without their express permission) or publicity; or (3) any confidentiality obligation; (g) is commercial, business-related or advertises or offers to sell any products, services or otherwise (whether or not for profit), or solicits others (including solicitations for contributions or donations); (h) contains a virus or other harmful component, or otherwise tampers with, impairs or damages the Sites or any connected network, or otherwise interferes with any person or entity's use or enjoyment of the Sites; (i) does not generally pertain to the designated topic or theme of the relevant Forum to which it is submitted; (j) violates any specific restrictions applicable to a Forum, including its age restrictions and procedures; or (k) is antisocial, disruptive, or destructive, including "flaming," "spamming," "flooding," "trolling," and "griefing" as those terms are commonly understood and used on the Internet.

We cannot and do not assure that other users are or will be complying with the foregoing Rules of Conduct or any other provisions of these terms of use, and, as between you and us, you hereby assume all risk of harm or injury resulting from any such lack of compliance.

## **8. Cooperation; Removal Of Submissions**

We reserve the right, but disclaim any obligation or responsibility, to (a) refuse to post or communicate or remove any Submission from any Site that violates these terms of use (including the Rules of Conduct) and (b) identify any user to third parties, and/or disclose to third parties any Submission or personally identifiable information, when we believe in good faith that such identification or disclosure will either (i) facilitate compliance with laws, including, for example, compliance with a court order or subpoena, or (ii) help to enforce these terms of use (including the Rules of Conduct) and/or our contest, sweepstakes, promotions, and game rules, and/or protect the safety or security of any person or property, including any Site. Moreover, we retain all rights to remove Submissions at any time for any reason or no reason whatsoever.

## **9. Content Accessible Via Links From Sites And Search Results**

You should be aware that when you are on a Site, there are links to other sites that take you outside of our service to sites that are beyond our control, such as banner advertisements and links from advertisers, sponsors and content partners that may use our logo(s) as part of a co-branding relationship. You acknowledge that when you click on any of the aforementioned links, the sites you are taken to are not controlled by us; different terms of use and privacy policy may apply, and we are not responsible for such sites. We do not endorse and cannot ensure that you will be satisfied with any products or services that you purchase from a third-party site that links to or from any Site or third-party Content contained on our sites. We strongly encourage you to make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any third parties.

Nor can we be held responsible for the accuracy, relevance, legality or decency of material contained on sites retrieved in searches and/or listed in search results or identified on search results pages.

## **10. Disclaimers**

THE CONTENT ON OR OTHERWISE RELATED IN ANY WAY TO OUR SITES OR ANY THIRD PARTY SITES OR SERVICES LINKED TO FROM ANY SITE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, AVAILABILITY, SECURITY, COMPATIBILITY AND NONINFRINGEMENT. WE DO NOT WARRANT THAT ANY CONTENT WILL BE ERROR-FREE, THAT ACCESS THERETO WILL BE UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY SITE OR THE SERVERS THAT MAKE SUCH CONTENT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. MOREOVER, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF ANY CONTENT. YOU HEREBY IRREVOCABLY WAIVE ANY CLAIM AGAINST US WITH RESPECT TO CONTENT AND ANY CONTENT YOU PROVIDE TO THIRD PARTY SITES (INCLUDING CREDIT CARD AND OTHER PERSONAL INFORMATION).

Furthermore, the Content is not intended to be a substitute for the services of trained professionals in any field, including, but not limited to, medical matters. Always seek the advice of your physician with any questions you may have regarding your physical or mental health and wellness. If you think you may have a medical emergency, call your doctor or 911 immediately. We make no representations or warranties concerning any treatment, action, application or usage of dietary supplements, medication, preparation or other product or service by any person following the information offered or provided within or through the Sites. Reliance on any information appearing on a Site is strictly at your own risk. Neither we, our affiliates nor any of the officers, directors, owners, employees, agents, representatives and assigns of each will be liable for any direct, indirect, consequential, special, exemplary or other losses or damages that may result including, but not limited to, economic loss, injury, illness or death.

Sites may contain the opinions and views of other users. Given the interactive nature of these sites, we cannot endorse, guarantee, or be responsible for the accuracy, efficacy, or veracity of any content generated by our users.

Site content is intended for educational and entertainment purposes only. Such content is not intended to, and does not, constitute legal, professional, medical or healthcare advice or diagnosis, and may not be used for such purposes. Always seek the advice of your physician or other qualified health provider with any questions you may have regarding a

medical or wellness condition. You should not act or refrain from acting on the basis of any content included in, or accessible through, the Sites without seeking the appropriate medical or other professional advice on the particular facts and circumstances at issue from a doctor or other trained health care professional licensed in the recipient's state, country or other appropriate licensing jurisdiction.

## **11. Testimonials**

Not all testimonials contained in or made available through the Sites have been prepared by us (including, but not limited to, information contained on message boards, in forums, text files, chats, etc.). As a result, we have not checked to determine whether or not a specific endorser's experience is what an average or typical consumer may expect to achieve. Not all consumers may achieve the same results.

## **12. Parental Permission**

The sites are not directed to children under the age of 13, and we will not knowingly collect personally identifiable information from children under 13. Without parental permission, we collect only such limited information from children 12 and under necessary to allow us to obtain parental permission. For example, we may also ask a child to provide an email address of a parent so we can notify the parent and seek consent. We will not collect more detailed information from a child 12 and younger, such as a postal address or a telephone number, without the consent of a parent or guardian. You agree to abide by any such restrictions, and not to help anyone avoid such restrictions. WE STRONGLY RECOMMEND THAT PARENTS PARTICIPATE IN THEIR CHILDREN'S EXPLORATION OF THE INTERNET AND ANY ONLINE SERVICES AND USE THEIR BROWSER'S PARENTAL CONTROLS TO LIMIT THE AREAS OF THE INTERNET TO WHICH THEIR CHILDREN HAVE ACCESS.

## **13. Privacy Policy**

We are committed to protecting your privacy and security and have explained in detail the steps we take to do so. We urge you to read our Privacy Policy.

## **14. Indemnification**

You are responsible for maintaining the confidentiality of your username(s), password(s), and your account(s), as well as all activities that occur under your account(s). You hereby agree to indemnify, defend, and hold us, our licensors, licensees, distributors, agents, representatives and other authorized users, and each of the foregoing entities' respective resellers, distributors, service providers and suppliers, and all of the foregoing entities' respective officers, directors, owners, employees, agents, representatives and assigns (collectively, the "Indemnified Parties") harmless from and against any and all losses, damages, liabilities and costs (including settlement costs and any legal or other fees and expenses for investigating or defending any actions or threatened actions) incurred by the Indemnified Parties in connection with any claim arising out of any breach by you of these terms of use or claims arising from your use of the Sites and/or your account(s). You shall use your best efforts to cooperate with us in the defense of any claim. We reserve the right, at our own expense, to employ separate counsel and assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## **15. Limitation Of Liability**

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL WE, OUR LICENSORS OR LICENSEES, OR ANY OF THE FOREGOING ENTITIES' RESPECTIVE RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS OR SUPPLIERS, BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS, PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE OF ANY NATURE WHATSOEVER, THAT RESULT FROM (A) THE USE OF, OR THE INABILITY TO USE, ANY SITE OR CONTENT, OR (B) THE CONDUCT OR ACTIONS, WHETHER ONLINE OR OFFLINE, OF ANY USER OF A SITE OR ANY OTHER PERSON OR ENTITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE AMOUNT PAID BY YOU, IF ANY, OR \$100 (WHICHEVER IS LESS) FOR ACCESSING OR PARTICIPATING IN ANY ACTIVITY RELATED TO ANY SITE. MOREOVER, UNDER NO CIRCUMSTANCES SHALL WE, OUR LICENSORS OR LICENSEES, OR ANY OF THE FOREGOING ENTITIES' RESPECTIVE RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS OR SUPPLIERS, BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM AN ACT OF FORCE MAJEURE OR CAUSES BEYOND OUR OR THEIR REASONABLE CONTROL.

WE MAY TERMINATE YOUR FURTHER ACCESS TO SITES OR CHANGE THE SITES OR DELETE CONTENT OR FEATURES IN ANY WAY, AT ANY TIME AND FOR ANY REASON OR NO REASON.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION AND ELSEWHERE IN THESE TERMS OF USE APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **16. Dispute Resolution**

Subject to the foregoing, you agree that: (1) any and all disputes, claims, and causes of action arising out of or in connection with these terms of use, this or any other Sites shall be resolved individually, without resort to any form of class action, by binding arbitration to take place in Bergenfield, New Jersey in accordance with the rules of the American Arbitration Association; (2) any and all claims, judgments, and awards shall be limited to the actual out-of-pocket amount paid by you to Frumandfit.com for accessing the Site, but in no event attorneys' fees; and (3) under no circumstances will you be permitted to obtain awards for, and each Site user hereby waives all rights to claim punitive, incidental, or consequential damages, any other damages other than actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased. All issues and questions concerning the construction, validity, interpretation and enforceability of these terms of use, or the rights and obligations of users and us in connection with these terms of use, shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Jersey. If any of these terms of use are found unlawful, void, or for any reason unenforceable, then that provision will be considered severable from the remaining terms of use, and will not affect the validity and enforceability of the remaining provisions.

## **17. Jurisdictional Issues**

We control and operate the Site from our offices in the United States of America. We do not represent that Site content is appropriate or available for use in other locations. Persons who chose to access the Site from other locations do so on their own initiative, and are responsible for compliance with local laws, if and to the extent local laws are applicable.

## **18. Amendment**

At any time, we may amend these terms of use (including by modification, deletion and/or addition of any portion thereof). If we make a material amendment to these terms of use, we will notify you of such amendment by sending you an e-mail at the last e-mail address that you provided us, and/or by posting notice of such amendment on the Sites covered by these terms of use. Any such amendment to these terms of use will be effective thirty (30) calendar days following either our dispatch of an e-mail notice to you or our posting of notice of the changes on the Sites. Please note that, at all times, you are responsible for updating your personal information to provide us your current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any other reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of any amendment described in the notice.

## **19. Waiver; Time Within Which Claims Must Be Brought**

No waiver of any provision of these terms of use by us shall be deemed a further or continuing waiver of such provision or any other provision, and our failure to assert any right or provision under these terms of use shall not constitute a waiver of such right or provision. In these terms of use, the word "including" is used illustratively, as if followed by the words "but not limited to." **YOU AGREE THAT ANY AND ALL DISPUTES, CLAIMS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE, THIS OR ANY OTHER SITES MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE DISPUTE, CLAIM OR CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH DISPUTE, CLAIM OR CAUSE OF ACTION SHALL BE PERMANENTLY BARRED.**

Last modified on October 31, 2012.