

## **Terms And Conditions Of Use**

### **1. ACCEPTANCE**

Ports America owns and operates the Internet site located at <http://www.portsamerica.com> (the "Website"). As used herein, the terms "you", "your" and "yours" refer to the user or registered user using this Website. The terms "Ports America", "we", "us," "our" and "the Company" refer to Ports America, Inc., and its related or affiliated companies.

Your continued access and use of the Website is conditional on your acceptance of and continued compliance with the terms and conditions of use set out below (the "Terms and Conditions").

These Terms and Conditions will govern your use of any new features that augment or enhance the current services (together the "Services"), however from time to time, new Services or features may be made available on this Website and you may be required to review and agree to additional terms and conditions and/or download software. Unless otherwise provided by the additional terms and conditions applicable to the new Services you use, the additional terms and conditions are hereby incorporated into these Terms and Conditions. In addition to these Terms and Conditions and any additional terms, the Ports America privacy notice, found at <http://www.portsamerica.com/privacy-policy.html> (the "Privacy Policy") will govern how your personal information will be used on this Website, and together they form the agreement between you and us (the "Agreement"). Nothing in this Agreement will be deemed to confer any third-party rights or benefits. THIS AGREEMENT CONTAINS DISCLAIMER AND OTHER PROVISIONS THAT LIMIT OUR LIABILITY TO YOU.

By accessing, browsing, using and/or downloading the pages in this Website, you agree to accept and comply with this Agreement for each use and visit to this Website. If you do not agree to accept and comply with this Agreement, you should not access, browse or otherwise use this Website.

### **2. CHANGES TO THE TERMS OF USE**

Ports America reserves the right, at any time, to modify, alter, or update this Agreement, and you agree to be bound by such modifications, alterations, or updates. Such changes, modifications, additions or deletions will be effective immediately upon notice to you, which may be given by any means, including but not limited to posting on this Website or by electronic or conventional mail. You agree to regularly review this Agreement and to be aware of such revisions. Your use of this Website following any such change constitutes your agreement to follow and be bound by this Agreement as changed.

### **3. ACCESSING THE WEBSITE AND ACCOUNT SECURITY**

In order to access some features of the Website, including certain applications accessible through the "Client Access" drop-down list, you will have to create an account. To register for the account you will be required to provide certain personal information including your full legal name and email address. You may never use another's account without permission. When creating your account, you must provide accurate and complete information. By creating an account, you represent and warrant that the information you provide is true and that you will keep it up to date. You are solely responsible for the activity that occurs on your account, and you must keep your account password confidential and secure. You must notify Ports America immediately of any breach of security or unauthorized use of your account.

Although Ports America will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of Ports America or others due to such unauthorized use.

The Website and Client Access Websites may contain links to third-party websites that are not owned or controlled by Ports America. Ports America has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites. In addition, Ports America will not and cannot censor or edit the content of any third-party site. By using the Website, you expressly relieve Ports America from any and all liability arising from your use of any third-party website.

Accordingly, we encourage you to be aware when you leave the Website and Client Access Websites to read the terms and conditions and privacy policy of each other website that you visit.

The Ports America Website allows links to other websites maintained by Ports America through the "Client Access" drop down list as well as other links on the Website ("Client Access Websites"). By accessing a Client Access Website, you agree to the terms and conditions posted on such website. In the event of a conflict between the terms and conditions of use of a Client Access Website and these Terms and Conditions of Use, the terms and conditions of the Client Access Website will prevail. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

Ports America reserves the right to deny or revoke access to this Website, or any part thereof, or to otherwise terminate a user's access to its Website, at any time in its sole discretion, with or without cause and without notice to you.

Although Ports America endeavors to ensure that this Website and the Client Access Websites are available at all times, Ports America will not be liable if, for any reason, this Website or the Client Access Websites are unavailable at any time or for any period.

The owner of the Website is based in the State of New Jersey in the United States. We provide this Website for use only by persons located in the United States. We make no claims that the Website or any of its content is accessible or appropriate outside of the United States. Access to the Website may not be legal by certain persons or in certain countries. If you access the Website from outside of the United States, you do so on your own initiative and are responsible for compliance with local laws.

#### **4. PROHIBITED USES**

You may use the Website only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Website:

- In any way that violates any applicable federal, state, local or international law or regulations (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way.
- To send, knowingly receive, upload, download, use or re-use any Content that does not comply with these Terms of Use.
- To transmit, or procure the sending of, any advertising or promotional material (without our prior written consent) including any "junk mail", "chain letter", "spam", or any other similar solicitation.
- To impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using email addresses (or screen names), associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone's use of the Website, or which, as determined by us, may harm the Company or users of the Website, or expose them or the Company to liability.

#### **5. INTELLECTUAL PROPERTY RIGHTS**

All information, including, without limitation, all text, design, graphics, drawings, photographs, advertisements, video clips, music and sounds, and all trade-marks, service marks and trade names and the selection and arrangements thereof, and data (collectively the "Content") comprised in the Website, is, unless otherwise noted, subject to intellectual property rights including copyrights and trademarks held by or licensed by Ports America. Except as expressly provided in this Agreement, no license to use, copy, distribute, republish, transmit or otherwise exploit any Content is given to you and all intellectual property rights in and to the Content are expressly reserved to Ports America.

If you wish to make use of any Content on the Website other than that set out in this section, please address your request to: [communications@portsamerica.com](mailto:communications@portsamerica.com).

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## **6. NO REPRESENTATIONS; LIMITATIONS ON LIABILITY**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT ANY CONTACT ON THE WEBSITE OR SUCH OTHER WEBSITES.

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REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (3) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS OR OTHER INACCURACIES IN THE WEBSITE OR CLIENT ACCESS WEBSITES, THE MATERIALS AND/OR LISTINGS OR INFORMATION DOWNLOADED THROUGH THE WEBSITE OR THE CLIENT ACCESS WEBSITES.

BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN SUCH STATES, PORTS AMERICA'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## **7. DISCLAIMER OF WARRANTIES**

You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the Website will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data.

TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE IS AT YOUR OWN RISK, THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE WEBSITE, WITHOUT LIMITING THE FOREGOING, NEITHER, THE COMPANY NOR ANYONE ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE WEBSITE, ITS CONTENT, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **8. INDEMNIFICATION**

You agree to indemnify, defend and hold harmless Ports America and its members, managers, officers, employees, agents, licensors, suppliers and the assigns of same, from and against any and all loss, costs, expenses (including reasonable attorneys' fees and expenses), claims, damages and liabilities related to or associated with your use of the Website or Client Access Websites and any violation of these Terms and Conditions by you.

## **9. GOVERNING LAW AND JURISDICTION**

This Agreement will be governed by and construed in accordance with the internal laws of the State of New Jersey without regard to conflicts of laws principles. By using this site, you hereby agree that any and all disputes regarding these Terms and Conditions will be subject to the federal, state and local courts in New Jersey. These Terms and Conditions operate to the fullest extent permissible by law. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

## **10. ARBITRATION**

At Company's sole discretion, it may require You to submit any disputes arising from these Terms of Use or use of the Website, including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination, to final and binding arbitration under the Rules of Arbitration of the Arbitration Association applying New Jersey Law.

## **11. WAIVER AND SEVERABILITY**

The failure of Ports America to comply with the Terms of Use because of an act of God, war, fire, riot, terrorism, earthquake, actions of federal, state or local governmental authorities or for any other reason beyond the reasonable control of Ports America, shall not be deemed a breach of these Terms. If Ports America fails to act with respect to your breach or anyone else's breach on any occasion, Ports America is not waiving its right to act with respect to future or similar breaches. If any provision of these terms of use shall be unlawful, void or for any reason unenforceable, then that provision shall

be deemed severable from these terms of use and shall not affect the validity and enforceability of any remaining provisions.

## **12. HEADINGS/ENTIRE AGREEMENT**

The headings in these Terms and Conditions are for your convenience and reference. These headings do not limit or affect these Terms and Conditions. These Terms and Conditions, together with those items made a part of these terms by reference, make up the entire agreement between us relating to the Website, and replaces any prior and contemporaneous understandings, agreements, representations, or warranties (whether oral or written) regarding the Website.