

# **Thekwreport.com Terms of Use**

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## **1. Application**

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These Terms of Use set forth the legally binding terms governing your access and use of the Site. These Terms of Use apply to the KW Report only.

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## **2. Privacy Notice**

In connection with your access to or use of the Site, we may obtain information from or about you. We will use your information in accordance with our Privacy Notice, which describes our privacy practices as well as choices you may have with respect to the collection and processing of some of your information. Please take a moment to review our Privacy Notice. The Privacy Notice is incorporated into these Terms of Use.

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If we become aware of a user's violation under these Terms of Use, including the rights of any third party, we may take certain remedial steps, including refusing access to the Site to any person or entity and change eligibility requirements at any time.

If we become aware that any of our users has repeatedly infringed the proprietary rights of any third party, we may take steps to terminate that user's access to the Site. We reserve the right (but have no obligation) to review any user content, investigate, and/or take appropriate action against you in our sole discretion. Such acts may include removing or modifying your user content, terminating your access to the Site (including any user account, registration or membership), legal action and/or reporting you to law enforcement authorities.

The KW Report reserves the right to investigate suspected violations under these Terms of Use, including comments, postings or emails you make on or send through the Site. The KW Report may seek to gather information from the user who is suspected of violating these Terms of Use and from any other user. The KW Report may suspend any users whose conduct or postings are under investigation and may remove such material from its servers as it deems appropriate and without notice. If the KW Report believes, in its sole discretion, that a violation under these Terms of Use has occurred, it may edit or modify any submission, posting or emails, remove the material permanently, cancel postings, warn users, suspend users and passwords, terminate accounts, or take other corrective action it deems appropriate. The KW Report may cooperate with law enforcement authorities or court order requesting or directing The KW Report to disclose the identity of anyone posting any emails, or publishing or otherwise making available any materials that are believed to violate these Terms of Use. **BY ACCEPTING THESE TERMS OF USE, YOU WAIVE AND HOLD HARMLESS THE KW REPORT (AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS) FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY THE KW REPORT (AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS) DURING OR AS A RESULT OF ITS INVESTIGATIONS AND/OR FROM ANY ACTIONS TAKEN AS**

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### 5. Your Conduct and Responsible Use of the Site

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**No System Abuse.** You may not upload, post or otherwise distribute or facilitate the distribution of a software virus or any other computer code that is designed or intended to disrupt, damage, or limit the functioning of the Site, any other online services, or to obtain unauthorized access to the Site or content or any data or other information of any third party. You may not interfere with, disrupt, or create an undue burden on servers or networks connected to the Site.

**No Violations of Security Systems.** You are prohibited from using the Site to compromise the security or tamper with, or gain unauthorized access to, the Site, content, online accounts or any other computer systems, resources or networks. The use or distribution of tools designed for compromising security (e.g. password guessing programs, cracking tools, malware, or network probing tools) is strictly prohibited. If you become involved in any violation of systems security, the KW Report reserves the right to release your details to relevant third parties, law

enforcement and/or governmental authorities in order to assist them in resolving security incidents.

We may require, at any time, proof that you are following these rules. We reserve the right to take, or refrain from taking, any and all steps available to us, including suspending or terminating your access to the Site or seeking other legal or equitable remedies, once we become aware of any violation under these Terms of Use.

#### 6. Availability of and Modification to the Site and Content

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If you have a dispute with one or more users of the Site, you release the KW Report (and its affiliates and its and their officers, directors, employees, contractors, consultants and agents) from claims, demands, liabilities, costs, or expenses and damages (actual and consequential of every kind and nature, known and unknown, arising out of or in any way connected with such disputes). In entering into this release, you expressly waive any protections (whether statutory or otherwise) to the extent permitted by applicable law that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release. **IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

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NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THESE TERMS OF USE (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO FIFTY US DOLLARS (\$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SERVICE PROVIDERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THESE TERMS OF USE.

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You are responsible for complying with local laws, if and to the extent local laws are applicable. You specifically agree to comply with all applicable laws concerning the transmission of technical data exported from the United States or the country you reside in.

#### 13. Termination

The KW Report may, in its sole discretion, terminate your use of the Site, or remove and discard any content or information stored, sent, or received via the Site without prior notice and for any reason or no reason, including, but not limited to: (i) any unauthorized access or use of the Site, (ii) any violation under these Terms of Use, or (iii) tampering with or alteration of any of the software, data files, and/or content contained in or accessed through, the Site. You may terminate your account for any reason or no reason. Termination, suspension, or cancellation under these Terms of Use or your access rights to the Site shall not affect any right or relief to which The

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Notwithstanding any termination, suspension, or cancellation under these Terms of Use or your access rights to the Site, the following provisions under these Terms of Use will survive: Sections 2 – 18.

#### 14. Entire Agreement

These Terms of Use (including the Privacy Notice) constitute the entire agreement between you and us regarding the use of the Site. Our failure to exercise or enforce any right or provision under these Terms of Use shall not operate as a waiver of such right or provision. The section titles in these Terms of Use are for convenience only and have no legal or contractual effect. The word including means including without limitation. If any provision of these Terms of Use is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms of Use will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

#### 15. Changes to these Terms of Use

We may revise, prospectively, these Terms of Use by posting an updated version on the Site. You consent and agree to receive notices of updates to these Terms of Use through our posting of an updated Terms of Use on the Site. You should visit this page or section regularly to review the current version of the Terms of Use. Your continued use of the Site will be deemed as irrevocable acceptance of any revisions.

#### 16. Dispute Resolution (Arbitration Clause and Class Action Waiver)

**PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS.**

1.1 Except for either party's claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret, any and all disputes between you and the KW Report arising under or related in any way to this Agreement, must be resolved through binding arbitration as described in this section. This

agreement to arbitrate is intended to be interpreted broadly. It includes, but is not limited to, all claims and disputes relating to your use of any of the Site.

1.2 YOU AGREE THAT BY ENTERING INTO THIS AGREEMENT, YOU AND THE KW REPORT ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AND THE KW REPORT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED.

1.3 The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes of the American Arbitration Association (“AAA”), as modified by this section. For any claim where the total amount of the award sought is \$10,000 or less, the AAA, you and The KW Report must abide by the following rules: (a) the arbitration shall be conducted solely based on written submissions; and (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties. If the claim exceeds \$10,000, the right to a hearing will be determined by the AAA rules, and the hearing (if any) must take place in: Atlanta, GA. The arbitrator's ruling is binding and may be entered as a judgment in any court of competent jurisdiction. In the event this agreement to arbitrate is held unenforceable by a court, then the disputes that would otherwise have been arbitrated shall be exclusively brought in the state or federal courts located in Atlanta, GA. Claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall be exclusively brought in the state and federal courts located in Atlanta, Georgia.

#### 17. No Waiver

No failure or delay by The KW Report in exercising any right, power or privilege under these Terms of Use will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under these Terms of Use.

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