

Katzkin T&C_2023

TERMS & CONDITIONS

TERMS AND CONDITIONS OF SALE

THESE TERMS & CONDITIONS CONTAIN A CLASS ACTION WAIVER AS WELL AS AN ARBITRATION PROVISION, WHICH REQUIRES YOU (“BUYER”) TO ARBITRATE ANY CLAIMS (WITH CERTAIN EXCEPTIONS) BUYER MAY HAVE AGAINST KATZKIN LEATHER, INC. (“KATZKIN”) AND ITS AFFILIATES AND VENDORS ON AN INDIVIDUAL BASIS. ARBITRATION ON AN INDIVIDUAL BASIS MEANS THAT BUYER WILL NOT HAVE, AND THAT BUYER WAIVES, THE RIGHT FOR A JUDGE OR JURY TO DECIDE BUYER’S CLAIMS, AND THAT BUYER MAY NOT PROCEED IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE CAPACITY IN ANY FORUM, AS DESCRIBED IN MORE DETAIL BELOW. BUYER HAS THE RIGHT TO OPT OUT OF ARBITRATION AND/OR THE CLASS ACTION WAIVER, AS EXPLAINED BELOW.

BY PURCHASING A KATZKIN INTERIOR (“GOODS”) FROM KATZKIN LEATHER, INC. (“KATZKIN”) AND USING THIS WEBSITE, BUYER ACKNOWLEDGES ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS OF SALE (“TERMS”). THESE TERMS, TOGETHER WITH THE INFORMATION ON THE ORDER, ARE REFERRED TO AS THIS “AGREEMENT” AND SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN KATZKIN AND BUYER AND SUPERSEDE ANY PREVIOUS AGREEMENT OR UNDERSTANDING (ORAL OR WRITTEN) BETWEEN THE PARTIES WITH RESPECT TO THE GOODS. ANY TERMS AND CONDITIONS OF THE ORDER WHICH ARE INCONSISTENT WITH THESE TERMS ARE REJECTED AND WILL NOT BE BINDING ON KATZKIN NOR CONSIDERED APPLICABLE TO THE SALE OR SHIPMENT OF GOODS. BUYER ACKNOWLEDGES AND AGREES THAT THE PURCHASE OF GOODS HEREUNDER SHALL NOT ENTITLE BUYER TO ANY FUTURE PURCHASE OF GOODS FROM KATZKIN.

KATZKIN’S [PRIVACY POLICY](#) AND ANY OTHER POLICIES, RULES, OR GUIDELINES THAT MAY BE APPLICABLE TO A PARTICULAR OFFER, PRODUCT, ORDER, OR FEATURE ON THE WEBSITE ARE ALSO INCORPORATED INTO THIS AGREEMENT.

1. **ORDERS:** All orders for Goods placed by Buyer (“Order”) constitute an offer and are subject to acceptance by Katzkin. No Order shall be binding upon Katzkin until accepted by authorizing shipment of the Goods subject to the Order. Katzkin may refuse to accept any Order for any cause and shall not be liable for claims of any nature because of failure to accept an Order. Goods sold under these Terms are for use only in the United States and Canada. Goods shall only be shipped to locations within the United States and Canada. By entering an Order with Katzkin, Buyer certifies that it has provided Katzkin with complete and accurate information concerning the vehicle for which the Goods have been ordered. Buyer acknowledges that Katzkin is relying on the information provided by Buyer and understands and agrees that if Buyer fails to provide accurate information, the Goods may not fit and charges may be incurred for a replacement. Buyer further agrees that the Goods purchased are of the design and color selected by Buyer, and Buyer has relied solely on its own judgment in selecting the Goods. Buyer

understands that colors as seen on Katzkin.com or a digital swatch card may not be representative of the actual color of the material. Physical swatch samples are available upon request and may incur a cost. The consumer is responsible for all design and color choices.

2. **PRICE AND PAYMENT:** The price of Goods shall be Katzkin's quoted price on the date the order is placed and shall be in US dollars. Available payment methods will be presented at the time of purchase. Buyer shall be responsible for all credit card costs associated with making payment to Katzkin. Partial shipments may be made for an Order and may be invoiced separately. The price of Goods does not include any sales, transaction, or similar taxes which Katzkin may be required to pay in connection with any Order. The amount of any applicable tax shall be paid as an additional charge and set forth on the invoice.

3. **CANCELLATION OF ORDER:** Katzkin reserves the right to cancel an Order for any reason, including where Katzkin believes the Order to be fraudulent or an error has occurred, subject to its obligation to refund any money paid by Buyer. Orders placed with and accepted by Katzkin may not be cancelled except with Katzkin's prior written consent, which shall be at the sole discretion of Katzkin. Buyer may incur a cancellation fee as the Goods are made-to-order custom products. Buyer has 15 minutes after placing the order to adjust or cancel before a \$500 fee is incurred. Buyer is not entitled to the product if canceled whether or not a cancellation fee is incurred. Once installed, Goods cannot be returned. Buyer understands that the original upholstery in Buyer's vehicle will not be maintained and will be destroyed during installation of the Goods.

4. **SHIPPING; DELAYS:** Katzkin will coordinate the shipping of the Goods to agreed upon installer via a third-party common carrier on Buyer's behalf. Delivery of the Goods, including the transfer of title and risk of loss, will occur at the time and location Goods are loaded on the common carrier's transport. Shipment dates are estimated and not guaranteed, and Katzkin shall not be liable to Buyer or any third party for any delay in delivery or shipping however occasioned. Scheduled installation dates are estimated and not guaranteed, and Katzkin shall not be liable for any rescheduling that may occur. If Buyer fails for whatever reason to take delivery of the Goods, Katzkin may store the Goods at Buyer's costs and risk until actual delivery up to thirty (30) days and charge Buyer for reasonable storage costs; transport, shipping and handling costs; and insurance. After thirty (30) days, Katzkin may cancel the order and refund the customer the amount paid, less a \$500 cancellation fee.

5. **FORCE MAJEURE:** Failure of Katzkin to fulfill or perform its obligations under this Agreement shall be excused by any cause beyond Katzkin's control, including, but not limited to: labor disputes, strike, lockouts, accidents, delays in manufacture or in transportation or delivery of materials, fire, flood, blizzard, natural disaster, insurrection, war, terrorism, ordinance, regulation, legal order (unless caused by the Katzkin Parties' default thereunder), civil disturbance, inability to obtain raw materials, epidemic, pandemic, act or omission by a third party, or delays in transit or delivery. In the event the occurrence of such event interferes with Katzkin's performance of its obligations, Katzkin may, at its option, cancel this Agreement or any Order without any liability to Buyer whatsoever resulting therefrom.

6. **WARRANTY:** All Goods purchased pursuant to this Agreement are governed by the Katzkin Limited Warranty available at <https://katzkin.com/warranty-registration/> (the "Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Goods. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

7. LIMITATIONS ON WARRANTY: TO THE EXTENT APPLICABLE BY LAW, THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY KATZKIN TO BUYER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, KATZKIN EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE OR NON-INFRINGEMENT AND ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE, SUITABILITY, MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, DURABILITY, ACCURACY, PERFORMANCE, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

APPLICABLE LAW IN SOME LOCATIONS, SUCH AS THE STATE OF NEW JERSEY, DOES NOT ALLOW THE WAIVER OF IMPLIED WARRANTIES SET FORTH ABOVE, SO THIS PROVISION MAY NOT APPLY TO BUYER.

8. INDEMNITY: Buyer shall indemnify, defend and hold harmless Katzkin, its related companies and affiliates, as well as each of their third-party information providers, licensors, contractors, and any other persons or entities involved in the delivery of Goods, Orders, products, services, or information, or acting by, through, under or in concert with any of them, whether in the past, present, or future (collectively, "Indemnified Parties"), against any and all claims, actions, judgments, awards, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Katzkin arising from, in connection with, or relating to this Agreement, an Order, or the Goods supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Buyer.

9. LIMITATION ON REMEDIES: NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL KATZKIN, ITS RELATED COMPANIES (INCLUDING ANY PARENTS, SUBSIDIARIES, PARTNERS, JOINT VENTURES, DISTRIBUTORS, ADMINISTRATORS, PREDECESSORS, SUCCESSORS, OR ASSIGNS), AND EACH SUCH COMPANY'S OFFICERS, DIRECTORS, EMPLOYEES, COUNSEL, REPRESENTATIVES, OR AGENTS, AS WELL AS EACH OF THEIR INSURERS, REINSURERS, CO-INSURERS, AND INSURANCE BROKERS, AND ANY OTHER PERSONS OR ENTITIES ACTING BY, THROUGH, UNDER, OR IN CONCERT WITH ANY OF THEM, WHETHER IN THE PAST, PRESENT, OR FUTURE, (THE "KATZKIN PARTIES") BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY GENERAL, PECUNIARY, NON-PECUNIARY, INDIRECT, ECONOMIC, SPECIAL, COMMERCIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, LOSS OF OPPORTUNITY, DOWNTIME, AND DAMAGES CAUSED BY DELAYS OR A FAILURE TO REALIZE EXPECTED SAVINGS) IN ANY WAY RELATED TO OR ARISING FROM THE KATZKIN PARTIES' SUPPLY OF GOODS UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF GOODS SUPPLIED UNDER THIS AGREEMENT. BUYER WAIVES AND RELEASES THE KATZKIN PARTIES OF AND FROM ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, EXPENSE OR INJURY, INCLUDING DEATH, WHICH BUYER OR ANY THIRD PARTY MAY SUFFER RESULTING FROM BUYER'S OR THIRD PARTY'S USE OF GOODS SUPPLIED UNDER THIS AGREEMENT DUE TO ANY ACT, OMISSION, FAULT, NEGLIGENCE, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE), STRICT LIABILITY, COMMON LAW, STATUTE, EQUITY, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE OWED BY BUYER. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER OR ANY THIRD PARTY CLAIMING DIRECTLY, THROUGH BUYER OR ON BUYER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF GOODS SUPPLIED BY KATZKIN UNDER THIS AGREEMENT.

APPLICABLE LAW IN SOME LOCATIONS, SUCH AS THE STATE OF NEW JERSEY, DOES NOT ALLOW THE LIMITATION OF LIABILITY OF CERTAIN DAMAGES SET FORTH ABOVE, INCLUDING THE PROVISIONS OF THIS SECTION THAT LIMIT OR EXCLUDE SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR LIMIT OR EXCLUDE THE USE OF ANY MULTIPLIER ON OR INCREASE TO DAMAGES, AND LIMIT THE LIABILITY OF KATZKIN OR ANY OF THE KATZKIN PARTIES, TO THE TOTAL COST OF GOODS SUPPLIED BY KATZKIN UNDER THIS AGREEMENT. THESE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO BUYER. THE PROVISIONS OF THIS SECTION DO NOT APPLY TO THE EXTENT, AND ONLY TO THE EXTENT, NOT PERMITTED BY APPLICABLE LAW.

10. CLAIMS: Buyer shall inspect the Goods upon installation.

11. CHANGES IN GOODS: Katzkin may, at any time, without notice, make changes in any Goods, and may discontinue the manufacture of any Goods, in its sole discretion, without incurring any obligations of any kind as a result thereof, whether for failure to fill an Order accepted by Katzkin, or otherwise.

12. INTELLECTUAL PROPERTY: Nothing in this Agreement shall be deemed to have given Buyer a license or any other rights to use any of the intellectual property rights of Katzkin.

13. GOVERNING LAW AND JURISDICTION: This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of California; provided, however, that the arbitration provisions herein shall be governed by the Federal Arbitration Act and the American Arbitration Association (“AAA”) Consumer Arbitration Rules (the “AAA Rules”), as described more fully below. The parties acknowledge that all directions issued by any forum court, including, without limitation, all injunctions and other decrees, shall be binding and enforceable in all jurisdictions and countries.

14. COMPLIANCE: Buyer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States. It is the intention of Katzkin to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Buyer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Buyer shall not resell, export, re-export, distribute, transfer, or dispose of the Goods or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. Buyer represents and warrants that the Goods will be installed and used in the application identified in the Goods description. Buyer acknowledges that failure to install the Goods in the appropriate application may violate U.S. laws and regulations.

15. BINDING ARBITRATION AGREEMENT; CLASS ACTION WAIVER

PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT BUYER’S LEGAL RIGHTS, INCLUDING BUYER’S RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR BUYER’S CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

- a) **Scope of the Arbitration Agreement.** Mindful of the high cost of legal disputes, not only in dollars but in time and energy, both Buyer and Katzkin agree that any and all disputes, actions, claims, or other controversies concerning or arising in any way out of Buyer's use (or lack of use) of, access (or lack of access) to, or a purchase from, the website; these Terms; the Agreement; any Order; any Goods; any product or service; and any advertising, marketing, promotion, or other communications between Buyer and Katzkin (each a "Dispute," and collectively, "Disputes"), whether based in contract, warranty, tort, statute, regulation, ordinance, or any other legal or equitable basis, shall be resolved exclusively through final and binding individual arbitration. "Dispute" will be given the broadest possible meaning allowable under law. Vendors, including software vendors, and all other Indemnified Parties are intended third-party beneficiaries of this binding arbitration agreement and class action waiver to the fullest extent permitted by law.

This agreement to arbitrate covers and includes threshold questions of arbitrability. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any and all disputes arising out of or relating to the formation, existence, scope, validity, interpretation, applicability, or enforceability of this agreement to arbitrate, or any part of it, or of the Agreement, including, but not limited to, any claim that all or any part of this agreement to arbitrate or the Agreement is void or voidable. If any party disagrees about whether the foregoing provision (or any portion of this agreement to arbitrate, including without limitation the provisions relating to arbitration) can be enforced or whether it applies to the dispute, the parties agree that the arbitrator will decide that dispute. Notwithstanding the foregoing, however, the parties agree that any issue concerning the validity of the class action waiver below must be decided by a court, and an arbitrator does not have authority to consider the validity of the class action waiver. Both Buyer and Katzkin understand and agree that they are waiving their right to sue or go to court to assert or defend their rights, except as set forth below.

- b) **Exceptions.** Notwithstanding the remainder of this binding arbitration agreement, Buyer and Katzkin agree that the following types of disputes will be resolved in court, unless both Buyer and Katzkin agree to submit the dispute to arbitration pursuant to this binding arbitration agreement:

- (1) Disputes or claims within the jurisdiction of a small claims court consistent with the jurisdictional and dollar limits that may apply, as long as it is brought and maintained as an individual Dispute and not as a class, representative, or consolidated action or proceeding;
- (2) Disputes or claims where the sole form of relief sought is injunctive relief (including public injunctive relief); or
- (3) Intellectual property disputes or claims.

For the avoidance of doubt, the waiver of the right to bring claims in or otherwise participate in a class, representative, or consolidated action or proceeding set forth in the class action waiver provision below does not prevent you from seeking public injunctive relief in an individual capacity to the extent otherwise permitted by law.

Buyer and Katzkin also agree that for disputes or claims where both injunctive relief (including public injunctive relief) and non-injunctive relief are sought, Buyer and Katzkin will first submit the dispute or claim for non-injunctive relief to arbitration pursuant to this Arbitration and Dispute Resolution; Class Action Waiver section. The arbitrator will not be permitted to grant injunctive relief (unless the parties mutually agree otherwise). Once the arbitration of the dispute or claim for non-injunctive relief has concluded, Buyer and/or Katzkin may seek the injunctive relief (including the public injunctive relief) in court to the extent permitted by law.

Any litigation in court of the foregoing types of disputes (except for small claims court actions) may be commenced only in a federal or state court located within Los Angeles, California, and Buyer and Katzkin each consent to the jurisdiction of those courts for such purposes. Regardless of whether the foregoing types of disputes in this Exceptions provision are resolved by a court or pursuant to arbitration, Buyer and Katzkin agree that the dispute is subject to the class action waiver provision set forth below.

- c) ***Informal Dispute Resolution.*** Either party asserting a Dispute shall first try in good faith to resolve it by providing written notice as specified below to the other party describing the facts and circumstances (including any relevant documentation) and allowing the receiving party 30 days in which to respond. Both Buyer and Katzkin agree that this dispute resolution procedure is a condition precedent which must be satisfied before initiating any arbitration against the other party.
- d) ***How Arbitration Works.*** Either party may initiate arbitration of a Dispute, which will be settled by final and binding arbitration, using the English language, administered by AAA under the AAA Rules then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms). Unless Buyer and Katzkin agree otherwise, including to conduct the arbitration by telephone or videoconference, any arbitration hearing shall take place in Los Angeles, California, unless the arbitrator determines that a different location would better serve the convenience of the parties. If Buyer lives outside the United States, any arbitration will take place in Los Angeles, California. Payment of all filing, administration, and arbitrator costs and expenses will be governed by the AAA Rules, except that if Buyer demonstrates that any such costs and expenses owed by Buyer under those rules would be prohibitively more expensive than a court proceeding, Katzkin will pay the amount of any such costs and expenses that the arbitrator determines are necessary to prevent the arbitration from being prohibitively more expensive than a court proceeding (subject to possible reimbursement as set forth below). Each party is responsible for his, her, their or its own attorneys' fees and expenses; Katzkin will not pay Buyer's attorneys' fees or expenses except to the extent ordered to do so by the arbitrator. If Buyer prevails in arbitration, however, Buyer will be entitled to an award of reasonable attorneys' fees and expenses to the extent allowed for under applicable law and ordered by the arbitrator. In the event the arbitrator determines the claim Buyer asserted in the arbitration to be frivolous according to Federal Rule of Civil Procedure 11, or brought for an improper purpose, Buyer agrees to reimburse Katzkin for all fees associated with the arbitration paid by Katzkin that Buyer otherwise would have been obligated to pay under the AAA Rules. In determining whether an action is frivolous, the arbitrator may consider whether Katzkin has offered Buyer a full refund of the sum Buyer paid for items Buyer purchased from Katzkin or has otherwise offered full relief to Buyer in relation to Buyer's individual claim. If the arbitrator,

upon final disposition of the case, finds Buyer's dispute was not frivolous, Katzkin will reimburse any filing fees that Buyer paid and were not otherwise reimbursed. Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under the Agreement will take place on an individual basis – class arbitrations and class actions are not permitted. Buyer understands that by agreeing to the Agreement, Buyer and Katzkin are each waiving the right to trial by jury or to participate in a class action or class arbitration.

- e) **WAIVER OF RIGHT TO BRING CLASS ACTION AND REPRESENTATIVE CLAIMS.** To the fullest extent permitted by applicable law, Buyer and Katzkin each agree that any proceeding to resolve any dispute, claim, or controversy will be brought and conducted ONLY IN THE RESPECTIVE PARTY'S INDIVIDUAL CAPACITY AND NOT AS PART OF ANY CLASS (OR PURPORTED CLASS), CONSOLIDATED, MULTIPLE-PLAINTIFF, OR REPRESENTATIVE ACTION OR PROCEEDING ("CLASS ACTION"). Buyer and Katzkin AGREE TO WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION. Buyer and Katzkin EXPRESSLY WAIVE ANY ABILITY TO MAINTAIN A CLASS ACTION IN ANY FORUM. If the dispute is subject to arbitration, THE ARBITRATOR WILL NOT HAVE THE AUTHORITY TO COMBINE OR AGGREGATE CLAIMS, CONDUCT A CLASS ACTION, OR MAKE AN AWARD TO ANY PERSON OR ENTITY NOT A PARTY TO THE ARBITRATION. Further, Buyer and Katzkin agree that the ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS FOR MORE THAN ONE PERSON'S CLAIMS, AND IT MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CLASS ACTION. For the avoidance of doubt, however, Buyer can seek public injunctive relief to the extent authorized by law and consistent with the Exceptions clause above.

IF THIS CLASS ACTION WAIVER IS LIMITED, VOIDED, OR FOUND UNENFORCEABLE, THEN, UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE, THE PARTIES' AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING SO LONG AS THE PROCEEDING IS PERMITTED TO PROCEED AS A CLASS ACTION. If a court decides that the limitations of this paragraph are deemed invalid or unenforceable, any putative class, private attorney general, or consolidated or representative action must be brought in a court of proper jurisdiction and not in arbitration.

- f) Buyer has the right to opt-out and not be bound by the arbitration provisions and/or the class action waiver set forth in these Terms by sending written notice of Buyer's decision to opt-out to:

Katzkin Leather, Inc
6868 Acco Street
Montebello, CA 90640

The notice must be sent to Katzkin within 30 days of Buyer's agreeing to these Terms. Buyer's written notification must include Buyer's name and address, as well as a clear statement that Buyer does not wish to resolve disputes with Katzkin through arbitration and/or that Buyer does not agree to the class action waiver. If Buyer does not opt out, Buyer shall be bound to arbitrate disputes on an individual basis in accordance with the provisions of this Section 15. If Buyer opts out of only the arbitration provisions, and not also the class action waiver, the class action waiver still applies. Buyer may not opt out of only the class action waiver and not also the

arbitration provisions. If Buyer opts-out of these arbitration provisions and/or class action waiver, Katzkin also will not be bound by them.

- g) **Governing Law and Other Terms.** This binding arbitration agreement and class action waiver are governed by, and interpreted, construed, and enforced in accordance with, the Federal Arbitration Act and other applicable federal law. To the extent state law applies to any aspect of this binding arbitration agreement and class action waiver, or to any disputes and claims that are covered by this binding arbitration agreement and/or class action waiver, the law of the state of California will apply. Katzkin will provide notice of any material changes to this binding arbitration agreement and/or class action waiver (which may be satisfied by updating these Terms, unless not otherwise permitted by law), in which case Buyer will have the right to opt out of the arbitration provisions and/or class action waiver within 30 days after such change, consistent with the terms above. Except as set forth above regarding the class action waiver provision, if any portion of these arbitration provisions is deemed invalid or unenforceable, it will not invalidate the remaining portions of these arbitration provisions. Only the arbitrator is authorized to make determinations as to the scope, validity, or enforceability of this binding arbitration agreement, including whether any dispute falls within its scope, as set forth above. However, the parties agree that any issue concerning the validity of the class action waiver above must be decided by a court, as set forth above, and an arbitrator does not have authority to consider the validity of the waiver.

16. MISCELLANEOUS: No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. This Agreement is binding on the parties and their successors and assigns. Buyer shall not assign this Agreement without the prior written consent of Katzkin.

Headings are for reference purposes only and in no way define, limit, construe or describe the scope of such section.

Katzkin may assign the Agreement in whole or in part. Moreover, Katzkin may delegate its rights and responsibilities or use contractors or agents to fulfill its obligations under the Agreement.

The Agreement represents the entire agreement between Buyer and Katzkin in connection with Buyer's use of the website, and they supersede all prior or contemporaneous communications and proposals, whether electronic, oral, or written between Buyer and Katzkin with respect to the website.

Any rights not expressly granted herein are reserved by Katzkin. Please note that, to the fullest extent permitted by law, Katzkin reserves the right to change these Terms and by which the website is extended to Buyer by providing Buyer in writing or electronically a copy of such revised terms (or notice thereof).

Katzkin may revise the Agreement at any time by updating this page, to the extent permissible by applicable law. By using the website, Buyer agrees to be bound by any such changes. Every time Buyer

wishes to use the website, please check these Terms to ensure Buyer understands the terms that apply at that time. Katzkin may update and change the website from time to time to reflect changes to its products, its customer's needs, and its business priorities.