

Online Terms of Service

Welcome to ItemMaster.

Once you click “submit” on your online registration (or otherwise indicate your consent), these terms of service (also referred to as the “Agreement”) become a binding legal agreement between the company that you represent (“Customer”) and ItemMaster, Inc., a Delaware corporation, with principal office address at 30 N. LaSalle, Suite 3500, Chicago, IL 60602 (“ItemMaster” or the “Company”). This Agreement governs the manner in which Customer may use the Services delivered via ItemMaster.com (the “Website”), and several other aspects of the relationship between Customer and ItemMaster.

This Agreement (or any of its provisions) will not apply to the extent, and only to the extent, that ItemMaster and Customer have signed a separate written agreement that expressly states its intention to supersede all or parts of this Agreement.

1. ItemMaster Services

The services delivered by ItemMaster (the “Services”) include the functionality made available to Customer through proper and intended uses of the Website, including a database of product information, product images and related content (together, the “Product Data”), and communication tools for interacting with the database.

2. Cost of Services

The Services are provided in return for the charges (if any) set forth in a separate agreement between Customer and ItemMaster. ItemMaster may change its pricing from time to time upon notice to Customer, and Customer’s sole remedy if it does not wish to pay the applicable updated charges is to terminate its access to the Services. If Customer fails to pay the applicable charges, ItemMaster may terminate its access to the Services.

3. Term

Unless otherwise agreed by authorized representatives of the parties in writing, this Agreement will continue in effect until terminated either by Customer or ItemMaster.

4. Ownership of Product Data and Database

- (a) Product Data may be compiled by ItemMaster or supplied to ItemMaster by product manufacturers, retailers or other third parties. All Product Data and works of authorship made available as part of the Services, including software and internet code, is copyrighted by ItemMaster, or by its content suppliers, and may not be used other than as expressly permitted by this Agreement. Furthermore, ItemMaster does not grant Customer any rights in its compilation or arrangement of Product Data (the “Database”).
- (b) If itemMaster creates Product Data from products submitted to it by Customer, ItemMaster retains ownership of this Product Data, and the Customer agrees that these are not to be deemed “works made for hire” under the Copyright Act.

5. Permitted Use of Services and Product Data

- (a) ItemMaster grants Customer a revocable, non-exclusive right to use the Services and a revocable, non-exclusive license to use and publicly display items of Product Data contained in the current version of our Services, anywhere in the world, to “end users” (i.e., users of Customer’s services who are the final recipients of the Product Data), during the term of and subject to the restrictions and conditions contained in this Agreement.
- (b) ItemMaster updates the Product Data periodically. When a newer version of Product Data is available, Customer must use and display that version. Within a reasonable time thereafter, Customer must delete all copies of the previous version that Customer possesses or controls. In extraordinary circumstances, ItemMaster may direct Customer to discontinue using and delete items of Product Data if rights to such data are called into question. In such a case, Customer agrees to use its best efforts to comply with this direction immediately.

6. Limitations and Restrictions on use of Product Data

Customer may not do any of the following without ItemMaster’s explicit written permission:

- Transfer or sublicense the rights conferred upon Customer by this Agreement;
- Sell, rent, lease, lend, or transfer any items of Product Data, other than as part of products or services that deliver additional features and functionality to the end users of those products or services;
- Alter Product Data;
- Make copies of or store Product Data, other than transient caching or other temporary storage incidental to otherwise permitted uses;
- Utilize framing techniques to enclose or re-present the appearance of the Services, ItemMaster.com or the Database;
- Use any metatags or “hidden text” (i.e., text rendered on a web page that is invisible to a viewer) utilizing ItemMaster’s name or trademarks;
- Remove any source attribution included in the Product Data; or
- Access the Services for the purpose of reverse engineering or creating “Derivative Works” from the Database.

7. Content Submissions

Depending on Customer’s level of service, the Services may permit Customer to submit content in a variety of different formats such as videos, photographs, text, logos or other images (“Customer Generated Content”). By submitting Customer Generated Content on or through the Service, Customer grants ItemMaster a worldwide, perpetual, non-exclusive, royalty-free, sublicensable, transferable (to any successor to ItemMaster’s business) license to redistribute, reproduce, perform and display and otherwise use such Customer Generated Content in connection with the Services, as they may exist at any time. Customer represents that Customer has all legal rights necessary to grant this license, and that Customer Generated Content does not libel, defame, invade the privacy of, or violate the proprietary rights of, any person. The rights granted under this license are in addition to, and not in place of, any rights to use the Product Data that ItemMaster has under applicable law.

8. ItemMaster and Third Party Trademarks

“ItemMaster”, “Every Brand. Everywhere.”, all ItemMaster logos and other words or symbols representing ItemMaster as the source of the Services (“ItemMaster Trademarks”) are owned by ItemMaster. Customer may not use ItemMaster Trademarks without ItemMaster’s written permission. All other trademarks, service marks, product names and company names or logos appearing in the Product Data that do not belong to ItemMaster (“Third-Party Trademarks”) are the property of their owners. ItemMaster conveys no rights or licenses with respect to Third-Party Trademarks.

9. Publicity

Unless otherwise agreed by authorized representatives of the parties in writing, Customer hereby grants ItemMaster a worldwide, royalty-free license to use its company name, brand names, logos and other trademarks on the Website and other publicly available marketing materials, solely for the purpose of accurately identifying Customer as a customer of the Services or contributor of Product Data to the Database.

10. Disclaimer of Warranties

Customer’s use of the Services and Product Data is at its own risk. The Services and Product Data are provided on an “as is” and “as available” basis. While ItemMaster strives to verify the accuracy of Product Data with product manufacturers and provide correct and timely Product Data, it cannot and does not guarantee Customer that the Product Data is accurate, up-to-date, or free of errors. ItemMaster hereby disclaims any warranties, express or implied, including any implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement, and any warranties arising out of a course of dealing or usage of trade.

11. Limitations of Liability

- (a) Under no circumstances will the collective liability of ItemMaster and its officers, directors, employees, subsidiaries, licensors, vendors and other related parties (the “ItemMaster Parties”), regardless of the legal theory under which liability is asserted, exceed the greater of \$500 or the amount that Customer has paid to ItemMaster for the Services during the 12-month period preceding the events giving rise to the claim.
- (b) The ItemMaster Parties are not liable for any incidental, indirect, punitive, actual, consequential, special, exemplary, or other damages, including loss of revenue or income, pain and suffering, emotional distress, or similar damages, even if Customer have advised them of the possibility of such damages.

12. Indemnification

- (a) Customer agrees to indemnify and defend the ItemMaster Parties from and against any claims, damages and expenses, including attorney’s fees, asserted by third parties, arising from or relating to
 - (i) Customer’s violation of any of the terms this Agreement,
 - (ii) Product Data received by such third parties directly or indirectly from Customer, and
 - (iii) Customer Generated Content.

- (b) ItemMaster agrees to indemnify and defend Customer from and against any claims, damages and expenses, including attorney's fees, asserted by third parties, arising from or relating to an assertion that Customer's use of the Product Data, solely in the form provided by ItemMaster, infringes or otherwise violates any third party's property rights. Customer shall promptly notify ItemMaster of any claim that it believes is subject to indemnification.

13. Security Violations and Unauthorized Use

- (a) Customer is responsible for the security of passwords created by users under its account and for all activities that occur through the use of its account if accessed with any of its passwords, including liability for damages resulting from misuse. If ItemMaster considers a password under Customer's account insecure, ItemMaster may require Customer to change the password in order to access the account.
- (b) Customer may not attempt to violate the security of the Services, or use the Services to violate the security of other persons or websites or to violate the law, including by (1) accessing data not intended for Customer or logging into an account that Customer are not authorized to access, (2) attempting to probe, scan or test the vulnerability of the Services or to breach security or authentication measures, or (3) attempting to interfere with service to any user, host or network, including without limitation, by submitting a virus to the Services.
- (c) ItemMaster will take all reasonably necessary steps to investigate suspected violations of this Agreement. We reserve the right to involve and fully cooperate with any law enforcement authorities and we will comply with court orders requesting or directing us to disclose the identity of anyone engaging in conduct that is believed to violate the law. ItemMaster may, in its discretion, release your user details to system administrators at other websites in order to assist them in resolving security incidents, subject to reasonable assurances of confidentiality.

14. Third Party Advertisers and Merchants

The Services may include advertisements from companies that are not owned or operated by ItemMaster and that may permit Customer to order and receive products, information and services from these businesses. The purchase, payment, warranty, guarantee, delivery, maintenance and all other matters concerning the merchandise, services or information ordered or received from such businesses are solely between Customer and such businesses, delivered under their terms of service. ItemMaster does not endorse, warrant or assume any responsibility or liability for such products, information or services including, but not limited to, the accuracy, completeness or usefulness of such information, opinion and advice and the quality and availability of such products or services. Any separate charges or obligations Customer incurs in Customer's dealings with these third parties are Customer's responsibility and are not part of the fee charged for the ItemMaster Services.

15. Termination

ItemMaster may discontinue or revise any or all aspects of ItemMaster's Service without prior notice to Customer. ItemMaster may also suspend or terminate Customer's access to the ItemMaster Services at any time for any reason without notice to Customer. Customer may terminate its ItemMaster account at any time.

16. Additional Terms

- (a) If any portion of this Agreement is held invalid or unenforceable, that portion will be construed in accordance with applicable law as nearly as possible to reflect the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.
- (b) The failure of either party to insist upon strict performance of any provision of this Agreement is not to be construed as a waiver of any provision or right.
- (c) This Agreement shall be governed by the laws of the State of Illinois without regard to its conflict of laws rules. Customer expressly agree that exclusive jurisdiction for any claim or dispute with ItemMaster or relating in any way to your use of the ItemMaster Services or ItemMaster.com resides in the courts of Illinois, located in Chicago, Illinois, and Customer further consent and agree to personal jurisdiction by the state and federal courts sitting in the State of Illinois in connection with any such dispute.
- (d) Customer may only resolve disputes with ItemMaster on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed.
- (e) Any claim by Customer related to use of the Services, Product Data and ItemMaster.com must be instituted within one year after the claim or cause of action has arisen.

17. Revisions to this Agreement

If ItemMaster makes material changes to this Agreement, Customer will be asked to review and accept the changes the next time Customer accesses the Services. If Customer does not agree to the new terms, Customer's sole recourse is to discontinue use of the Services.