

Terms and Conditions of Use

Last Updated: JUNE 1, 2021

IMPORTANT: PLEASE READ THESE TERMS AND CONDITIONS OF USE (“Terms and Conditions”) AND THE PRIVACY POLICY LOCATED AT WWW.SPORTKRAFTUSA.COM (“PRIVACY POLICY”) CAREFULLY BEFORE USING THIS WEBSITE.

By using this Site, you understand and agree to be bound by these Terms and Conditions and recognize that you may be waiving certain rights. Your continued use of this Site is subject to your continued compliance with these Terms and Conditions. If you do not agree to be bound by these Terms and Conditions, you may not use this Site.

This “Site” (as defined below) is owned and operated by Sportkraft USA, LLC and its respective subsidiaries, affiliates, agents, service vendors/providers, and affiliates acting on its behalf (“Sportkraft”, “us” “our” or “we”). This is a contract between you (and, if you are agreeing to these terms and conditions on behalf of another entity, that entity) and Sportkraft who owns the digital property that you are using. These Terms & Conditions of Use (the “**Terms & Conditions**”) set forth the legal terms and conditions governing Sites and online advertisements. “**Site(s)**” means Sportkraft websites, social media pages that we control, promotional sites, widgets and mobile sites and applications, blogs, interactive applications, email and text messages that we send to you, and other digital/online properties on which these terms are posted or referenced (unless a different or additional policy is provided on a particular site, application or service, in which case such different policy shall govern and control).

1. PRIVACY STATEMENT; MARKETING COMMUNICATIONS

These Terms & Conditions incorporate the Sportkraft Privacy Policy, which describes our practices related to the collection, use, and disclosure of your information. You have a choice in how we communicate with you. Please refer to the Privacy Policy or the marketing communication (e.g., email) for further information on managing communications.

2. APPLICABLE LAW

By entering this Site you acknowledge and agree that this Site is construed in accordance with and governed by the laws of the State of California, USA. If you use this Site from another location, you are responsible for compliance with any and all applicable local laws. Sportkraft makes no representation that the content contained within this Site is appropriate for countries outside the United States. You agree that any litigation between you and Sportkraft arising from or pertaining to the use of this Site, any advertising associated with this Site, or any link accessible from or providing access to this Site or otherwise shall be governed by California law and that exclusive jurisdiction and venue for any litigation arising from or relating to the Site shall be Monterey County Superior Court. You acknowledge and agree that you are waiving any and all rights of removal to Federal District Court and are agreeing to personal jurisdiction in the State of California.

3. UPDATES TO TERMS & CONDITIONS; RIGHT TO UPDATE OR TERMINATE ACCESS

Sportkraft reserves the right to revise these Terms and Conditions at any time, for any reason and without notice or obligation, by updating this page and such revisions shall become effective immediately upon posting. Sportkraft further reserves the right to make changes at any time, for any reason and without notice or obligation, to any of the content contained on this Site. By entering this Site you acknowledge and agree that you shall be bound by any such revisions. We suggest periodically visiting this page of the Site to review these Terms and Conditions.

4. LICENSE TO USE THE SITE

Sportkraft grants you a non-exclusive, non-transferable, revocable, limited right and license to access, use and privately display this Site and the Content for your personal, non-commercial use only, provided that you comply fully with these Terms and Conditions.

You may not use the Site or Content other than as expressly permitted by this Section 4. Without limitation, you will not, directly or indirectly: (a) copy, reproduce, modify, distribute, display, create derivative works of or transmit any Content; (b) use the Site or Content for any commercial purpose; (c) reverse engineer, decompile, tamper with or disassemble the technology used to provide the Site (except as and only to the extent any foregoing restriction is prohibited by a non-waivable provision of applicable law); (d) interfere with or damage the Site or any underlying technology; (e) impersonate or misrepresent your identity or affiliation; (f) attempt to obtain unauthorized access to the Site; (g) collect information about users of the Site or the Site itself; (h) violate, misappropriate or infringe a third party's intellectual property or other right, or any social media platform terms; (i) violate any law, rule, or regulation, or (j) interfere with any third party's ability to use or enjoy, or our ability to provide, the Site.

You agree to report any violation of these Terms and Conditions by others of which you become aware.

Any violation of these Terms & Conditions may result in restrictions on your access to all or part of a Site and may be referred to law enforcement authorities. No changes to or waiver of any part of these Terms & Conditions shall be of any force or effect unless formally posted or made in writing and signed by a duly authorized officer of Sportkraft.

5. INTELLECTUAL PROPERTY RIGHTS AND RESTRICTIONS

A. Any and all rights in a Site and the content it contains, or may contain in the future, including but not limited to text, video, pictures, graphics, designs, information, applications, software, articles, directories, as well as the trademarks, service marks, trade names, trade dress, copyrights, logos, domain names, code, patents and/or any other form of intellectual property (collectively, the "**Content**") are and shall remain the exclusive property of Sportkraft or the third party from which the Content was licensed.

B. All Sites and associated Content are protected from any unauthorized use, copying and dissemination by copyright, trademark and other intellectual property and non-intellectual property laws and by international treaties.

C. Except as expressly permitted in writing by Sportkraft in advance, you shall not capture, reproduce, perform, transfer, sell, license, modify, create derivative works from or based upon, republish, reverse engineer, upload, edit, post, transmit, publicly display, frame, link, distribute or exploit, in whole or in part, any of the Content for any purpose.

D. Any use of the Content other than as permitted by these Terms and Conditions will violate these Terms and Conditions and may infringe upon the rights of Sportkraft or the rights of the third party that owns the affected Content. Nothing contained in these Terms and Conditions or on a Site should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Content in any manner without the prior written consent of Sportkraft or such third party that owns the Content or intellectual property displayed on the Site. You may access this Site for your individual noncommercial use only. Any unauthorized use of the Content of a Site may subject you to civil or criminal penalties.

6. **USER GENERATED CONTENT; ACCEPTABLE CONTENT**

A. Certain Sites may allow you to send ideas, concepts, comments, graphics, photographs, questions, complaints, materials, or other information (each a “**User Content**”) posted or communicated to Sportkraft. By submitting User Content to us, you grant us, and represent and warrant that any applicable third party with rights in the User Content grants us, a perpetual, irrevocable, worldwide, royalty free, non-exclusive, transferable license to use, reproduce, distribute, sublicense, modify, translate, prepare derivative works of, publicly display, broadcast, publish, and perform this User Content in any manner or medium known now or later devised, including but not limited to commercial use, without any consent/approval, notice and attribution, or compensation to you or any third party. You hereby irrevocably waive, and agree not to assert, any claims based on “moral rights” or similar theories

B. Any material or communication transmitted by you to a Site will not be treated as confidential.

C. You represent and warrant that you have permission to transmit any material or communication transmitted by you to this Site, and that the material does not infringe the intellectual property or privacy rights of any third party person or non-person, whether living or dead.

D. You will not post or transmit any User Content to a Site that contain any of the following: Unlawful, pornographic, obscene, profane, defamatory, libelous, threatening, or otherwise objectionable material, as determined by Sportkraft.

E. You agree that your User Content will not incorporate, encourage, or condone:

1. Criminal activity or conduct that gives rise to civil liability;

2. Any form of violence, hatred or harassment;
 3. Any form of discrimination on any ground covered by human rights legislation, such as religion, race, color, sexual orientation, disability, etc.
- F. You agree that your User Content will not contravene any applicable law, regulation, policy, guidelines or industry standards, as determined by Sportkraft.
- G. Sportkraft reserves the right to delete or hide any User Content that it deems inappropriate based on these Terms and Conditions.

7. **COPYRIGHT POLICY/INFRINGEMENT NOTICES; DIGITAL MILLENNIUM COPYRIGHT ACT**

Sportkraft may at its sole and absolute discretion, disable and/or terminate accounts of users who may or are alleged to be infringing the intellectual property rights of others.

Sportkraft will respond to allegations of copyright infringement that comply with the Digital Millennium Copyright Act ("DMCA"). If you believe that your copyrighted work is infringed by Content appearing on the online services, please provide a written DMCA notice to Sportkraft with the below information.

If you believe that your intellectual property rights have been violated, please provide the Copyright Agent (below) the following information:

- A. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- B. A description of the work or other intellectual property that you claim has been infringed;
- C. A description of the material that you claim infringes on your intellectual property and the material's location;
- D. Your address, telephone number, and email address;
- E. A statement by you that you have a good faith belief that the identified use is not authorized by the intellectual property owner, its agent, or the law; and
- F. A statement by you made under penalty of perjury, that the information in your notice is accurate and that you are the intellectual property owner or are authorized to act on the owner's behalf.

If Sportkraft receives such a notification, we reserve the right to remove or delete the allegedly infringing material. Sportkraft will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity. Sportkraft will take reasonable steps to expeditiously notify the user that created or posted the relevant material that it has removed or disabled access thereto.

Sportkraft USA, LLC
ATTN: Copyright Agent
44300 Via Canada
King City, CA 93930

To the extent permitted under DMCA in the United States, any user whose material has been removed or disabled in accordance with this Policy may provide Sportkraft with a counter notification under the DMCA. Such counter notification must be provided in writing to our Copyright Agent at the address listed above and must contain:

A. The user's electronic or physical signature;

B. Identification of the material that has been removed or to which access has been disabled and the location at which such material appeared before it was removed or disabled, including the complete URL;

C. A statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

2. UNSOLICITED IDEAS

Sportkraft does not accept unsolicited ideas or concepts. We are unable to review any ideas or concepts that arise outside of the Sportkraft business. You and your heirs and assigns expressly waive any and all claims, now or in the future, in connection with any product, design, or concept similar to your submission, including if you send any unsolicited ideas or concepts to us. Should you submit any unsolicited ideas or concepts through the Site, you hereby grant Sportkraft permission to use such content in any manner, including reproduction, transmission, publication or broadcast without compensation.

8. REGISTRATION

Certain parts or features of a Site may require registration or may otherwise ask you to provide information to participate in certain features or to access certain Content on the Site (“**Account Information**”). Examples of Account Information include but are not limited to user name, address and contact information, and profile picture. The decision to provide this Account Information is purely voluntary and optional; however, if you elect not to provide such information, you may not be able to access certain Content or participate in certain parts or features of the Site.

You agree that you will not provide any false information to us, or create an account for anyone other than yourself without permission.

You shall not create more than one personal profile. Sportkraft reserves the right to remove or reclaim any Account Information from a Site in our sole discretion, and further reserves the right, with or without notice, to terminate your password and membership to such Site or to all Sportkraft Sites, for any reason or no reason at all. If we disable your account, you agree that you will not create another one.

If you register with a Site, you are responsible for maintaining the confidentiality of your password, if any, and for restricting access to your account so that others may not access the password protected portion of the Site. You accept responsibility for all activities that occur under your account, email or password, if any, and agree you will not sell, transfer, or assign your account.

You understand and agree that Sportkraft shall not have any liability to you or any other person for any termination of your access to the Sites or the removal of Account Information concerning your account. Sportkraft will determine your compliance with these Terms and Conditions in its sole discretion and its decision shall be final and binding and not subject to challenge or appeal.

9. **CHAT FUNCTIONALITY; CHAT BOTS**

Certain Sites may feature chat functionality. In certain instances, this may be manned by a person, and in other cases this may be through automated conversation systems, or “chatbots,” that utilize artificial intelligence. For example, chatbots may be accessed on our Sites (via web widgets), via SMS, and via messaging apps such as Facebook Messenger.

Given that these automated chatbots are managed through artificial intelligence, and often through third-party platforms, we make no warranties, implied or express, or make any representation concerning the accuracy, results, or reliability, or correctness of the materials and responses.

Refer to our Privacy Policy for information on how we may use personal data.

10. **LINKING; THIRD PARTY SITES AND CONTENT**

You must obtain Sportkraft permission to link to this Site. Sportkraft will only authorize links in its discretion. If we allow you to link to a Site, you may link only to the home page, or the portion of the Site specifically authorized by Sportkraft, and which is freely accessible and not subject to any restrictions such as a paywall, authorized user account or other password protection or authorization. The link must be in plain text, unless otherwise approved in writing. The link to the Site must not damage, dilute or tarnish the goodwill associated with Sportkraft and/or its intellectual property, nor may the link create the false appearance that your website and/or organization is sponsored, endorsed by, affiliated and/or associated with Sportkraft. You may not “frame” the Site or alter its Content in any other way. Sportkraft reserves the right, in its sole discretion, to terminate a link with any website for any reason or no reason at all, including without limitation any website that Sportkraft deems to be inappropriate or inconsistent with or antithetical to the Site and/or these Terms and Conditions.

The Site may contain links to third party websites or resources, which may or may not be obvious (“**Third Party Sites**”) as well as software, text, graphics, articles, photographs, designs, sound, video, music, information, software applications, plug-ins, and other Content originating from third parties (collectively, “**Third Party Content**”). Sportkraft is not the owner of, does not control, does not monitor, and is not responsible for any Content or performance of any Third Party Content linked to or referenced on our Site.

Although this Site may be linked to other sites, Sportkraft does not endorse, approve, certify or sponsor the linked site unless specifically stated on this Site. If you decide to leave the Site and access the Third Party Sites or to use or install any Third Party Content, you do so at your own risk and you should be aware that our Terms and Conditions and policies no longer govern.

In some cases, we may use a third-party service to process entries made through the Sites. In these cases, your transaction will be subject to the third party's policies. We have no control over, and are not responsible for, third party's actions or sites.

YOU AGREE THAT YOUR USE OF THIRD-PARTY SITES OR THIRD PARTY CONTENT, INCLUDING, WITHOUT LIMITATION, YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER CONTENT ON OR AVAILABLE THROUGH SUCH SITES AND RESOURCES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES AND RESOURCES. WE BEAR NO RESPONSIBILITY FOR ANY ISSUES THAT MAY ARISE FROM YOUR USE OF THE THIRD-PARTY CONTENT.

11. **INDEMNIFICATION**

BY USING THE SITE YOU AGREE TO INDEMNIFY, DEFEND AND HOLD SPORTKRAFT HARMLESS FROM AND AGAINST ANY THIRD PARTY CLAIMS, ALLEGED CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, DAMAGES, LOSSES, LIABILITIES, AND ALL COSTS AND EXPENSES OF DEFENSE, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO: YOUR BREACH OF YOUR REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS HEREUNDER; YOUR VIOLATION OF THESE TERMS AND CONDITIONS OR ANY LAW; YOUR USE OF THIS SITE AND/OR THE CONTENT; YOUR USER CONTENT THAT INFRINGES ANY COPYRIGHT, TRADEMARK, TRADE SECRET, TRADE DRESS, PATENT, PUBLICITY, PRIVACY OR OTHER RIGHT OF ANY PERSON OR DEFAMES ANY PERSON; ANY MISREPRESENTATION MADE BY YOU; AND/OR SPORTKRAFT'S USE OF YOUR USER CONTENT. YOU WILL COOPERATE AS FULLY AND AS REASONABLY REQUIRED IN SPORTKRAFT'S DEFENSE OF ANY CLAIM. SPORTKRAFT RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU, AND YOU SHALL NOT IN ANY EVENT SETTLE ANY SUCH MATTER WITHOUT THE WRITTEN CONSENT OF SPORTKRAFT.

12. **LIMITATION OF LIABILITY AND DISCLAIMER**

THE SITE, ALL MATERIALS, AND CONTENT ON THE SITE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

Sportkraft assumes no responsibility for any delays, interruptions, errors, defects, omissions, or deletions, related to the communications line failure, operation or transmission, alteration of, or theft or destruction or unauthorized access to, user communications. The Site may be unavailable from time to time due to maintenance or malfunction of computer equipment or for various other reasons. Sportkraft is not responsible for any technical or non-technical malfunction or other problems of any hosting services, computer systems, servers or providers, telephone networks or telephone services, computer or mobile phone equipment, software, failure of e-mail or players on account of technical problems or traffic congestion on the Internet or in connection with the Site, including injury or damage to a user's or to any other person's computer, mobile phone, or other hardware or software, related to or resulting from using or downloading Content in connection with the Web and/or in connection with the Site.

IN NO EVENT SHALL SPORTKRAFT BE LIABLE FOR: (1) ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THIS SITE OR ANY INFORMATION PROVIDED ON THIS SITE, REGARDLESS OF THE CAUSE OF ACTION FROM WHICH THEY ARISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING AND (2) AMOUNTS IN EXCESS OF THE AMOUNT THAT YOU PAID SPORTKRAFT BY WAY OF THE SITE OR \$100, WHICHEVER IS GREATER.

13. **MISCELLANEOUS**

A. These Terms and Conditions constitute the entire Terms and Conditions of the parties with respect to the subject matter hereof and supersede all prior or contemporaneous written or oral agreements, understandings, or the like between the parties with respect to the subject matter hereof.

B. These Terms and Conditions may not be amended, nor any obligation waived, without Sportkraft written authorization. Any failure to enforce any provision of these Terms and Conditions shall not constitute a waiver thereof or of any other provision thereof.

C. If any provision of these Terms and Conditions shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and Conditions and shall not affect the validity and enforceability of any remaining provisions.

14. **NOTICE FOR CALIFORNIA RESIDENTS**

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: If you have a question or complaint regarding the Site, please send an email to sportkraftusa@gmail.com or by writing to Sportkraft USA, LLC, 401 N First St, King City, CA 93930, California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.