

TERMS OF USE

These terms of use (“**Terms of Use**” or “**Terms**”) govern your use of the “DERCO FOODS” app (the “**Application**”), which is owned and operated by Derco Associates, Inc., doing business as Derco Foods (“**Derco**,” “**we**,” or “**us**”). The Application provides our users with the ability to obtain information on the status of their orders.

These Terms explain the terms by which you (“**you**,” or “**User**”) may use the Application, together with the content, software, services, and functionality offered on or through the Application (collectively, the “**Services**”). By accessing or using the Services, you signify that you have read, understood, and agree to be bound by these Terms of Use, including any policies referenced herein, and to the collection and use of your information as set forth in the Derco Privacy Policy, hereby incorporated by reference. These Terms apply to all visitors, Users, and others who access the Services.

Certain Services may be subject to additional terms and conditions specified by us from time to time, and your use of such Services is subject to those additional terms and conditions, which are hereby incorporated into these Terms by reference. Derco reserves the right to modify these Terms with or without notice. If we materially update any portion of these Terms, we may notify you by posting an announcement on the Application before the date becomes effective. Your continued use of the Services after such modification will constitute acknowledgement and acceptance of the modified Terms. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) the Services. If you choose to send Derco a notice relating to these Terms, any notice shall be sent by email to development@dercofoods.com and will be deemed to have been received by Derco on the day such notice is sent.

1. Use of Our Services

1.1 Eligibility. This is a contract between you and Derco. You must read and agree to these terms before using the Services. Please read these Terms carefully to ensure that you understand each provision. If you do not agree to the Terms, you may not use the Services. You may use the Services only if you can form a binding contract with Derco, and only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations (“**Applicable Law**”). Any use or access to the Services by anyone under 18 is strictly prohibited and in violation of these Terms. The Services are not available to any Users previously removed from the Services by Derco. If at any time you do not accept all of these Terms, you must immediately stop using the Services. If you are an entity, the person signing up for and using the Services is acting on behalf of such entity.

1.2 Derco Services. Subject to the terms and conditions of these Terms, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Services for your use only as permitted by the features of the Services and these Terms. Derco reserves all rights not expressly granted herein in the Services and the Content (as defined below in Section 2).

The Services are primarily controlled from facilities in the United States for use internationally. Users who access or use the Services do so at their own volition and are entirely responsible for compliance with all Applicable laws and regulations. You may not use the Services if you are a

resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government.

1.3 User Accounts. Derco will provide you with a login and password for your account which will give you access to the Services and functionality that we may establish and maintain through the Application from time to time and in our sole discretion. We may maintain different types of accounts for different types of Users. All User accounts are subject to the sole control of Derco and access to any User account may be restricted or terminated as Derco determines in its sole and absolute discretion.

If you are using an account on behalf of an entity, (a) you represent and warrant that you have the authority to legally bind the entity and to grant all permissions and licenses provided in these Terms; and (b) you shall not allow access to or use of the Services by anyone other than authorized User.

You are responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Derco immediately of any breach of security or unauthorized use of your account. Derco will not be liable for any losses caused by any unauthorized use of your account.

By providing Derco your email address, you consent to our using the email address to send you Services-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Services. If you do not want to receive such email messages, you may opt out by clicking Unsubscribe. Unsubscribing may prevent you from receiving email messages regarding updates or improvements.

1.4 Prohibited Uses. You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Services in any medium, including without limitation by any automated or non-automated "scraping;" (ii) using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Services in a manner that sends more request messages to the Derco servers than a human can reasonably produce; (iii) transmitting spam, chain letters, or other unsolicited emails; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Services; (vii) collecting or harvesting any personally identifiable information, including account names, from the Services; (viii) using the Services for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Services; (xi) accessing any content on the Services through any technology or means other than those provided or authorized by the Services; (xii) bypassing the measures we may use to prevent or restrict access to the Services, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or the content therein; (xiii) making any

commercial use of the Services, including making any collection or use of any product listings, descriptions, prices or images; (xiv) except as permitted pursuant to these Terms, downloading, copying, or transmitting any Content for the benefit of any other merchant or Seller; or (xv) using the Services for any other purposes not expressly permitted under these Terms or without Derco's express prior written consent.

1.5 Changes to the Services. We may change the Services; stop providing the Services or features of the Services, to you or to Users generally; or create usage limits for the Services, with or without notice, but will provide you with notice if such changes have a material effect on our contractual obligations to you. You agree that we will not be liable to you or any third party for any Derco actions in keeping with this Section.

2. Ownership & Proprietary Rights. The Services and all materials therein or transferred thereby, including, without limitation, information, software, images, text, graphics, illustrations, products, features, functionality, Services, logos, patents, trademarks, service marks, copyrights, and photographs (the "**Content**"), and all Intellectual Property Rights related thereto, are the exclusive property of Derco and its licensors. Except as explicitly provided herein, nothing in these Terms shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Content. Use of the Content for any purpose not expressly permitted by these Terms is strictly prohibited. Specifically, Derco does not convey to anyone, through allowing access to the Application, any ownership rights in the Application or in any Content appearing on or made available through the Application. Users may not copy, modify, translate, transmit, distribute, adapt, reproduce, decompile, reverse engineer or disassemble any part of the Application or the Content "**Intellectual Property Rights**" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights and proprietary rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

3. Termination and Suspension

3.1 Termination and Suspension by Derco. We may permanently or temporarily terminate or suspend your access to the Services or terminate the Terms (in each case, in whole or in part) without notice and liability for any reason, including if in our sole determination you violate any provision of these Terms, or for no reason at all. We may discontinue, suspend or modify the Services and these Terms at any time without notice, and we may block, terminate or suspend any User's access to the Services, including their account at any time without notice for any reason as determined by Derco in its sole discretion, even if access continues to be allowed to others.

3.2 Effect of Termination. Upon termination of these Terms for any reason, all licenses set forth herein will immediately terminate, and you will immediately cease using the Services, Derco will cease providing the Services, and except as otherwise provided in Section 3.3 below, the rights and obligations of both parties hereto will cease.

3.3 Survival of Terms and Conditions. Upon termination for any reason or no reason, you shall continue to be bound by the terms and conditions of Section 4, 5, 6, and 8 which by their nature shall survive such termination, including indemnification, warranty disclaimers, and limitations of liability.

4. Indemnity. You shall bear the risk of loss or damage resulting from your use of this Application and any of the Services. You agree to defend, indemnify and hold harmless Derco and its subsidiaries, agents, licensors, officers, directors, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Services, including any data or content received by you; (ii) your violation of any term of these Terms, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; (iv) your violation of any Applicable Law, rule or regulation; (v) providing any misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Services with your account, username, password or other appropriate security code. Derco has the right to defend and/or settle any such matter in such manner as Derco deems appropriate, without your consent, and you must reimburse Derco for all costs reasonably incurred in defending and/or settling any such matter, including reasonable attorneys' fees.

5. DISCLAIMER OF WARRANTY. THE APPLICATION AND SERVICES ARE PROVIDED ON AN "AS IS", "WHERE-IS" AND "AS AVAILABLE" BASIS AND USE OF THE APPLICATION AND SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM DERCO OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, DERCO AND ITS AFFILIATES DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICES WILL MEET YOUR REQUIREMENTS; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT OBTAINED THROUGH THE USE OF THE SERVICES IS DONE SO AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM YOUR USE OF THE SERVICES. FURTHERMORE, NO ORAL OR WRITTEN INFORMATION, REPRESENTATION OR ADVICE GIVEN BY DERCO OR AN AUTHORIZED REPRESENTATIVE OF DERCO SHALL CREATE A WARRANTY.

THE SERVICES MAY DISPLAY NAMES, MARKS, PRODUCTS, ADVERTISEMENTS, OR SERVICES OF THIRD PARTIES, OR LINKS TO THIRD-PARTY APPLICATIONS. IN NO EVENT WILL DERCO BE LIABLE, DIRECTLY OR INDIRECTLY, TO ANY USER FOR DAMAGES OR LOSS ARISING FROM OR RELATING TO USE, CONTINUED USE, OR RELIANCE ON ANY ADVERTISEMENT DISPLAYED ON THE SERVICES, PRODUCTS, SERVICES, OR OTHER MATERIALS RELATING TO SUCH ADVERTISEMENT, LINKED THIRD-PARTY

APPLICATION, OR LINKED CONTAINED IN A LINKED APPLICATION.

6. LIMITATION OF LIABILITY.

6.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL DERCO BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT DERCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.2 MAXIMUM AGGREGATE LIABILITY. DERCO'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES SHALL BE THE LESSER OF: (A) A USER'S ACTUAL DAMAGES; OR (B) FIVE HUNDRED DOLLARS (\$500).

6.3 ACKNOWLEDGEMENT. THE LIABILITY LIMITED BY SECTIONS 6.1 AND 6.2 APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF DERCO IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF USER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 6, DERCO'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE BY SUCH LAW.

7. CHOICE OF LAW AND VENUE AND DISPUTE RESOLUTION. These Terms shall be governed by the internal substantive laws of the United States of America and the State of California, without respect to its conflict of laws principles. PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

7.1 Initial Dispute Resolution. We are available by email at development@dercofoods.com to address any concerns you may have regarding your use of the Services. Most concerns may be quickly resolved in this manner. You agree to use best efforts to settle any dispute, claim, question, or disagreement directly through consultation and good faith negotiations which shall be a precondition to either party initiating a lawsuit or arbitration.

7.2 Agreement to Binding Arbitration. If we do not reach an agreed-upon solution within a period of thirty (30) days from the time informal dispute resolution is resolved, then either you or we may initiate binding arbitration. All claims arising out of or relating to these Terms (including its formation, performance and breach), the parties' relationship with each other and/or your use of the Services shall be finally settled by binding arbitration administered on a confidential basis by Judicial Arbitration and Mediation Services (JAMS), in accordance with the JAMS Streamlined

Arbitration Rules & Procedures, excluding any rules or procedures governing or permitting class actions. Such arbitration will take place in Los Angeles, California. Each party will have the right to use legal counsel in connection with arbitration at its own expense. The parties shall select a single neutral arbitrator in accordance with the JAMS Streamlined Arbitration Rules & Procedures. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of your agreement to these Terms, including, but not limited to, any claim that all or any part of your agreement is void or voidable. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be in writing and provide a statement of the essential findings and conclusions, shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. The interpretation and enforcement of these Terms shall be subject to the Federal Arbitration Act. If you initiate arbitration, to the extent the filing fee for the arbitration exceeds Two Hundred and Fifty U.S. Dollars (\$250) and the claim is found to be non-frivolous, we will pay the additional cost. You will not be required to pay fees and costs incurred by us if you do not prevail in arbitration.

You understand that, absent this mandatory provision, you would have the right to sue in court and have a jury trial. You further understand that the right to discovery may be more limited in arbitration than in court.

7.3 Class Action and Class Arbitration Waiver. You and we each further agree that any arbitration shall be conducted in our respective individual capacities only and not as a class action, and you and we each expressly waive our respective right to file a class action or seek relief on a class basis. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

7.4 Term for Cause of Action. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

7.5 Exclusive venue for litigation. You and we expressly consent to exclusive jurisdiction in of the exclusive jurisdiction and venue of the state and federal courts located in Los Angeles County, California, for any litigation that is not required to be resolved by arbitration as required herein, other than small claims court actions. In the event of litigation relating to these Terms or the Services, you agree to waive, to the maximum extent permitted by law, any right to a jury trial, except where a jury trial waiver is not permissible under applicable law.

8. General

8.1 Assignment. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Derco without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

8.2 Entire Agreement/Severability. These Terms, together with any amendments and any additional agreements you may enter into with Derco in connection with the Services, shall constitute the entire agreement between you and Derco concerning the Services. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force.

8.3 No Waiver. No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and Derco's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.

8.4 Contact. Please contact us at development@dercofoods.com with any questions regarding these Terms.

8.5 Copyright Complaints. It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 ("**DMCA**"). If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Services, please notify Derco's copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

- (a) An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- (b) Identification of the copyrighted work that you claim has been infringed;
- (c) Identification of the material that is claimed to be infringing and where it is located on the Services;
- (d) Information reasonably sufficient to permit Derco to contact you, such as your address, telephone number, and, email address;
- (e) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
- (f) A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.
- (g) The above information must be submitted to the following DMCA Agent:

Attn: DMCA Notice
Derco Associates, Inc.
2670 W. Shaw Lane
Fresno, California 93711, USA
Email: development@dercofoods.com

All communications sent by you to us will be treated as non-confidential and non-proprietary (subject to our privacy policy). Please do not submit confidential or proprietary information to us including patentable ideas, new content suggestions or business proposals unless we have mutually agreed in writing otherwise. Ideas that we receive unsolicited will be treated as property owned by Derco and will not be returned to you.

8.6 Notices And Electronic Communications. Except as explicitly stated otherwise, any notices you send to Derco shall be sent by email to development@derco.com. In the case of notices Derco sends to you, you consent to receive notices and other communications by Derco posting notices on the Application or emailing a notice to you at your email address listed in your account. You agree that all agreements, notices, disclosures, and other communications that Derco provides to you in accordance with the prior sentence satisfy any legal requirement that such communications be in writing. Notice shall be deemed given (a) 24 hours after the notice is posted, or (b) in the case of emailing, one day after the date of emailing. You agree that a printed version of these Terms and/or any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.