

## **TERMS AND CONDITIONS**

The following are the terms and conditions (the "Agreement") under which you ("You," or a "User") may use the this website and co-branded websites of <http://www.TIMCOLEY.COM> ("TIMCOLEY.COM") located at [www.timcoley.com](http://www.timcoley.com) and/or any other addresses (any or all of which are herein referred to as the "Site"). Please read this page carefully. By accessing and using the Site, you accept and agree to be bound, without modification, limitation or qualification, by the Agreement. TIMCOLEY.COM may, at its sole discretion, modify or revise the Agreement at any time by updating the text of this page. You are bound by any such modification or revision and should therefore visit this page periodically to review the Agreement.

Specific rules, in addition to this Agreement, are provided with respect to transactions conducted on or in connection with the Site, and other rules may be provided for the use of certain other items, areas or services provided on or in connection with the Site, and you agree to be bound by such rules.

**YOUR USE OF THE SITE CONSTITUTES YOUR AGREEMENT TO ALL TERMS, CONDITIONS, AND NOTICES CONTAINED HEREIN OR OTHERWISE POSTED ON THE SITE. (COLLECTIVELY, THE "AGREEMENT.") IF YOU DO NOT ACCEPT ANY OF THE PROVISIONS OF THE AGREEMENT, DO NOT USE THE SITE.**

### **Section 1. The Material on the Site**

The contents of the Site, such as text, graphics, images, audio, video, data, coding, scripts, computer programs and other material ("Material" or "Materials"), are protected by copyright under the laws of the United States as well as other countries, and are owned or controlled by TIMCOLEY.COM or by third parties that have licensed their Material to TIMCOLEY.COM. TIMCOLEY.COM authorizes you to view and download a single copy of the Material solely for your personal, non-commercial use or for use in connection with a sale conducted through the Site (the "Sale.") All rights in and to the Material not expressly granted to User in the Agreement are reserved. Neither the availability of, nor anything contained within the Site shall be construed as conferring any license under any of TIMCOLEY.COM's or any third party's intellectual property rights, other or further than as expressly provided in the foregoing provisions of this paragraph, whether by implication, estoppel or otherwise.

Unauthorized use of the Material may violate copyright, trademark, and other laws. You may not sell, prepare derivative works based on or modify the Material (including, without limitation, preparation of summaries of the Material or "thumbnails" of any images therein), or reproduce, publicly display, publicly perform, distribute, or otherwise use the Material in any way for any public or commercial purpose. The use of the Material or any portion thereof on any other Site, or in any publication, database, catalog or compilation, or in a networked computer environment for any purpose other than personal browsing of the Site without the express prior written permission of TIMCOLEY.COM is strictly prohibited. With respect to any copy you make of the Material within the scope of the limited personal license granted herein, you must retain therein, unmodified and unobscured, any and all copyright and other proprietary notices contained in the original Material. Some of the Material may contain digital "watermarks" to indicate their source and ownership. You agree not to attempt to remove, deactivate, reverse engineer, modify, tamper with or obscure any such watermarks. The trademarks, logos and service marks (the "Marks") displayed on the Site are owned by TIMCOLEY.COM or third parties. You are prohibited from using the Marks without the express, prior written permission of TIMCOLEY.COM or such third party. If you would like information about obtaining TIMCOLEY.COM's permission to use the Material on your Site, [info@timcoley.com](mailto:info@timcoley.com).

TIMCOLEY.COM reserves the right to employ robot exclusion headers and similar mechanisms within the Site, and you agree that you and all persons and facilities under your control will honor such headers and mechanisms. Regardless of the presence or absence of any such headers or mechanisms, and without limiting the generality of any other restriction on use of the Site or the Material set forth in this Agreement, you will not in any event use any robot, spider, or other automatic or manual device or process for the purpose of compiling information regarding the

identification, address or other attributes of any of our Users, bidders or sellers, or to recreate in original or modified form any substantial portion of the Site. You further agree not to use any device, software or routine to interfere or attempt to interfere with the proper functioning of the Site or any transactions being conducted on or in connection with the Sites. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our servers or systems.

If you violate any provision of the Agreement, your permission to use the Material and the Site automatically terminate and you must immediately destroy any copies you have made of the Material.

## **Section 2: Copyright Agent**

TIMCOLEY.COM respects the intellectual property of others, and we ask our Users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide TIMCOLEY.COM's Copyright Agent the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest
- a description of the copyrighted work that you claim has been infringed
- a description of where the Material that you claim is infringing is located on the site
- your address, telephone number, and e-mail address
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law
- a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf

TIMCOLEY.COM's Copyright Agent for Notice of claims of copyright infringement on its site can be reached as follows:

### **By email:**

#### **Attn: Copyright Agent**

webmaster@timcoley.com

## **Section 3. Privacy; User Submissions**

TIMCOLEY.COM is committed to maintaining your privacy. TIMCOLEY.COM does, however, gather anonymous usage information provided by users of the Site. If you do not wish to have anonymous data collected about your activity, please do not access the Site.

## **Section 4. Registration, Passwords and Signatures**

In consideration of your use of the Site, you agree to: (a) provide true, accurate, current and complete information about yourself (Registration Data) as prompted by any form that you may fill out on or in connection to this Site (such as information used to create an account or make purchase through PayPal) and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any Registration Data that is untrue, inaccurate, not current or incomplete, or TIMCOLEY.COM has grounds to suspect that such Registration Data is untrue, inaccurate, not current or incomplete, TIMCOLEY.COM has the right to suspend or terminate your account and refuse any and all current or future use of the Site (or any portion thereof).

## **Section 5. Use of the Sale or Commerce Portions of the Site**

The portions of the Site relating to Sales or other commercial activities are available only to clients of TIMCOLEY.COM. This excludes in all cases minors (persons who have not reached their eighteenth birthday). By completing a purchase through the Site, you acknowledge and agree that if you choose to offer items for sale through the Sale, you will also be subject to PayPal terms and conditions, as listed on <http://www.paypal.com>. These terms shall, as applicable, be incorporated into the terms of this Agreement.

## **Section 6. Links to Other Sites**

The Site may contain links to third-party Sites that are maintained by others. These links are provided solely as a convenience to you and not as an endorsement by TIMCOLEY.COM of the contents of such third-party Sites. TIMCOLEY.COM is not responsible for the content of linked third-party sites and does not make any representations regarding the content or accuracy of materials on such third-party Sites. If you decide to access linked third-party Sites, you do so at your own risk.

## **Section 7. Liability Disclaimers**

The Material may contain inaccuracies or typographical errors. Except as may be separately specifically provided with respect to a particular sale, TIMCOLEY.COM makes no representations about the accuracy, reliability, completeness, or timeliness of the Material or about the results to be obtained from using the Site and the Material. Any use of the Site and the Material is at your own risk. Advice received via the Site should not be relied upon for personal, medical, legal or financial decisions and you should consult an appropriate professional for specific advice tailored to your situation. Changes are periodically made to the Site and may be made at any time. Some Material on the Site is provided by third parties and TIMCOLEY.COM shall not be held responsible for any such Material provided by third parties.

TIMCOLEY.COM DOES NOT WARRANT THAT THE SITE WILL OPERATE ERROR-FREE, CONTINUOUSLY OR WITHOUT INTERRUPTION, OR THAT THE SITE OR ITS SERVER ARE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL CONTENT. IF YOUR USE OF THE SITE OR THE MATERIAL RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, TIMCOLEY.COM IS NOT RESPONSIBLE FOR THOSE COSTS.

THE SITE AND MATERIAL ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. TIMCOLEY.COM AND ITS SUPPLIERS, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OF PROPRIETARY OR THIRD-PARTY RIGHTS, AND THE WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

TIMCOLEY.COM AND ITS SUPPLIERS MAKE NO WARRANTIES ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE MATERIAL, SERVICES, SOFTWARE TEXT, GRAPHICS, AND LINKS. SOME STATES/JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS WHICH VARY DEPENDING ON YOUR STATE/JURISDICTION.

YOU EXPRESSLY AGREE AND ACKNOWLEDGE THAT (WITH THE EXCEPTION OF MEMORABILIA OR SIMILAR ITEMS THAT MAY BE OFFERED FROM TIME TO TIME) THE SALES PROVIDED ON OR THROUGH THE SITE ARE FOR FUTURE REVENUE STREAMS THAT MAY RESULT FROM THE EXPLOITATION OF A COPYRIGHTED SONG (THE "REVENUE STREAMS"), AND THAT THE SELLER IS NOT OFFERING FOR SALE AN INTEREST IN THE UNDERLYING COPYRIGHT INTEREST TO THE WORK. UNLESS EXPRESSLY PROVIDED TO THE CONTRARY, SELLER WILL RETAIN SELLER'S COPYRIGHT INTEREST IN THE WORK, INCLUDING ALL PUBLISHING AND OTHER EXPLOITATION RIGHTS THEREIN. IN ALL EVENTS, TIMCOLEY.COM SHALL HAVE NO LIABILITY FOR ANY EXPLOITATION OF THE UNDERLYING COPYRIGHT TO THE WORK TO WHICH THE REVENUE STREAMS RELATE.

YOU EXPRESSLY ACKNOWLEDGE THAT UNITED STATES COPYRIGHT LAWS PROVIDE FOR CERTAIN TERMINATION OF TRANSFERS OF COPYRIGHT, AND THAT THESE LAWS COULD POTENTIALLY IMPACT THE REVENUE STREAMS AND/OR RIGHTS THAT ARE THE SUBJECT OF THE SALES THROUGH THIS SERVICE. ADDITIONALLY, OTHER NATIONS' LAWS MAY PROVIDE FOR SIMILAR TERMINATIONS OF TRANSFERS. TIMCOLEY.COM IS NOT LIABLE FOR THE IMPACT OF ANY SUCH LAWS UPON THE VALUE OF THE ITEMS

PLACED FOR SALE THROUGH THIS SERVICE, AND YOU SHOULD CONSULT WITH YOUR COUNSEL REGARDING SUCH MATTERS.

#### **Section 8. Disclaimers of Certain Damages**

IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SITE, OR WITH ANY PROVISION OF THE AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE. UNDER NO CIRCUMSTANCES SHALL TIMCOLEY.COM BE LIABLE TO ANY USER OR ANY THIRD PARTY ON ACCOUNT OF THAT USER'S USE OF THE SITE. IN NO EVENT SHALL TIMCOLEY.COM AND/OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY SUCH THIRD PARTY FOR (A) ANY DIRECT DAMAGES IN EXCESS OF THE LESSER OF THE FEES COLLECTED BY TIMCOLEY.COM IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER, OR ONE THOUSAND DOLLARS (\$1,000), OR (B) ANY INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE SITE, THE DELAY OR INABILITY TO USE THE SITE, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH THE SITE, OR OTHERWISE ARISING OUT OF THE USE OF THE SITE, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF TIMCOLEY.COM OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **Section 9. Indemnity**

You agree to defend, indemnify, and hold harmless TIMCOLEY.COM, its officers, directors, employees and agents, from and against any losses, liabilities, damages, costs, and expenses, including, without limitation, reasonable legal, expert and accounting fees, incurred in connection with any claims, actions or demands alleging or resulting from your use of the Material (including Software), your breach of this Agreement, or your violation of law or of the rights of any third party. TIMCOLEY.COM shall provide notice to you promptly of any such claim, suit, or proceeding and, if it is one asserted by a third party, shall provide reasonable assistance to you, at your expense, in defending any such claim, suit or proceeding.

#### **Section 10. Local Standards**

We do not represent that materials on the Site are appropriate for use in all locations. Persons who choose to access the Site do so on their own initiative, and are responsible for compliance with local laws, if and to the extent local laws are applicable.

#### **Section 11. Import and Export Regulations Regarding Tangible Property**

To the extent that Sales on or through this Site relate to tangible property, the terms of this Section shall apply. The United States and most foreign countries regulate the importation and exportation of tangible property. Many countries require a declaration of export for property that is leaving the country. It is the responsibility of the Buyer to ensure that the property is properly imported into the Buyer's country. If you participate in the Sale or commerce portions of the Site, and, as a result, purchase property that you plan to ship to another country, you agree that you are responsible for familiarizing yourself with and complying with any and all applicable rules and regulations. TIMCOLEY.COM MAKE NO REPRESENTATION OR WARRANTY AND ACCEPTS NO LIABILITY WHATSOEVER TO THE SELLER, THE BUYER, OR ANY THIRD PARTY IN RESPECT OF THE AVAILABILITY OR ISSUANCE OF VALID IMPORT AND EXPORT PERMITS OR THE EXISTENCE OR EXERCISE OF PRE-EMPTION OR OTHER RIGHTS TO PURCHASE BY GOVERNMENTAL OR REGULATORY AUTHORITIES ANYWHERE.

## **Section 12. General**

The Site is based in the State of North Carolina, U.S.A. All legal issues arising from or related to the use of the Site shall be construed in accordance with and determined by the laws of the State of North Carolina applicable to contracts entered into and performed within the State of North Carolina without respect to its conflict of laws principles. By using the Site, you agree that the exclusive forums for any claims or causes of action arising out of your use of the Site shall be the state courts for or within Durham County in the State of North Carolina, and the United States District Court for the District of North Carolina. You hereby irrevocably waive, to the fullest extent permitted by law, any objection which you may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. The failure of TIMCOLEY.COM to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision, and no waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term. 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 Site must be filed within one (1) year after such claim or cause of action arose or be forever barred. This Agreement constitutes the entire Agreement between you and TIMCOLEY.COM with respect to the use of the Site. Any changes to this Agreement must be made in writing, signed by an authorized representative of TIMCOLEY.COM.

## **Section 13: Further Inquiries**

You may direct questions about this Agreement, or other issues, to:  
info@TIMCOLEY.COM