

## Terms of Use

April 6, 2020

Welcome to the Thirstie service owned by Thirstie, Inc. ("Company", "we" or "us"). You may have entered the service through our website located at [www.thirstie.com](http://www.thirstie.com), our mobile application, or through one of our channel partner sites or services (the Thirstie service and foregoing sites are collectively hereinafter the "Site").

YOUR ACCESS AND USE OF THE THIRSTIE SERVICE IS SUBJECT TO THE FOLLOWING TERMS OF USE (THE "TERMS OF USE") AND ALL APPLICABLE LAWS. BY ACCESSING OR USING ANY PART OF THE SITE, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THESE TERMS OF USE. IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF USE SET FORTH BELOW, YOU MAY NOT USE ANY PORTION OF THE THIRSTIE SERVICE.

THESE TERMS OF USE CONTAIN AN ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. PLEASE READ THEM CAREFULLY, SINCE THEY AFFECT YOUR LEGAL RIGHTS.

**Legal Drinking Age:** By using the Site, you represent and warrant that you are over 21 years of age if you're located in the United States and of legal drinking age if you're outside of the United States and that you will provide photo identification upon delivery to verify your age and ability and consequent legal capacity to consume alcohol. You hereby represent and warrant to the Company and its agents that all information provided by you to the Site and the Retailer (as defined herein) will be true, complete and accurate in all respects. You understand and agree that any Retailer may refuse to complete any transaction for any reason, including, without limitation, the Retailer's belief that inadequate or invalid identification is being provided, or that the person placing the order is already inebriated, presents a danger to himself or herself or others, or has in any way misrepresented any fact to the Retailer or the Company.

**Orders:** The Site provides a market service, and a market service only for a retailer (the "Retailer"), which will be a licensed off-premise retailer in the case of an order involving alcohol products, through which all orders and purchases are processed. At time of purchase, your credit card will be charged by Thirstie, for the direct benefit of the Retailer.

If the person placing the order is not (i) available at the time of delivery to accept delivery, (ii) cannot provide a current, valid, government issued photo identification confirming that such person is a minimum of 21 for customers located in the United States and of legal drinking age if outside the United States and (iii) cannot meet the requirements of the Retailer or third party common carrier making the delivery, the Retailer will not render services. All products will be cleared from the order and returned to the Retailer, and a restocking fee to be consistent with the Retailer's policies (the "Restocking Fee") will be charged to the User's credit card account. No refunds will be issued under this circumstance.

If the products ordered are to be delivered to a person other than the customer placing the order, the customer placing such order, by placing such order, represents and warrants that both the customer and the recipient/receiver are each at least twenty-one (21) years of age in the United States and of legal drinking age if outside the United States at the time of order and delivery, respectively, and shall have available legal identification evidencing such age at the time of delivery. Any breach of this representation and warranty shall result in the termination of the order, and the charging of a non-refundable Restocking Fee to the customer.

ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS.

**Delivery:** Delivery is the sole responsibility of the Retailer or Retailers. Thirstie is not responsible for delivery of orders. The Retailer or Retailers will make reasonable efforts to complete the User's order in one delivery, but please note large orders may have to be completed in multiple deliveries. If you experience any problems with your delivery, please contact Thirstie's Customer Support via the Customer Support Contact information provided below under Questions.

**Authorized Use of Site:** The Site is provided for your personal and non-commercial use and for informational purposes only. Any other use of the Site requires the prior written consent of Company.

You may use the Site without registration, but in order to take advantage of some aspects of the Site, you will need to register for an account. Your account is for your sole, personal use, you may not authorize others to use your account, and you may not assign or otherwise transfer your account to any other person or entity. All registration information about you must be truthful, and you may not use any aliases or other means to mask your true identity. You are responsible for the security of your password and will be solely liable for any use or unauthorized use under such password. In addition to any right or remedy that may be available to us under these Terms of Use or applicable law, we may suspend, limit or terminate your account, or all or a portion of your access to the Site, at any time with or without notice and with or without cause. In addition, we may refer any information on illegal activities, including your identity, to the proper authorities.

**Unauthorized Use of Site:** You may not use spiders, robots, data mining techniques or other automated devices or programs to catalog, download or otherwise reproduce, store or distribute content available on the Site. Further, you may not use any such automated means to manipulate the Site or attempt to exceed the limited authorization and access granted to you under these Terms of Use or disrupt the Site or any other user's use of the Site, including, without limitation, via means of overloading, "flooding", "mailbombing" or "crashing" the Site or circumventing security or user authentication measures. You may not frame portions of the Site within another web site or establish links from any other web site to any page of the Site other than the home page. You may not resell use of, or access to, the Site to any third party.

**Proprietary Rights:** We or our licensors are the exclusive owners of all copy, software, graphics, designs and all copyrights, trademarks and other intellectual property or proprietary rights contained on or used in connection with the Site. By using the Service, you agree not to copy, distribute, modify or make derivative works of any materials without the prior written consent of the owner of such materials. Except as expressly set forth in these Terms of Use, no license is granted to you and no rights are conveyed by virtue of accessing or using the Site. All rights not granted under these Terms of Use are reserved by Company.

**No Ideas Accepted:** We do not accept any unsolicited ideas from outside the Company including without limitation suggestions about advertising or promotions, or merchandising of any products, additions to our services, or changes in methods of doing business. We may already be working on or may in the future work on a similar idea. This policy eliminates concerns about ownership of such ideas. If, notwithstanding this policy, you submit an unsolicited idea to the Site, you understand and acknowledge that such idea is not submitted in confidence and we assume no obligation, expressed or implied, by considering it. You further

understand that we shall exclusively own all known or hereafter existing rights to the idea everywhere in the world, and that such idea is hereby irrevocably assigned to us. Without limiting the foregoing, to the extent any such assignment is deemed unenforceable, and or to the extent necessary for Company to utilize your submission, you hereby grant Company an irrevocable, perpetual, world-wide license to use the idea and any associated intellectual property in any manner, in any medium now known or hereafter developed, without compensation to you.

**Pricing:** While we strive to provide accurate product and pricing information, pricing or typographical errors may occur. We cannot confirm the price of an item until after you order. In the event that an item is listed at an incorrect price or with incorrect information due to an error in pricing or product information (including, without limitation, common carrier charges or determinations and assessments of sales tax), we or the Retailer shall have the right, at our sole but individual respective discretion, to refuse or cancel any orders placed for that item. In the event that an item is mispriced, we may, at either our discretion or the discretion of the retailer, either contact you for instructions or cancel your order and notify you of such cancellation. Prices and availability are subject to change without notice.

**Privacy:** The privacy of your personally identifiable information is very important to us. For more information on what information we collect and how we use such information, please read our [Privacy Policy](#), which is subject to update in our sole discretion.

**Third Party Links:** The Site may contain links to other websites not maintained by us. We encourage you to be aware when you leave the Site and to read the terms and conditions and privacy statements of each and every website that you visit. We are not responsible for the practices or the content of such other websites or services. The existence of a link between the Site and any other website is not and shall not be understood to be an endorsement by us of the owner or proprietor of the linked internet website, nor an endorsement of us by the owner or proprietor of such linked website.

**No Warranties:** THE SITE, INCLUDING ALL CONTENT MADE AVAILABLE ON OR ACCESSED THROUGH THE SITE, IS PROVIDED "AS IS" AND WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR THE CONTENT ON THE SITE AND THE PRODUCTS DISPLAYED ON THE SITE. YOU SHALL LOOK SOLELY TO THE MANUFACTURER OR DISTRIBUTOR OF THE PRODUCTS FOR ANY SUCH WARRANTIES OR INSTRUCTIONS. THE SITE MAY CONTAIN TYPOGRAPHICAL ERRORS AND YOU AGREE THAT THE WE SHALL NOT BE BOUND BY ANY SUCH ERRORS.

FURTHER, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE OR, MATERIALS OR CONTENT CONTAINED THEREIN WILL BE COMPLETELY SECURE, UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE SHALL NOT BE LIABLE FOR THE USE OF THE SITE, INCLUDING, WITHOUT LIMITATION, THE CONTENT AND ANY ERRORS CONTAINED THEREIN PROVIDED BY THIRD PARTIES. IN NO EVENT WILL WE BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR OTHER

CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST DATA, LOST OPPORTUNITIES, COSTS OF COVER, EXEMPLARY, PUNITIVE, PERSONAL INJURY/WRONGFUL DEATH, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE OUR TOTAL LIABILITY IN THE AGGREGATE FOR ANY CLAIMS MADE BY YOU OR ANY THIRD PARTY SHALL NOT EXCEED FIVE HUNDRED DOLLARS (\$500).

If you are a California resident, you hereby waive California Civil Code Section 1542 in connection with the foregoing, which states: "a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

**Indemnification:** You agree to defend, indemnify and hold harmless Company, its officers, directors, employees, business partners and agents, 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 your use of the Site, any breach by you of any of these Terms of Use and any violation of applicable law.

**Governing Law; Dispute Resolution; Arbitration:** The laws of the State of New York shall govern these Terms of Use. While we will make reasonable efforts to resolve any disagreements you may have with Company, if these efforts fail you agree that all claims, disputes or controversies against Company arising out of these Terms of Use, or the purchase of any products or services ("Claims") are subject to fixed and binding arbitration (except for matters that may be taken to small claims court), no matter what legal theory they are based on or what remedy (damages, or injunctive or declaratory relief) they seek. This includes Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; and Claims made independently or with other claims. The party filing an arbitration must submit Claims to the American Arbitration Association and follow its rules and procedures for initiating and pursuing an arbitration. Any arbitration hearing that you attend will be held at a place chosen by the American Arbitration Association in the same city as the U.S. District Court closest to your then current residential address, or at some other place to which you and Company agree in writing, and the arbitrator shall apply New York law consistent with the Federal Arbitration Act. You shall not be entitled to join or consolidate Claims in arbitration by or against other users or to arbitrate any Claim as a representative or member of a class or in a private attorney general capacity. You may obtain copies of the current rules, and forms and instructions for initiating an arbitration by contacting the American Arbitration Association at using the contact information noted below.

American Arbitration Association  
800-778-7879 (toll-free)  
Website: [www.adr.org](http://www.adr.org)

A single, neutral arbitrator will resolve Claims. The arbitrator will be either a lawyer with at least ten (10) years' experience or a retired or former judge, selected in accordance with the rules of the American Arbitration Association. The arbitration will follow the procedures and rules of the American Arbitration Association which are in effect on the date the arbitration is filed unless those procedures and rules are inconsistent with these Terms of Use, in which case these Terms of Use will prevail. Those procedures and rules may limit the discovery available to you

or us. The arbitrator will take reasonable steps to protect your customer account information and other confidential information if requested to do so by you or us. Each party to the arbitration will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines. The arbitrator's award is final and binding on the parties unless we or you appeal it in writing to the arbitration firm within fifteen (15) days of notice of the award. The appeal must request a new arbitration before a panel of three neutral arbitrators designated by the American Arbitration Association. An award by a panel is final and binding on the parties after fifteen (15) days has passed. Any Claim you have must be commenced within one (1) year after the date the Claim arises. As noted above, you and Company hereby voluntarily and knowingly waive any right either may have to a jury trial.

We will not choose to arbitrate any Claim you bring in small claims court. However, if such a Claim is transferred, removed or appealed to a different court, we may then choose to arbitrate.

In the event this arbitration clause is not enforceable by the specified arbitration organization, the parties will mutually agree upon another arbitration organization that will enforce this clause.

**Class Action Waiver:** YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND. CLAIMS AND REMEDIES SOUGHT AS PART OF A CLASS ACTION, PRIVATE ATTORNEY GENERAL OR OTHER REPRESENTATIVE ACTION ARE SUBJECT TO ARBITRATION ONLY ON AN INDIVIDUAL (NON-CLASS, NON-REPRESENTATIVE) BASIS, AND THE ARBITRATOR MAY AWARD RELIEF ONLY ON AN INDIVIDUAL (NON-CLASS, NON-REPRESENTATIVE) BASIS.

**Severability:** If any part of these Terms of Use shall be held or declared to be invalid or unenforceable for any reason by any court of competent jurisdiction, such provision shall be ineffective but shall not affect any other part of these Terms of Use.

**Waiver; Remedies:** The failure by us to partially or fully exercise any rights or the waiver of any breach of these Terms of Use by you, shall not prevent a subsequent exercise of such right by us or be deemed a waiver by us of any subsequent breach by you of the same or any other term of these Terms of Use. Our rights and remedies under these Terms of Use shall be cumulative, and the exercise of any such right or remedy shall not limit our right to exercise any other right or remedy.

**Changes:** All information posted on the Site is subject to change without notice. In addition, these Terms of Use may be changed at any time without prior notice. We will make such changes by posting them on the Site. You should check the Site for such changes frequently. Your continued access of the Site after such changes conclusively demonstrates your acceptance of those changes.

**Return Policy:** GENERALLY, WE DO NOT ACCEPT ANY RETURNS OR EXCHANGES, AND DO NOT PROVIDE ANY REFUNDS.

We may consider returns or exchanges on a case by case basis if your product has been damaged during delivery through no fault of your own. If you would like us to consider a possible return or exchange, please contact us at the Customer Support Contact (as defined in the Questions section herein). You may be required to provide a valid picture of the damaged

product to the Retailer and follow any additional instructions or requests from the retailer. If a return or exchange is granted, the retailer will refund a return or offer a product in exchange for the damaged product. Thirstie's customer support team will assist you with your communications with the retailer.

THIRSTIE DOES NOT GUARANTEE THAT A MERCHANT WILL AGREE TO ACCEPT A RETURN OR EXCHANGE.

**Conflicting Terms:** In the event you are asked to accept multiple terms and conditions or terms of use (including any Retailer's terms), this Terms of Use shall govern if there is a conflict.

**Questions:** Should you have any questions regarding these Terms of Use you may contact us at [support@thirstie.com](mailto:support@thirstie.com), or the customer support email address provided on the Site (the "Customer Support Contact").