

Autobooks Terms of Use

Please read this agreement carefully before using this website.

1. **GENERAL.** These terms and conditions (“Agreement”) are offered by Autobooks, and any user of this website (“Site”) who uses the Site in connection with any organization or contractual arrangement between Autobooks and the (“Client”). Autobooks provides this Site and all related products and services subject to your compliance with the terms and conditions set forth in this Agreement. These terms and conditions do not govern or affect the legal relationship between Autobooks and any Organization, as such legal relationship is governed by a separate contract. It is important that you read carefully and understand the terms and conditions of this Agreement. By using the Site, you agree to be bound by this Agreement. If you do not agree to these terms and conditions, please do not use the Site. In this Agreement, “you” and “your” refer to any Client and any individual authorized by the Client to use such Client’s account, and “we”, “us”, and “our” refer to Autobooks.

2. **DEFINED TERMS.** Capitalized terms used in these terms and conditions which are not defined herein have the meanings ascribed to such terms in the Agreement to which these terms and conditions are attached.

3. **TERMINATION.** Notwithstanding anything in this Agreement to the contrary:

(a) If either party materially defaults in the performance of any of its obligations under this Agreement (other than the obligation to pay money) and shall fail or refuse to remedy such default to the reasonable satisfaction of the complaining party within 30 days after written notice from the complaining party describing the default, the complaining party may terminate this Agreement on 15 days advance written notice; provided such notice of termination is given prior to the defaulting party’s cure of such default.

(b) If either party shall (i) file a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code (or corresponding provisions of future laws) or any other Federal or state insolvency law, or file an answer consenting to or acquiescing in any such petition, (ii) make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts as they mature, or (iii) have filed against it an involuntary petition under Title 11 of the United States Code (or corresponding provisions of future laws), seeking an application for the appointment of a receiver for the assets of such party, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other Federal or state insolvency law, provided that the same shall not have been vacated, set aside or stayed within 60 days after filing; then the other party may immediately terminate this Agreement upon notice to such party.

(c) If either party defaults in the payment of any amount due under this Agreement, and shall fail or refuse to remedy such default within five business days after receiving written notice from the complaining party describing the default, the complaining party may terminate this Agreement on 5 days advance written notice; provided such notice of termination is given prior to the defaulting party’s cure of such default.

(d) Either party may terminate this Agreement upon thirty (30) days’ written notice to the other party.

4. **PAYMENT TERMS.** All invoices rendered by Autobooks are due upon receipt.

5. **FORCE MAJEURE.** Either party to this Agreement shall be released from liability hereunder for failure to perform any of its obligations (other than the obligation to pay money) herein where such failure to perform occurs by reason of any act of God, fire, flood, earthquake, tidal wave, utility failure, sabotage, war, strikes, lockouts, labor unrest, terrorism, military operations, national emergency, civil commotion, or the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or either party’s compliance therewith, or governmental proration, regulation or priority, or any other cause beyond either party’s reasonable control whether similar or dissimilar to such causes.

6. **SERVICE REQUIREMENTS/SERVICES.**

(a) Autobooks shall perform Services in a professional and workmanlike manner and using a level of care and skill that is consistent with the prevailing standard in the industry. THE WARRANTY CONTAINED IN THE PRECEDING SENTENCE IS OUR ONLY WARRANTY CONCERNING THE SERVICES AND ANY

DELIVERABLE, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND THE SERVICES AND ANY DELIVERABLES ARE PROVIDED ON AN "AS IS, WHERE IS" BASIS.

(b) Autobooks shall establish, within the Autobooks Website, a webpage through which Client will be able to access information held in the Autobooks system on behalf of Client. Such information may include, without limitation, account information processed or transmitted by Autobooks in connection with the provision of the Services (the "Client Webpage"). Autobooks shall incorporate reasonable password protection capability into the Client Webpage suitable to allow Client to control the number and identity of the users and their scope of access to the Client information through the Client Webpage.

(c) Autobooks shall use commercially reasonable efforts to provide access to the Autobooks Website and the Client Webpage for 24 hours a day, seven days a week throughout the Term. Client acknowledges that from time to time the Autobooks Website and/or the Client Webpage may be inaccessible or inoperable for various reasons, including (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs, or equipment upgrades which Autobooks may undertake from time to time; (iii) malfunctions of telephone lines, routers, switches and other telecommunications equipment, or (iv) malfunctions of other servers on the Web (collectively "Downtime"). Autobooks shall endeavor to provide 48 hours advance notice to Client in the event of any scheduled Downtime and shall endeavor to schedule such Downtime during periods of reduced traffic. Autobooks shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Autobooks Website and the Client Webpage due to Downtime, whether scheduled or not.

(d) Autobooks shall have no responsibility for the accuracy or validity of any data or information furnished by or on behalf of the Client or its employees.

(e) Autobooks shall maintain errors and omissions insurance ("Insurance") for the benefit of Client at Autobooks's sole cost and expense.

(f) Autobooks shall utilize commercially reasonable security measures to prevent the unauthorized use and ensure the security, confidentiality and integrity of the Autobooks Website and the Client Webpage.

7. CONFIDENTIALITY.

(a) "Confidential Information" shall mean all non-public or confidential information disclosed to, or acquired by, either Autobooks or Client as a result of the performance of the duties hereunder.

(b) Each party to this Agreement shall hold the Confidential Information provided to it hereunder in confidence and shall not disclose the Confidential Information to any third party except as permitted hereunder and for the purposes of performing its duties hereunder for the duration of this Agreement and thereafter. Each party shall use its commercially reasonable efforts to protect Confidential Information of the other party from inadvertent disclosure to a third party except as necessary for the performance of this Agreement. Unless otherwise agreed to in writing by the disclosing party, distribution of the Confidential Information by the receiving party will be restricted to those agents, employees, contractors or advisors of each party to this Agreement who have a need to know such information in connection with the obligations arising under this Agreement. Each party will instruct its agents, employees and advisors to whom any Confidential Information is disclosed that such information must be treated as confidential in accordance with this Agreement and agrees on their behalf that they will so treat it.

(c) Confidential Information shall remain the exclusive property of the disclosing party. Each party hereto shall be liable for any improper disclosure or use of the Confidential Information by such party and any persons improperly obtaining the Confidential Information through, or as a result of, communications by such party's agents, employees or advisors.

(d) Confidential Information shall not include any information that was known to such party prior to its entering into this Agreement, is or becomes part of the public domain through no violation of this Agreement, is rightfully received by such party from a third-party without accompanying secrecy obligations, or is approved for use or release by the disclosing party in advance and in writing. If a party is required by law or compelled by legal process to disclose any Confidential Information of the other party, the receiving party agrees that it will, to the extent it is legally permitted to do so, and to the extent practical, provide the disclosing party with prompt written notice, of such request, so

that the disclosing party may, at its sole cost and expense, seek a protective order or other appropriate remedy. In any event the receiving party may disclose the Confidential Information it is legally obligated to disclose without being deemed to have breached this Agreement.

(e) Disclosure of this Agreement or Client Confidential Information to a successor or potential successor to Autobooks's business shall not be deemed to violate the terms of this Agreement; provided such successor or potential successor is subject to an agreement to maintain the confidentiality of such Client Confidential Information.

8. Ownership of the Autobooks Website(s) and the Materials. The Autobooks Website is owned and operated by Autobooks in conjunction with others pursuant to contractual arrangements, and any materials provided on the Autobooks Website, including the Autobooks Website itself, and, except as otherwise provided herein, any intellectual property and other rights relating thereto (collectively the "Materials"), are and will remain the sole property of Autobooks and its licensors and suppliers. The Materials may be used by Client solely to the extent necessary for the authorized use of the Autobooks Website, as provided in this Agreement or as expressly authorized in writing by Autobooks or, if so indicated in writing by Autobooks, its licensors or suppliers. Client acknowledges that it does not acquire any ownership rights in the Autobooks Website and Materials by using same.

9. Client Trademarks. The trademarks, logos, and service marks of Client (collectively the "Client Marks") are the registered and unregistered trademarks of Client. The Client Marks, whether registered or unregistered, may not be used in connection with any product or service other than the Client Webpage or pursuant to a Client's instructions. Autobooks is hereby granted the non-exclusive license to use the Client Marks on the Client Webpage solely in connection with the performance of the Services.

10. Autobooks Service Marks and Trademarks. The trademarks, logos, and service marks displayed on the Autobooks Website (collectively the "Autobooks Marks") are the registered and unregistered trademarks of Autobooks, Autobooks's licensors and suppliers and others. The Autobooks Marks, whether registered or unregistered, may not be used by Client. Nothing contained on the Autobooks Website should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Autobooks Mark without the express written permission of Autobooks or the third party owner of any such Autobooks Mark.

11. LIMITATION OF LIABILITY; INDEMNIFICATION.

(a) IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY THIRD PARTY CLAIM (EXCEPT AS PROVIDED FOR UNDER THE INDEMNIFICATION PROVISION OF THIS SECTION) OR FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR OTHER INDIRECT DAMAGES.

(b) Autobooks agrees to indemnify Client and hold it harmless from and against any losses, judgments, liability claims, expenses or costs of any kind, including reasonable attorney's fees, which may result to Client as a result of Autobooks's gross negligence or willful misconduct in connection with Autobooks's provision of Services under this Agreement, or breach hereof, and with any software of Autobooks or other rights of Autobooks, Autobooks uses to perform its obligations hereunder, including, without limitation any claims for breach violation of a third party's intellectual property rights or copyright infringement. In no event shall Autobooks's liability to Client hereunder or under the Agreement exceed the fees paid by Client to Autobooks during the 12 months preceding the occurrence giving rise to the claim.

(c) Client agrees to indemnify Autobooks and hold it harmless from and against any losses, judgments, liability claims, expenses or costs of any kind, including reasonable attorneys' fees, which may result to Autobooks as a result of Client's gross negligence or willful misconduct or breach hereof.

(d) The indemnification obligations in this Agreement are contingent upon: (1) the indemnified party promptly notifying the indemnifying party in writing of any claim which may give rise to a claim for indemnification hereunder and the indemnified party taking diligent and reasonable measures to mitigate any potential damages; (2) the indemnifying party being allowed to control the defense and settlement of any third party claim.

12. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan without reference to its rules of conflicts of law. The parties irrevocably submit and consent to the exercise of subject matter jurisdiction and personal jurisdiction over each of the parties by the federal and/or state courts

in, or having jurisdiction over, Oakland County, Michigan. Each party hereby waives personal service of any and all process upon it and consents that all such service of process may be made to the addresses set forth in Section 13.

13. ENTIRE AGREEMENT. The Agreement to which these terms and conditions are attached, together with all Attachments thereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements. This Agreement may not be amended except in writing, signed by both parties. The terms of this Agreement shall prevail over contradictory terms in any purchase order, invoice, or any other documentation executed in furtherance of this Agreement, if any. The remedies provided in this Agreement or the Attachments to this Agreement, are intended to be the exclusive remedies for the matters to which they apply.

14. NOTICES. Any notice or consent or other communication permitted or required hereunder shall be deemed given when sent by registered via US Postal Services, First Class Mail, or Certified Mail or Registered Mail, or when sent by overnight delivery services or by facsimile transmission at the addresses set forth below:

Autobooks: Autobooks
Attn: Vincent Thomas
363 W. Big Beaver Rd., Suite 440
Troy, MI 48084

Client: Address listed in the books and records of Autobooks

15. ASSIGNMENT. Autobooks is permitted to assign this Agreement or any duties or obligations under this Agreement including its rights to receive payments under this Agreement without consent upon notice to Client.

16. INDEPENDENT CONTRACTOR AND CONTRACT PERSONNEL. Autobooks is and shall be an independent contractor, and not an employee or agent of Client for any purpose, including but not limited to FICA, FUTA, income tax withholding, any pension plan or health benefit plan maintained by Client for its own employees, unemployment insurance benefits, or worker's compensation benefits. Client shall not be responsible to Autobooks or any Autobooks personnel for or with respect to any such benefits. Autobooks shall not have the right or ability to bind Client to any liability, obligation or commitment to any third party.

17. DISPUTES. In the event there is a dispute between the parties regarding the interpretation of this Agreement the parties agree to attempt in good faith for a period of 30 days to resolve the dispute prior to filing any lawsuit; provided, however, neither party believes that irreparable harm could result of any delay in filing suit.

18. CONTACT LIST. Autobooks and Client shall jointly prepare a list (including name, responsibility, hours, telephone number and fax number) of key persons within each organization to serve as contacts in the parties' dealings with one another pursuant to this Agreement.

19. COLLECTION OF DATA. Client agrees that Autobooks may collect, use and provide to third parties as necessary or convenient for the performance of the Services, technical data and related information from Client, including but not limited to technical information about Client's devices, systems and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to Client related to the Services. Autobooks may use this information for purposes which are not related to the direct performance of services for Client, as long as such data is in a form that does not personally identify Client.

20. MISCELLANEOUS.

(a) If any portion of this Agreement is found to be unenforceable, the remaining shall continue in full force and effect.

(b) In the event either party fails to insist on strict performance of any of the terms and conditions of this Agreement, or fails to exercise any of its rights and privileges hereunder; such failure shall not constitute a waiver of such terms and conditions, rights or privileges.

(c) Other than expressly set forth herein, this Agreement shall not be deemed to provide third parties with any remedy, claim right of action, or other right. In the event a party is required to institute proceedings to collect fees

and costs due hereunder, the prevailing party shall receive its attorneys' fees and costs, incurred in connection with collecting such amounts.

(d) No press releases or other public disclosures relating to this Agreement, its existence or its subject matter, shall be made by either party without the prior written approval of the other party. In addition, neither party shall use, whether in press releases, on web sites, in advertising or otherwise, the name or any trade or service names or marks or logos of the other party, without such other party's prior written consent. Notwithstanding the foregoing, a party shall be entitled to disclose the existence and content of this Agreement to the extent required by law, regulation or court order.

Last Update: December 9, 2015