

# AVARY websites terms of use

## 1. ACCEPTANCE OF TERMS OF USE FOR THIS WEBSITE

1.1 YOU MUST READ THESE AVARY WEBSITE TERMS OF USE ("TERMS") CAREFULLY.

AVARY AND ITS AFFILIATES ("AVARY") PROVIDE THIS WEBSITE TO YOU, YOUR EMPLOYEES, AGENTS, AND CONTRACTORS, AND ANY OTHER ENTITY ON WHOSE BEHALF YOU ACCEPT THESE TERMS (COLLECTIVELY "YOU"), SUBJECT TO THESE TERMS. THESE TERMS ARE ENTERED INTO BY AND BETWEEN AVARY AND YOU, AND YOU ACCEPT THEM BY: (a) PLACING AN ORDER THROUGH THIS WEBSITE; (b) POSTING ON THE MESSAGE BOARDS OF THIS WEBSITE (c) USING THE WEBSITE IN ANY OTHER MANNER; AND/OR (d) ACKNOWLEDGING AGREEMENT WITH THESE TERMS. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT USE THIS WEBSITE.

1.2 This website ("Website") includes without limitation: (a) AVARY website installations, code, wiki installations, tumblr, wordpress (including, but not limited to: AVARY.info wiki, AVARY.org RAfp wiki), Café Avary, caferoger.com, or other AVARY phpbb messageboards, AVARY twitter feeds, AVARY blogs (including, but not limited to: AVARY Killing Zoe blog, AVARY Pulp Fiction blog, AVARY Rules of Attraction blog, AVARY Glitterati blog, AVARY Beowulf blog, AVARY Silent Hill blogs, AVARY XIII blogs, REMFORM.net), and other on-line services accessible via the Website (collectively the "Services"); (b) information such as opinion, historical, annotative, technical, contractual, product, program, critical, pricing, marketing, and other valuable information ("Information"); and (c) content such as data, text, software, music, sound, photographs, graphics, video, feeds, messages, or other materials ("Content"). AVARY controls and operates its websites from various locations and makes no representation that this Website is appropriate or available for use in all locations. AVARY products and services may not be available in Your location, and deliverables may vary among locations. If You are using the Website on behalf of Your employer, You represent and warrant that You are authorized to accept these Terms on Your employer's behalf, and that Your employer agrees to indemnify You and AVARY for violations of these Terms. In addition to the Terms and unless otherwise noted, the standard AVARY terms and conditions of sale in your jurisdiction govern purchases You make through the Website, unless You have in effect a separate valid written purchase or license

agreement with AVARY for that product or service, in which case that separate agreement governs, and in cases of conflict, prevails.

## **2. YOUR OBLIGATIONS AND CONDUCT**

2.1 In consideration of Your use of the Website, You agree to: (a) provide accurate, current, and complete information about You as may be prompted by a registration form on the Website (the "Registration Data"); (b) maintain the security of your password and identification; (c) maintain and promptly update the Registration Data, and any information You provide to AVARY, to keep it accurate, current and complete; and (d) accept all risks of unauthorized access to information and Registration Data. You have sole responsibility for adequate protection and backup of data and/or equipment used in connection with the Website.

2.2 You are entirely responsible for all Content that You upload, post or otherwise transmit via the Website. You agree not to upload, post or otherwise transmit via the Website Content that: (a) is inaccurate, harmful, obscene, pornographic, defamatory, racist, violent, offensive, harassing, or otherwise objectionable to AVARY or other users of the Website; (b) includes unauthorized disclosure of personal information; (c) violates or infringes anyone's intellectual property rights; or (d) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. AVARY reserves the right to edit or remove Content that violates these Terms or that contains third-party commercial advertisements. You understand that AVARY routinely "prunes" posts, messages, accounts, information, email, backups, and other Information from its sites and servers and You release AVARY from any and all liability from such deletions.

2.3 You agree that You will not use the Website to: (a) transmit spam, bulk or unsolicited communications; (b) pretend to be AVARY or someone else, or spoof AVARY's or someone else's identity; (c) forge headers or otherwise manipulate identifiers (including URLs) in order to disguise the origin of any Content transmitted through the Services; (d) misrepresent your affiliation with a person or entity; (e) disrupt the normal flow of dialogue or otherwise act in a manner that negatively affects other users' ability to use the Website; (f) engage in activities that would violate any fiduciary relationship, any applicable local, state, national or international law, or any regulations having the force

of law, including but not limited to attempting to compromise the security of any networked account or site, operating an illegal lottery or gambling operation, stalking, or making threats of harm; or (g) collect or store personal data about other users unless specifically authorized by such users.

2.4 You agree not to archive, mirror, catalog, or back-up Information, Content, or Services stored on AVARY servers or servers that AVARY stores information on. You further agree to respect AVARY's robots.txt files outlining restricted directories on AVARY websites. You agree to not robotically crawl AVARY websites or directories. AVARY reserves the right to ban IP addresses and restrict, withhold, and deny Information, Content, and Services without liability.

2.5 You grant to AVARY, and AVARY's associates, full power to do with You, at their pleasure, to rule, to send, fetch, or carry You or Yours, be it either body, soul, flesh, blood or goods.

### **3. CONFIDENTIALITY OF AVARY INFORMATION**

3.1 You may obtain direct access via the Website to certain confidential information of AVARY and its suppliers, including without limitation technical, contractual, product, program, pricing, marketing, opinion and other valuable information that should reasonably be understood as confidential ("Confidential Information"). You must hold Confidential Information in strict confidence. Title to Confidential Information remains with AVARY and its suppliers.

3.2 Your obligations regarding Confidential Information expire five (7) years after the date of disclosure. Upon termination of the Terms or AVARY's written request, You must cease use of Confidential Information and return or destroy it. You agree to take reasonable security precautions, at least as great as the precautions it takes to protect Your own confidential information, but no less than reasonable care, to keep confidential AVARY's Confidential Information.

3.3 The Terms impose no obligation upon You with respect to Confidential Information that You can establish by legally sufficient evidence: (a) You possessed prior to Your receipt from AVARY, without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public through no act or omission by You, or otherwise without violation of the Terms; (c) You obtained from a third party who had the right to disclose it, without an obligation to keep such information confidential; (d) You independently developed

without the use of Confidential Information and without the participation of individuals who have had access to it, or (e) in response to a valid order by a court or other governmental body, as otherwise required by law, or as necessary to establish the rights of either party under these Terms and as disclosed after prior notice to AVARY adequate to afford AVARY the opportunity to object to the disclosure.

#### **4. CONTENT SUBMITTED TO AVARY**

4.1 AVARY does not claim ownership of the Content You place on the Website and shall have no obligation of any kind with respect to such Content. Unless otherwise stated herein, or in AVARY's Privacy Policy, any Content You provide in connection with this Website shall be deemed to be provided on a nonconfidential basis. AVARY shall be free to use or disseminate such Content on an unrestricted basis for any purpose, and You grant AVARY and all other users of the Website an irrevocable, worldwide, royalty-free, nonexclusive license to use, reproduce, modify, distribute, transmit, display, perform, adapt, resell and publish such Content (including in digital form). You represent and warrant that you have proper authorization for the worldwide transfer and processing among AVARY, its affiliates, and third-party providers of any information that You may provide on the Website.

4.2 AVARY does not routinely monitor Content, but AVARY and its designees reserve the right to monitor, restrict access to, edit or remove any Content that is available via the Website.

4.3 AVARY does not accept nor read outside creative submissions for business purposes. You agree to release AVARY from all obligations and waivers arising from any and all NON-NEGOTIATED agreements, licenses, terms-of-service, shrinkwrap, clickwrap, browsewrap, confidentiality, non-disclosure, non-compete and acceptable use policies ("BOGUS AGREEMENTS") in perpetuity, without prejudice to AVARY's ongoing rights and privileges. You further represent that you have the authority to release AVARY from any BOGUS AGREEMENTS on behalf of your employer.

#### **5. DELIVERY OF E-MAIL**

5.1 AVARY will attempt to deliver all of the e-mail that is addressed to Your e-mail address on AVARY's Services. However, the nature of e-mail is such that AVARY cannot guarantee delivery of such e-mail. AVARY makes no representations as to the security, privacy, or

reliability of e-mail sent from or received by its servers.

5.2 AVARY reserves the right to read, screen, and delete all emails and attachments sent from or received by its servers.

5.3 You understand and agree that Internet-based communication sent or transmitted to AVARY, including but not limited to email, will not be accepted for Ex parte notice nor for any other legal purpose at AVARY's sole discretion.

## **6. INDEMNITY**

You agree to indemnify and hold AVARY and its subsidiaries, affiliates, shareholders, officers, directors, agents, licensors, suppliers, alliance members, other partners, employees and representatives harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Your Content, Your use of or connection to the Website (including any use by You on behalf of Your employer), Your violation of the Terms, or Your violation of any rights of another.

## **7. NOTICES; MODIFICATION AND TERMINATION OF SERVICES; AMENDMENT OF TERMS**

AVARY may provide notice to You via email, regular mail, or posting notices or links to notices on the Website. AVARY reserves the right at any time to modify, suspend or terminate the Services (or any part thereof), and/or Your use of or access to them, with or without notice. AVARY may also delete, or bar access to or use of, all related Information and files. AVARY will not be liable to You or any third-party for any modification, suspension, or termination of the Services, or loss of related information. AVARY may amend these Terms at any time by posting the amended terms on this Website.

## **8. ADVERTISEMENTS AND PROMOTIONS**

AVARY runs advertisements and promotions from third parties on the Website. Your correspondence or business dealings with, or participation in promotions of, advertisers other than AVARY found on or through the Website, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between You and such advertiser. AVARY is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as

the result of the presence of such non-AVARY advertisers on the Website.

## **9. CONTENT PROVIDED VIA LINKS**

9.1 You may find links to other Internet sites or resources on the Website. You acknowledge and agree that AVARY is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. AVARY will not be responsible or liable, directly or indirectly, for any actual or alleged damage or loss caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

9.2.01 Lions Gate Entertainment content on the Website is the intellectual property of Lions Gate Entertainment. Any copying, republication or redistribution of Lions Gate Entertainment content, including by caching, framing, or similar means, is expressly prohibited without the prior written consent of Lions Gate Entertainment. Lions Gate Entertainment shall not be liable for any errors or delays in content, or for any actions taken in reliance thereon. Lions Gate Entertainment, Lions Gate Films and their logos are registered trademarks of Lions Gate Entertainment.

9.2.02 Sony Pictures Entertainment content on the Website is the intellectual property of Sony Pictures Entertainment. Any copying, republication or redistribution of Sony Pictures Entertainment content, including by caching, framing, or similar means, is expressly prohibited without the prior written consent of Sony Pictures Entertainment. Sony Pictures Entertainment shall not be liable for any errors or delays in content, or for any actions taken in reliance thereon. Sony Pictures Entertainment, TriStar Films and their logos are registered trademarks of Sony Pictures Entertainment.

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9.2.06 Shangri-La Entertainment content on the Website is the intellectual property of Shangri-La Entertainment. Any copying, republication or redistribution of Shangri-La Entertainment, including by caching, framing, or similar means, is expressly prohibited without the prior written consent of Shangri-La Entertainment. Shangri-La Entertainment shall not be liable for any errors or delays in content, or for any actions taken in reliance thereon. Shangri-La Entertainment and its logo are registered trademarks of Shangri-La Entertainment.

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any actions taken in reliance thereon. Prodigy Entertainment and/or EuropaCorp. Television and its logo are registered trademarks of Prodigy Entertainment and/or EuropaCorp. Television.

9.3.01 AVARY is in no way affiliated with projectAVARY, a California nonprofit. AVARY provides links to projectAVARY ([www.projectavary.org](http://www.projectavary.org)) strictly for the purposes of raising awareness for a positive and good cause that AVARY believes in. projectAVARY content on the projectAVARY.com website is the intellectual property of projectAVARY. Any copying, republication or redistribution of projectAVARY, including by caching, framing, or similar means, is expressly prohibited without the prior written consent of projectAVARY. projectAVARY shall not be liable for any errors or delays in content, or for any actions taken in reliance thereon. projectAVARY and its logo are registered trademarks of projectAVARY.

9.3.02 REMFORM and the remform.net web blog ("REMFORM") links to websites that AVARY has no affiliation with whatsoever. REMFORM is a satirical weblog and the product copy on REMFORM is satirical in nature. Content on external websites that REMFORM links to are the intellectual property of their owners.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 Except as expressly authorized by AVARY or by Content providers, You agree not to reproduce, modify, rent, lease, loan, sell, distribute, mirror, clone, frame, republish, download, transmit, or create derivative works of the Content of others, in whole or in part, by any means. You must not remove or modify any copyright or trademark notice, or other notice of ownership.

10.2 "AVARY Trademarks" means all names, marks, brands, logos, designs, trade dress, slogans, cartoons, and other designations AVARY uses in connection with its products and services. You agree to not remove or alter any AVARY Trademarks, or co-brand your own products or material with AVARY Trademarks, without AVARY's prior written consent. You acknowledge AVARY's rights in AVARY Trademarks and agree that any use of AVARY Trademarks by You shall inure to AVARY's sole benefit. You agree not to incorporate any AVARY Trademarks into Your trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations, for use on or in connection with computer or Internet-related products, services or technologies.

10.3 AVARY makes no representations or warranties about respecting others' intellectual property rights, however AVARY makes best efforts to respect others' intellectual property rights within the boundaries of AVARY's code of ethics, conscience, and morality.

10.4 All articles which are excluded shall be deemed included at AVARY's sole discretion.

10.5 Unless explicitly stated herein, nothing in these Terms shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication, or otherwise. Permission is granted to display, copy, distribute and download Content owned by AVARY on this Website provided that: (a) the copyright notice pertaining to the Content remains, and a permission notice (e.g., "Used with permission") is added to such Content; (b) the use of such Content is solely for personal and non-commercial use; (c) such Content will not be copied or posted on any networked computer or published in any medium, except as explicitly permitted by valid permission or license covering such materials; and (d) no modifications are made to such Content. This permission terminates automatically without notice if You breach any of the terms or conditions in this Section 10.4. Upon termination, You must immediately destroy any downloaded and/or printed Content.

## **11. DISCLAIMER OF WARRANTIES**

11.1 YOUR USE OF THE WEBSITE IS AT YOUR SOLE RISK UNLESS OTHERWISE EXPLICITLY STATED. THE WEBSITE, INCLUDING THE INFORMATION, SERVICES AND CONTENT (AS DEFINED IN SECTION 1.2) IS PROVIDED ON AN "AS IS" "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. AVARY DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. AVARY MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES AS TO THE USEFULNESS QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF THE WEBSITE.

11.2 AVARY MAKES NO WARRANTY OR REPRESENTATION THAT: (a) THE WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (b) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITE WILL BE ACCURATE OR RELIABLE; (c) THE QUALITY OF ANY PRODUCTS, SERVICES, CONTENT, INFORMATION, OR OTHER

MATERIAL PURCHASED OR OBTAINED FROM THE WEBSITE WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS; OR (d) ANY ERRORS IN THE WEBSITE WILL BE CORRECTED.

11.3 YOU ASSUME ALL RISK FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM OBTAINING ANY CONTENT FROM THE WEBSITE, INCLUDING ANY DAMAGES RESULTING FROM COMPUTER VIRUSES.

## **12. LIMITATION OF LIABILITY**

12.1 TO THE FULL EXTENT PERMITTED BY LAW, AVARY IS NOT LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, ELECTRONICALLY TRANSMITTED ORDERS, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF OR IN CONNECTION WITH THE WEBSITE, EVEN IF AVARY HAS PREVIOUSLY BEEN ADVISED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OF SUCH DAMAGES, HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT OR IN TORT (INCLUDING NEGLIGENCE, NUISANCE, DEFAMATION, OR INTERFERENCE), INCLUDING WITHOUT LIMITATION DAMAGES DUE TO: (a) THE USE OF OR THE INABILITY TO USE THE WEBSITE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM THE WEBSITE; (c) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE WEBSITE, INCLUDING WITHOUT LIMITATION UNAUTHORIZED ACCESS TO OR ALTERATION OF TRANSMISSIONS OR DATA, MALICIOUS OR CRIMINAL BEHAVIOR, OR FALSE OR FRAUDULENT TRANSACTIONS; OR (d) CONTENT OR INFORMATION YOU MAY DOWNLOAD, USE, MODIFY OR DISTRIBUTE.

12.2 TO THE EXTENT THAT ANY JURISDICTION DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, PORTIONS OF THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY.

## **13. AVARY'S PRIVACY POLICY**

You consent to the collection, appropriation, processing, analysis, examination, storage and exploitation by AVARY of Your sensitive personal information, which includes, but is not limited to, name,

address, email, telephone, contact information, next of kin, passport numbers, practice, behavior, affectation, style, IP addresses, computer configurations, design schema and other informations that AVARY deems relevant at its discretion. You agree to allow AVARY full normative jurisprudence when gathering sensitive personal information of Yours, and grant access to AVARY and its subsidiaries, affiliates, shareholders, officers, directors, agents, licensors, suppliers, alliance members, other partners, employees and representatives to said sensitive personal information. The terms of the AVARY privacy policy are defined by AVARY and are subject to revision at the discretion of AVARY.

## **14. GENERAL TERMS**

14.1 The Terms constitute the entire agreement between You and AVARY relating to their subject matter, and cancel and supersede any prior versions of the Terms. No modification to the Terms will be binding, unless in writing and signed by an authorized AVARY representative. You must not assign or otherwise transfer the Terms or any right granted hereunder. You also may be subject to additional terms and conditions that may apply when You use AVARY or third-party products or services.

14.2 You agree that any material breach of Sections 2, 3, 4, 6, 10, and 13 of the Terms will result in irreparable harm to AVARY for which damages would be an inadequate remedy and, therefore, in addition to its rights and remedies otherwise available at law, AVARY will be entitled to equitable relief, including both a preliminary and permanent injunction, if such a breach occurs. You waive any requirement for the posting of a bond or other security if AVARY seeks such an injunction.

14.3 California law and controlling U.S. federal law govern any action related to the Terms and/or Your use of the Website. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Terms. You and AVARY agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Los Angeles, California, U.S.A.

14.4 Services, Content, and product derived or obtained from this Website may be subject to the U.S. export laws and the export or import laws of other countries. You agree to comply strictly with all such laws and, in particular, shall: (a) obtain any export, reexport, or import authorizations required by U.S. or your local laws; (b) not use

Services, Content, or direct product from this Website to design, develop or produce missile, chemical/biological, or nuclear weaponry; and (c) not provide Services, Content, or direct product from this Website to prohibited countries and entities identified in the U.S. export regulations.

14.5 Rights and obligations under the Terms which by their nature should survive will remain in full effect after termination or expiration of the Terms.

14.6 The Website may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements may include statements regarding market expectations and opportunities, expectations about financials, research and development and strategies, statements concerning AVARY's roadmaps, market share growth, and product and service development and introduction, and our continuous evaluation of the competitiveness of our product and service offerings. These forward-looking statements are just predictions and involve risks and uncertainties. Actual results may differ materially from results discussed in the forward-looking statements. Factors that may cause such a difference include risks related to adverse changes in general economic conditions, failure to reduce costs, lack of success in technical advancements, the timely development, production and acceptance of new media, products and services, and AVARY's ability to compete in a highly competitive and rapidly changing marketplace. Detailed listings of the potential factors affecting AVARY's business and these forward-looking statements are not made publicly available.

14.7 Any express waiver or failure to exercise promptly any right under the Terms will not create a continuing waiver or any expectation of non-enforcement. If any provision of the Terms is held invalid by any law or regulation of any government, or by any court or arbitrator, the parties agree that such provision will be replaced with a new provision that accomplishes the original business purpose, and the other provisions of the Terms will remain in full force and effect.

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