

TERMS OF USE

Effective Date: October 14, 2022*

Flushmate LLC (collectively with its affiliates, "**Flushmate**", "we" or "our") welcomes you to this website, flushmate.com, and other Flushmate websites, microsites, applications, and online locations (collectively, the "**Site**"). Use of the Site is subject to the following Terms of Use, together with the [Privacy Policy](#) (collectively hereinafter "**Terms**").

These Terms of Use govern your access to and use of the Site, including Site content, accounts, Design Tools, and other online functionality. They do not govern the purchase or sale of Flushmate products or related services except to the limited extent expressly stated herein. Any purchase or sale of Flushmate products or related services is governed by Flushmate's [Terms of Sale](#), the applicable order confirmation, any applicable product-specific or transaction-specific terms, and, as applicable, Flushmate's and [Limited Warranty](#). In the event of any conflict or inconsistency between these Terms of Use and Flushmate's Terms of Sale, Limited Warranty, order confirmation, or other commercial terms applicable to a purchase or sale, those commercial terms shall control with respect to the purchase, sale, payment, credit, delivery, return, cancellation, warranty, and product-related subject matter they address.

1. ACCEPTANCE OF TERMS OF USE

By accessing and using the Site, registering for an account on the Site, or using any Site content or functionality, you acknowledge that you have read, understood, and agree to be bound by these Terms, including the [Privacy Policy](#), which form an agreement that is as effective as if you had signed it. If you make a purchase through the Site, that purchase is also subject to Flushmate's Terms of Sale and the other commercial terms applicable to the transaction. If there is a conflict between these Terms of Use and the Terms of Sale or other applicable commercial terms, the Terms of Sale or other applicable commercial terms shall control for purchase-related matters. If at any time you do not agree to these Terms, please do not access, or use the Site or any of its content.

If you are accessing or using the Site on behalf of a company, legal entity, association, partnership, organization, or other entity (collectively, "**Organization**"), you accept and agree to these Terms on behalf of the Organization and you represent and warrant that you have the authority to bind the Organization to these Terms and to make purchases on its behalf. In such event, when these Terms use the words "you" or "your" it will refer and apply to you and that Organization. If at any time you do not have the authority to bind the Organization to these Terms or make purchases on its behalf, please do not access, or use the Site or any of its content. Even if you are accessing or using the Site on behalf of an Organization, you agree that you, as an individual, are bound by these Terms and the [Privacy Policy](#).

YOUR ACCESS TO, USE OF AND BROWSING OF THE SITE AND ITS CONTENT IS SUBJECT TO ALL TERMS CONTAINED IN THESE TERMS AND ALL APPLICABLE LAWS AND REGULATIONS. IF YOU DO NOT AGREE TO THESE TERMS, YOUR PERMISSION TO ACCESS OR USE THE SITE IS AUTOMATICALLY AND IMMEDIATELY REVOKED.

These Terms are subject to be revised or updated from time to time. Accordingly, you should check the Terms regularly for updates. Should the Terms be revised, Flushmate will post the changes on this Site and the new Terms will be effective immediately upon posting. If Flushmate makes any material changes to the Terms, in addition to posting the revised Terms to this Site, Flushmate will notify you in the manner and to the extent required by law. You can determine when the Terms were last revised by referring to the "Last Revised" date at the top of this page. Each time you access, use, or browse the Site, you signify your acceptance of the then-current Terms.

Flushmate may make changes to the Site or its contents, products, services or features at any time. You understand and agree that Flushmate may discontinue or restrict your use of the Site at any time for any reason with or without notice.

2. PERMITTED USERS OF THE SITE

The Site is directed to persons 18 years of age or older. If you are under age 18, you are not permitted to submit any personally identifiable information to Flushmate on the Site or offline. If you provide information to Flushmate through the Site, you represent that you are at least 18 years of age or of an age to form a legally binding contract and you are not prohibited from receiving services or purchasing products available on or through the Site under the laws of the United States or any other applicable jurisdiction.

3. PRIVACY POLICY

Please review the [Privacy Policy](#) for the Site, which is incorporated in these Terms. If you do not agree with the [Privacy Policy](#), you are not authorized to access, use, or browse the Site.

4. PERMITTED USES

Any content available through the Site, including without limitation any text, documents, drawings, graphics, audio, animation, videos, logos, icons, images, media, data, charts, maps, product information, software and other information and materials (the "**Content**") is the sole and exclusive property of Flushmate, its licensors, or other content providers.

The Content is made available for only your personal, noncommercial use, other than with respect to (i) use of the Site for entering purchase orders, or (ii) use of the Design Tools (defined below) to facilitate the purchase of Flushmate products for the Organization you represent as an authorized agent. You agree to abide by any posted limitations relating to use, reproduction or dissemination of any Content. Any use of the Site or Content in any way not expressly permitted by these Terms is prohibited and may be actionable under United States or international law.

Special terms may apply to some services, features or products offered on the Site, or when you register, enroll, or participate in any surveys or questionnaires; promotions; or any other services, events or activities sponsored by Flushmate or third parties, or offered in connection with the Site (collectively, "Activities," or individually, an "**Activity**") that may be offered on the Site or offline. Such special terms or rules (which may include official rules and expiration dates) may be posted in connection with the applicable Activity. By participating in any Activity, you will become subject to those terms or rules. We urge you to read the applicable terms or rules which are applicable to the Activity, and to review our [Privacy Policy](#) which, as part of these Terms, governs any information you submit in connection with such Activities. Any special terms or rules are in addition to these Terms, and, in the event of a conflict, any such terms or rules shall prevail over these Terms.

5. DESIGN CONFIGURATION TOOLS

Flushmate may make available through the Site tools that allow you to develop and design restroom and/or other projects using Flushmate products (each a "**Design Tool**"). The Design Tools may allow you to create project summaries or other product documentation. Project summaries and any other documentation made available through the Design Tools is considered Content under these Terms. Design Tools may be operated by Flushmate or by a third party. Design Tools operated by a third party may be subject to additional terms and conditions provided by that third party.

You understand that the Design Tool and any Design Tool Content are for illustrative purposes only, and do not constitute, and should not be used as, final plans, specifications, details, or designs for your project. Design Tool and any Design Tool Content should only serve as a basis for seeking further professional advice. Before starting a project or purchasing any materials, you should independently verify the accuracy, suitability, completeness, safety, and legal compliance of your project.

Product depictions on screen and by print are a visual representation of products offered by Flushmate and may vary in color and pattern from the actual product. No images created by the Design Tools should be interpreted as a recommendation to use any product for a specific application. Images created in the Design Tools may not include all installation details such as seams or mounting holes. Design Tools may allow you to include custom project notes; Flushmate makes no representation that any custom request from a consumer can be fulfilled.

Any prices identified in Design Tools or Design Tool Content are Flushmate's suggested list prices and should be used only for budget estimates; actual sales prices may be set by distribution partners. Flushmate sells its product either direct or through distribution partners; however Flushmate does not control distribution partners' prices. No price representation will be binding until a purchase order is executed or a purchase is completed through the Site by buyer.

To the greatest extent permitted by applicable law, Flushmate hereby disclaims all express and implied warranties and representations pertaining to the use, product availability, suitability, completeness, safety, and legal compliance of all, or any portion, of the Design Tools, including, without limitation, color, measurements, dimensions, materials, energy source, energy consumption, or otherwise.

6. FLUSHMATE IOT PRODUCT SUBSCRIPTION SERVICES

Flushmate may allow users of Flushmate connected products ("**Flushmate IOT Products**") to log-in and access Flushmate IOT Product subscription services through the Site, however, use of Flushmate IOT Products is governed by separate Flushmate IOT Product Terms of Use.

7. PRODUCT INFORMATION

Select products displayed on the Sites are available to purchase through the Sites from Flushmate LLC. The prices displayed on the Sites are quoted in U.S. Dollars.

We have made every effort to display as accurately as possible colors and designs of our products that appear at the Sites. We cannot guarantee that the display of any color or design on your computer or mobile device will be accurate.

Product information on our Sites may contain typographical errors, inaccuracies, or omissions that relate to product descriptions, pricing, promotions, offers, and availability. We reserve the right to correct any errors, inaccuracies or omissions and to change or update information or cancel orders if any information on the Sites is inaccurate at any time without prior notice (including after you have submitted your order).

8. PROPRIETARY RIGHTS

You acknowledge and agree that, as between Flushmate and you, all right, title, and interest in and to the Site and the Content, including without limitation any patents, copyrights, trademarks, brands, trade secrets, inventions, know-how, and all other intellectual property rights (excluding any User Content), are owned exclusively by Flushmate or its content providers, affiliates, suppliers, vendors, merchants, licensors, or Activities partners or sponsors, and are protected by United States intellectual property and other applicable laws.

Copyright: All Content is the copyright and property of Flushmate or its content providers, affiliates, suppliers, vendors, merchants, licensors, or Activities partners or sponsors, and protected by U.S. and international copyright laws. You agree not to copy, modify, distribute, transmit, republish, sell, resell, or exploit, for any purpose, any portion of the Site or the Content other than as expressly authorized by Flushmate in writing.

Trademarks: The trademarks, service marks, logos, slogans, trade names and trade dress used on the Site are proprietary to Flushmate or its affiliates, suppliers, vendors, merchants, licensors, content providers, or Activities partners or sponsors. Third party trademarks referenced in the Site do not constitute or imply affiliation with, endorsement of, or recommendation of Flushmate by the respective trademark owners, or by Flushmate of the respective trademark owners. Without limitation, Flushmate LLC ® is a trademark registered in the United States Patent and Trademark Office and owned by Flushmate.

9. ACCOUNT PASSWORD AND SECURITY

The Site may contain some features that require registration of a username and password ("**Account**"), including the password-protected account through which you can place orders and make purchases via the Site or use Design Tools. You agree to provide only accurate and truthful information in creating or maintaining an Account. You are responsible for maintaining the confidentiality of your

password and are fully responsible for all activities that occur under your Account or password, whether by you or others. If you are using your Account on behalf of an entity or third party, you represent that you have authority from such entity or third party to use such Account and to act on behalf of such entity or third party. When you register for your login information and each time you access your account, you agree to (a) log out of the Account at the end of each session; (b) keep the password confidential and not share it with anyone else; and (c) immediately notify Flushmate of any unauthorized use of the password or Account or any other breach of security. Flushmate reserves the right to delete, modify or remove any content on any Account at any time in its sole discretion. You are solely responsible to backup any content that you do not want deleted, modified, or removed from the Account. Flushmate is authorized to act on instructions received through use of your Account. This includes any purchases you make through the Site on behalf of the Organization that you represent, and Flushmate is not liable for any loss or damage arising from your failure to comply with this Section.

10. USER CONTENT

a. Responsibility. You and other users may have the ability to upload to transmit through, or otherwise make available (collectively, “**Upload**”) through the Site reviews or other information or materials (collectively, “**User Content**”). You are solely and entirely responsible for User Content that you Upload using the Site. You acknowledge that other users of the Sites, and not Flushmate, are similarly responsible for all User Content they Upload using the Site. You agree that you have no right, title, or interest in or to any materials that you have not Uploaded that appears on or through the Site. You acknowledge that Flushmate has no obligation to pre- screen, monitor, or investigate User Content, but that it reserves the right to do so.

b. License to Flushmate. You grant to Flushmate a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right (including any moral rights) and license to use, distribute, reproduce, modify, adapt, translate, create derivative works of, publicly perform, and publicly display your User Content, in whole or in part, together (at our option) with the names and likenesses of any persons identifiable therein, in any form, media, or technology now known or later developed, for the purposes of operating and providing the Site and their services to you and to other users. You agree and understand that we are not obligated to post, keep, or use your User Content.

c. No Unsolicited Materials. It is our policy not to accept or consider content, information, ideas, suggestions, or other materials other than those we have specifically requested, to which certain specific terms, conditions and requirements may apply. This is to avoid any misunderstandings if your ideas are similar to those we have developed or are developing independently. Accordingly, Flushmate does not accept unsolicited materials or ideas, and takes no responsibility for any materials or ideas so transmitted and you agree that any such ideas transmitted to Flushmate are included in the above license you grant to us for any User Content.

d. Your Warranties. You represent and warrant that you are the owner of all rights, title, and interest in and to the User Content you upload (or such User Content is in the public domain), or otherwise have all rights necessary to grant the license provided for in these Terms and the User Content you upload is accurate, does not violate these Terms, and will not cause injury to any person or entity.

11. YOUR INDEMNITY OF FLUSHMATE

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS FLUSHMATE AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES, CONTENT PROVIDERS, AFFILIATES, PARTNERS, LICENSORS, LICENSEES, SERVICE PROVIDERS, SUPPLIERS, VENDORS, ACTIVITIES PARTNERS AND SPONSORS, BROKERS, MERCHANTS, ADVERTISERS AND OTHERS ACTING IN CONCERT WITH ANY OF THE FOREGOING (COLLECTIVELY, THE “FLUSHMATE PARTIES”), FROM AND AGAINST ANY AND ALL LOSS, LIABILITY, CLAIM, DEMAND, ACTION, DAMAGE, LIABILITY, PENALTY, FINE, COST OR EXPENSE (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES), WHETHER INCURRED BY OR MADE AGAINST A FLUSHMATE PARTY AND WHETHER MADE BY YOU, OR ON YOUR BEHALF, OR BY ANY THIRD PARTY DUE TO, ARISING OUT OF OR RELATING TO (A) YOUR USE OF OR RELIANCE ON THE SITE OR ANY CONTENT, USER CONTENT, PRODUCTS, SERVICES OR ACTIVITY AVAILABLE THROUGH THE SITE, OR YOUR DEALINGS IN CONNECTION WITH THE SITE, (B) YOUR SUBMISSION(S) OR ANY MATERIALS YOU SUBMIT OR TRANSMIT TO THE SITE OR TO FLUSHMATE; (C) YOUR VIOLATION OF THESE TERMS, ANY APPLICABLE LAWS, OR THE RIGHTS OF FLUSHMATE OR ANY THIRD

PARTY; AND (D) ANY ACTIVITY RELATED TO ACCESS OR USE OF YOUR ACCOUNT OR PASSWORD WHETHER BY YOU OR ANY OTHER PERSON, OR ANY USE OF FLUSHMATE'S ONLINE ORDERING SYSTEM.

12. LINKS TO OTHER WEBSITES

The Site may contain advertisements, postings and links to websites operated by other parties. The Site provides these advertisements, postings and links as a convenience, and your use of other websites is at your own risk. Flushmate is not responsible for their content or privacy practices. Such advertisements, postings or links or references to other parties' products or services do not imply Flushmate's endorsement of information, material, products or services of any other party or any other website. Flushmate disclaims all liability with regard to your access to and use of any information, material, products or services or transactions with such linked websites or other parties. You acknowledge and agree that Flushmate is not responsible or liable, directly, or indirectly, for any damage, loss or other claim caused or alleged to be caused by or in connection with, access to, use of or reliance on any content available on or through any other site or resource.

13. MODIFICATIONS, SUSPENSION AND TERMINATION

Flushmate reserves the right at any time to modify, suspend or discontinue, temporarily or permanently, the Site, its Content, including, without limitation, product parts, prices, and sales terms, or Activities, or any portion thereof, with or without notice. You agree that Flushmate will not be liable to you or to any third party for any modification, suspension or discontinuance of the Site, its Content, or Activities or any portion thereof.

Flushmate reserves the right, at its sole discretion, immediately and without notice, to suspend, discontinue, or terminate your access to the Site, Content, or any part thereof for any reason or no reason at all, including without limitation any breach by you of these Terms. You agree that Flushmate shall not be liable to you or any third party for any such suspension, discontinuance, or termination.

14. DISCLAIMERS AND LIMITATION OF LIABILITY

WITH THE EXCEPTION OF THE LIMITED WARRANTY AVAILABLE AT <https://legal.eflushmate.com/#warranty-policy> FOR CERTAIN PRODUCTS, THE SITE AND ALL CONTENT ON THE SITE IS PROVIDED TO YOU ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FLUSHMATE MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF DESIGN TOOLS OR ANY CONTENT AVAILABLE THROUGH THE SITE (INCLUDING USER CONTENT). YOU ARE RESPONSIBLE FOR VERIFYING ANY INFORMATION BEFORE RELYING ON IT. USE OF THE SITE AND ITS CONTENT IS AT YOUR SOLE RISK.

FLUSHMATE MAKES NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU ARE RESPONSIBLE FOR TAKING ALL NECESSARY PRECAUTIONS TO ENSURE THAT ANY CONTENT YOU MAY OBTAIN FROM THE SITE IS FREE OF VIRUSES OR OTHER HARMFUL CODE. FLUSHMATE DOES NOT ENDORSE USER CONTENT AND IS NOT RESPONSIBLE FOR USER CONTENT.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, FLUSHMATE AND ALL OF THE FLUSHMATE PARTIES DISCLAIM ALL LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, IN LAW OR IN EQUITY, AND FURTHER DISCLAIM ALL LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH ACCESS TO OR USE OF THE SITE, CONTENT, OR USER CONTENT, EVEN IF FLUSHMATE OR ANY OF THE FLUSHMATE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Exclusions and Limitations: Because some jurisdictions do not allow limitations on how long an implied warranty lasts, or the exclusion or limitation of liability for consequential or incidental damages, the above limitations may not apply to you. This Limitation of Liability shall be to the maximum extent permitted by applicable law.

15. NOTICE REQUIRED BY CALIFORNIA LAW

Pursuant to California Civil Code Section 1789.3, California residents are entitled to the following specific consumer rights notice: The name, address, and telephone number of the provider of this service is Flushmate LLC, 30075 Research Drive, New Hudson, Michigan 48165 United, 1 (800) 533-3460. Complaints regarding the service or requests to receive further information regarding use of this service may be sent to the above address or to marketing@flushmate.com.

The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite N 112, Sacramento, CA 95834 or by telephone at (800) 952-5210.

16. PRODUCTS AND SERVICES

Product descriptions, pricing, availability, specifications, and other product-related information displayed on the Site are provided for informational purposes and are subject to Flushmate's Terms of Sale and any applicable order confirmation. Unless otherwise prohibited by law, we reserve the right to change or substitute any products or services offered on the Site, and the prices or specifications of any such products or services, at any time and from time to time without any notice or liability to you or any other person. We reserve the right to limit quantities of products or services described on the Site, and to decline any purchase. The products or services described on the Site may be out of date or differ slightly from the actual products or services offered, sold, or provided by FLUSHMATE. Products or services described on the Site may not be available at all times or in all locations.

17. PAYMENTS

By placing an order on the Site, you represent and warrant that you have the authority to both place and direct payment for the order. If you are paying for your order via credit or debit card, you represent that you are an authorized user of the credit or debit card and authorize Flushmate or its designee to charge the credit and debit card you provided in the amount specified at checkout prior to completion of the order. Payment processing through the Site is subject to the payment terms presented at checkout and to Flushmate's Terms of Sale, Credit Terms, and applicable order confirmation. To the extent this Section conflicts with Flushmate's Terms of Sale, Credit Terms, or applicable order confirmation, those commercial terms shall control. Further, you agree not to dispute the payment with your credit card company or bank, so long as the transaction corresponds to the terms provided to you at the time you place your order.

18. GOVERNING LAW AND DISPUTES

Any dispute between you and Flushmate arising out of or relating to these Terms, the [Privacy Policy](#), the Site or its Content shall be governed by, and will be construed in accordance with, the laws of the State of Illinois, U.S.A., without regard to choice of law principles. For the avoidance of doubt, this Section does not apply to disputes arising out of or relating to the purchase, sale, ordering, pricing, shipment, delivery, payment, return, cancellation, warranty, credit terms, collection, or use of Flushmate products or related services. Those disputes are governed by Flushmate's Terms of Sale, Limited Warranty, applicable order confirmation, or other commercial terms applicable to the transaction.

a. Dispute Resolution. Any dispute, controversy or claim arising under, out of, or relating to these Terms and/or any Purchase Orders, Order Confirmations or other documents entered into between the Parties in connection with the purchase of Products by you (the "**Dispute**"), including, without limitation, the formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall, if possible, be finally settled amicably by negotiation between the parties ("**Internal Dispute Resolution**").

b. Mediation. If the Parties are unable to reach an amicable solution to the Dispute pursuant to the Internal Dispute Resolution process within fifteen (15) days from the first notice of Dispute, then the Dispute shall be submitted to mediation, in Illinois, under the auspices of the American Arbitration Association ("**AAA**"), in accordance with the AAA's Mediation Procedures and, if applicable, Supplementary Rules for the Resolution of Patent Disputes then in

effect. Each Party shall bear its own cost of mediation and shall share mediation costs equally. Notwithstanding the foregoing, the Parties shall not be required to first attempt to resolve a Dispute through mediation if such Dispute concerns an allegation that a Party has violated (or threatens to violate, or poses an imminent risk of violating): (i) any federally protected Intellectual Property Rights; (ii) any claims pertaining to or arising out of any warranty issue; or (iii) any restrictive covenants contained in this Agreement, if any.

c. Arbitration. If the Parties are unable to resolve any Dispute by mediation within sixty (60) days after the notice of Dispute, the Parties shall submit the Dispute to binding arbitration before a single arbitrator agreeable to both Parties, or if the Parties cannot agree, then an arbitrator shall be appointed by the AAA. Any arbitrator chosen hereunder shall have reasonable educational training, and industry experience relevant to the particular Dispute. All proceedings will be conducted at a suitable location chosen by the arbitrator in Cook County, Illinois. Judgment upon the arbitrator's award shall be final and binding and may be entered in any court of competent jurisdiction. The arbitration proceeding shall be conducted in English. Subject to Section 29 below, the arbitrator has the right to award or include in his or her award any relief which he or she deems proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs, provided that the arbitrator may not declare any Trademark generic or otherwise invalid or, award any punitive, exemplary, or multiple damages against any Party. Each Party further agrees that, in any arbitration proceeding, each must submit or file any claim that would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim, which is not submitted or filed as required, is forever barred. For any Dispute in which the amount in controversy is Twenty-Five Thousand Dollars (\$25,000) or less, the arbitration shall be conducted on a documents-only basis without oral hearings or depositions, unless the arbitrator determines that an oral hearing is necessary for a fair resolution of the Dispute. The Parties agree that, in any arbitration, Buyer may, at its own election and subject to its own discretion, elect the following limitations and rules governing discovery: (i) requests for documents shall be limited to documents that are directly relevant to significant issues in the case or to the case's outcome; shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain; and shall not include broad phraseology such as "all documents directly or indirectly related to"; (ii) there shall be no interrogatories or requests to admit; (iii) with respect to any electronic discovery, the Parties agree that: (A) production of electronic documents need only be from sources used in the ordinary course of business. No such documents shall be required to be produced from back-up servers, tapes or other media; (B) the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format which is usable by the Party receiving the documents and convenient and economical for the producing Party. Absent a showing of compelling need, the Parties need not produce metadata, with the exception of header fields for email correspondence; (C) the description of custodians from whom electronic documents may be collected shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute; and (D) where the costs and burdens of electronic discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the arbitrator shall either deny such requests or order disclosure on condition that the requesting Party advance the reasonable cost of production to the other side, subject to allocation of costs in the final award as provided herein; (iv) each side may take three discovery depositions and each side's depositions are to consume no more than a total of eighteen (18) hours, provided that the arbitrator may authorize additional depositions or extend the time limits upon a showing that the complexity of the issues, the amount in

controversy, or other circumstances warrant additional depositions; (v) there are to be no speaking objections at the depositions, except to preserve privilege; and (vi) the total period for the taking of depositions shall not exceed six weeks unless extended by the arbitrator for good cause. The provisions of this Section are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

d. Court Carveout. Notwithstanding the foregoing, Flushmate may bring any action or proceeding in any court of competent jurisdiction to collect amounts owed, enforce payment obligations, enforce or perfect any security interest or lien right, recover or repossess Products or collateral, obtain injunctive or equitable relief, protect or enforce intellectual property rights, prevent unauthorized use or disclosure of confidential information, or obtain any provisional, emergency, or creditor remedy. Buyer irrevocably submits to the jurisdiction of the state and federal courts located in Cook County, Illinois, for any such action or proceeding and waives any objection to personal jurisdiction, venue, or forum non conveniens in such courts.

e. Limitation of Action. No cause of action arising under these Terms may be maintained against Flushmate unless brought before the expiration of one year after the act, transaction or occurrence upon which such action is based or the expiration of one (1) year after you become aware of facts or circumstances reasonably indicating that you may have a claim against Flushmate hereunder, whichever occurs sooner, and that any action not brought within this period shall be barred as a claim, counterclaim, defense, or set-off.

f. Confidentiality of Dispute Resolution Proceedings. The Parties agree that all dispute resolution proceedings including but not limited to Internal Dispute Resolution, mediation, and arbitration, shall be strictly confidential. Without limiting the foregoing, the Parties agree that the following shall be deemed Confidential Information: (i) the existence, content, and results of any dispute resolution proceeding, including the fact that a Dispute has been asserted or is being resolved; (ii) all documents, testimony, evidence, and information exchanged or produced in connection with any dispute resolution proceeding; (iii) all settlement discussions, proposals, offers, and agreements; (iv) all mediator or arbitrator deliberations, rulings, decisions, and awards; (v) the identities of witnesses and experts; and (vi) all written submissions, briefs, memoranda, and correspondence related to the dispute resolution proceeding. Each Party shall take reasonable measures to ensure that its representatives, witnesses, experts, consultants, and advisors maintain the confidentiality of such information. The confidentiality obligations of this subsection shall not prevent a Party from disclosing information: (A) to the extent required by applicable law, regulation, court order, or governmental authority, provided that the disclosing Party provides the other Party with prompt written notice of such requirement and cooperates in any effort to obtain a protective order or confidential treatment; (B) to the Party's attorneys, accountants, auditors, insurers, and other professional advisors who have a need to know and who are bound by confidentiality obligations; (C) to the extent necessary to enforce or challenge an arbitration award or settlement agreement in a judicial proceeding, provided that the Party seeking disclosure first petitions the court for a protective order; (D) if both Parties provide prior written consent to the disclosure; or (E) to the extent the information is already in the public domain through no breach of this Agreement. Any breach of this confidentiality provision may be enjoined by any court of competent jurisdiction, and the breaching Party shall be liable for all damages, costs, and attorneys' fees incurred by the non-breaching Party as a result of such breach.

g. Class, Collective, and Representative Action Waiver. To the fullest extent permitted by applicable law, you agree that any Dispute shall be brought and resolved only on an individual basis. You hereby waive any right to bring, maintain, participate in, or recover relief in any class, collective, consolidated, representative, private-attorney-general, or similar proceeding, whether in arbitration or in court. The arbitrator may not consolidate more than one person's claims and may not otherwise preside over any class, collective, consolidated, representative, private-attorney-general, or similar proceeding.

h. WAIVER OF JURY TRIAL. THIS WAIVER APPLIES SOLELY AND EXCLUSIVELY TO THOSE COURT PROCEEDINGS EXPRESSLY PERMITTED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION PROCEEDINGS TO SEEK

EMERGENCY INJUNCTIVE OR EQUITABLE RELIEF, TO ENFORCE AN ARBITRAL AWARD, OR TO PURSUE CLAIMS CARVED OUT FROM THE MANDATORY DISPUTE RESOLUTION PROCESS. FOR THE AVOIDANCE OF DOUBT, THIS WAIVER DOES NOT EXPAND THE CATEGORIES OF DISPUTES THAT MAY BE BROUGHT IN COURT, AND ALL OTHER DISPUTES REMAIN SUBJECT TO THE ARBITRATION PROVISIONS OF THIS AGREEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY SUCH PERMITTED COURT PROCEEDING. Each Party certifies that (a) this waiver is made voluntarily and with full understanding of its implications, (b) no Representative of the other Party has represented that such other Party would not seek to enforce this waiver, and (c) each Party has had the opportunity to consult with counsel regarding this waiver.

The Site is controlled within the United States of America and is directed to individuals residing in the United States. Those who choose to access the Site from locations outside of the United States do so on their own initiative and are responsible for compliance with local laws if and to the extent local laws are applicable. Flushmate does not represent that the Site or its Content is appropriate outside the United States of America. Flushmate reserves the right to limit the availability of the Site for any person, geographic area, or jurisdiction at any time in its sole discretion.

19. MISCELLANEOUS

If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Flushmate's failure to act with respect to any failure by you or others to comply with these Terms does not waive Flushmate's right to act with respect to subsequent or similar failures. **These Terms of Use, together with the [Privacy Policy](#), set forth the entire understanding between you and Flushmate with respect to your access to and use of the Site, Content, accounts, Design Tools, and other non-purchase online functionality. These Terms of Use do not supersede, modify, or limit Flushmate's Terms of Sale, Limited Warranty, order confirmations, return policies, cancellation policies, or any other commercial terms applicable to the purchase or sale of Flushmate products or related services.** Any cause of action or claim you may have with respect to these Terms, or the Site must be commenced within six (6) months after the claim or cause of action arises or such claim or cause of action shall be barred. You may not assign or transfer your rights or obligations under these Terms without the prior written consent of Flushmate, and any assignment or transfer in violation of this provision shall be null and void. Flushmate reserves the right to seek all remedies available at law and in equity for violations of these Terms or special terms or rules set forth on the Site, including without limitation the right to block access from a particular internet address.

* The effective date appearing in the header of this page under the version control block is system-generated and is only for administrative and versioning purposes. That date does not constitute or modify the Effective Date or effectiveness of these Terms or Policies.