

SMARTHEEL.COM
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These Terms were last revised on January 15, 2007 (EST).

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2. You may without our permission:

(a) Download, view, copy, retransmit and print Content, but only if:

(i) the Content is used solely for personal, informational, or internal business purposes;

(ii) all copyright, trademark and other proprietary rights notices included in the Content as presented at the Site appear on all copies;

(iii) Sections 1(b), 2, 4, 5 and 10-17 of these Terms are prominently displayed with all copies;

(iv) the Content is not modified or altered in any way; and

(v) no graphics are used separately from accompanying text.

(b) Link or hyper-link to the home page of the Site from any Qualified Site, but only if:

(i) you notify us by email to info@smartheel.com specifying the URL of each page from which you will be linking to our home page;

(ii) you do not frame the Site or any portion of the Site;

(iii) you do not deep link into the Site (i.e., you do not link into any page other than the home page);

(iv) the link or hyper-link to the Site is not used in a way that suggests that Smart Heel endorses you or your web site;

(v) the link is identified using a plain text rendering of the Smart Heel name and not any trademark or Smart Heel logo;

(vi) the link or hyper-link to the Site is not used or presented in any way that disparages Smart Heel or tarnishes, blurs or dilutes the quality of Smart Heel's name or trademarks or any associated goodwill;

(vii) the link or hyper-link to the Site is not displayed on any web page that displays Objectionable content or links; and

(viii) you agree that Smart Heel may terminate your right to link or hyperlink to the Site at any time for any reason or no reason.

"Qualified Site" means a web site that displays no Objectionable content, is not owned or controlled by a competitor to Smart Heel and the content of which is not competitive to the Site.

"Objectionable" means as to any content, information in any medium or format including, without limitation, text, data, graphics, audio or video, that: (a) is libelous or defamatory, pornographic, sexually explicit, unlawful or plagiarized; (b) a reasonable

person would consider harassing, abusive, threatening, harmful, vulgar, profane, obscene, excessively violent, racially, ethnically or otherwise objectionable or offensive in any way; (c) constitutes a breach of any person's privacy or publicity rights, a misrepresentation of facts, hate speech or an infringement of any third party's intellectual property rights of any kind including, without limitation, copyright, patent, trademark, industrial design, trade secret, confidentiality or moral rights; or (d) violates or encourages others to violate any applicable law.

3. You may not under any circumstance:

(a) Send unsolicited commercial email to the email addresses provided on the Site (spam, chain emails, advertising solicitations and similar email solicitations are expressly prohibited);

(b) Delete, modify or attempt to change or alter any of the Content on the Site;

(c) Use any device, software or routine that interferes with the proper functioning of the Site or servers or networks connected to the Site, or take any other action that interferes with other parties use of the Site;

(d) Use the Site or the Content, intentionally or unintentionally, in any manner inconsistent with or in violation of any applicable laws or regulations or in violation of the rules of any other web site providers, web sites, chat rooms or the like including, without limitation, laws regarding import/export of technical data by virtue of your online transmission;

(e) Use any "robot", "spider" or other automatic or manual device or process for the purpose of compiling information on the Site for purposes other than for a generally available search engine; or

(f) Use any Smart Heel names, service marks, or trademarks without Smart Heel's prior written consent including without limitation, as metatags or hidden text.

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Certain product, service or company designations for companies other than Bach may be mentioned in the Site for identification purposes only. Such designations are often claimed as trademarks or service marks. In all instances where Bach is aware of a claim, the designation appears in initial capital or all capital letters. However, you should contact the appropriate companies for more complete information regarding such designations and their registration status.

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Smart Heel may change these Terms from time to time by postings on the Site. . Your continued use of this Site following the posting of any changes to the Terms constitutes your acceptance of those changes. If you object to any provision of these Terms or any subsequent modifications to these Terms or become dissatisfied with the Site in any way, your only recourse is to immediately terminate use of the Site.

6. Termination of Site/Modifications To Site.

Smart Heel reserves the right to modify or terminate the Site or your access to the Site (or portions of the Site), temporarily or permanently, with or without notice to you, and is not obligated to support or update the Site. Section 1 and Sections 3 to 16 of these Terms shall survive any termination of these Terms or your right to access to the Site. You acknowledge and agree that Smart Heel will not be liable to you or any third party in the event that Smart Heel exercises its right to modify or terminate access to the Site (or portions of the Site). Unless explicitly stated otherwise, any new features that augment or enhance the current Site will be subject to these Terms.

7. Privacy

Smart Heel will treat any information it collects from you in accordance with its Privacy Policy, which is hereby incorporated by reference. Please review the Privacy Policy before you use the Site. If you are unwilling to accept the terms and conditions of the Privacy Policy, Smart Heel asks that you do not use the Site.

8. Other Sites, Content, Products and Services.

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IN NO EVENT SHALL SMART HEEL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR COST OF PROCUREMENT OF SUBSTITUTE SERVICES, LOSS OF PROFITS, REVENUE, DATA, GOODWILL, OR USE, INCURRED BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), ARISING FROM YOUR ACCESS TO OR INABILITY TO ACCESS, OR USE OF, THE SITE OR ANY SERVICES PROVIDED IN CONNECTION WITH THE SITE, OR OTHERWISE RESULTING FROM: (1) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES, GOODS OR WEBSITES, (2) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, (3) THE STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE, OR (4) ANY OTHER MATTER RELATING TO THE SITE, EVEN IF SMART HEEL WAS ADVISED THAT SUCH DAMAGES WERE LIKELY OR POSSIBLE. THIS LIMITATION ON LIABILITY APPLIES TO, BUT IS NOT LIMITED TO, THE TRANSMISSION OF ANY DISABLING DEVICE OR VIRUSES WHICH MAY INFECT YOUR EQUIPMENT OR SYSTEM, FAILURE OF MECHANICAL OR ELECTRONIC EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER INTERCONNECT PROBLEMS, UNAUTHORIZED ACCESS, THEFT,

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11. Indemnity.

You agree to indemnify, defend and hold harmless Bach its affiliates, shareholders, directors, officers, co-branders, subsidiaries, parents, employees and agents, from any claim, demand, liability, dispute, damage, cost, expense, or loss, including reasonable attorneys' fees and costs of litigation, arising out of, or in any way connected with, your use of or access to the Site, your use of the Content, your linking to the Site or your violation of these Terms.

12. Dispute Resolution.

Any dispute arising out of or in connection with these Terms or your use of any Content or this Site or your access to or links to this Site, shall be resolved by arbitration before three neutral arbitrators administered by the American Arbitration Association in New York, New York, in accordance with its Commercial Arbitration Rules as then in effect. Except for punitive damages (which may not be awarded), any provisional or equitable remedy which would be available from a court of law shall be available from the arbitrators to parties. The award of the arbitrators may be enforced in any court having jurisdiction thereof. Both parties hereby consent (a) to the nonexclusive jurisdiction of the courts of the State of New York or to any federal court located within the State of New York for any action (i) to compel arbitration, (ii) to enforce the award of the arbitrators or (iii) at any time prior to the qualification and appointment of the arbitrators, for temporary, interim or provisional equitable remedies and (b) to service of process in any such action by registered mail or any other means provided by law. Some jurisdictions may provide additional rights to consumers.

13. General.

If any provision of these Terms is found by a court or arbitrator to be invalid, the parties agree that the court or arbitrator should give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms will remain in effect. Smart Heel's failure to act with respect to a breach by any person using the Site does not constitute a waiver of its right to act with respect to subsequent or similar breaches. These Terms will be governed by and construed in accordance with the laws of the State of New York without regard to its choice of law provisions. In the event of any conflict between foreign laws, rules and regulations and those of the United States, the laws, rules and regulations of the United States will govern. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. You consent to personal jurisdiction by the state and federal courts located in New York County, New York. Smart Heel may assign its rights and duties under these Terms without such

assignment being considered a change to the Terms and without notice to you. You may not assign these Terms without the prior written consent of Smart Heel. These Terms, the Privacy Policy, any operating rules, policies or procedures that may be posted from time to time by Smart Heel on the Site, and any modifications to the foregoing, constitute the entire agreement between the parties with regard to the subject matter in these Terms and supersede all prior understandings and agreements, whether written or oral, as to such subject matter. Nothing contained in these Terms will be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

14. Limitation of Actions Brought Against Smart Heel.

You agree that any claim or cause of action arising out of your use of the Site or these Terms must be filed within one year after such claim or cause of action arose or it shall forever be barred, notwithstanding any statute of limitations or other law to the contrary. Within this period, any failure by Smart Heel to enforce or exercise any provision of these Terms or related right shall not constitute a waiver of that right or provision.

15. Acknowledgment.

You acknowledge (a) that you have read and understood these Terms; and (b) that these Terms have the same force and effect as a signed agreement.

16. Contact Information.

If you have any questions regarding these Terms or the Site, please contact Smart Heel by e-mail at info@smartheel.com or by calling 212-427-6081.