

dtw Research/CD PROMO WorldWide

Terms of Use

About dtw Research, Inc.

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Changes to These Terms of Use

Any or all of these Terms of Use may be changed at any time without notice to you. Your use of our Sites, and your use of or access to our products and services immediately after such changes are posted will mean you accept such changes. Therefore, each time you use our Site, or access our proprietary database or other products and services, you should review these Terms of Use.

To update information on your contact information, please contact us at dtw@dtwresearch.com or by mail at dtw Research, Inc., 4812 First Coast Highway, Fernandina Beach, Florida 32034, Attention: Website Caretaker.

By purchasing a subscription, or placing a purchase order with dtw through this Site, and accessing CD Promo, you and your company expressly consent to and agree to the terms and conditions of these Terms of Use, and our Privacy Policy [<https://secure.dtwresearch.com/privacy.php>].

If you do not agree, then please do not use our Sites to access our products and/or services. Further, as a visitor to our Websites, you are also bound by the Terms of Use and this Privacy Policy – regardless of whether your company purchases products or services from us. IF YOU DO NOT AGREE WITH THIS PRIVACY POLICY OR OUR TERMS OF USE, PLEASE DO NOT USE OUR SITES.

Regarding the CD Promo Database

You, as the authorized named user of your credentials, and on behalf of your company (as applicable) that purchased this Subscription (together the “Client”) acknowledge and agree that:

- (i) dtw’s CD Promo WorldWide Database (the “Database”) is **confidential and proprietary information and/or an original work of authorship compiled and owned by dtw**, and (ii) Client shall **keep in confidence and protect dtw’s Database from disclosure to unauthorized parties** and restrict its use as provided herein. You understand that dtw’s Data and Database are unique and proprietary in that they gather data from hundreds of unrelated sources, sort and catalogue that Data, and make that Data readily available and searchable to facilitate market research and other studies. While each individual image

within the Database may be available from another source, dtw's Data and Database are a unique, confidential and proprietary compilation of this Data.

- Client agrees to use the Database and all information obtained therefrom **solely for its internal professional and/or internal business purposes** and not for any other purpose. Further, the Client shall not: (i) access or use the Database for the benefit of third parties, or (ii) provide any information from the Database to third parties, including without limitation to any third party market research, public relations and/or advertising companies or consultants, (iii) permit the use, duplication, reproduction, copying or disclosure of the Database and/or the information contained therein, or otherwise make the Database available for any purpose to any unauthorized party, including without limitation to any third party market research, public relations and/or advertising companies or consultants. For example, and not by way of limitation, Client shall not nor shall it permit any other party to (i) resell information from the Database; (ii) create a competing database (whether owned by the Client or any/third party), (iii) mass-download or download in bulk images from the Database, (iv) use or allow third parties to access or use information from the Database for the purpose of compiling, enhancing, verifying, supplementing or deleting from any compilation of information which is sold, published, furnished or in any manner provided to a third party, including without limitation to any third party market research, public relations and/or advertising companies or consultants even if such third parties are undertaking market research or other projects for Client; or (v) use the information from the Database in any service or product provided by the Client or any third party, including without limitation any third party market research, public relations and/or advertising companies or consultants.
- Client further acknowledges and agrees that each of its designated named users will set his/her named user Password for use by the subject named user only (whether as an employee, contract hire, or temporary personnel) to access the Database. The Passwords provide vital security in preventing unauthorized access to the Database and the confidential information contained therein. Client and each of its named users is responsible for keeping and maintaining the security of each Password that is set by each named user and Client and each of its named users shall have full responsibility for any unauthorized access to and/or use of the Database that results from Client's and/or any named user's failure to keep the Password(s) secure. For the avoidance of doubt, Client understands that the Passwords are (i) intended only for its named employees, named contract hires, or named temporary personnel, excluding any other employees, contract hires and/or temporary personnel, and excluding all third parties, including without limitation market research, public relations and/or advertising companies or consultants, (ii) not to be shared, and (iii) not be reused or reassigned for or to any other employee, contract hire, or temporary personnel, or any third party including without limitation any third party market research, public relations and/or advertising companies or consultants. Client further understands that upon termination of any named employee's, named contract hire's or named temporary personnel's need to access the Database, Client will immediately notify dtw so that dtw can deactivate such named employee's, named contract hire's, or named temporary personnel's Password.

Client shall be primarily liable for the acts or omissions of its employees, contract hires, temporary personnel and/or any person or entity to whom or to which it or they disclosed or revealed a designated user's Password, and or the use of credentials for each Client designated user by any unauthorized party or for use for any unauthorized purposes.

- When in the course of Client's business, Client desires to disclose a portion of information from the Database to a third party or to the public, Client shall request dtw's prior written consent. dtw may withhold such consent if, in dtw's sole discretion, such disclosure would

cause or threaten harm and loss to dtw's proprietary rights in the Database and/or other services rendered by dtw.

- Without limiting the foregoing, Client acknowledges and agrees that Client may only share materials from the Database with third parties upon execution of and in compliance with a valid written Third-Party Agreement from dtw. This Agreement must be signed by all parties (vendor, client and dtw) prior to the release of any information.
- Client also agrees and understands that neither this subscription nor the named user password shall be construed as granting Client any right of access to the Database for any purpose, including Client's internal professional and/or business use, to any domestic or foreign dtw database that is not the subject of a subscription between Client and dtw.

Violation of these Terms and Subscription Agreements

Client shall use its best efforts to assist dtw in identifying any violations of these Terms. In the event that Client (i) violates, these Terms, (ii) permits or acquiesces in a violation of these Terms, or (iii) fails to disclose to dtw an unauthorized user or unauthorized use of our proprietary database, then Client shall indemnify and hold harmless dtw from any and all damages and expenses of any kind, including reasonable attorneys' fees and costs, for all losses and harm incurred and suffered by dtw as a result of such violation or unauthorized use. Client also agrees that it will indemnify and hold harmless dtw from any and all liability, actions, claims, costs, damages and expenses of any kind, including reasonable attorneys' fees, which may be brought by a third party as a result of or arising from, directly or indirectly, any misuse or unauthorized use of the Database and/or the assigned credentials for the Database.

Survival.

All Client obligations and undertakings stated in these Terms shall survive the expiration or earlier termination of any subscription agreement with dtw for any reason.

Regarding CD Promo WebAccess Accounts

All CD Promo WebAccess accounts are programmed to expire at the end of the subscription year. All fees for CD Promo are reflective of activation costs and are not discounted or pro-rated.

dtw is responsible for technical support with regard to only CD Promo.

dtw cannot be held responsible for policies drafted by the subscribing company that may prevent CD Promo from functioning appropriately. dtw suggests that, if the subscribing company is a first time CD Promo user, the IT/MIS Department of the subscribing company test CD Promo in order to ensure system compatibility.

Injunctive Relief.

Client acknowledges and agrees that the use, misuse or sharing or transmission of any content on our Sites or from our proprietary database or portions thereof in violation of these Terms would cause dtw irreparable harm for which monetary damages would be inadequate. Accordingly, and without limiting any other terms of these Terms and Client's subscription agreement, in the event of a breach or threatened breach of these Terms, dtw will be entitled to injunctive relief without the need to post a bond or other security or to prove actual damages. dtw will be entitled to recover dtw's attorneys' fees, court costs and expenses together with all other relief awarded by a court of competent jurisdiction.

Limitation of Warranties. CLIENT UNDERSTANDS AND AGREES THAT THE SITES, THE DATABASE AND THE SYSTEMS USED TO ACCESS THE SITES AND DATABASE ARE PROVIDED "AS IS." EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN dtw AND ITS THIRD PARTY PROVIDERS SPECIFICALLY DISCLAIM, WITHOUT LIMITATION, ALL WARRANTIES OF ANY KIND TO CLIENT, ITS USERS AND ANY OTHER THIRD PARTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE. dtw AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATION OR WARRANTY THAT THE SYSTEM, THE SITES OR THE DATABASE, INFORMATION, REPORTS, MATERIALS OR SERVICES OBTAINED FROM OR GENERATED BY THE SYSTEM OR THE DATABASE, WILL MEET CLIENT'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE, COMPLETE, ACCURATE OR FREE FROM ERROR OR DEFECT. dtw MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO ANY RECOMMENDED EQUIPMENT TO BE USED WITH THE SYSTEM AND/OR TO ACCESS THE SITES AND/OR THE DATABASE, INCLUDING, WITHOUT LIMITATION, THE FAULT TOLERANCE OF THE SYSTEM. CLIENT IS RESPONSIBLE FOR VERIFYING THE RESULTS OF ALL USES OF AND RESULTS AND REPORTS PROVIDED BY THE SYSTEM AND FOR TESTING THE SYSTEM BEFORE CLIENT USES THE SYSTEM AND THE DATABASE IN CONNECTION WITH ITS BUSINESS.

Limitation of Remedies. CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE IN PERFORMANCE OF THE SYSTEM, OR DISSATISFACTION WITH THE DATABASE IS TO TERMINATE ITS SUBSCRIPTION AGREEMENT. AS A VISITOR TO THIS SITE, IF YOU ARE DISSATISFIED WITH THE SITE OR THE SYSTEM, YOUR SOLE RECOURSE IS NOT TO USE THE SITES.

Limitation of Liability. The parties acknowledge that the limitations set forth in this Section are integral to the amount of fees levied in connection with a subscription agreement, and that, were dtw to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher. Further, if you are a visitor to the Sites, and have not purchased any services or products, then you have paid not consideration for such access. IT IS UNDERSTOOD AND AGREED THAT dtw AND ITS THIRD PARTY PROVIDERS (THEIR OFFICERS, DIRECTORS, AGENTS AND ANY ENTITY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL) SHALL HAVE NO LIABILITY TO ANY VISITOR, CLIENT OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. LOSS OF PROFIT, LOST DATA, LOSS OF USE OF THE SYSTEM, BUSINESS INTERRUPTION, LOSS OF BUSINESS REPUTATION OR GOODWILL, COSTS OF SUBSTITUTE SERVICES, OR DOWNTIME COSTS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR RELATING TO THE SITES, CLIENT'S SUBSCRIPTION, THE DATABASE AND/OR THE SYSTEM, EVEN IF dtw HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. dtw AND ITS THIRD PARTY PROVIDERS (THEIR OFFICERS, DIRECTORS, AGENTS AND ANY ENTITY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH dtw OR ITS THIRD PARTY PROVIDERS) HAVE NO LIABILITY TO CLIENT OR ANY THIRD PARTY FOR ANY (I) LOSS, CORRUPTION, ERROR, OMISSION, INACCURACY OR DELAY OF DATA OR INFORMATION RETAINED IN THE SYSTEM, THE SITES OR PRODUCED BY THE SYSTEM OR THE DATABASE, OR (II) CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF dtw. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE AGGREGATE LIABILITY OF dtw AND ITS THIRD PARTY PROVIDERS (THEIR OFFICERS, DIRECTORS, AGENTS AND ANY ENTITY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH dtw OR ITS THIRD PARTY PROVIDERS) FOR DAMAGES FOR ANY CAUSE WHATSOEVER RELATING TO OR ARISING OUT OF USE OF THE STIES, THIS SUBSCRIPTION, YOUR USE OF THE DATABASE OR THE SYSTEM, AND REGARDLESS OF

THE FORM OF ACTION, SHALL BE LIMITED TO THE SUBSCRIPTION FEES PAID BY CLIENT TO dtw DURING THE THREE (3) MONTHS PRIOR TO THE CLAIM(S).

Waiver. No waiver by dtw of any term or condition in these Terms and Conditions will mean that dtw is not enforcing these Terms and Conditions, or excusing your violation of these Terms and Conditions. And our decision not to terminate your account, or not to sue you, even if you violate any Rule does not mean that we are giving up or waiving our right to do so.

Severability. If any provision of these Terms and Conditions or our Privacy Policy is deemed void, unlawful, or otherwise unenforceable by a judicial or similar authority, that provision will be severed from these Terms and Conditions or our Privacy Policy, but the remaining provisions will remain in force.

Binding Agreement; Applicable Laws, Jurisdiction and Waivers

By accessing all or any part of our Sites, the Database, and our products and services offered through our Sites you confirm you are at least eighteen (18) years old and that you consent to these Terms and Conditions and our Privacy Policy [<https://secure.dtwresearch.com/privacy.php>].

Any claims arising out of or relating to these Terms and Conditions shall be governed by the laws of the State of Florida, U.S.A., without giving effect to any conflicts of laws provisions. You agree that in the event of any dispute or claim with respect to these Terms and Conditions, the sole and exclusive jurisdiction for bringing any such action shall be in the Florida state courts located in Nassau County, Florida, USA, or the Federal District Court for the District of Florida, and you waive any and all rights to claim inconvenient forum or immunity. **You and dtw hereby waive any and all rights to a jury trial with respect to any claim arising out of or relating to these Terms and Conditions.**

Entire Agreement: These Rules, our Privacy Policy and your company's subscription or other agreement with dtw (as applicable) together constitute the entire agreement between you and dtw concerning your use of the Sites and the dtw proprietary database.

Your questions and comments are welcome. Please feel free to contact us by email [dtw@dtwresearch.com] or by mail at dtw Research, Inc., 4812 First Coast Highway, Fernandina Beach, Florida 32034 USA; Attention Website Caretaker.