

## SISLEY TERMS OF USE

These Terms of Use ("Terms") were posted on October 2013

NOTICE OF ARBITRATION PROVISIONS: YOUR USE OF THE SITE IS SUBJECT TO BINDING INDIVIDUAL ARBITRATION OF ANY DISPUTES WHICH MAY ARISE AS PROVIDED IN PARAGRAPH 9.2 HEREIN. PLEASE READ THE ARBITRATION PROVISIONS CAREFULLY AND DO NOT USE THE SITE IF YOU ARE UNWILLING TO ARBITRATE ANY DISPUTES YOU MAY HAVE WITH US AS PROVIDED BELOW.

### 1. ACCEPTANCE OF TERMS

Welcome to the SISLEY website (the "Site"). The Site is operated by Sisley Cosmetics USA Inc. ("SISLEY," "we," "us").

Please read the below terms carefully, because your use of the Site constitutes your agreement to the Terms. If you do not agree to the Terms, you should not access or use the Site. By using the Site, you affirm that you are of legal age to agree to the Terms or, if you are not, that you have obtained parental or guardian consent to agree to the Terms. The Site is not intended for children under 13.

We may change the Terms from time to time on a prospective basis, add or discontinue any aspect, content or feature of the Site, at its sole discretion. Your continued use or accessing of the Site following the posting of any changes to the Terms constitutes your acceptance of such changes. When we make changes, we will post them here. To the extent that an arbitrator or court of applicable jurisdiction determines that applying any changes to the Terms would render this an illusory or unenforceable contract, such changes shall be applicable on a prospective basis only, with respect to events or circumstances occurring after the date of such changes, to the extent necessary to avoid the Terms being deemed illusory or unenforceable.

All billing and other information provided by you on this Site must be truthful and accurate. You agree to keep such information current. Providing any untruthful or inaccurate information constitutes a breach of the Terms. We may terminate your access to the Site if you provide us with false or misleading information. You will choose your password as you completed the registration form. You are solely responsible for maintaining the confidentiality of your password, e-mail and any other account identifiers, and you are solely responsible for all use of your password and account, whether authorized by you or not. If you choose to make any of your personally identifiable information publicly available on the Site, you do so at your own risk. By confirming your purchase at the end of the checkout process, you agree to pay for the item(s) requested.

Unauthorized reproduction, copying, retransmission or exploitation of the Site, including but not limited to all content and products, is hereby expressly prohibited.

### 2. SITE TRANSACTIONS

We do not authorize the purchase of our merchandise for resale purposes. We reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by dealers, resellers or distributors. To enforce this policy, we may, in our sole discretion, limit or cancel quantities purchase per person, per household or per order. These restrictions may include, for example, orders placed by or under the same customer account, and/or the same credit card, and/or the same IP address with different credit cards and/or orders that use the same billing and/or shipping address. In the event we make a change to or cancel an order, we will attempt to notify you by contacting the e-mail and/or billing address/phone number provided at the time the order was placed.

### 3. INFORMATION ACCURACY

We will use reasonable efforts to include accurate and current information on the Site, but there may be occasions when information on the Site contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, availability and other matters. We make no warranties or representations regarding the accuracy of such information and will not be bound thereby. We reserve the right to correct any errors and, to update Site information at any time (including after you have submitted your order). We apologize for any inconvenience this may cause.

### 4. CHANGES TO THESE TERMS

From time to time, SISLEY may revise this Terms to reflect changes in the law or technology, or changes in our practices regarding information collection and use. You can determine when these Terms were last revised by referring to the "Last Updated" legend at the top of this page. Any changes to these Terms will become effective upon posting of the revised Terms on the Internet, accessible through the Site. By continuing to use the Site following such changes, you will be deemed to have agreed to such changes. If you do not agree with the Terms, as it may be amended from time to time, please do not continue using the Site. To the extent that an arbitrator or court of applicable jurisdiction determines that applying any changes to these Terms would render this an illusory or unenforceable contract, such changes shall be applicable on a prospective basis only, with respect to events or circumstances occurring after the date of such changes, to the extent necessary to avoid these Terms being deemed illusory or unenforceable.

### 5. DISCLAIMER OF WARRANTY

5.1 SISLEY PROVIDES THE SITE ON AN "AS IS" AND "AS AVAILABLE" BASIS. SISLEY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SITE INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SISLEY DOES NOT WARRANT THAT THE SITE WILL BE UNINTERRUPTED, FREE OF INACCURACIES, ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS OR OPERATE IN THE CONFIGURATION OR WITH THE HARDWARE OR SOFTWARE YOU USE. YOUR USE OF THE SITE IS SOLELY AT YOUR RISK.

5.2 EXCEPT FOR THE REPLACEMENT OF OR REFUND OF THE PURCHASE PRICE FOR ANY DAMAGED PRODUCTS, SISLEY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO PRODUCTS PURCHASE ON THE SITE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **6. LIMITATION OF LIABILITY**

6.1 IN NO EVENT WILL SISLEY BE LIABLE TO ANY PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES FOR USE OF THE SITE OR ANY OTHER HYPERLINKED WEBSITES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES, COSTS OF REPLACEMENT, BUSINESS INTERRUPTIONS, LOSS OF DATA OR DAMAGES. IN THE EVENT OF ANY PROBLEM WITH THE SITE OR ANY CONTENT THEREIN, YOU AGREE THAT YOUR SOLE REMEDY IS TO CEASE USING THE SITE. IN NO EVENT WILL SISLEY'S AGGREGATE LIABILITY TO YOU IN CONNECTION WITH THE SITE OR THE PRODUCTS EXCEED THE AMOUNT (IF ANY) PAID BY YOU TO SISLEY IN THE SIX MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE LIABILITY. BECAUSE SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OF DAMAGES, SISLEY'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY THE LAW OF SUCH JURISDICTION.

6.2 ANY THIRD-PARTY WEB SITES LINKED TO OR FROM THE SITE ARE NOT CONTROLLED BY SISLEY. ACCORDINGLY, SISLEY MAKES NO WARRANTIES REGARDING SUCH THIRD-PARTY WEB SITES AND WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY YOUR USE OR RELIANCE ON SUCH WEB SITES. YOUR USE OF THIRD-PARTY WEB SITES IS AT YOUR OWN RISK. THE INCLUSION ON THE SITE OF A LINK TO A THIRD-PARTY WEB SITE DOES NOT IMPLY AN ENDORSEMENT BY SISLEY. WHEN YOU ACCESS ANY OF THESE THIRD-PARTY WEB SITES, YOUR RIGHTS AND OBLIGATIONS WILL BE GOVERNED BY THE AGREEMENTS AND POLICIES RELATING TO THE USE OF THOSE WEB SITES.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 SISLEY and its affiliated companies retain all rights regarding their trademarks, trade names, brand names and trade dress. These marks, names, trade dress, and all associated logos or images, are registered and/or common law trademarks of SISLEY or its affiliated companies and may not be used without the prior written consent of SISLEY in each instance.

7.2 The Site and all of its materials and content, including its software, source code, HTML code, scripts, web apps, text, artwork, photographs, images, design, video, and audio (collectively, "Materials") are protected by U.S. copyright laws and other U.S. and international laws and treaties. All Materials are provided by SISLEY as a service to its current and prospective customers and may be used only for personal information and product ordering purposes. No right, title or interest in our Materials is conveyed to you. Any unauthorized copying, alteration, distribution, transmission or display or other use of these Materials is prohibited.

7.3 Your misuse of the trademarks and copyrighted materials displayed on our Website is strictly prohibited. You are advised that SISLEY will aggressively enforce its intellectual property rights to the fullest extent of the law, including the seeking of civil remedies and criminal prosecution.

## **8. MISCELLANEOUS NOTE**

8.1 No failure or delay by SISLEY in exercising any right under the Terms will operate as a waiver thereof or preclude any future exercise of such right.

8.2 If one of the provisions of the Terms is declared invalid in whole or in part, the other provisions and other rights and obligations arising from the Terms shall be unchanged and shall remain applicable.

8.3 When you visit the Site or send e-mails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail and/or by posting notices on the Site. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

8.4 You agree that regardless of any statute or law which establishes a different statute of limitations, to the maximum extent permitted under applicable law, any claim or cause of action (including any arbitration) arising out of, related to or connected with the use of the Site or the Terms or our Privacy Policy, or any SISLEY Transaction must be filed within one (1) year after such claim or cause of action arose or be forever barred.

8.5 The provisions of the Terms, the Purchase Policy, the Privacy Policy and the Site constitute the entire agreement between you and SISLEY related to the use of the Site and supersedes any prior agreements or understandings not incorporated in the Terms.

8.6 You agree that a printed version of the Terms and of any notice given in electronic form shall be admissible in judicial, administrative or arbitration proceedings based upon or relating to any Sisley Transaction to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

8.7 SISLEY will not be responsible for failure to fulfil any obligation due to causes beyond its control.

## 9. APPLICABLE LAW / ATTRIBUTION OF JURISDICTION

9.1 These Terms shall be governed by the laws of the United States and the State of New York without regard to its conflict of law provisions. Subject to the arbitration provisions below, and other than small claims actions as permitted therein, any action or proceeding arising from, relating to or in connection with these Terms or your use of the Site or purchase of products will be brought exclusively in the federal or state courts located in New York, and you irrevocably consent to the personal jurisdiction of such courts and agree that it is a convenient forum and that you will not seek to transfer such action or proceeding to any other forum or jurisdiction under the doctrine of forum non conveniens or otherwise.

## 9.2 BINDING ARBITRATION OF ALL DISPUTES

We believe that arbitration is a faster, more convenient and less expensive way to resolve any disputes that you may have with us. Therefore, pursuant to the Terms, if you have any dispute with us regarding or relating to your use of the Site, or the Terms, or our Purchase Policy or our Privacy Policy or any purchases or use of the products (collectively "Sisley Transactions"), you will not have the right to pursue a claim in court, or have a jury decide the claim and you will not have the right to bring or participate in any class action or similar proceeding in court or in arbitration. By using the Site, or engaging in a Sisley Transaction with us, you agree to binding arbitration as provided below:

We will make every reasonable effort to informally resolve any dispute that you may have with us. If those efforts fail, by using our Site, you agree that any dispute you may have against SISLEY, and any claim Sisley may have against you, arising out of, or connected in any way with these Terms or a Sisley Transaction shall be resolved exclusively by final and binding arbitration administered by JAMS or its successor ("JAMS") and conducted in accordance with the JAMS Streamlined Arbitration Rules And Procedures in effect at the time the arbitration is initiated or, if the amount in controversy exceeds \$100,000, in accordance with the JAMS Comprehensive Arbitration Rules And Procedures then in effect (respectively, the "Applicable Rules"). The Applicable Rules can be found at [www.jamsadr.com](http://www.jamsadr.com). If JAMS is no longer in existence, the Arbitration shall be administered by the American Arbitration Association or its successor (the "AAA") instead, and conducted in accordance with the AAA Commercial Arbitration Rules in effect at that time (which shall be the "Applicable Rules" in such circumstances). If JAMS (or, if applicable, AAA) at the time the arbitration is filed has Minimum Standards of Procedural Fairness for Consumer Arbitrations in effect which would be applicable to the matter in dispute, SISLEY agrees to provide the benefit of such Minimum Standards to you to the extent they are more favourable than the comparable arbitration provisions set forth herein, provided, however, that in no event may such Minimum Standards contravene or restrict the application of subpart (e) or (i) below. Furthermore, nothing herein shall prevent any party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. You further agree that:

(a) the arbitration shall be conducted before a single arbitrator selected in accordance with the Applicable Rules or by mutual agreement between you and SISLEY (the "Arbitrator");

(b) the Arbitrator, and not any federal, state or local court or agency, shall have the exclusive authority to resolve any dispute arising under or relating to the validity, interpretation, applicability, enforceability or formation of the Terms, including but not limited to any claim that all or any part of the Terms is void or voidable;

(c) the arbitration shall be held either (i) at a location determined by JAMS (or, if applicable, AAA) pursuant to the Applicable Rules (provided that such location is reasonably convenient for you and does not require you to travel in excess of 100 miles from your home or place of business); or (ii) at such other location as may be mutually agreed upon by you and Sisley; or (iii) at your election, if the only claims in the arbitration are asserted by you and are for less than \$10,000 in aggregate, by telephone or by written submission;

(d) the Arbitrator (i) shall apply internal laws of the State of New York consistent with the Federal Arbitration Act and applicable statutes of limitations, or to the extent (if any) that federal law prevails, shall apply the law of the United States, irrespective of any conflict of law principles, (ii) shall entertain any motion to dismiss, motion to strike, motion for judgment on the pleadings, motion for complete or partial summary judgment, motion for summary adjudication, or any other dispositive motion consistent with New York or federal rules of procedure, as applicable; (iii) shall honor claims of privilege recognized at law; and (iv) shall have authority to award any form of legal or equitable relief;

(e) the arbitration can resolve only your and/or SISLEY's individual claims, and the Arbitrator shall have no authority to entertain or arbitrate any claims on a class or representative basis, or to consolidate or join the claims of other persons or parties who may be similarly situated;

(f) the Arbitrator shall issue a written award supported by a statement of decision setting forth the Arbitrator's complete determination of the dispute and the factual findings and legal conclusions relevant to it (an "Award"). Judgment upon the Award may be entered in any court having jurisdiction thereof or having jurisdiction over the relevany party or its assets;

(g) in the event you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, SISLEY will pay as much of your filing and hearing fees in connection with the arbitration as the Arbitrator deems necessary to prevent the arbitration from being cost-prohibitive, regardless of the outcome of the arbitration, unless the Arbitrator determines that your claim(s) were frivolous or asserted in bad faith;

(h) in the event you recover an Award greater than SISLEY's last written settlement offer, the Arbitrator shall also have the right to include in your Award SISLEY's reimbursement of your reasonable and actual out-of-pocket attorneys' fees associated with the arbitration, but SISLEY shall in all events bear its own attorneys' fees; and

(i) with the exception of subpart (e) above, if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Applicable Rules, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, subpart (e) is found to be invalid, unenforceable or illegal, then the entirety of this arbitration provision shall be null and void, and neither you nor SISLEY shall be entitled to arbitrate their dispute, and must instead bring any claims in a court of competent jurisdiction.

(j) SISLEY may modify these arbitration provisions, but such modifications shall only become effective thirty (30) days after SISLEY has given notice of such modifications and only on a prospective basis for claims arising from Sisley Transactions occurring after the effective date of such notification.

(k) Notwithstanding the foregoing arbitration provisions, at your option, you may bring any claim you have against SISLEY in your local small claims court within the United States, if your claim is within such court's jurisdictional limit; provided such court does not have the authority to entertain any claims on a class or representative basis, or to consolidate or join the claims of other persons or parties who may be similarly situated in such proceeding.