

## Terms of Service

Effective as of December 19, 2020.

These terms and conditions of use (“Terms of Use”) govern your use of the online interfaces, related websites, products and services owned and controlled by BlackSuede LLC (“Company”), including the [www.blacksuede.net](http://www.blacksuede.net) website (the “Site”). Your compliance with these Terms of Use is a condition to your use of the Site. If you do not agree to be bound by the Terms of Use, promptly exit this Site. Please also consult our Privacy Policy for a description of our privacy practices and policies.

You may visit the Site without an account. In order to enjoy access to all available benefits of the Site, you may need to create an account. All users of this Site agree that access to and use of this Site are subject to the following terms and conditions and other applicable law.

You agree that by using this Site, you are at least 18 years of age and a resident of the United States.

It is your responsibility to review these Terms of Service periodically. We may revise these Terms of Service at any time without notice to you. If you do not agree to these terms and conditions, please do not use this Site.

**Binding Arbitration.** These Terms of Use provide that all disputes between you and Company that in any way relate to these Terms of Use or your use of the Site will be resolved by BINDING ARBITRATION. ACCORDINGLY, YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT (INCLUDING IN A CLASS ACTION PROCEEDING) to assert or defend your rights under these Terms of Use (except for matters that may be taken to small claims court). Your rights will be determined by a neutral arbitrator and not a judge or jury and your claims cannot be brought as a class action. Please review the Section below entitled Dispute Resolution; Arbitration Agreement for the details regarding your agreement to arbitrate any disputes with Company.

## Site

We grant you a limited license to access and use the Site for your personal use, and to copy, distribute, transmit and print the content of this Site only to the extent that such copying, distribution and transmission is automatically done through your browser software incidentally to using the Site for your personal use, or as otherwise set forth below. This license does not include any resale or commercial use of this Site or its contents; any collection and use of any product listings or descriptions; any derivative use of this Site or its contents; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots or data gathering and extraction tools.

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We reserve the right to change any information, features and functions of the Site without prior notice. We may refuse service, cancel orders, terminate accounts and/or deny access to any or all parts of this Site if you engage in any conduct or activities that we determine, in our sole discretion, violate these Terms of Service, our rights or the rights of any third party. Use of the Site for any illegal or unauthorized purpose is strictly prohibited. We reserve the right to cancel orders due to suspected fraudulent activity in our sole discretion. The sale or linking of our products on or to any third-party e-commerce site, marketplace or mobile application without our specific prior written consent is prohibited. Creating or maintaining any link from another Site to any page on this Site without our prior written permission is prohibited. Running or displaying this Site or any information or material displayed on this Site in frames or through similar means on another site and creating any link from another site to any page on this Site without our prior written permission is strictly prohibited. Permitted links to this Site must comply with applicable laws, rules and regulations.

## **Registration and Membership**

To register and become a member of our Site, complete the registration form by providing information such as your valid email address and creating a password to register your profile.

Each time you use your password or identification, you will be deemed to be authorized to access and use the Site in a manner consistent with these Terms of Service and BlackSuede has no obligation to investigate the authorization or source of any such access or use of the Site.

YOU WILL BE SOLELY RESPONSIBLE FOR ALL ACCESS TO AND USE OF THIS SITE BY ANYONE USING YOUR PASSWORD AND IDENTIFICATION WHETHER OR NOT SUCH ACCESS TO AND USE OF THIS SITE IS ACTUALLY AUTHORIZED BY YOU, INCLUDING WITHOUT LIMITATION, ALL COMMUNICATIONS AND TRANSMISSIONS AND ALL OBLIGATIONS (INCLUDING, WITHOUT LIMITATION, FINANCIAL OBLIGATIONS) INCURRED THROUGH SUCH ACCESS OR USE.

You are solely responsible for protecting the security and confidentiality of your password and identification. You shall immediately notify us of any unauthorized use of your password or identification or any other breach or threatened breach of this Site's security.

## **Contact Information**

If you provide your contact information to us through the Site, we may send you emails promoting any special offer(s), including third party offers, as well as monthly newsletters, unless you opt-out at any time either in your account settings, by using unsubscribe buttons in emails you receive from us or by emailing us at [blacksuede@blacksuede.net](mailto:black suede@blacksuede.net) indicating that you would like to unsubscribe from marketing emails.

## **Orders**

At the time of your first order on the Site, we will request your shipping and payment information. Where permitted by applicable law, you agree that we may update your payment information with information your bank or credit card issuer may supply, or other information available to us. All such personal information is subject to our Privacy Policy, which is hereby incorporated into these Terms of Service.

## **Billing and Payments**

We accept a number of bank or credit cards and electronic payment methods. For your convenience, we will save your bank or credit card or other payment information.

You may be charged local tax, if applicable. If your payment method is declined, we will attempt to process your charge until the transaction is approved. We and our third party payment service providers may request, and we may receive, updated credit card information from your credit card issuer, such as updated card numbers and expiration date information when your credit card has expired. If such updated information is provided to us and our third-party payment service providers, we will update your account information accordingly, and will use such updated information to process payments for your future purchases and subscriptions. Your credit card issuer may give you the right to opt out of providing vendors and third-party payment service providers with your updated credit card information. If you wish to opt out of your credit card's updating service, you should contact your credit card issuer.

We are not responsible for any fees or charges that your bank or credit card issuer may apply. If your bank or credit card issuer reverses a charge to your credit card, we may bill your account directly and seek payment by another method including a mailed statement.

The risk of loss and title for items purchased by you passes to you upon our delivery of the items to the carrier. Replacement of products and credits to your account for shipped merchandise claimed as not received are subject to our investigation, which may include postal service notification. We will replace products and credit your account at our discretion.

If you do not make prompt payment for any order, we reserve the right to hold or cancel the order or otherwise to refuse shipment or service.

## **Returns**

Returns of product(s) are accepted within 30 days of your order date for orders placed on this Site and shipping within the contiguous United States, as consistent with return policy instructions below. Please note that all sales to Hawaii, Alaska and APO/FPO addresses are final.

After we receive your returned item(s), we will process your refund onto your original form of payment minus the cost of return shipping. Original shipping, return shipping, and handling fees and "Duties & Taxes Reimbursements" will not be refunded. Please allow 10-14 business days from receipt of your returned item(s) by Company for your refund to post.

Return/Exchange Instructions: For return of product(s), log into your account on this Site and contact customer service regarding refund or exchange request. At this time, we will only be able to process returns/exchanges using our Company's return shipping label. Once you contact customer service, you will receive a reply back within 24-72 hours regarding your refund/exchange request. Customer service will then email you a return shipping label. Once

you have the label, please affix our return shipping label to your package of product(s) and mail it back to us. Once we receive the product(s), then we can process your refund minus the cost of the return shipping label fee. If the shipping label we email you has not been used within 14 (fourteen) days, then that return shipping label will be automatically cancelled. If you were unable to use the return shipping label originally sent to you and the 14 days have lapsed, but you still need to return product(s), please contact customer service for another new return shipping label.

## **Shipping Estimates**

Free Shipping for Orders More Than \$100.

Regular Shipping Cost for One or Two products flat rate of \$14.95 (expected delivery 3-5 days).

Regular Shipping Cost for Three to Six products \$19.95 (expected delivery 3-5 days).

Estimates subject to change based on current carrier rates.

Returns/exchanges are only accepted if using Company return label. Please contact Customer Service on this Site to request return shipping label. If return shipping label has not been used to return products to us within 14 days, return shipping label automatically will be canceled. If it has been longer than 14 days since you've received your return shipping label and have been unable to use it but you still need to return product(s), please contact Customer Service for another label. Please review the Return Policy section of this Site for full return policy details.

## **Warranty Disclaimer**

THE LAWS OF CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LEGAL WARRANTIES, CONDITIONS OR REPRESENTATIONS. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE BELOW EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED, THE SITE AND THE PRODUCTS OFFERED ON THE SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, UNLESS SPECIFICALLY SET FORTH OTHERWISE. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, BLACKSUEDE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BLACKSUEDE DOES NOT REPRESENT OR WARRANT THAT THE FUNCTIONS CONTAINED ON THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE DEFECTS WILL BE CORRECTED OR THAT THE SITE OR THE SERVER THAT MAKES THE SITE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. BLACKSUEDE DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE USE OF THE MATERIALS ON THE SITE IN TERMS OF THEIR CORRECTNESS, ACCURACY, ADEQUACY, USEFULNESS, TIMELINESS, RELIABILITY OR OTHERWISE.

## **Limitation of Liability**

THE LAWS OF CERTAIN JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY OR CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE BELOW LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

BLACKSUEDE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE SITE OR MATERIALS ON THE SITE, EVEN IF BLACKSUEDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **Typographical Errors**

In the event a product is listed at an incorrect price or with incorrect information due to typographical error or error in pricing or product information received from our suppliers, we have the right to refuse or cancel any orders placed for product listed at the incorrect price, whether or not the order has been confirmed and your bank or credit card charged. If your bank or credit card has already been charged for the purchase and your order is canceled, we will immediately issue a credit to your bank or credit card account in the amount of the charge.

### **Copyright**

The technology underlying the Site and the entire contents of the Site including, but not limited to, text, graphics, images, photographs, audio and video clips, digital downloads, data compilation or code is the property of BlackSuede and protected by copyright and other intellectual property or proprietary rights. The work includes works that may be licensed to BlackSuede.

Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement under United States copyright law should be sent to Service Provider's Designated Agent. ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE.

For your complaint to be valid under the DMCA, you must provide the following information in writing:

An electronic or physical signature of a person authorized to act on behalf of the copyright owner;  
Identification of the copyrighted work that you claim has been infringed;  
Identification of the material that is claimed to be infringing and where it is located on the Website;  
Information reasonably sufficient to permit BlackSuede to contact you, such as your address, telephone number, and, e-mail address;  
A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and  
A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that this procedure is exclusively for notifying BlackSuede and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with BlackSuede rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do

not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

### **Trademarks**

All trademarks, service marks and trade names of BlackSuede on the Site are trademarks or registered trademarks of BlackSuede or their respective owners. Our trademarks, including but not limited to BLACKSUEDE and BLACK SUEDE & Spade Design, TRASH WITH CLASS, and GET CAUGHT UP IN THE NET and others may not be used in any manner for any purpose without our express written consent.

### **Indemnification**

You agree to indemnify, defend and hold harmless BlackSuede, its officers, directors, employees, agents, licensors and suppliers from and against all losses, liabilities, expenses, damages and costs, including reasonable attorneys' fees, resulting from any violation of these Terms of Service, or any activity related to use of the Site (including negligent or wrongful conduct) by you or any other person accessing the Site using your identification or password.

### **Privacy**

Registration data and other information about you are subject to our Privacy Policy, which is incorporated herein by this reference. You understand that the technical processing and transmission of this Site may involve (a) transmission of your personal data over various networks; and (b) changes to your personal information in order to conform and adapt to technical requirements of connecting networks or devices. For more information, see our Privacy Policy at [www.blacksuede.net/privacy](http://www.blacksuede.net/privacy).

### **Third-Party Links and Sites**

This Site may link to other websites operated by third parties. We have no control over these linked sites, each of which have separate privacy and data collection practices independent of BlackSuede. We are not responsible for and do not endorse or accept any responsibility for the availability, contents, products, services or use of any third party site, any website accessed from a third party site or any changes or updates to such sites. These linked sites are only for your convenience and therefore you access them at your own risk. You acknowledge that you bear all risks associated with access to and use of content provided on a third party site and agree that we are not responsible for any loss or damage you may incur from dealing with such a third party site. You should contact the site administrator for the applicable third party site if you have any concerns regarding such links or the content located on any such third party site.

### **Submissions**

We welcome your feedback and comments regarding our products and services. However, we cannot accept or consider creative ideas, suggestions or materials, and we ask that you not submit any creative ideas, suggestions or materials of any kind to us. We hope you will understand that it is the intent of this policy to avoid the possibility of future misunderstandings when projects developed by BlackSuede's professional staff might seem to others to be similar to their own creative work. Accordingly, we ask that you not send us any original creative ideas, suggestions or materials of any kind, including show designs, photographs, drawings or original artwork. If you send us creative ideas, suggestions or materials of any kind despite our request

not to do so (an "unsolicited submission"), you acknowledge and agree that we may treat the unsolicited submission to be non-confidential and non-proprietary in each instance and in all respects. All unsolicited submissions made by you shall be the sole property of BlackSuede and will not be acknowledged or returned.

You agree that we have no obligation of confidence to you with respect to any submission and we shall not be liable to you in any way for any use or disclosure of any submission. We may use any submission without restriction for any purpose whatsoever, including, without limitation, reproduction, disclosure, transmission, personalization, publication, broadcast or posting, and you hereby irrevocably waive, release and give up any claim that any use of such submission violates any of your rights including, without limitation, copyrights, trademarks, moral rights, privacy rights, proprietary or other property rights, publicity rights or right to credit for the material or ideas.

You hereby irrevocably grant to us the right, but not the obligation, to reproduce, modify, adapt, publish, broadcast, license, perform, post, sell, translate, incorporate, create derivative works from, distribute and otherwise use the submission in any and all media, now known or hereafter devised, throughout the universe, in perpetuity, without according you any compensation or credit. By submitting a submission to us, you represent that such submission is original to you and does not conflict with, violate or infringe upon the rights of any third parties including, without limitation, any intellectual property rights and rights of publicity and/or privacy.

You hereby acknowledge and agree that your relationship with us is not a confidential, fiduciary or other special relationship, and that your decision to make a submission does not place us in a position that is any different from the position held by members of the general public with regard to your submission. You understand and acknowledge that we have broad access to ideas, products designs and other materials related to our business, and that new ideas, products, designs and other materials are constantly submitted to us or being developed by our own employees. Many submissions that we receive or ideas, products, designs and materials that are independently developed by us may be competitive with, similar or identical to your submission. You acknowledge and agree that you will not be entitled to any compensation as a result of our use of any such similar or identical submission or independently developed ideas, products, designs or materials.

You acknowledge that, with respect to any claim you may have relating to or arising out of our actual or alleged exploitation or use of any submission you make, the damage, if any, caused thereby will not be irreparable or otherwise sufficient to entitle you to injunctive or other equitable relief or to in any way enjoin the production, distribution, exhibition or other exploitation of any production based on or allegedly based on your submission, and your rights and remedies in any such event shall be strictly limited to the right to recover damages, if any, in an action at law.

While BlackSuede strives to keep our content accurate, complete, and up-to-date, we cannot and do not guarantee or endorse, and are not responsible for the accuracy, completeness, reliability or timeliness of any content.

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and other intellectual property rights you own or control to: (i) use, reproduce, transmit, modify, index, adapt, publish, translate, create derivative works from, distribute, display and otherwise exploit such content throughout the world in any media, whether now known or hereafter invented, including for any and all purposes, including commercial or marketing purposes, all without further notice to you, with or without attribution, and without the requirement of any permission from or payment to you or any other person or entity, and (ii) to use your name, persona or likeness alone or in connection with such uses, without any obligation or remuneration to you. Without limitation, the granted rights include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such User Submissions and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any User Submissions for any purposes whatsoever, including developing, manufacturing, and marketing products and/or services. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any User Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section.

You agree that your User Submissions will be limited to messages and material that are proper and related to the Site. By posting, uploading, inputting, providing or submitting your user Submission you warrant and represent that you own or otherwise control all of the rights to your User Submission as described in this section including, without limitation, all the rights necessary for you to provide, post, upload, input or submit the Submissions. You represent, warrant, and covenant that your User Submission will not:

Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or information.

Upload files that contain software or other material protected by intellectual property laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consents.

Constitute or encourage violence or a criminal offense, violate the rights of any party, including intellectual property rights, or otherwise give rise to liability or violate any law;

Impersonate any other person, user, or BlackSuede, or may be false, fraudulent, deceptive, inaccurate, or misleading, or that misrepresents your identity or affiliation with a person or BlackSuede;

Include other peoples' personal information, such as another person's address, phone number, e-mail address, social security number, credit card number, medical information, financial information, or any other information that may be used to track, contact, or impersonate that individual;

Upload files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another's computer.

Advertise or offer to sell or buy any goods or services for any business purpose, unless such user Submission specifically allows such messages.

Conduct or forward surveys, contests, pyramid schemes or chain letters.

Download any file posted by another User Submission that you know, or reasonably should know, cannot be legally distributed in such manner.

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Restrict or inhibit any other user from using and enjoying the Website and User Submissions.  
Violate any code of conduct or other guidelines which may be applicable for any particular User Submission.

Harvest or otherwise collect information about others, including e-mail addresses, without their consent.

Violate any applicable laws or regulations

We may refuse or remove a User Submission without notice for any reason in our sole discretion, including our belief that a User Submission may violate these Terms and Conditions or be otherwise objectionable. However, we will have no obligation to review, monitor, display, post, store, maintain, accept or otherwise make use of, User Submissions, and you agree that neither we nor our employees or agents will be liable for User Submissions or any loss or damage to you and any other person or entity resulting from User Submissions. We cannot and do not assure that other users are or will be complying with the foregoing or any other agreement, and, as between you and us, you hereby assume all risk of harm or injury resulting from any such lack of compliance.

#### Notice Regarding Medical Advice

THIS SITE DOES NOT PROVIDE MEDICAL, LEGAL OR OTHER LICENSED PROFESSIONAL ADVICE. NOTHING STATED OR POSTED ON THIS SITE OR AVAILABLE THROUGH ANY SERVICES ARE INTENDED TO BE, AND MUST NOT BE TAKEN TO BE, THE PRACTICE OF MEDICINE OR LAW. THE SITE MATERIALS, SUCH AS TEXT, GRAPHICS, IMAGES, AND INFORMATION OBTAINED FROM THIS SITE ARE FOR INFORMATIONAL, NEWS AND ENTERTAINMENT PURPOSES ONLY. THE SITE IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL SERVICES OR ADVICE.

#### **Miscellaneous**

Your use of the Site shall be governed in all respects by the laws of the State of California, U.S.A., without regard to choice of law provisions.

If any current or future provision of these Terms of Service is found invalid, void or for any reason unenforceable, that provision is severable and does not affect the validity and enforceability of any remaining provision of these Terms.

#### **Arbitration**

BlackSuede is committed to resolving all disputes in a fair, effective and cost-efficient manner. We seek to resolve any customer concerns. However, if you are dissatisfied with our customer service's resolution of your matter, these Terms of Service provide that disputes may be resolved in binding arbitration or small claims court.

(a) We and you agree to arbitrate all disputes and claims between us before a single arbitrator. The types of disputes and claims we agree to arbitrate are intended to be broadly interpreted and include:

Claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory.

Claims that arose before these or any prior versions of our Terms of Service (including, but not limited to, claims relating to advertising);

Claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and

Claims that may arise after termination of these Terms of Service.

For the purposes of this Arbitration Agreement, references to "BlackSuede", "we" and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of services or products under these Terms of Service or any prior agreements between us.

Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude your bringing issues to the attention of federal, state or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by accessing and using this Site, you and we are each waiving the right to a trial by jury or to participate in a class action. These Terms of Service evidence a transaction or website use in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision will survive termination of these Terms of Service.

(b) A party who intends to seek arbitration must first send, by U.S. certified mail, a written Notice of Dispute ("Notice") to the other party. A Notice to BlackSuede should be addressed to: Notice of Dispute, BlackSuede, PMB120820 1999 Harrison Street, Oakland, CA 94612 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute and (b) set forth the specific relief sought ("Demand"). If you and we do not reach an agreement to resolve the claim within 30 days after the Notice is received by us, you or BlackSuede may commence an arbitration proceeding.

During the arbitration, the amount of any settlement offer made by BlackSuede or you prior to selection of an arbitrator shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or BlackSuede is entitled.

You may download or copy a form to initiate arbitration from the AAA website (<http://adr.org>) under the "Forms" tab.

(c) The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, the "AAA Rules") of the American Arbitration Association (the "AAA"), as modified by these Terms of Service, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. The arbitrator shall be bound by these Terms of Service. Unless you and we agree otherwise, any arbitration hearings will take place in the County of Santa Clara in the State of California. If your claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, by a telephonic hearing or by an in-person hearing as established by the AAA Rules. If you choose to proceed either in person or by telephone, we may choose to respond only by telephone or submission. If your claim exceeds \$10,000, the AAA Rules will determine whether you have a right to a hearing.

Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings of fact and conclusions of law on which the award is based. You and we agree that any awards or findings of fact or conclusions of law made in an arbitration of their dispute or claim are made only for the purposes of that arbitration and may not be used by any other person or entity in any later arbitration of any dispute or claim involving BlackSuede. You and we agree that in any

arbitration of a dispute or claim, neither of us will rely for preclusive effect on any award or finding of fact or conclusion of law made in any other arbitration of any dispute or claim to which we were a party.

If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules. An award may be entered against a party who fails to appear at a duly noticed hearing.

(d) The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS PLAINTIFFS OR CLASS MEMBERS IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR IN THE CAPACITY OF A PRIVATE ATTORNEY GENERAL. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the parties agree that any injunctive award may be vacated or corrected on appeal by either party to a court of competent jurisdiction for any such error. Each party will bear its own costs and fees on any such appeal. Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding. If this specific proviso is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

(e) All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential, other than as part of an appeal to a court of competent jurisdiction.

### **No Waiver**

No waiver of any term of these Terms and Conditions shall be deemed a further or continuing waiver of such term or any other term, and BlackSuede's failure to assert any right or provision under these Terms and Conditions shall not constitute a waiver of such right or provision.

### **Modification and Changes to these Terms and Conditions**

We reserve the right, in our sole discretion, to change these Terms and Conditions at any time by posting a revised Terms and Conditions on the Website. It is your responsibility to check periodically for any changes we may make to these Terms and Conditions. Your continued use of the Website following the posting of changes to these Terms and Conditions other policies means you accept the changes.

### **Applicability and Survival of Terms**

These Terms of Service are applicable to you upon your accessing this Site. The provisions relating to Copyrights, Trademark, Warranty, Disclaimer, Limitation of Liability, Privacy, Submissions, Indemnification, Arbitration and Miscellaneous, shall survive any termination of these Terms of Service.

Last Updated: December 19, 2020