

Percolate

TERMS & CONDITIONS

Last Updated: January 30, 2018

These Percolate Terms of Use (“**Terms**”) are between Percolate Tea & Coffee Inc. (together with its affiliates, “**Percolate**,” “**we**,” “**us**,” or “**our**”) and the person who is accessing or using this website, made available by Percolate (“**Website**”). These Terms govern your access to and use of this Website.

By accessing or using this Website, you, on behalf of yourself and any company that you represent (together, “**you**”), are agreeing to comply with and be bound by these Terms and our [Privacy Policy](#). Please read these Terms and our [Privacy Policy](#) carefully. If you do not agree to These Terms or our [Privacy Policy](#), do not access or use the Website.

You represent that you are a natural person over eighteen (18) years of age. You further represent that you may legally enter into these Terms and that you agree with these Terms.

Percolate may change these Terms, including Percolate’s [Privacy Policy](#), at any time. Percolate will post all such changes on the Website and all changes will be effective immediately upon posting. Material changes will be conspicuously posted on the Website. By accessing or using the Website after changes are posted, you agree to those changes. You agree to review these Terms and Percolate’s [Privacy Policy](#) frequently in order to notify yourself of any changes.

ARBITRATION NOTICE: These Terms contain a binding arbitration provision. You agree that, except for certain types of disputes described in the arbitration provision below, all disputes between you and Percolate will be resolved by mandatory binding arbitration and you waive any right to participate in a class action lawsuit or class-wide arbitration.

1. [Privacy Policy](#).

The information you provide by accessing and using the Website, as well as other information we collect from your use of the Website, will be handled according to

our [Privacy Policy](#). Percolate's [Privacy Policy](#) describes how your personal information and other information is collected, used, and shared and is hereby incorporated by reference into these Terms. You should read our [Privacy Policy](#) and stay familiar with its terms.

2. Intellectual Property Rights.

This Website, including its text, audio, video, graphics, charts, photographs, interfaces, icons, software, computer code, data, trademarks, logos, slogans, names of products and services, documentation, other components, content, and tools, and the design, selection, and arrangement of content is exclusively the property of Percolate or, as applicable, its third-party vendors and licensors. The Website may contain references to third-party marks and copies of third-party copyrighted materials, which are the property of their respective owners. The Website is protected by copyright, trademark, and other intellectual property laws. Any unauthorized use of any trademarks, trade dress, copyrighted materials, or any other intellectual property belonging to Percolate or any third party is strictly prohibited and may be prosecuted to the fullest extent of the law. There are no implied rights or licenses granted to you or any other person in these Terms.

Copyright © 2018 Percolate. All rights reserved.

3. Use of the Website.

A. Personal Use. Except as may be otherwise expressly permitted by these Terms, you may download and print one copy of the Website's visible content only for your own personal non-commercial use, provided you do not modify or delete any copyright, trademark, attribution, or proprietary notices.

B. Limited Additional Uses. Additionally, if you are a writer, blogger, journalist, educator, or student, you may download, copy, and use the Website's contents and Percolate's names, logos, service marks, and trademarks that appear on the Website (together, "Percolate Marks") solely for purposes of including those items in articles or academic materials, as applicable, created or prepared by you for purposes of your work as a writer, blogger, journalist, educator, or student, provided that you do not remove any copyright, trademark, attribution, proprietary, or other notices in or on those items, that you attribute the Website contents and Percolate Marks to Percolate as may be required by Percolate, and that you use those contents and Percolate Marks in compliance with applicable laws and regulations.

YOU UNDERSTAND AND AGREE THAT YOU WILL NOT USE PERCOLATE MARKS ON OR WITH ANY GOODS OR SERVICES AND WILL NOT USE PERCOLATE MARKS TO INDICATE THE SOURCE OR ORIGIN OF ANY GOODS OR SERVICES. YOU FURTHER AGREE NOT TO ALTER OR MODIFY PERCOLATE MARKS IN ANY WAY, FOR EXAMPLE, BY CHANGING THE COLORS OR DIMENSIONS OF ANY PERCOLATE LOGO. If so

required by Percolate, you will use Percolate Marks only together with notices as Percolate may from time to time require, including without limitation the ® or the ™ symbols.

You understand and agree that the rights granted herein are fully revocable by Percolate, with or without notice. If Percolate revokes your rights, or terminates these Terms, your rights with respect to the Website's contents and Percolate Marks are immediately terminated. In such case, you will immediately cease all copying, distribution, and other use of the Website contents and Percolate Marks, you will promptly remove the Website contents and Percolate Marks from any materials in your possession or control, and you will promptly confirm to Percolate in writing that you have done all of the foregoing.

4. Limitations on Use; Compliance with Laws.

Your use of the Website must conform to the following:

- A. Your use of the Website will at all times comply with all applicable local, state, and federal laws, rules and regulations. You may not use the Website for unlawful purposes.
- B. You will not copy, reproduce, display, duplicate, redistribute, sell, publish, post, license, rent, modify, translate, adapt, reverse-engineer, or create derivative works of any part of the Website, or any materials appearing on or visible through the Website, except as otherwise expressly permitted by these Terms without the prior written consent of Percolate.
- C. Unless you operate a legitimate internet search engine, you agree not to use or launch any automated system, including without limitation, "robots," "spiders," "scrapers," web crawlers, indexing agents, and other automated programs and devices to access, use, or copy any portion of the Website.
- D. You will not obtain or attempt to obtain any personally identifiable information from any other users or third parties from or using the Website.
- E. You agree not to circumvent, disable, or otherwise interfere with security-related features of the Website. User activities that aim to render the Website or associated services inoperable or to make their use more difficult are prohibited.
- F. You may not use the Website to post or transmit any material that contains any viruses, Trojan horses, worms, time bombs, cancelbots, malware, adware, or other computer programming routines that may damage, interfere with, surreptitiously intercept, or expropriate any system, personal information, or other data.
- G. You will not impersonate any third party or interfere with any third party's use of the Website.

- H. You will not submit inaccurate information via the Website, commit fraud or falsify information in connection with your use of the Website, or act maliciously against the business interests or reputation of Percolate.

5. Your Percolate Customer Account.

You may use the Website as a guest, but you will not be able to use all features of the Website. You will be required to either set up an online Percolate customer account or log into the Website using your Facebook, Twitter, or Google+ account in order to use or redeem mobile coupons, to order catering services using the Website, to save recipes, to create shopping lists, and to use certain other features of the Website. You will be required to submit certain information to set up your account and will be required to establish a username and password. You are responsible for complying with all applicable laws, regulations, and policies of all relevant jurisdictions, including all applicable local rules regarding online conduct in connection with your Percolate customer account. Percolate will presume, and you warrant, that any information received from or about you through your access to or use of the Website, including through the Percolate customer account creation process, is accurate, complete, current, and authorized by you. You agree not to contest the validity and binding legal effect of those communications and information. You understand and agree that perfect security does not exist anywhere, and you will therefore protect your personal information and information associated with your Percolate customer account, including without limitation your username and password, in a reasonable way at all times. You will not transfer your Percolate customer account to or share your Percolate customer account with any other person. Your Percolate customer account is personal to you. You will promptly notify Percolate of any unauthorized use of your Percolate customer account or Website contents that becomes known to you.

6. Mobile Coupons

If you have an online Percolate customer account you may download, clip, and print mobile Percolate coupons from the Website, save those coupons to use and redeem those coupons at Percolate retail stores. Your use and redemption of mobile coupons is subject to our Mobile Coupon Terms, any rules contained in or on the coupons, and other terms as may be made available from time to time by Percolate.

7. Sweepstakes & Promotions.

To participate in any sweepstakes or promotions that Percolate may make available, you may be required to provide additional information. Additional terms and eligibility criteria may apply to your participation.

8. Order and Payment Information; Gift Cards.

You may order catering services using the Website but catering services must be paid for at the applicable Percolate store location. Purchases of gift cards made through the Website must be made by credit or debit card. Gift card purchases are subject to the terms of our gift card provider, Toast. Information about our collection and use of payment-related information is described in our [Privacy Policy](#). If the credit or debit card information that you submit is incorrect or invalid, your payment will not be processed. We have no responsibility or liability if your credit or debit card is declined by your financial institution. Payments are processed by our PCI-compliant third-party payment processor. Refunds, if available, are solely the responsibility of Percolate and are at Percolate's sole discretion.

9. Product, Program, and Service Availability.

Any products, programs, or services that may be mentioned in the Website (for example, catering services) are subject to availability and terms not described in these Terms may apply. Available catering services may change at any time without notice to you. Prices for catering services remain valid while they are listed and offered via the Website. Prices will be as posted on the Website as of the date and time of your order, as applicable. Availability of products and services may be limited. Some products and services may not be available in certain areas. Percolate may change the programs, products, and services mentioned on the Website at any time without notice. You agree that Percolate may add to, delete from, and modify the Website at any time without notice and without permission from you or any third party.

10. Career Opportunities.

The Website may allow you to submit job applications (including uploading a resume and other materials) for posted career opportunities at Percolate. You will not submit a job application or upload a resume or other materials for any person other than yourself. You warrant that all information contained in any job application, resume, and other materials you provide is current, accurate, and complete. Your submission of a job application does not in any way require Percolate to review materials or consider you for employment. Career opportunity descriptions on the Website are subject to change at our sole discretion without notice.

11. Term.

These Terms will continue until terminated by you or Percolate as permitted by these Terms. You may terminate these Terms at any time and for any reason or no reason by ceasing all access to and use of the Website and its contents. Percolate may terminate these Terms and your access to and use of the Website at any time

and for any reason or no reason, without notice or liability, including if you breach these Terms. Upon any termination of these Terms you must promptly cease accessing and using the Website. Any provisions of these Terms that are intended to survive termination (including without limitation any provisions regarding indemnification, limitation of our liability, and dispute resolution) will continue in effect beyond any termination of these Terms or of your access to or use of the Website.

12. DISCLAIMER OF WARRANTIES.

PERCOLATE PROVIDES THE WEBSITE ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTY OR ASSURANCES OF AVAILABILITY OR USABILITY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PERCOLATE HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, ARISING FROM COURSE OF DEAL, USAGE OR TRADE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND THOSE REGARDING FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, QUALITY, ACCURACY, COMPATIBILITY WITH ANY STANDARDS OR USER REQUIREMENTS, NON-INFRINGEMENT, AND TITLE.

PERCOLATE DOES NOT WARRANT THAT THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY DEFECTS IN THE WEBSITE WILL BE CORRECTED.

PERCOLATE IS NOT RESPONSIBLE FOR ANY CONTENT, PROGRAM, TOOL, OR APPLICATION IN CONNECTION WITH THE WEBSITE OR FOR ANY ACTION TAKEN IN RELIANCE THEREON. IN ADDITION, PERCOLATE WILL NOT BE LIABLE TO YOU FOR ANY INTERCEPTION OF ONLINE COMMUNICATIONS, SOFTWARE OR HARDWARE ISSUES (INCLUDING WITHOUT LIMITATION VIRUSES, OTHER HARMFUL CONDITIONS OR COMPONENTS, LOSS OF DATA, AND COMPATIBILITY CONFLICTS), OR OTHER CONSEQUENCES OF YOUR ACCESS TO OR USE OF THE WEBSITE. PERCOLATE HAS NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY USER COMMUNICATION.

YOUR USE OF THE WEBSITE IS AT YOUR OWN RISK AND YOU, ALONE, ARE RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER HARDWARE, SOFTWARE, SYSTEMS, AND NETWORKS, ANY LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY INFORMATION FROM THE WEBSITE, AND FOR ANY OTHER DAMAGE THAT MAY BE INCURRED.

WE MAKE NO REPRESENTATION THAT THE WEBSITE IS APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OTHER THAN THE UNITED STATES. IF YOU CHOOSE TO ACCESS THE WEBSITE FROM LOCATIONS OTHER THAN THE UNITED STATES, YOU DO SO AT YOUR OWN RISK AND YOU ARE RESPONSIBLE FOR COMPLYING WITH APPLICABLE LAWS AND REGULATIONS.

NO ADVICE OR INFORMATION, ORAL OR WRITTEN, OBTAINED BY YOU FROM PERCOLATE OR IN ANY MANNER FROM THE WEBSITE CREATES ANY WARRANTY.

13. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PERCOLATE, ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, LICENSORS, SUPPLIERS, CONTRACTORS, REPRESENTATIVES, OR EMPLOYEES ("PERCOLATE PARTIES") BE LIABLE TO YOU OR ANY PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOSSES, OR ANY OTHER DAMAGE OR LOSS OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THE WEBSITE OR YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE WEBSITE (INCLUDING WITHOUT LIMITATION THE INPUT OF PERSONALLY IDENTIFIABLE AND OTHER INFORMATION INTO THE WEBSITE), HOWEVER AND WHEREVER ARISING, WHETHER THE CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE, AND EVEN IF A PERCOLATE PARTY HAS EXPRESS KNOWLEDGE OF THE POSSIBILITY OF THE DAMAGE OR LOSS. YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP ACCESSING AND USING THE WEBSITE. WITHOUT LIMITING THE FOREGOING, IN NO EVENT WILL THE TOTAL LIABILITY OF THE PERCOLATE PARTIES UNDER THESE TERMS OR REGARDING THE WEBSITE EXCEED ONE HUNDRED DOLLARS (\$100), EVEN IF THIS REMEDY FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF CERTAIN DAMAGES SO SOME OF THE FOREGOING MAY NOT APPLY TO YOU. YOU AND PERCOLATE AGREE THAT ANY CAUSE OF ACTION BY YOU ARISING OUT OF OR RELATED TO THESE TERMS MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

14. Indemnification.

You will indemnify, defend, and hold harmless the Percolate Parties from and against any claims, demands, losses, liabilities, complaints, actions, damages, judgments, settlements, fines, penalties, expenses, and costs, including reasonable attorneys' fees, due to or arising out of your access to or use of the Website, your misuse of any material, data, or other information downloaded or otherwise obtained from the Website, your order of products or services via the Website, your breach of these Terms, or your violation of any law, regulation, or rights of any third party. We reserve, and you grant to us, the exclusive right to assume the defense and control of any matter subject to indemnification by you.

15. Third-Party Websites.

You understand and agree that when using the Website you may be exposed to information from a variety of sources and that Percolate is not responsible for the accuracy, content, usefulness, safety, or intellectual property rights of or relating to such information. Additionally, the Website may link to, or be linked to, websites not maintained or controlled by Percolate. Those links are provided as a convenience and Percolate is not responsible for examining or evaluating the content or accuracy of, and does not warrant or endorse, any third-party website or

any products or services made available through those websites. Please take care when leaving the Website to visit a third-party website. You should read the terms of use and privacy policy for each website that you visit.

16. Linking to the Website.

If you operate a website and are interested in linking to the Website: (a) the link must be a text-only link and clearly marked; (b) the link must “point” to the URL “<http://www.Percolatetea.com>” and not to any other page; (c) the link and its use must be in connection with a website of appropriate subject matter; (d) the link and its use must not, nor have the potential to, damage or dilute the goodwill associated with Percolate Marks; (e) the link and its use must not create the false appearance that any program, person, or entity is associated with or sponsored by Percolate; and (f) the link, when activated by a user, must display the Website full-screen and not within a frame. Percolate reserves the right to revoke consent to link to the Website at any time in its sole discretion, either by amending these Terms or through other notice.

17. Feedback.

Percolate welcomes comments and other feedback regarding the Website. If you submit feedback to us regarding the Website, via email or otherwise, it will not be considered or treated as confidential. You warrant that you have all rights necessary to submit any feedback. We may use any comments and feedback that you send us in our discretion and without attribution or compensation to you.

18. Governing Law.

These Terms will be governed by the laws of the State of California, without regard to any laws that would direct the choice of another state’s laws and, where applicable, by the federal laws of the United States. You irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the federal or state courts, as applicable, located in Los Angeles County, California, for any dispute or litigation arising out of or relating to these Terms or the use of the Website unless otherwise determined by Percolate in its sole discretion. You waive any objection to the laying of venue of any such litigation in California courts and agree not to claim that any litigation has been brought in an inconvenient forum. In other words, if you and Percolate have a dispute, you agree to resolve it in a Los Angeles County, California, court unless otherwise determined by Percolate in its sole discretion. You agree that the Website will be deemed solely located in California and the Website is and will be deemed a passive website that does not give rise to personal jurisdiction over Percolate, either specific or general, in jurisdictions other than California.

19. Arbitration Agreement; Class Waiver; Waiver of Trial by Jury.

Please read the following paragraphs carefully because they require you to arbitrate disputes with Percolate and limit the manner in which you can seek relief from us.

A. Applicability. You agree that any dispute, controversy or claim arising out of, or relating to, these Terms (including the breach, termination, enforcement, interpretation, or validity of these Terms) (together, “**Disputes**”) will be resolved by confidential and binding arbitration on an individual basis as described in these Terms (this “**Arbitration Agreement**”). The place of arbitration will be Los Angeles County, California, unless otherwise agreed to in writing by all parties to the arbitration. But, in the event of any actual, alleged, or threatened violation of confidentiality or violation of Percolate’ intellectual property or other proprietary rights, Percolate may immediately resort to court proceedings in a court of competent jurisdiction in order to seek immediate injunctive relief without posting bond, proving damages, or meeting any similar requirement. Any institution of any action for injunctive relief will not constitute a waiver of the right or obligation of either party to submit any claim seeking relief other than injunctive relief to arbitration. This Arbitration Agreement applies to you; Percolate; Percolates’ affiliates; Percolate and its affiliates’ respective directors, officers, employees, owners, agents, predecessors in interest, successors in interest, and assigns; authorized and unauthorized users or beneficiaries of the Website; and any third-party beneficiaries. This Arbitration Agreement evidences a transaction involving interstate commerce and the Federal Arbitration Act, 9 U.S.C. Sections 1-16, will govern the interpretation, enforcement, and proceedings pursuant to this Arbitration Agreement.

B. Arbitrator. Arbitration proceedings will be administered by the American Arbitration Association (“**AAA**”) and in accordance with the AAA’s Commercial Arbitration Rules and the Supplementary Procedures for Consumer-Related Disputes then in effect except as stated below. A single arbitrator with knowledge of electronic commerce will conduct the arbitration and that arbitrator may grant injunctions or other relief in such dispute or controversy. The parties will mutually agree upon such arbitrator, but if the parties have not agreed on an arbitrator within thirty (30) days of the date of the notice of intention to arbitrate, the AAA will select the arbitrator from its list of commercial arbitrators. The arbitrator will conduct a single hearing no longer than one (1) day in duration for the purpose of receiving evidence and will render a decision within fifteen (15) days after the conclusion of the hearing. The decision of the arbitrator will be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator’s decision in any State or Federal court of competent jurisdiction. The cost of the arbitrator will be shared equally, and all other expenses of arbitration, including attorneys’ fees, will be paid by the party who incurred them. Any arbitration proceeding may not be consolidated or joined with any other

proceeding and will not proceed as a class action. **You further agree that you will not participate in any way in any class action in connection with any Dispute, either as a class representative plaintiff or as a member of a putative class. The parties understand that they would have had a right or opportunity to litigate Disputes through a court, to have a judge or jury decide their case, and to participate in a class action or other proceeding involving multiple claimants, but they have instead chosen to have all Disputes decided through individual arbitration.**

C. Place; Federal Arbitration Act. The place of arbitration will be Los Angeles County, California, unless otherwise agreed to in writing by all parties to the arbitration. This Arbitration Agreement evidences a transaction involving interstate commerce and the Federal Arbitration Act, 9 U.S.C. Sections 1-16, will govern the interpretation, enforcement, and proceedings pursuant to this Arbitration Agreement.

D. Confidentiality. Any and all actions taken under this Arbitration Agreement, including all filings, orders, judgments, and awards made in any arbitration proceeding, are confidential and may not be disclosed to any third party.

E. Time Limitation on Claims. Arbitration proceedings must be initiated within one (1) year after any Dispute arises; otherwise, the Dispute is permanently barred.

20. Assignment.

Neither these Terms, nor any rights hereunder, may be assigned by operation of law or otherwise, in whole or in part, by you without the prior written permission of Percolate. Any purported assignment without such permission will be void. These Terms may be assigned by Percolate in whole or in part without notice.

21. Third-Party Beneficiaries.

These Terms do not confer any rights, remedies, or benefits upon any person other than you and Percolate, except that our affiliates are third-party beneficiaries of these Terms.

22. Entire Agreement; Interpretation.

These Terms, including our [Privacy Policy](#) and, as applicable, and any other items incorporated herein, are the entire agreement between the parties with respect to their subject matter and supersede any and all prior or contemporaneous or additional communications, negotiations, and agreements with respect thereto. Any Percolate waiver of any rights under these Terms must be in writing, signed by Percolate, and any such waiver will not operate as a waiver of any future breach of these Terms. In the event any portion of these Terms is found to be illegal or

unenforceable, such portion will be severed from these Terms and the remaining provisions will be separately enforced. The headings in these Terms are for convenience only and do not affect the interpretation of these Terms. These Terms inure to the benefit of Percolate' successors and assigns.

23. Electronic Communications.

These Terms and any other documentation, agreements, notices, or communications between you and Percolate may be provided to you electronically to the extent permissible by law. Please print or otherwise save a copy of all documentation, agreements, notices, and other communications for your reference.

24. Contact Us.

If you have any questions or comments about Percolate, the Website, or these Terms, you may contact Percolate using our [Website's Contact Us form](#) or at:

Percolate

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