

TheoTRADE

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In order to become a TheoTRADE member (“Registrant”), you will be required to register a valid email address at [www.theotrade.com](http://www.theotrade.com). We do not charge a subscription fee to become a Registrant and receive nightly emails and videos.

In order to participate in some of our exclusive emails and offers, you may also be asked to update your profile settings and/or provide us with your first and last name, phone, street address, city, state, zip code and country of origin.

TheoTRADE is not intended for use by any persons under the age of 13.

Terms and Conditions - To Use This Site, You Must Accept Our Terms and Conditions

Last updated 06/1/2018

Please read our complete terms and conditions. Our terms and conditions set forth the rules for using our Web Site (“Terms of Use” or “Agreement”). Please also read our Privacy Policy located, <https://theotrade.com/privacy-policy/> which is part of our Terms of Use.

### **1. General Terms and Conditions - An Agreement between You and Us.**

These Terms of Use are an agreement between you and us that govern your use of the TheoTRADE Web Site and all of our services, including our Content and the store, (collectively, the “Site”). By using this Site, you agree to be bound by these terms and

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#### Changes

We reserve the right to change these Terms of Use and or our Privacy Policy or to impose new conditions on use of the Site, from time to time, in which case we will post the revised Terms of Use or Privacy Policy on the Site and update the "Last Updated" date to reflect the date of the changes. All changes will be effective immediately upon our posting the changes on the Site. By continuing to use the Site after we post any such changes, you agree to accept and to be bound by the Terms of Use and/or Privacy Policy, as modified. If you do not agree to the changes, please promptly discontinue use of the Site. You should re-read these Terms of Use and our Privacy Policy periodically so you are up to date with respect to any changes that we have made to the Terms of Use or our Privacy Policy. We will not modify the terms of your existing TheoTRADE subscription. Changes will only affect your future TheoTRADE subscription. We reserve the right to terminate the use of any username or password, or to deny access to our Content or any other features of the Site, to anyone who violates these Terms of Use or who, in our sole determination, interferes with the ability of others to enjoy our Site or infringes the rights of others.

We have the right at any time to change or discontinue any aspect or feature of the Site or any TheoTRADE -produced product or service, including, but not limited to, Content, hours of availability, exclusive offers, mobile applications, store merchandise, and equipment needed for access or use. We may stop providing any part or parts of the content or information or category or type of information at any time. We may change or eliminate any transmission method and may change transmission speeds or other technical characteristics of our Site. You agree that we will not be liable to you or to any third-party for any modification, suspension or a discontinuance of the Site or any portion thereof.

#### Eligibility

You represent that you are of legal age to enter into a binding contract. You must be at least 18 years old to be eligible to use the Site and register for free to become a Registrant. However, if you are at least 13 years old and younger than 18, you may use the Site in conjunction with your parent or guardian who agrees to be bound by this Agreement. If you are between the ages of 13 and 18 you should review these Terms of Use with your parent or guardian. If you become a Registrant, you must have your parent or legal guardian check the box affirmatively indicating that you have read and agree to be bound by these Terms of Use and our Privacy Policy.

No one under age 13 may use the Site.

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#### Protecting your Confidential Information

You are responsible for protecting the confidentiality of any subscription identification

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You acknowledge that, although the Internet can be a secure environment, interruptions in service or events may occur that are beyond our control. We shall not be responsible for any data lost while transmitting information on the Internet.

#### Telephone Monitoring/Recording

From time to time we may monitor and/or record telephone calls between you and us to assure the quality of our customer service or as required by applicable law.

## 2. Becoming a TheoTRADE Registrant

### Personal Information

To become a Registrant, we ask you to provide your e-mail address. In order to participate in other offers, we may also ask you to provide certain personally identifiable information, including your first and last name, address, phone number and/or date of birth. Becoming a Registrant is voluntary and provides you with access to LIMITED Content, which includes but is not limited to exclusive TheoTRADE emails and offerings. We have the right to suspend or terminate your access and refuse any and all current or future use of the Site (or any portion thereof) by you, if we have a reasonable basis to believe that such information is untrue, inaccurate, or incomplete. Our use of any information you provide to us as part of the subscription process is governed by the terms of our

Privacy Policy located at <https://theotrade.com/privacy-policy/>

#### Username and Password

To become a TheoTRADE Registrant, you will need a username, consisting of a valid email address, and a preliminary password will be automatically assigned in the registration process. We reserve the right to reject or terminate the use of any username that we deem offensive or inappropriate.

#### Email, Mobile Phone Numbers and Opt-Out Choices

By providing us with your email address, you consent to our using your email address to send you required notices related to our services, including among other things, notices required by law, instead of using the United States postal services. You may not opt out of service notices because they are required by law. We may also send you other messages, including information about our Content, features of our subscription, the offers in our store and other information about TheoTRADE by email address or to your mobile telephone number if you use a mobile device. You may opt out of such emails by sending an email to [support@theotrade.com](mailto:support@theotrade.com). You may opt out of mobile text messages and other special messages by contacting TheoTRADE customer service at 1 (800) 256-8876, 10am - 6pm ET Monday through Friday or email [support@theotrade.com](mailto:support@theotrade.com) 24 hours a day, 7 days a week.

#### Refunds

##### Subscriptions

We reserve the right to charge subscriptions for our Content and to change subscription prices at any time. We do not issue pro-rated refunds for fees paid for those subscriptions, TheoTRADE has never and does not currently provide price protection or refunds in the event of a price reduction or promotional offering.

### 3. Participation and Use of Content

#### Viewing Content

Viewing Content requires compatible devices, Internet access, and certain software (fees may apply); may require periodic updates; and may be affected by the performance of these factors. High-speed Internet access is strongly recommended for regular use and is required for video. The latest version of the required software is recommended to access Content and may be required for certain transactions or features. You agree that meeting these requirements, which may change from time to time, is your responsibility.

#### Content Availability

TheoTRADE reserves the right to change Content options (including eligibility for particular features) without notice.

#### Call-Ins

When you voluntarily call-in to speak with any employee or representative of TheoTRADE, whether on the live show or off the air, topics of conversation may include stock market technical analysis and trading techniques and strategies designed to minimize risk and enhance profitability, so that you may gain the skills and confidence to start managing your own investments.

The risk of loss in trading securities, options, futures and forex can be substantial. You must consider all relevant risk factors, including your own personal financial situation, before trading. Options involve risk and are not suitable for all investors.

The TheoTRADE employee or representative is not a licensed financial advisor, registered investment advisor or registered broker-dealer and does not provide investment or financial advice or make investment recommendations. The TheoTRADE employee or representative is not in the business of transacting trades, nor does he or she agree to direct your commodity accounts or give trading advice tailored to your particular situation. Nothing contained in the call-in service constitutes a solicitation, recommendation, promotion, or endorsement of any particular security, other investment product, transaction or investment.

When speaking directly to a TheoTRADE employee or representative, you acknowledge

and agree that you are assuming the entire risk of any and all trades you place in the stock market. You agree, at all times, to indemnify, defend and hold TheoTRADE, its employees, representatives and affiliates harmless from and against any and all claims, actions, demands, suits, losses, and costs (including attorneys' fees) resulting from trades you place in the market.

YOU UNDERSTAND AND AGREE THAT, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THEOTRADE ANY OF ITS AFFILIATES, OR ITS RESPECTIVE SUCCESSORS AND ASSIGNS, OR ANY OF ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSORS, OPERATIONAL SERVICE PROVIDERS, ADVERTISERS, OR SUPPLIERS, SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, OF ANY KIND, DIRECT OR INDIRECT, IN CONNECTION WITH OR ARISING FROM USE OF EDUCATIONAL SERVICES PROVIDED AS PART OF THE PRODUCTS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.

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You agree that the Site and certain TheoTRADE products include security technology that limits your use of Content and that, whether or not Content is limited by security technology, you shall use Content in compliance with the applicable usage rules below established by TheoTRADE ("Usage Rules"), and that any other use of the Content may constitute a copyright infringement. Any security technology is an inseparable for of the Content and related products, TheoTRADE reserves the right to modify the Usage Rules at any time. You agree not to violate, circumvent, reverse-engineer, decompile, disassemble, or otherwise tamper with any of the security technology related to such Usage Rules for any reason-or to attempt or assist another person to do so. You agree not to access the Content by any means other than through [www.theotrade.com](http://www.theotrade.com), or through other approved sources, including Roku, Apple TV, Apple Radio, iTunes, Google

Play Store, Amazon, YouTube, or through our mobile trading applications. You shall not access or attempt to access a Login that you are not authorized to access.

#### Usage Rules

(i) You shall be authorized to use Content only for personal, noncommercial use.

(ii) You will be able to access your Content on any computer, device, or mobile device that permits you to successfully enter your Login and verify your registration status.

(iii) You shall NOT be entitled to burn any Content.

(iv) You must be connected to an approved TheoTRADE source, when viewing Content and you may do so on your computer, devices, or mobile devices.

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- Attribution: You must give TheoTRADE appropriate credit by displaying a visible link back to [theotrade.com](http://theotrade.com) and by explicitly referencing TheoTRADE as the original source of the content and materials. Logos within the videos and visuals must remain untouched and unedited.

The delivery of Content does not transfer to you any commercial or promotional use rights.

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#### 4. Applications & Additional Services

From time to time, TheoTRADE may choose to offer additional services to Registrants or to the general public through the Site, an alternate Web Site owned and operated by TheoTRADE, via email, or through an approved third party, including but not limited to the Apple iTunes Store and/or the Google Play Store. We may add additional products and services that may involve additional fees. If we add additional services, we will describe those services and the related charges and fees on the Site.



## TheoTRADE Unlimited Streaming

### Payment Process and Automatic Renewal

By becoming a TheoTrade Unlimited Streaming subscriber, you acknowledge and agree to pay to us a subscription fee that will be charged to you in any of the following ways: (i) a premium monthly subscription fee of \$99, plus any applicable taxes, (ii) a premium annual subscription fee of \$997, plus any applicable taxes. From time to time, TheoTRADE may offer a promotion for a discounted subscription fee. The discounted subscription fee promotion is for one period only, unless otherwise stated in the promotion offer details. You can cancel your subscription at any time (see details on cancellation below).

Your purchase of a TheoTRADE Unlimited Streaming subscription will be processed by one of the third-party processors with whom we have contracted. You will be required to represent to that third-party processor that you have the legal right to use the payment method you provide to such third-party processor (the "Payment Method").

If you choose the recurring billing option, we will bill your Payment Method the TheoTRADE Unlimited Streaming subscription fee at the beginning of your TheoTRADE Unlimited Streaming subscription (the "Initial Subscription Date") and automatically bill your Payment Method at each subsequent anniversary date following the Initial Subscription Date on the calendar day corresponding to your Initial Subscription Date, until you cancel your subscription. In the event a monthly subscription begins on a day not contained in a given month, we will bill your Payment Method on the last day of such month. For example, if you became a paying subscriber on January 31, your Payment Method for the next month would be billed on February 28. We will give all notices of renewal as required by law. You must cancel your subscription before it renews for either the week period or one-month period, as applicable, in order to avoid automatic billing of the next one week or one month period's subscription fees to your Payment Method.

YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW AND WE WILL AUTOMATICALLY BILL YOU FOR THE RENEWAL UNLESS YOU CANCEL YOUR SUBSCRIPTION. WE WILL BILL YOU FOR RENEWALS USING THE PAYMENT

OPTION YOU SELECTED AND AUTHORIZED AT THE TIME OF YOUR INITIAL SUBSCRIPTION PURCHASE, UNLESS YOU NOTIFY US AT LEAST THREE (3) BUSINESS DAYS PRIOR TO YOUR RENEWAL. SEE DETAILS ON CANCELLATION BELOW.

If you want to use a different Payment Method or if there is a change in your credit card, debit card or bank account and it is no longer valid or expires, you may edit your Payment Method information online on you're My Account page, or by calling Customer Service at 1(800) 256-8876 or by e-mailing [support@theotrade.com](mailto:support@theotrade.com), and we will direct you on how to do so via your My Account page. If the card or account that you used as a Payment Method has expired, your continued use of the service constitutes your authorization for us to continue billing that Payment Method, which would be your renewed credit card or debit card and you remain responsible for any uncollected amounts. If a charge to your credit card, debit card or other Payment Method is declined for any reason, we shall have the right to terminate or suspend your access to TheoTRADE Unlimited Streaming. We rely on our third-party payment processors to notify you when your credit card or other payment option has been declined.

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Cancellation of your subscription will be effective within three (3) business days after cancellation. EXCEPT AS EXPLICITLY PROVIDED IN THESE TERMS AND CONDITIONS, WE DO NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL SUBSCRIPTION PERIODS OR UNUSED SERVICES, UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW.

### **Changes to Our Subscription Payment, Billing and Cancellation Policies**

We will e-mail our subscribers to notify them of any changes to our TheoTRADE Unlimited Streaming subscription payment, billing and cancellation policies. You will be given an opportunity to cancel your subscription before any changes become effective.

### **Payments and Refunds for Price Changes**

The full price of the TheoTRADE Unlimited Streaming subscription is charged upon purchase.

**ALL SALES OF PRODUCTS ARE FINAL.** Prices of TheoTRADE Unlimited Streaming subscriptions may change at any time, and TheoTRADE does not provide price protection or refunds in the event of a price reduction or promotional offering.

If a subscription becomes unavailable following a transaction but prior to access, your sole remedy is a refund. If technical problems prevent or unreasonably delay delivery of your subscription, your exclusive and sole remedy is either replacement or refund of the price paid, as determined by TheoTRADE.

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TheoTRADE may periodically and at its discretion offer individual classes, coaching sessions, and live events for purchase. Individual classes purchased through TheoTRADE provide unlimited playback for a period of one calendar year from date of purchase. Coaching sessions and live courses are nonrefundable though credits from events not redeemed may be applied to other TheoTRADE products and subscriptions.

Individual products such as classes, coaching, mentorships, live events, and anything else not described as TotalTheo Unlimited Streaming may have a refund policy different than stated in the Terms of Use. A refund policy for the individual product or service may be stated on the product page. If no separate policy exists the products refund policy will be governed by these terms of use.

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We may also share this information with Our authorized third-party service providers to measure the overall effectiveness of Our online advertising, content, and distribution.

In purchasing a TheoTRADE Unlimited Streaming subscription you need to give us and our third-party payment processors certain personally identifiable information. Our Privacy Policy (tells you in greater detail what we do with non-personally identifiable information and your Personally Identifiable Information and is part of these Terms and Conditions.

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TheoTRADE Unlimited Streaming gives subscribers the ability to see trades made during a trading day by Don Kaufman, Don's Team and possibly other TheoTRADE show hosts (each a "Trader"). The trades of each Trader represent the opinions of solely that Trader as expressed on the applicable TheoTRADE show and in the Trader's trades. Any such opinion may have been expressed by the Trader previously. The trades do not reflect the opinions of TheoTRADE or its affiliated companies. The opinions expressed by the Traders are not intended to influence you to make a particular trade or follow any specific trading strategy. Neither TheoTRADE nor the Traders are implying that any of the traders are suitable for you. The trades are being disclosed to you for educational and informational purposes to give you a real-time view of the types of trades that are discussed by the Traders on their TheoTRADE shows, TheoTRADE does not warrant the accuracy of any comments or information disseminated by the Traders on their shows and you should not rely on such information and the related trades. The Traders' opinions on the market and on specific securities and trading strategies are subject to change without notice, TheoTRADE does not compensate the Traders based on the profitability of their trades.

None of the Traders or TheoTRADE guarantees any particular results or profits from the trades. The risk of loss in trading securities, including options and equities, is substantial. There is a risk of loss in all trading and investment strategies that are

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None of the Traders guarantees any particular results or profits from the trades. The risk of loss in trading securities, including options and equities, is substantial. There is a risk of loss in all trading and investment strategies that are discussed on TheoTRADE and that are represented by the Traders' trades. When trading options and futures, you may lose more than your initial investment. Options trading is not suitable for all investors. Click here to see the Options Disclosure document:

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(2) a description of the location of the allegedly infringing material on the Site; (3) your contact information, including your address, telephone number, and, if available, e-mail

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WE ARE NOT RESPONSIBLE FOR ANY DAMAGES, INJURIES, EXPENSES OR LIABILITIES ARISING OUT OF OR RELATED TO YOUR USE OR PURCHASE OF PRODUCTS OR SERVICES SOLD BY THEOTRADE.

In connection with the releases contained in our Terms of Use, you hereby waive California Civil Code Section 1542 (and any similar application provision under any other state law) which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

#### 15. Indemnification

You agree to defend, indemnify and hold harmless us, our affiliates, and each of our

and their respective directors, officers, managers, subscribers, partners, employees, shareholders, agents, representatives and licensors, from and against any and all losses, expenses, damages and costs, including reasonable attorneys' fees, that arise out of or are related to your use of the Site, your use of the materials or content on the Site in violation of these Terms of Use by you or any other person using your account, or your violation of any rights of any other person. You agree to defend, indemnify and hold harmless us, our affiliates, and each of our and their respective directors, officers, subscribers, managers, partners, employees, shareholders, agents, representatives and licensors, from and against any and all losses, expenses, damages and costs, including reasonable attorneys' fees, that arise out of or are related to of your purchase of TheoTRADE products and/or services. We reserve the right to take over the exclusive defense of any claim for which we are entitled to indemnification under this section. In such event, you agree to provide us with such cooperation as is reasonably requested by us.

#### 16. Suspension and Termination of Access and Subscription

You agree that, in our sole discretion, we may suspend or terminate your access, your password, other identification numbers, (or any part thereof) or use of the Site, or any part of the Site, and remove and dispose of any materials that you submit to the Site, at any time, for any reason, without notice. You agree that we will not be liable to you or any third-party for any suspension or termination of your password or other identification numbers, or use of the Site, or any removal of any materials that you have submitted to the Site. In the event that we suspend or terminate your access to and/or use of the Site, you will continue to be bound by the Terms of Use that were in effect as of the date of your suspension or termination.

#### 17. Arbitration

##### Agreement to Arbitrate Disputes

This arbitration provision ("Arbitration Provision") sets forth the circumstances and procedures under which Claims (defined below) that arise between you and us will be resolved through binding arbitration. This means that neither you nor we will have the

right to litigate that Claim in court or have a jury trial on that Claim. Other rights that you would have in court also may not be available or may be limited in arbitration, including your right to appeal and your ability to participate in a class action. Nothing in this provision precludes you from filing and pursuing your individual Claim in a small claims court in your state or municipality, so long as that Claim is pending only in that court.

#### Definitions

As used in this Arbitration Provision, the term "Claim" shall mean and include any claim, dispute or controversy of every kind and nature, whether based in law or equity, between you and us arising from or relating to TheoTRADE, these Terms of Use, our Content, our Materials, our other content and features, the Site, your registration with us, your subscription with us, any store credit or store purchase, as well as any related or prior agreement that you may have had with us or the relationships resulting from any of the above agreements ("Agreements"), including the validity, enforceability or scope of this Arbitration Provision or the Agreements. As used in this Arbitration Provision, "you" and "us" also includes any corporate parent, or wholly or majority owned subsidiaries, affiliates, any licensees, predecessors, successors, assigns, any purchaser of any accounts, all agents, employees, officers, directors and representatives of any of the foregoing, and any third-party using or providing any product, service or benefit in connection with TheoTRADE, the Site, our Content, our Materials, our other content and features, your registration and/or subscription with us, any store credits or the store.

#### Initiation of Arbitration Proceeding/Selection of Administrator

Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration Provision and the code of procedures of the national arbitration organization to which the Claim is referred in effect at the time the Claim is filed (the "Code"), except to the extent the Code conflicts with this Agreement. Claims shall be the American Arbitration Association ("AAA"). For a copy of the procedures, to file a Claim or for other information about the AAA, contact AAA at 335 Madison Avenue, New York, NY 10017, [www.adr.org](http://www.adr.org). In addition to the AAA, Claims may be referred to

any other arbitration organization that is mutually agreed upon in writing by you and us, or to an arbitration organization or arbitrator(s) appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. sections 1-16, provided that any such arbitration organization and arbitrator(s) will enforce the terms of this entire Arbitration Provision.

#### Class Action Waiver and Other Restrictions

Arbitration shall proceed solely on an individual basis without the right for any Claims to be arbitrated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. The arbitrator's authority to resolve and make written awards is limited to Claims between you and us alone. Claims may not be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. Notwithstanding any other provision in these Terms of Use (including the "Continuation" provision below), and without waiving either party's right of appeal, if any portion of this "Class Action Waiver and Other Restrictions" provision is deemed invalid or unenforceable, then the entire Arbitration Provision (other than this sentence) shall not apply.

#### Arbitration Procedures

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended ("FAA"), and the applicable Code. The arbitrator shall apply Substantive Arizona law consistent with the FAA and applicable Arizona statutes of limitations and shall honor claims of privilege recognized at law. Federal or state rules of civil procedure or evidence shall not apply. Written requests to expand the scope of discovery rest within the arbitrator's sole discretion and shall be determined pursuant to the applicable Code. The arbitrator shall take reasonable steps to preserve the privacy of individuals, and of business matters. Judgment upon the written arbitral award may be entered in any court having jurisdiction. Subject to the right of appeal under the FAA, the arbitrator's written decision will be final and binding unless you or we take an appeal from the award by making a dated, written request to the arbitration organization

within 30 days from the date of entry of the written arbitral award. A three-arbitrator panel administered by the same arbitration organization shall consider anew any aspect of the award objected to by the appellant, conduct an arbitration pursuant to its Code and issue its decision within 120 days of the date of the appellant's written notice. The panel's majority vote decision shall be final and binding.

#### Location of Arbitration/Payment of Fees

The arbitration shall be held at a location determined by the AAA pursuant to the Code (provided that such location is reasonably convenient for you). Irrespective of who prevails in arbitration, you will only be responsible for paying your share, if any, of the arbitration fees required by the applicable Code, which amount shall not exceed the filing fees you would have incurred if the Claim had been brought in the appropriate state or federal court closest to your residence. We will pay the remainder of any arbitration fees. At your written request, we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees. Waivers also may be available from the AAA.

#### Continuation

This Arbitration Provision shall survive termination or expiration of these Terms of Use, your registration, your TheoTRADE membership, or any offer in our store or the termination of this Site or our operations, and any bankruptcy by you or us. If any portion of this Arbitration Provision, except the "Class Action Waiver and Other Restrictions" provision above, is deemed invalid or unenforceable for any reason, it shall not invalidate the remaining portions of this Arbitration Provision, these Terms of Use or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity. If the Class Action Waiver and Other Restrictions is found to be invalid, unenforceable or illegal, then the entirety of this Arbitration Provision shall be null and void, and neither you nor TheoTRADE shall be entitled to arbitrate their dispute.

#### 18. Miscellaneous

This agreement constitutes the entire agreement between us and you with respect to

the subject matter contained in this agreement and supersedes all previous and contemporaneous agreements, proposals and communications, whether written or oral.

If any provision of these Terms of Use is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of any other provisions contained in these Terms of Use, and the remaining provisions of these Terms of Use shall remain in full force and effect. These Terms of Use will be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to any principles of conflicts of law

This agreement is personal to you and you may not assign it to any other person. We may assign this agreement to a third-party at any time without notice to you.

However, if we assign this agreement, the Terms of Use will remain substantially and materially the same, unless such Terms of Use are changed in the manner provided in there Terms of Use.

Neither our failure to exercise any of our rights under these Terms of Use nor our delay in enforcing or exercising any of our rights shall constitute a waiver of such rights. If we waive any right under these Terms of Use on one occasion, such waiver shall not operate as a waiver as to any other occasion.

Except as otherwise set forth in these Terms of Use, these Terms of Use are not intended to benefit any third-party, and do not create any third-party beneficiaries.

Accordingly, these Terms of Use may only be invoked or enforced by you or us. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to use of the Site, our store or these Terms of Use must be filed by you within one year after such claim or cause of action arose or be forever barred.