



TERMS AND CONDITIONS OF USE

Effective May 17, 2018

Overview

This website is owned and operated by TraceGains, Inc. (“**TraceGains**,” “**us**,” “**our**,” or “**we**”). These Terms and Conditions of Use (“**Terms of Use**”) set forth the terms and conditions under which you are authorized to use our websites, including any website where these Terms of Use are posted, and any subdomains and mobile versions thereof, along with any corresponding mobile applications (“**Mobile Apps**”) (collectively, the “**Services**”).

To the extent additional rules or guidelines affect your use of our Services, those rules and guidelines (including our [Privacy Policy](#)) are hereby incorporated by reference into these Terms of Use. By using any of our Services, you agree to these Terms of Use. If you do not agree to these Terms of Use, you should immediately stop using our Services. **Through your use of our Services, you acknowledge these Terms of Use.**

Third-party Services and Content

TraceGains is revolutionizing information exchange across the supply chain by connecting TraceGains customers with their suppliers (collectively, the “**Clients**”). TraceGains delivers full-service supplier, compliance, and regulatory document management services. Our solutions address the unique needs of the food and beverage industry by connecting partners, collecting critical documents, and capturing data to predict and reduce risk. TraceGains may use third party service providers in order to provide features or services to you. Your interactions with and use of features and other content or services provided by third parties are not governed by these Terms of Use. You acknowledge and agree that we are not responsible for the availability of, or any content located on or through, any third-party site or service, or any use of your information by those third parties. You further acknowledge that any reliance on representations and warranties provided by any party other than TraceGains will be at your own risk. You expressly agree to hold us harmless for any claims of damage arising from any content, product, or service provided by any third party or use of your information by those third parties. Your use of those third-party websites and services is subject to the terms of use and privacy policies posted on each site or service, and we encourage you to review those terms of use and privacy policies.

Modifications and Interruption to the Services

We reserve the right to modify or discontinue all or any portion of our Services with or without notice to you. We will not be liable if we choose to exercise this right. You acknowledge and accept that we do not guarantee continuous, uninterrupted, or secure access to our Services, or that operation of our Services will be uninterrupted or error free. You understand that usage of our Services may be interfered with or adversely affected by numerous factors or circumstances outside of our control.

Your Account

As a condition of your right to use our Services, you represent that you are of legal age to enter into a binding contract and that you are not a person barred from accessing the Services under the laws of the United States or any other country. By registering as a user, **YOU REPRESENT THAT YOU ARE AGE 16 OR OLDER**. People under the age of 16 are prohibited from registering. TraceGains reserves the right to terminate any account with or without reason at any time.

You will set a password for your account, and you agree to protect and safeguard it against unauthorized use. You must immediately notify us of any unauthorized use of your account or any other breach of security. You must exit from your account at the end of each session and must not share your login credentials with any third parties without TraceGains’s authorization.

YOU ARE ENTIRELY RESPONSIBLE FOR ALL ACTIVITIES AND CONDUCT, WHETHER BY YOU OR ANYONE ELSE, CONDUCTED THROUGH YOUR ACCOUNT. TraceGains is not liable for any harm you may incur as a result of someone else using your password or account, either with or without your knowledge.

Data Compliance

As part of registration, you will be asked to provide certain data about yourself and your company, including Personal Data (as defined in our [Privacy Policy](#)). By providing this data, you represent that the data is true, accurate, current, and complete, and you agree to maintain and promptly update the user data, including Personal Data, to keep it true, accurate, current, and complete.

TraceGains may process this data as set forth in the TraceGains [Privacy Policy](#), including (without limitation) by disclosing such information to a Client and the Client's authorized users and other third parties who may disclose and/or use the information for other lawful purposes. By providing such data, you represent and warrant that you have all necessary right, title, and interest (including any consent or other lawful basis) necessary to provide such data to TraceGains and any third-party recipients for these and any other applicable purposes described in our [Privacy Policy](#).

Please review our [Privacy Policy](#) for more information about the rights you grant to TraceGains, and your rights and obligations with respect to Personal Data.

Restricted Activities

You may not engage in any of the following with regard to the Services (including without limitation posting or transmitting content through the Services), and you agree not to use the Services to:

1. violate or encourage the violation of any local, state, national, or international law or regulation;
2. collect or store personal data about other users of our Services or solicit personal information from any individual without proper rights or consent of the individual;
3. send or promote any message that is unlawful, libelous, defamatory, abusive, sexually explicit, threatening, vulgar, obscene, profane, disparaging regarding racial, gender, or ethnic background, any statement that you have reason to know is false or misleading, or otherwise objectionable messages, as determined by TraceGains in its sole discretion;
4. infringe any patent, trademark, trade secret, copyright, right of publicity or privacy, or other right of any party, or distribute any content you do not have a right to make available under any law or under contractual or fiduciary relationships;
5. promote or distribute any unauthorized advertising, promotional materials, or material which can be characterized as "junk mail," "spam," "chain letters," "pyramid schemes," or similar material;
6. disrupt or interfere with the security or use of the Services or any websites or content linked to them;
7. interfere with or damage the integrity of the Services, including, without limitation, through the use of viruses, Trojan horses, harmful code, denial of service attacks, packet or IP spoofing, forged routing or email address information or similar methods or technology or disobey any requirements, procedures, policies, or regulations of networks connected to our Services;
8. use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs or Trojan horses;
9. attempt to use another user's account, impersonate another person or entity, misrepresent your affiliation with a person or entity, including (without limitation) TraceGains, or create or use a false identity;
10. attempt to obtain unauthorized access to the Services or portions thereof that are restricted from general access;
11. use any meta tags or any other "hidden text" utilizing TraceGains name, trademarks, or product names;
12. attempt to reverse engineer or otherwise derive or obtain the code in any form for any software used in the Services;
13. engage in any activity that interferes with any third party's ability to use or enjoy the Services; or
14. assist any third party in engaging in any activity prohibited by these Terms of Use.

Further, without our written consent, you may not:

1. reproduce, duplicate, copy, sell, resell, create derivative works, or exploit for any commercial purpose any TraceGains content or any use of or access to the Services;
2. use any high volume, automated, or electronic means (including, without limitation, robots, spiders, scripts, or other automated devices) to access the Services or monitor or copy our web pages or the content contained thereon;
3. deep link to the Services for any purpose; or frame the Services, place pop-up windows over any content, or otherwise affect the display of the Services;
4. access the Services in order to build a competitive service or to benchmark with a non-TraceGains service; or
5. reverse engineer the Services (to the extent such restriction is permitted by law).

DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, TRACEGAINS, ITS RELATED ENTITIES, ITS SERVICE PROVIDERS, ITS LICENSORS, AND ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (COLLECTIVELY THE “**TRACEGAINS PARTIES**”) EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, RELATED TO OUR SERVICES.^[1] YOU UNDERSTAND AND AGREE THAT YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. OUR SERVICES AND ALL CONTENT, PRODUCTS, AND SERVICES OFFERED THROUGH THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE TRACEGAINS PARTIES ARE NOT RESPONSIBLE FOR THE TIMELINESS OR DELIVERY OF CONTENT, ANY FAILURES OF DELIVERY, ERRONEOUS DELETION, OR ANY LOSS OR DAMAGE OF ANY KIND YOU CLAIM WAS INCURRED AS A RESULT OF THE USE OF ANY SERVICES. UNDER NO CIRCUMSTANCES WILL ANY OF THE TRACEGAINS PARTIES BE LIABLE TO YOU OR TO ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR ANY LOSS, INJURY, LIABILITY, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS TO, USE OF, INABILITY TO USE, OR RELIANCE ON ANY OF OUR SERVICES OR ANY CONTENT, PRODUCT, OR SERVICE PROVIDED TO YOU THROUGH OR IN CONNECTION WITH ANY OF OUR SERVICES. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL LOSSES AND DAMAGES OF ANY KIND WHATSOEVER, WHETHER DIRECT OR INDIRECT, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, GOODWILL, REVENUE, OR PROFITS. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR ANY OTHER BASIS; EVEN IF ANY TRACEGAINS PARTY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.^[1] IF ANY PART OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID, ILLEGAL, OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF THE TRACEGAINS PARTIES UNDER SUCH CIRCUMSTANCES TO YOU OR ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED WILL NOT EXCEED ONE HUNDRED U.S. DOLLARS.^[1]

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

You acknowledge that you may have or may in the future have claims against us which you do not know or suspect to exist in your favor when you agreed to these Terms of Use and which if known, might materially affect your consent to these Terms of Use. You expressly waive all rights you may have under Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

IF THIS CLAUSE IS HELD TO BE UNENFORCEABLE IN WHOLE OR IN PART IN ANY JURISDICTION DUE TO RELEVANT LAWS, THEN IN NO EVENT SHALL OUR OR THE RELEASEES' TOTAL LIABILITY TO YOU EXCEED \$100.00. NOTHING IN THIS CLAUSE SHALL LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE.

Indemnification

You agree to indemnify and hold the TraceGains Parties harmless from any claim or demand, including reasonable attorney's fees and costs, made by any third party due to or arising out of your posting of any content on our Services, or other use of our Services in a manner not permitted by these Terms of Use, including without limitation your actual or alleged violation of these Terms of Use, or infringement of a third party's intellectual property or other rights by you or another user of our Services using your computer, mobile device, or account.

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All content, copyrights, and other intellectual property rights in the content available on our Services, including without limitation design, text, graphics, interfaces, and the selection and arrangements thereof (collectively "**Content**"), are owned by TraceGains, with all rights reserved, or in some cases may be licensed to TraceGains by third parties. This Content is protected by the intellectual property rights of TraceGains or those owners. All Content which qualifies for protection under U.S. Federal Copyright Law is subject to the exclusive jurisdiction of the Federal Court System, whether registered or unregistered. All trademarks displayed on our Services are the trademarks of their respective owners, and constitute neither an endorsement nor a recommendation of such parties. In addition, such use of trademarks or links to the websites of third parties is not intended to imply, directly or indirectly, that those third parties endorse or have any affiliation with TraceGains.

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Content Complaints

If you believe that any Content on our Services violates these Terms of Use or is otherwise inappropriate, please report the Content by contacting us by email at legal@tracegains.com.

Notification of Claimed Copyright Infringement

In the event that you find Content posted on our Services which you believe to be an infringement of the copyright ownership or other intellectual property rights of your company or any third party, you are requested to immediately contact TraceGains's Copyright Agent as described below. To report any alleged infringement, please contact us in writing by providing a signed statement containing the following information pursuant to the Digital Millennium Copyright Act ("**DMCA**"):

Your name, address, telephone number, and email address, and if you are acting on behalf of the owner of the intellectual property, the name of the owner;

1. a statement, made under penalty of perjury, that you are the owner of the copyright or are authorized to act on behalf of the owner;
2. a detailed description of the copyrighted work or other intellectual property that you claim has been infringed;
3. if your claim is based on a registered work, the registration number, and the date of issuance of the registration;
4. a description of the infringing material and the URL where such material is located on the Services, or a description of where on our Services you found such material;
5. your written statement that you believe, in good faith, that the use of the work on our Services has not been authorized by the true owner of the work, its agent, or as a matter of law; and
6. a statement that all of the information you have provided is true.

Please send your notice of alleged infringement to us:

TraceGains, Inc.
10385 Westmoor Dr., Bldg. 5, Suite 200,
Westminster, CO 80021

E-mail: legal@tracegains.com, subject line "DMCA Notice"

In accordance with the DMCA, it is the policy of TraceGains to terminate use of our Services by repeat infringers in appropriate circumstances.

User-Submitted Content

Any Content uploaded, posted, submitted, or otherwise made available by individual users of the Services, including without limitation blog comments, message board posts, and any other Content which does not originate with TraceGains ("**User Content**"), is the sole responsibility of the person who made such User Content available on the Services. Under no circumstances will TraceGains be liable in any way for any User Content made available through this Services by you or any third party.

Since TraceGains does not control the User Content posted on the Services, it does not guarantee the truthfulness, integrity, suitability, or quality of that User Content, and it does not endorse such User Content. You also agree and understand that by accessing the Services, you may encounter Content that you may consider to be objectionable. TraceGains has no responsibility for any User Content, including without limitation any errors or omissions therein. The TraceGains Parties are not liable for any loss or damage of any kind incurred as a result of any User Content on the Services.

User Content is owned by the author thereof, and TraceGains does not claim ownership of original works created and posted by individual visitors to this Services. However, by uploading, posting, transmitting, or otherwise making any User Content available on or through the Services, you are granting TraceGains, and its parent, subsidiaries, affiliates, and other related entities an irrevocable, nonexclusive, perpetual, royalty-free, transferrable, sublicensable, worldwide license to copy, reproduce, modify, publish, display, distribute publicly, perform, exploit, and prepare derivative works of such User Content (including your name, contact information, or other information you have made publicly available in connection therewith) in any manner, media, or format now existing or hereafter devised, without any obligation of notice, attribution, or compensation to you.

TraceGains reserves the right (but has no obligation) in its sole discretion to pre-screen, edit, refuse, move, or remove any User Content that is posted on the Services. You agree that the exercise by TraceGains of such discretion shall not convert or transform User Content to Content owned or provided by TraceGains, and the user who made such User Content available on the Services will retain ownership thereof as described above.

As required by California Law, we permit minors under the age of 18 to request the deletion of any Content or information that the minor has posted on our Services. To request the removal of Content or information you have

posted on our Services, please send a letter or email to the address below with (i) your name, (ii) a complete description of the content you would like removed, and (iii) the web address(es) of the Content you would like removed. Please be aware that our fulfillment of this request does not ensure complete or comprehensive removal of the Content or information you have posted on our Services.

Mobile Devices & Third-Party Restrictions

If you access our Services on mobile devices or in our Mobile App, you understand that your mobile carrier's standard charges will apply. When you download our Mobile App, you will also be subject to any terms imposed by the "store" through which you obtain the Mobile App, if any (e.g. the Apple App Store or Google Play Store, or others).

Any Mobile App installed from the Apple App Store, Google Play Store, or other app "store" must be installed on a device you control or own, and must be used in accordance with any applicable terms from the Apple App Store or other store. The following terms are required by Apple and are applicable if you install our Mobile App from the Apple App Store:

TraceGains, not Apple, is responsible for:

1. The content in the Mobile App;
2. Maintenance or support of the Mobile App;
3. Any product warranties, whether express or implied;
4. Addressing any claims of the end-user or any third party relating to the Mobile App or the end-user's possession and/or use of that Mobile App, including, but not limited to: (a) product liability claims; (b) any claim that the Mobile App fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation; and,
5. The investigation, defense, settlement, and discharge of any third party claim that the Mobile App or your possession and use of that Mobile App infringes a third party's intellectual property rights.

Further, if you install our Mobile App from the Apple App Store, you acknowledge that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms of Use, and that, upon your acceptance of these Terms of Use, Apple will have the right (and you will be deemed to have accepted the right) to enforce the Terms of Use against you as a third party beneficiary thereof.

Providing Feedback to TraceGains

We welcome your comments and feedback about our Services. All information and materials submitted to TraceGains through the Services or otherwise, such as any comments, feedback, ideas, questions, designs, data, or the like regarding or relating to the Services or the business of TraceGains (collectively, "**Feedback**"), will be considered NON-CONFIDENTIAL and NON-PROPRIETARY with regard to you, but TraceGains reserves the right to treat any such Feedback as the confidential information of TraceGains.

By submitting Feedback to TraceGains, you assign to the TraceGains Parties, free of charge, all worldwide rights, title, and interest in all copyrights and other intellectual property rights in such Feedback. The TraceGains Parties will be entitled to use any Feedback you submit, and any ideas, concepts, know-how, or techniques contained in any such Feedback, for any purpose whatsoever, including but not limited to developing, manufacturing, and marketing products and services using such Feedback without restriction and without compensating you in any way. You are responsible for the information and other content contained in any Feedback you submit to us, including, without limitation, its truthfulness and accuracy.

Governing Laws

This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to the conflicts of laws provisions thereof. By use of the Service, you irrevocably agree that any legal or equitable action or proceeding arising under or in connection with this Agreement shall be brought exclusively in the Federal or state courts in the County of Denver in the State of Colorado, where you consent to jurisdiction and venue and

service of process by any means permitted therein. YOU IRREVOCABLY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT. Any failure of TraceGains to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, you nevertheless agree that the court should endeavor to give effect to the intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

Compliance with Laws

You assume all knowledge of applicable law and you are responsible for compliance with any such laws. You may not use our Services in any way that violates applicable state, federal, or international laws, regulations, relevant guidance, or other government requirements.

Changes to These Terms

We reserve the right, at any time, to modify, alter, or update these Terms of Use without prior notice. You are encouraged to check this page regularly for changes to the Terms of Use. Modifications will become effective immediately upon being posted to our Services, without further notice to you. Your continued use of any of our Services after such modifications are posted constitutes your acknowledgement and acceptance of such modifications, and you may not amend these Terms of Use.

Other Terms

If any provision of these Terms of Use is determined by a court of law to be unlawful, void, or unenforceable for any reason, the other provisions (and any partially-enforceable provision) shall not be affected thereby and shall remain valid and enforceable to the maximum possible extent, and the invalid provision will be modified as necessary to make it valid and enforceable while as closely as possible reflecting the original intentions of TraceGains.

You agree that these Terms of Use and any other agreements referenced herein may be assigned by us, in our sole discretion, to a third party in the event of a merger or acquisition or otherwise. These Terms of Use shall apply in addition to, and shall not be superseded by, any other written agreement between us in relation to your participation as a contributor to our Services.

You agree and understand that these Terms of Use together with any other applicable click-through agreements you may have entered into regarding our Services, constitutes the entire agreement between you and TraceGains regarding your use of the Services, and that any other prior agreements between you and TraceGains are superseded by these Terms of Use. In the event of any conflict between these Term of Use and the TraceGains Network Terms and Conditions, the TraceGains Network Terms and Conditions will control.

Any failure by TraceGains to exercise its rights under these Terms of Use or to enforce the terms hereof will not constitute a waiver of those rights. ^[1]_[SEP]You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of our Services or relating to these Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Contact Us

If you have any questions about these Terms of Use, please feel free to please contact us at 720-465-9400 or by email at legal@tracegains.com.

Notice for California Users

Under California Civil Code Section 1789.3, California users of our Services are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.