

RedDiamond.com User Agreement

Welcome to RedDiamond.com. By using the services on RedDiamond.com's website (the "Site"), you are accepting and agreeing to the following terms (including those terms made available by hyperlink), with Red Diamond, Inc.

Before you may become a user on RedDiamond.com, you must read and accept all of the terms and conditions in, and linked to, this User Agreement and the Privacy Policy. Because the linked information is also included in these terms, we strongly recommend that, as you read this User Agreement, you also access and read any linked information.

Using the Site

All content on this Site, including, without limitation, the text, graphics, layout, images, icons, logos, buttons, illustrations, video, audio and software is protected by copyright. Red Diamond, Inc. grants you a limited, nontransferable, nonsublicensable, revocable, and personal license to access and use the Site solely as permitted by this User Agreement and the Privacy Policy. Except for this limited license, we do not grant you any other rights or licenses with respect to this Site, and any other rights and licenses with respect to the Site are expressly reserved. You may display or print one copy of the displayable content of this Site limited solely for your noncommercial, personal use unless otherwise indicated, and you may print copies of your shopping cart or order information for your personal or business records. You must retain all proprietary and copyright notices on any copy. You may not copy, transmit, distribute, modify, publish, publicly perform, reuse, sell, or display any of the contents of this website for any public or commercial purpose except with our prior written consent, or the consent of the owners of the materials. You may not create derivative works of any of the contents of this Site, reverse engineer any of the contents of this Site, or frame or otherwise use the contents in any other website.

While using the Site, you agree that you will not:

- post content or items in an inappropriate category or area on the Site;
- violate any laws, third-party rights, or our policies;
- use the Site if you are under the age of 13, or are temporarily or indefinitely suspended from our Site;
- manipulate or interfere with the Site or the content on the Site;
- circumvent or manipulate the account structure, the billing process, or any fees owed to Red Diamond, Inc.;
- post false, inaccurate, misleading, defamatory, or libelous content (including personal information);
- take any action that may undermine feedback, rating, or posting systems (such as displaying, importing or exporting information off of the Site or using it for purposes unrelated to RedDiamond.com);
- transfer your RedDiamond.com account and user name or password to another party without our consent;

- distribute or post spam, chain letters, or pyramid schemes;
- distribute viruses or any other technologies that may harm RedDiamond.com, or the interest or property of RedDiamond.com users;
- copy, modify, or distribute content from the Site, or otherwise violate Red Diamond Inc.'s copyrights or trademarks;
- harvest or otherwise collect information about users, including email addresses, without their consent;
- post content that is patently offensive and promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
- post content that harasses or advocates harassment of another person;
- post content that exploits people in a sexual or violent manner;
- post content that contains nudity, excessive violence, or offensive subject matter or contains a link to adult website;
- post content that solicits personal information from anyone under 18;
- post content that poses or creates a privacy or security risk to any person;
- post content that constitutes or promotes information that you know is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
- post content that furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including, but not limited to making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
- post content that involves commercial activities and/or sales without prior written consent from Red Diamond, Inc. such as contests, sweepstakes, barter, advertising, or pyramid schemes; or
- post content that includes a photograph or video of another person that you have posted without that person's consent.

Trademarks

RED DIAMOND, RED DIAMOND Design, THE SOUTH'S FINEST, THE OFFICIAL DRINK OF SOUTHERN HOSPITALITY, product names, slogans, logos, trade names and other indicia of source are trademarks, service marks, trade dress, and registered trademarks of Red Diamond, Inc. (collectively referred to herein as "Red Diamond Marks"). Red Diamond Marks may not be used in connection with any product or service other than Red Diamond® products and services nor shall they be used in any manner that suggests affiliation with, sponsorship or endorsement by Red Diamond, Inc. You agree not to use Red Diamond Marks in any disparaging manner or in a manner that is likely to cause confusion among customers.

Third-Party Content Providers and Links

Portions of the information provided on this Site may have been compiled from third-party sources, including, without limitation, from other users on the Site. Third-Party content and any links to outside sites are provided for your convenience only. Red Diamond Inc. cannot exercise any control over any third-party content nor does it warrant the accuracy, timeliness, appropriateness for any particular purpose of any third-party content or content on an outside site. Red Diamond, Inc. is independent of any and all

third parties referenced or linked to this site, and users of this site should be aware that Red Diamond, Inc. is not affiliated with or sponsored by any third party content providers or outside sites. Moreover, inclusion on this site of any third party or link to an outside site does not constitute any endorsement by Red Diamond, Inc. of the third party, its site, or any of the content, products or services provided by a third party to this site or on any linked site.

Protecting Copyrights

Red Diamond, Inc. respects the rights of intellectual property owners and wants to be sure that the content on this Site, does not infringe upon the copyright, trademark or other rights of third parties. If you believe that your rights have been violated, please notify us per the procedure below:

If you believe that this Site contains material which infringes upon your copyrighted work, please submit the following information to our designated copyright agent:

- a physical or electronic signature of the person authorized to act on behalf of the copyright owner;
- a description of the copyrighted work that you claim has been infringed upon;
- a description of the location on this site of the work that you claim infringes the copyrighted work;
- your contact information, including address, telephone number and email address;
- a statement that you have a good faith belief that the use of the alleged infringing material is not authorized by the copyright owner, its agent or the law; and
- a statement by you, made under penalty of perjury, that the information submitted above is accurate and that you are either the copyright owner or authorized to act on the copyright owner's behalf.

Submit the information above to the following designated copyright agent:

copyright@reddiamond.com

Without limiting other remedies, we may limit, suspend, or terminate our service and user accounts, prohibit access to our Site, remove hosted content, and take technical and legal steps to keep users off the Site without any refund of any fees paid hereunder if we think that they are creating problems, possible legal liabilities, or acting inconsistently with the letter or spirit of our policies. We also reserve the right to cancel unconfirmed accounts.

Ordering

The Site allows you to place orders for Red Diamond® products and/or manage accounts for Red Diamond® services. These products and services are subject to Red Diamond, Inc.'s standard purchase orders and agreements. In the event of a conflict between this User Agreement and such agreements relating to product orders or service requests, the terms of those agreements will control. Changes to products prices or service fees are effective upon posting the changes on the Site. We may choose to temporarily change the product prices or fees for our services for promotional events or offer new services, and such changes are effective when we post the temporary promotional event or new

service on the Site and effective only for the time period stated in the promotional event information.

Unless otherwise stated, all prices are quoted in U.S. Dollars. You are responsible for paying all fees and applicable taxes associated with your orders or requests on the Site in a timely manner with a valid payment method. If your payment method fails we may collect fees owed using other collection mechanisms. (This includes charging other payment methods on file with us, retaining collection agencies and legal counsel.)

Content License

This Site may contain areas where you are encouraged to communicate with us or other users, including providing commentary, testimonials, best practices, experiences and/or additional information about Red Diamond® products and services or this Site. When you communicate with us or submit content, you grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) license to exercise the copyright, publicity, and database rights you have in the content, in any media known now or in the future. You agree that we may use any commentary submitted to us in any promotion or administration of the Site and that we may attribute the commentary to the name and/or entity associated with such communication.

By submitting any content to our Site, you represent and warrant that you are the creator of such content or that you otherwise have the rights to grant us the rights in the content and that such content does not violate the rights of any third party.

Red Diamond, Inc. has the right, but not the obligation (except as otherwise required by law), not to post or, in the alternative, to remove any submitted content from this Site (and/or to remove any user or prevent further submissions of content by any user), in Red Diamond Inc.'s sole discretion, which is defamatory, offensive, or otherwise objectionable, which infringes the rights of any third parties or which fails to comply with this User Agreement. Any user who repeatedly infringes the rights of third parties shall no longer have access to this Site to post content of any kind.

As a user of this site, you acknowledge and agree that you bear all risks associated with the use of any content, including any reliance on the accuracy, completeness or usefulness of such content.

You acknowledge and agree that Red Diamond, Inc. may preserve content and disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this User Agreement; (c) respond to any claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of RedDiamond.com, its users and the public.

Liability

We cannot guarantee continuous or secure access to our services, and operation of the Site may be interfered with by numerous factors outside of our control. THIS SITE IS PROVIDED ON AN AS-IS BASIS, WITHOUT WARRANTY OF ANY KIND.

ACCORDINGLY, WE EXPRESSLY EXCLUDE AND YOU EXPRESSLY WAIVE ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, RED DIAMOND, INC. DISCLAIMS ANY AND ALL WARRANTIES FOR THE SECURITY, AVAILABILITY, RELIABILITY, TIMELINESS, ACCURACY AND PERFORMANCE OF CONTENT INCLUDED ON THE SITE AND ANY WARRANTIES THAT YOUR USE OF THE SITE WILL BE UNINTERRUPTED OR VIRUS-FREE. WE EXPRESSLY DISCLAIM ALL LIABILITY RELATING TO THE SITE AND THESE TERMS AND CONDITIONS. YOU EXPRESSLY UNDERSTAND AND AGREE THAT UNDER NO CIRCUMSTANCES SHALL RED DIAMOND, INC. BE LIABLE TO ANY USER ON ACCOUNT OF THE USER'S USE OR MISUSE OF AND RELIANCE ON THIS SITE OR INFORMATION CONTAINED HEREIN. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY AND PUNITIVE DAMAGES (EVEN IF RED DIAMOND, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF OR RELIANCE ON THIS SITE OR INFORMATION CONTAINED HEREIN OR FROM THE INTERRUPTION, SUSPENSION OR TERMINATION THEREOF. WE ARE NOT LIABLE FOR ANY LOSS OF MONEY, GOODWILL, OR REPUTATION, OR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF YOUR USE OF OUR SITE. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, SO SUCH DISCLAIMERS AND EXCLUSIONS MAY NOT APPLY TO YOU.

Regardless of the previous paragraph, if we are found to be liable as a result of the Site, our liability to you or to any third party is limited to the **[greater of (a) the total amounts you actually paid to us for orders through the Site in the 12 months prior to the action giving rise to the liability]**, or (b) \$100. No claim, action, suit or liability shall be brought against Red Diamond, Inc. more than one year after the earliest of (i) your last use of the Site; (ii) the claim arises; or (iii) the termination of this Agreement. The foregoing time period shall not operate to extend any applicable statute of limitations on such claim.

Access and Interference

Much of the information on the Site is updated on a real-time basis and is proprietary or is licensed to Red Diamond, Inc. by our users or third parties. You agree that you will not use any robot, spider, scraper or other automated means to access the Site for any purpose without our express written permission.

Additionally, you agree that you will not:

- take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large burden on our infrastructure;

- copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (except for content submitted by you) from the Site without the prior expressed written permission of Red Diamond, Inc. and the appropriate third party, as applicable;
- interfere or attempt to interfere with the proper working of the Site or any activities conducted on the Site; or
- bypass measures we may use to prevent or restrict access to the Site.

Privacy

We use your information only as described in the RedDiamond.com [Privacy Policy](#). We view protection of users' privacy as very important. For a complete description of how we use and protect your personal information, see the RedDiamond.com [Privacy Policy](#). If you object to your information being transferred or used in this way, please do not use our Site or our services.

Indemnity

You will indemnify and hold us (and our officers, directors, affiliates, joint ventures, employees, agents and subcontractors), harmless from any claim, suits, demand, liabilities, losses, settlement, judgment, damages, costs and expenses (including reasonable attorneys' fees) made by any third party due to or arising out of your (i) breach of this Agreement, (ii) breach of the policies on this Site, (iii) use or misuse of the Site, or (iv) your violation of any law or the rights of a third party. We shall promptly notify you of such claim and we shall be entitled to participate in the defense of such claim without waiving or reducing any of your obligations to indemnify us or hold us harmless. You shall also indemnify us for any expenses incurred in enforcing this section.

No Agency

No agency, partnership, joint venture, employer-employee or franchisor-franchisee relationship is intended or created by this Agreement. At all times, users and listed businesses shall be independent contractors with Red Diamond, Inc..

Notices

Except as explicitly stated otherwise, legal notices shall be served (in the case of Red Diamond, Inc.) on Red Diamond Inc.'s registered agent or (in your case) to the email address you provide to RedDiamond.com during the registration process. Notice shall be deemed given 24 hours after email is sent. It is your responsibility to update your email address as provided on this Site. Red Diamond, Inc. shall have no liability for any undelivered email whether due to malfunctions or undeliverable, blocked or obsolescent email accounts or otherwise. Alternatively, we may, in our discretion, give you legal notice by mail to the address provided during the registration process. In such case, notice shall be deemed given three days after the date of mailing. Notice to Red Diamond, Inc. shall be effective upon receipt.

Resolution of Disputes

If a dispute arises between you and Red Diamond, Inc., our goal is to provide you with a neutral and cost-effective means of resolving the dispute quickly. Accordingly, you and

Red Diamond, Inc. agree that we will resolve any claim or controversy at law or equity that arises out of this Agreement or our services (a “Claim”) in accordance with one of the subsections below or as we and you otherwise agree in writing. Before resorting to these alternatives, we strongly encourage you to first contact us directly to seek a resolution by going to the [Contact Us](#) page. We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation.

- **Law and Forum for Disputes** – This Agreement shall be governed in all respects by the laws of the State of Alabama and the federal laws of the United States as they apply to agreements entered into and to be performed entirely within Alabama between Alabama residents, without regard to conflict of law provisions. The United Nations Convention on the International Sale of Goods shall not apply. You agree that any claim or dispute you may have against Red Diamond, Inc. must be resolved by courts located in St. Clair County, Alabama, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You agree to submit to the personal jurisdiction of the courts located within St. Clair County, Alabama for the purpose of litigating all such claims or disputes.
- **Arbitration Option** – For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost-effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution (“ADR”) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties, c) the judgment must be reasoned and based upon legal principles and d) any judgment or award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- **Improperly Filed Claims** – All claims you bring against Red Diamond, Inc. must be resolved in accordance with this Resolution of Disputes Section. All claims filed or brought contrary to the Resolution of Disputes Section shall be considered improperly filed. Should you file a claim contrary to the Resolution of Disputes Section, Red Diamond, Inc. may recover attorneys’ fees and costs up to \$1000, provided that Red Diamond, Inc. has made attempts to notify you in writing at the last email address it has on file of the improperly filed claim, and you have failed to promptly withdraw the claim.

Force Majeure

Under no circumstances shall Red Diamond, Inc. be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, without limitation, internet failures (including, without limitation, denial of service attacks), computer equipment failures, telecommunication

equipment failures, other equipment failures, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals, non-performance of third parties, or loss of or fluctuations in heat, light or air conditioning

Termination

The Site or any products or services offered herein may be terminated at any time by Red Diamond, Inc. You may terminate your use of the Site or any services received hereunder upon notice to us. This Agreement, and your use of the Site, may be terminated immediately upon your breach of this Agreement or our policies. Additionally, your user account may be deactivated during any investigation of a breach.

General

If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. In our sole discretion, we may assign this Agreement. Headings are for reference purposes only and do not limit the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. We do not guarantee we will take action against all breaches of this Agreement.

Red Diamond, Inc. reserves the right, without limitation of any other remedies available to us, to take appropriate legal action for any illegal or unauthorized use of RedDiamond.com's services.

We may amend this Agreement at any time by posting the amended terms on the Site. All amended terms shall automatically be effective after they are initially posted on the Site. Additionally, we will attempt to notify you through email at the last email address you provided to us of amended terms. This Agreement may not be otherwise amended except in a writing signed by you and us. This Agreement, and the linked policies referenced herein, sets forth the entire understanding and agreement between us with respect to the subject matter hereof and supersedes any other representations, communications, undertakings, or agreements between us. The following Sections survive any termination of this Agreement: Ordering (with respect to any fees owed for our services), Release, Content License, Liability, Indemnity and Resolution of Disputes.