

# terms of service

## 1. welcome to woojer

- a. woojer usa, inc. (including our affiliates and subsidiaries, "**woojer**," "**we**," "**us**" or "**our**") is a pioneer in the field of haptic technology. Our products, including Vest™, Strap™, and others to be released from time to time (collectively, the "**Products**") used in conjunction with games, music, and other audio sources deliver high fidelity tactile sensations that reproduce the rich emotion of sound, allowing you to "feel" the sound.
- b. Through our website at *www.woojer.com* (the "**Site**"), we are pleased to provide you access to purchase Products, and use software, websites, applications, and related content (collectively, the "**Services**").
- c. By using or visiting the Site and using the Services, you ("**You**" "**Your**," or "**User**") accept and agree to (1) these terms and conditions (the "**Terms**"); and (2) the woojer Privacy Policy (the "**Privacy Policy**"), found at *www.woojer.com/privacy*, which is incorporated herein by reference. These Terms apply to all Users of the Services.
- d. These Terms may be modified, amended, and revised from time to time with or without notice to You. By continued use of the Services, You agree to be bound by such modified, amended, and revised Terms.
- e. You acknowledge that You are either 18 years of age or older, an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms, subject to Section 1(H) below. However, even if You are not competent to enter into a legal agreement, if You knowingly accept and enjoy the benefits of the Services, then You will be deemed bound to the undertakings in the Terms.
- f. You further acknowledge and affirm that You are over the age of 13, as the Products and Services are not intended for children under 13. If You are under 13 years of age, then You may not use the Services and should immediately stop any use of the Products and Services.

## 2. using woojer services and software

- a. To access and use certain features of the Services, you may be required to register for an account. By creating an account, you agree to: (i) provide accurate, current and complete account information; (ii) maintain the security of your password; and (iii) not share your password with any other person.
- b. Certain software, including firmware embedded in the Products, may be required to access and use the Products and Services (the "**Software**"). woojer may need to automatically update some of the Software in the Products and Services or provide you with new software to keep the Services functioning properly, in the form of bug fixes, patches, enhanced features, missing plug-ins and new versions. By using the Services, you agree to

such automatic updating. If you do not maintain the current versions of the Software, the Products may not function properly or optimally.

- c. We hereby grant you a limited, nonexclusive, non-sublicensable license to access, install, and use the Software solely for personal and noncommercial purposes, conditioned on your compliance with these Terms. You will not use, copy, adapt, modify, decompile, reverse engineer, disassemble, decrypt, attempt to derive the source code of, prepare derivative works based upon, distribute, license, sell, rent, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Software, except as expressly permitted by woojer or as permitted under applicable law.
- d. Any unauthorized use of the Product or Services is strictly prohibited and will cause the immediate termination of the license granted in these Terms.
- e. Our Services may contain links to content or services provided by third parties ("**Third Party Links**"). These Third Party Links are not under our control, and we are not responsible for their content, services, performance, operation, availability, business practices or policies. We provide access to Third Party Links as a convenience and we do not imply any endorsement or recommendation of their content or services, or of any association of us with such third parties. The websites available through Third Party Links are subject to their own terms and policies, including privacy and data gathering practices.

### 3. ordering products and services from woojer

- a. This section address purchases of Products and Services through our Site. You may only purchase Products and Services for personal, non-commercial use. You may not resell, distribute, or supply Products or Services to third parties without express written authorization from woojer. Prices are subject to change without notice in woojer's sole discretion.
- b. To place an order for the purchase of Products or Services (an "**Order**"), kindly follow the instructions on the Site. Once we receive Your Order, we will process it accordingly, and if acceptable to us, we will send you an Order acceptance ("**Order Acceptance**") by confirmation email. The contract between us in relation to purchase of Products or Services is formed upon delivery of the Order Acceptance.
- c. We will not process payment for Your Product purchases until Order Acceptance.
- d. Our Order Acceptance may contain the estimated shipping date of the Products in Your Order. Any shipping dates or times provided are *estimates* only and are subject to change. The risk of loss in physical goods you purchase and the responsibility to insure the goods passes to you upon delivery of the goods to the carrier.

### 4. pre-ordering new products and services

- a. Prior to the general commercial distribution of a new Product or Service (collectively, a "**New Release**"), woojer may offer limited advance ordering for such New Releases through

pre-ordering (a “**Pre-Order**”). Due to uncertainties regarding timing and volume limits on New Releases, placing a Pre-Order does not guarantee delivery, nor that such Products or Services will be available.

- b. woojer will not charge your credit card, nor process any payment from You until such New Releases are available and ready for shipment, at which time we will send you a written Order Acceptance.
- c. You understand that at any time prior to Order Acceptance, we may decline or reject your Pre-Order without further obligation or liability.

## **5. order and pre-order cancellations**

- a. You may cancel your Order or Pre-Order of Products at any time prior to Order Acceptance without charge.

## **6. paying for woojer products and services**

- a. We may accept various forms of payment, in addition to credit and debit cards. By submitting an Order or Pre-Order, you authorize us to charge your preferred payment provider in the authorized amounts.
- b. woojer may utilize an agent, subsidiary, or affiliate to process payment and shipping. In the event that your selected payment method is either invalid or has insufficient funds available, we have the right to suspend or cancel your Order or Pre-Order.

## **7. product returns**

- a. Should you be dissatisfied with our product, the original retail purchaser of the Product may return all Products purchased in the original transaction, in their original condition, with the original receipt and packaging, within thirty (30) days of the date of delivery to the original retail purchaser and woojer will exchange it or provide a full refund of the original purchase price. This is in addition to your legal rights and your rights under the woojer Product warranty referred to herein.
- b. woojer can only refund orders placed directly through our website, [www.woojer.com](http://www.woojer.com) . If you purchased woojer Products through another party (such as Amazon.com) please contact the retailer for refund instructions.
- c. Once you have submitted your refund request you will be contacted by the woojer Product support team with instructions on how to return your Products. Upon receipt, we will verify that all of the Products in your original order are included with the return and that the Products are in good physical condition. Once the refund has been processed a confirmation message will be sent out with information on when you should expect the refund. You will be responsible for all costs of shipping and related costs, unless otherwise agreed by woojer.

## 8. prohibited conduct and activities

- a. You agree that you will not:
- (i) access or use the Services in any manner that could interfere with, disrupt, negatively affect or inhibit anyone from fully enjoying the Services, including, but not limited to, defamatory, harassing, threatening, bigoted, hateful, vulgar, obscene, pornographic, or otherwise offensive behavior or content;
  - (ii) damage, disable, or impair the functionality of the Services in any manner;
  - (iii) access or use the Services for any illegal or unauthorized purpose or engage in, encourage, or promote any illegal activity, or any activity that violates these Terms, or any other terms or policies provided in connection with the Services;
  - (iv) use or attempt to use another user's account without authorization from such user; (e) modify, adapt, hack or emulate the Services;
  - (v) use any robot, spider, crawler, scraper or other automated means or interface not provided or authorized by us to access the Services or to extract data;
  - (vi) circumvent or attempt to circumvent any filtering, security measures or other features designed to protect the Services, or third parties; and
  - (vii) infringe upon or violate the rights of woojer, our users or any third party.

## 9. user content license

- a. Our Services may include interactive features and areas where you may submit, post, upload, publish, email, send or otherwise transmit content, including, but not limited to, text, images, photos, videos, sounds, virtual reality environments or features, software and other information and materials (collectively, "**User Content**"). Unless otherwise agreed to, we do not claim any ownership rights in or to your User Content. However, by submitting User Content through the Services, you grant woojer a worldwide, irrevocable, perpetual non-exclusive, transferable, royalty-free and fully sublicensable right to use, copy, display, store, adapt, publicly perform and distribute such User Content in connection with the Services. You irrevocably consent to any and all acts or omissions by us or persons authorized by us that may infringe any moral right (or analogous right) in your User Content.
- b. You are solely responsible for the User Content you make available through the Services and you represent and warrant that (a) you either are the sole and exclusive rights owner of all User Content that you provide, or you have obtained all rights, licenses, permissions, consents and releases that are necessary to grant to woojer the rights specified in this section; (b) the provision of your User Content, and our subsequent use of such User Content, will not infringe, misappropriate or violate any third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights,

or rights of publicity or privacy, or result in the violation of any applicable laws or regulations; and (c) your User Content does not violate our community standards.

- c. woojer does not endorse the opinions, views, advice, or recommendations posted or sent by Users. woojer has no responsibility or liability for User Content made available through the Services, and we have no obligation to screen, edit or monitor such User Content. However, we reserve the right, and have absolute discretion, to monitor, remove, screen or block Users or User Content at any time due to violations of these Terms.
- d. You may submit questions, comments, suggestions, ideas, plans, notes, drawings, original or creative materials or other information about woojer and our Services (collectively, "**Feedback**"). You agree that woojer shall be able to use the Feedback in any way it may choose without any obligation to you.

## 10. warnings

- a. Similar to speakers, headphones, and other amplification devices, the Products rely on signals from computers, smartphones, televisions, and other third party sources (the "**Sources**") to express their functionality. You should only connect the Products to Sources that are compatible with the Products. Carefully follow all instructions for connecting any Sources to the Products.
- b. woojer is not responsible for damage to any Products due to Your connecting products or equipment that are incompatible with the Products.
- c. The Products rely upon rechargeable batteries to deliver the unique woojer experience to You. To ensure that You enjoy the optimal woojer experience, the batteries in the Products must be adequately charged prior to use.
- d. woojer Products should never be submerged in water and should only be used in a dry environment. Exposure to water and other liquids may damage the Products.
- e. woojer Products should never be disassembled or otherwise taken apart or modified.
- f. woojer Products contain lithium-ion batteries. Lithium-ion batteries (each, a "**Battery**") may get hot, explode or ignite and cause serious injury. Please follow these safety warnings:
  - Do not pierce the Battery with nails, strike the Battery with a hammer, step on the Battery or otherwise subject it to strong impacts or shocks.
  - Do not expose Battery to water or salt water, or allow the Battery to get wet.
  - Remember to turn off the power on the woojer Products when not in use
  - Do not place the Battery in or near fire, on stoves or other high temperature locations.

- Do not place the Battery in direct sunlight, or use or store the Battery inside cars in hot weather. Doing so may cause the Battery to generate heat, explode or ignite. Using the Battery in this manner may also result in a loss of performance and a shortened life expectancy.
- Do not disassemble or modify the Battery. The Battery contains safety and protection devices, which, if damaged, may cause the Battery to generate heat, explode or ignite.
- Do not charge the Battery unattended.
- Immediately discontinue use of the Battery if, while using, charging or storing the Battery, the Battery emits an unusual smell, feels hot, changes color or shape, or appears abnormal in any other way.
- Do not place the Battery in a microwave oven, high-pressure container, or on induction cookware.
- In the event the Battery leaks and the fluid gets into one's eye, do not rub the eye. Rinse well with water and immediately seek medical care. If left untreated, the Battery fluid could cause damage to the eye.

## 11. HEALTH AND SAFETY WARNINGS

- a. YOU SHOULD CONSULT YOUR PHYSICIAN **BEFORE** USING THE PRODUCTS IF ANY OF THE FOLLOWING APPLY TO YOU, OR IF YOU HAVE OTHER CONCERNS ABOUT YOUR HEALTH:
  - CHEST PAIN OR PAIN IN THE NECK AND/OR ARM;
  - SHORTNESS OF BREATH;
  - A PACE MAKER OR OTHER MECHANICAL OR ELECTRONIC DEVICE HAS BEEN SURGICALLY IMPLANTED, OR OTHERWISE ATTACHED TO YOU, TO SUPPORT YOUR BODILY FUNCTION;
  - HEART CONDITION;
  - PREGNANCY
  - USE OF DEFIBRILLATORS;
  - IF YOU ARE TAKING ANY MEDICATIONS, ESPECIALLY CARDIAC AND/OR BLOOD PRESSURE MEDICATIONS.
- b. WE MAY UPDATE OR REVISE THESE WARNINGS FROM TIME TO TIME WITHOUT NOTICE. ADDITIONAL HEALTH AND SAFETY WARNINGS MAY BE PROVIDED BY THIRD PARTIES IN RELATION TO THEIR THIRD PARTY CONTENT.

## 12. intellectual property rights

- a. The Products and Services, including the trade secrets, know-how, and other intellectual property subsisting therein, are the property of woojer and are protected by copyright, trademark, patent, trade secret, and other laws of the United States and foreign countries. You may not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Product and Services.
- b. woojer, vest™, strap™, and the woojer logo ("**woojer Marks**") are trademarks or registered trademarks of woojer. The woojer Marks and those of its affiliates may not be copied, imitated or used, in whole or in part, without prior written permission. All other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective owners and may not be used without permission of the applicable trademark holder.
- c. "**Confidential Information**" means woojer confidential and proprietary information, technical data, or know-how, including woojer's research, services, inventions, processes, specifications, designs, drawings, diagrams, concepts, marketing, techniques, documentation, source code, pricing information, procedures, business and marketing plans or strategies, financial information, and business opportunities, among other woojer property, including in written, oral, or machine readable form.
- d. You agree to treat all Confidential Information as confidential and not to use or disclose such Confidential Information without woojer's express advance written permission

## 13. Digital Millennium Copyright Act (DMCA) takedowns

- a. **Notification.** If You are a copyright owner and believe that any content hosted on the Site infringes upon your copyrights, You may submit a notification pursuant to the Digital Millennium Copyright Act ("**DMCA**") by providing our specially designated DMCA copyright agent (the "**Copyright Agent**") with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- (i) A physical or electronic signature of a person authorized to act on your behalf;
- (ii) identification of all copyrighted works claimed to have been infringed;
- (iii) identification of the infringing material and information that will allow woojer to locate the infringing material;
- (iv) your contact information so woojer can reach You (address, telephone number, and, email address);
- (v) a statement that You have a good faith belief that use of the material is unauthorized; and
- (vi) a statement that your notification is accurate, and under penalty of perjury, that You are authorized to take the action described in your notification.

You may direct copyright infringement notifications to our Copyright Agent at email: [copyrightagent@woojer.com](mailto:copyrightagent@woojer.com). If You do not carefully follow all of these instructions your DMCA notification may not be valid.

- b. **Counter-Notification.** If You believe that your content that was removed (or to which access was disabled) is not infringing, or that You have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your content, You may send a counter-notification to the Copyright Agent containing the following information:

(i) your physical or electronic signature; (ii) identification of the content hosted on the Site that has been removed or to which access has been disabled and the location of the content hosted on the Site before it was removed or disabled; (iii) a statement that You have a good faith belief that the content hosted on the Site was removed or disabled as a result of mistake or a misidentification of the content hosted on the Site; and (iv) your name, address, telephone number, and e-mail address, a statement that You consent to the jurisdiction of the federal court in New York, New York, and a statement that You will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notification is received by the Copyright Agent, woojer may send a copy of the counter-notification to the original complaining party informing that person that the Copyright Agent may replace the removed content hosted on the Site or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content hosted on the Site, the removed content hosted on the Site may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at woojer's sole discretion.

## 14. disclaimers

- a. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR ACCESS TO AND USE OF THE SITE AND SERVICES ARE AT YOUR SOLE RISK. THE SITE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WOOJER EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- c. WOOJER DOES NOT REPRESENT OR WARRANT THAT (A) THE FUNCTIONS CONTAINED IN THE SITE AND SERVICES WILL BE ACCURATE OR MEET YOUR REQUIREMENTS; (B) THE OPERATION OF THE SITE AND SERVICES WILL BE SECURE, UNINTERRUPTED, ERROR-FREE OR VIRUS-FREE, OR (C) ANY DEFECTS IN THE SITE AND SERVICES WILL BE CORRECTED. THE FOREGOING DISCLAIMER OF WARRANTIES IS SUBJECT TO APPLICABLE LAW.

## 15. product warranty

- a. woojer warrants that the Products will be free from defects in materials and workmanship for a period of one (1) year from the date of delivery to the original retail purchaser (the “**Warranty Period**”). If a defect in the Product arises within the Warranty Period, woojer will, at its sole option and subject to applicable laws either: (a) repair or replace it with a new or refurbished Product; or (b) refund the original purchase price upon return of the defective Product. This warranty does not apply to: (i) cosmetic damage, such as scratches; (ii) rips in textile elements or straps; (iii) consumable parts, such as batteries, unless Product damage has occurred due to a defect in materials or workmanship; (iv) damage caused by accident, abuse, misuse, water, flood, fire, or other acts of nature or external causes; (v) damage caused by service performed by anyone who is not an authorized service provider of woojer; (vi) damage to a product that has been modified, disassembled, or altered without the written permission of woojer; (vii) damage caused where the instructions for use and activation of the Product are not followed or where the Product is damaged as a result of other causes beyond our reasonable control, including Your violation of any instructions or warnings in these Terms.
  
- c. ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS ARE LIMITED TO THE DURATION OF THE ABOVE EXPRESS WARRANTY. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, ARE HEREBY DISCLAIMED.

## 16. limitation of liability

WOOJER SHALL HAVE NO LIABILITY FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES, ARISING FROM OR RELATED TO YOUR USE OR INABILITY TO USE THE PRODUCT, SITE OR SERVICES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF WOOJER ARISING OUT OF OR RELATING TO THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU PAID US FOR THE PURCHASE OF PRODUCTS OR SERVICES. THE FOREGOING DISCLAIMER OF CERTAIN DAMAGES AND LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, NOTHING IN THESE TERMS EXCLUDES OR LIMITS OUR LIABILITY FOR FRAUD OR FOR DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE.

## 17. dispute resolution and governing law

- a. These Terms shall be governed by the internal substantive laws of the state of New York without respect to its conflict of laws principles. Any claim or dispute between You and woojer that arises in whole or in part from the Services shall be decided exclusively by a court of competent jurisdiction located in New York County, New York and you agree to submit to the personal jurisdiction of such courts for the purposes of litigating all such claims.

- b. The Site and the Services shall be deemed solely based in California, U.S.A. and shall be deemed a passive website that does not give rise to personal jurisdiction over woojer, either specific or general, in jurisdictions other than New York.

## 18. modifications to the services

- a. woojer reserves the right to change, suspend, remove, discontinue or disable access to the Site and Services or particular portions thereof, at any time and without notice. In no event will woojer be liable for the removal of or disabling of access to any portion or feature of the Services.
- b. We reserve the right to terminate Your right to access and use the Services if you violate these Terms or any other terms or policies referenced herein.

## 19. miscellaneous

- a. These Terms and the Privacy Policies, together with any other legal notices published by woojer on the Services, shall constitute the entire agreement between You and woojer concerning the Services.
- b. Any notices that we may be required to provide to You, may be delivered by any method reasonably calculated to provide You with actual notice of the matter described therein, including through email, or other accepted method of electronic or other communication. You expressly agree to the receipt of such communications and notices in such manner.
- c. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect. No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and woojer's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.
- d. The paragraph headings contained herein are for the purposes of reference only, are not intended to define, limit, or interpret the contents of any such paragraphs or the Terms, and shall have no legal effect, impact, or import whatsoever.
- e. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by You, but may be assigned by woojer without restriction.
- f. woojer is not Your employer and You are not our employee. woojer is not entering into a fiduciary relationship with You. You have no authority to enter into contracts, expend monies, or otherwise act on behalf of woojer. Nothing in these Terms shall limit or prevent woojer from providing any services or entering into an business relationship with any other company or individual.
- g. YOU AND WOOJER AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION

ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED. YOU HEREBY WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING AGAINST WOJER.

# # #

*Last Updated: December 31, 2016*