

TERMS AND CONDITIONS

ALTUS BRANDS

altusbrands.com Terms of Use Agreement

Effective Date: May 8, 2020

We at Altus Brands (dba Pro Ears, dba Benchmasterusa) are committed to the responsible use of your personal information and the protection of your privacy. This privacy policy applies to all the products and services described on our web site.

Altus Brands, LLC (hereinafter “AltusBrands”) is a limited liability company organized under the laws of the State of Michigan. Altus Brands is the owner and provider of the proears.com and benchmasterusa.com websites and their associated services (hereinafter “Website”). The terms and conditions herein govern your use of the Website.

Altus Brands reserves the right to modify or replace this Agreement at any time and in its sole discretion. In the event Altus Brands modifies or replaces this Agreement, the Effective Date, located above, will change. Your use of the Website after a change in its Effective Date constitutes your agreement to any changes made to this Agreement.

Warranties

You warrant that you are of sound mind and competent to agree to the provisions of these TOU thereby entering into a binding Agreement with Altus Brands. You also warrant that your use of the Website does not violate any law, regulation, ordinance, statute, or treaty applicable to individuals or other entities located in the jurisdiction in which you live, conduct business, or make use of the Website. You further warrant that you are not prohibited from entering into this Agreement by the terms of any pre-existing agreement or obligation. If you are accessing or using the Website on behalf of a governmental organization, non-governmental organization, business, or other legal

entity, you warrant that you are an authorized agent of that organization and that you have the authority to bind that organization to the terms of this Agreement.

Privacy Policy

Altus Brands respects your privacy and has set out how information provided by you to Altus Brands may be used in a separate Privacy Policy available on the Website. Altus Brands hereby incorporates its Privacy Policy by reference as if fully restated herein.

Intellectual Property Rights

Altus Brands is the owner of all rights in, and to, the Website and its associated content, including, but not limited to, copyright rights, trademark rights, patent rights, rights of publicity and privacy, trade secret rights, and any other property or proprietary rights. Altus Brands expended a lot of time and effort developing the Website. We are proud of it, and we hope you appreciate how important it is for Altus Brands to protect its intellectual property. The Website is subject to copyright and other intellectual property rights under the laws of the United States, foreign states, as well as international treaties, and Altus Brands provides you with the right to use the Website on a limited basis without forfeiting any of its rights in and to the Website and associated content. You are expressly prohibited from using the Website for any purposes not stated in these TOU.

How You May Use proears.com and benchmasterusa.com

Altus Brands hereby provides you with a limited, non-exclusive, non-assignable, non-sublicensable, revocable license to use the Website for its customary and intended purposes. Use of the Website for a purpose outside of its customary and intended purposes or in violation of the express provisions of these TOU will immediately terminate any limited license granted to you by Altus Brands through these TOU or otherwise. This license may be revoked by Altus Brands in its sole discretion at any time, and any rights not expressly granted herein are reserved by Altus Brands.

You are expressly prohibited from reproducing, preparing derivative works based upon, distributing, publicly performing, publicly displaying, scraping, framing, hacking, reverse

engineering, crawling, or aggregating the Website, whether in whole or in part, without the prior written consent of Altus Brands. The prohibition on crawling and/or aggregating does not apply to search engines that appropriately comply with Altus Brands' robots.txt file.

Registering an Account with Altus Brands

In order to obtain access to additional features or areas of the Website, you may be required to register an account ("Account"). You may only use the Account that you register and you are expressly prohibited from providing third parties with access to your Account. You agree that, in registering an Account, you will provide Altus Brands with accurate, complete, relevant, and current information. You are solely responsible for maintaining the security and confidentiality of your username and password. We take your privacy and our security seriously, and you are solely responsible for any access to your Account, whether authorized or unauthorized. In the event your Account is accessed without your authorization, you agree to immediately provide written notice to Altus Brands. By creating an Account, you agree to allow Altus Brands to contact you as needed and determined in its sole discretion by any available means, including, but not limited to, the email address you provide when registering your Account. Altus Brands reserves the right to accept, reject, modify, suspend, or delete any Account at any time and for any reason in its sole discretion. By registering an Account, you agree to allow Altus Brands to market new products and services to you using the contact information you provide.

Your Use of proears.com and benchmasterusa.com as it Affects Third Parties

Some portions of the Website may allow you to share or post information, including photographs and other media. You warrant that any content uploaded or transmitted to or using the Website is owned by you or that you have obtained appropriate rights to use the content for such purposes. If you hold any copyright rights to content uploaded to the Website by you, you will retain such rights but grant Altus Brands, its successors and assigns, an irrevocable, non-exclusive, royalty free license to use such content in connection with the Website for its customary and intended purposes. You warrant that

any use of the Website or transmission of content via the Website will not: (1) violate any term or condition of these TOU; (2) violate the rights of any third party, including rights of privacy, publicity, or intellectual property rights; or (3) violate any law, statute, regulation, ordinance, or treaty, whether local, state, provincial, national, or international. By uploading or transmitting information using the Website, you expressly waive your rights to publicity and privacy with respect to the content.

DMCA and CDA Policy

You acknowledge and agree that the Website is an interactive computer service as defined under § 230 of the Communications Decency Act (“CDA”). Altus Brands will not be considered a speaker or publisher of any information provided by You or any third party using the Website regardless of whether Altus Brands chooses to remove, suspend, change, or amend such information.

The Website is protected by copyright and such rights are owned by Altus Brands. Although Altus Brands does not plan to host user-generated content, it may provide you or other users with the ability to upload or post information to public or semi-public areas of the Website. If such functionality become available, Altus Brands will expeditiously respond to all properly issued notifications of copyright infringement that are sent to Altus Brands’ designated copyright agent pursuant to 17 U.S.C. § 512.

All notices of copyright infringement **must** contain the following:

- a. The physical or electronic signature of a person authorized to act on behalf of the copyright owner;
- b. Specific identification of the copyrighted works alleged to have been infringed;
- c. The location of the allegedly infringing works on the Website;
- d. The contact information of the notifying person(s), such as an address, telephone number, or email address;
- e. A statement that the notifying person(s) has a good faith belief that the use of the allegedly infringing content is not authorized by the copyright owner, its agent, or the law; and
- f. A statement, under penalty of perjury, that the information in the notification is accurate and that the notifying person(s) is authorized to act on behalf of the copyright owner.

Upon receipt of a proper notice of copyright infringement as described above, Altus Brands will remove the allegedly infringing content within a reasonable time period and take reasonable steps to contact the poster of the allegedly infringing content so that the poster may issue a counter-notification.

All counter-notifications ***must*** contain the following:

- a. Identification of the specific materials that have been removed from the Website;
- b. The contact information of the notifying person(s), such as an address, telephone number, or email address;
- c. A statement, under penalty of perjury, that the notifying person(s) has a good faith belief that the content was removed as a result of mistake or misidentification;
- d. A statement that the notifying person(s) consents to the jurisdiction of the federal district court in which the notifying person(s) address is located or, if the notifying person(s) is located outside of the United States, that the notifying person(s) consents to the jurisdiction of the federal courts having jurisdiction in Grand Traverse County, Michigan;
- e. A statement that the notifying person(s) will accept service of process from party who filed the original notification alleging a copyright violation or an agent of such party; and
- f. The notifying person's(s) physical or electronic signature.

All notices of infringement and counter-notifications may be sent to: customerservice@proears.com.

Indemnification

You agree to hold harmless, defend, and indemnify Altus Brands from and against any and all claims, demands, judgments, liabilities, costs, and fees, including attorneys' fees, arising out of or related to: (1) the creation or use of an Account; (2) the uploading or transmitting of user-generated content using the Website; (3) a violation of any provision of these TOU; (4) the violation of any right of any third party, including rights of privacy, publicity, and/or intellectual property rights in connection with your use of the Website; and (5) the violation of any law, statute, regulation, ordinance, or treaty, whether local, state, provincial, national, or international in connection with your use of the Website. Your obligation to indemnify Altus Brands will not provide you with the ability or right to control Altus Brands' defense or legal strategy, and Altus Brands

reserves the right to control its defense in its sole discretion, including, but not limited to, the choice to litigate or settle and the choice of counsel.

Modification of the Website or Altus Brands' Services

Altus Brands reserves the right to accept, reject, modify, suspend, or delete any Account or user-generated content at any time for any reason as determined in its sole discretion. Altus Brands reserves the right to modify or cease providing access to the Website or any of its associated services at any time without notice in its sole discretion.

Interactions Between Users of the Website

You understand and agree that Altus Brands provides the Website as a service and takes no responsibility and cannot be held liable or responsible for any communication or conduct entered into by or between users of the Website whether through Accounts or otherwise. Altus Brands makes no representations or warranties with respect to any user's communications received by you through the Website.

Specifically Prohibited Use of the Website

You agree that you will not: (1) send unsolicited commercial messages through the Website or to users of the Website; (2) impose a disproportionate load on the Website or its server infrastructure or otherwise attempt to interfere with the operation of the Website; (3) circumvent any technological or security protection mechanisms used by Altus Brands; (4) use a robot, spider, scraper, or other automated technology to access the App; (5) attempt to gain access to the private data or personal information of a user of the Website or a third party through the Website; (6) post or otherwise transmit content intended to collect personal or personally identifiable information from users of the Website or third parties by using the Website in any way; (7) harass any user of the Website; (8) harass any third party through your use of the Website; (9) post or transmit content that threatens or encourages bodily harm or the destruction of property; (10) post or transmit content that infringes upon the intellectual property rights of other users of the Website or third parties; (11) post or transmit content that constitutes fraud, an unwanted commercial solicitation, a phishing scam, a pyramid scheme, a chain letter, or

any similar nuisance; or (12) post or transmit any content of a graphic sexual nature or content in violation of 18 U.S.C. § 2257.

Payment

All payments for services and any applicable taxes, information, or otherwise, offered through the Website are non-refundable. You hereby authorize Altus Brands' payment processing agent to charge your credit card (or other approved payment facility). You further agree to pay all required fees and charges on time, **and Altus Brands may terminate or disable your access to the Website or suspend its services if you fail to pay any amount owing to Altus Brands when due.** You agree that you will pay all costs of collection, including legal fees, incurred by Altus Brands if it is forced to expend resources collecting any monies owed to it by you.

In the event you dispute the amount or validity of any payments made under these TOU, you must notify Altus Brands within ten (10) days of any such dispute. You understand and agree that by failing to notify Altus Brands of any dispute within ten (10) days you will expressly waive any claims related to the disputed payment.

Third Party Links

You acknowledge and agree that the Website may contain links to third-party websites that are not owned or controlled by Altus Brands. Altus Brands will not be held liable or responsible for the content of third-party websites, and you are advised to review the terms of use agreements and privacy policies of those websites.

Termination

This Agreement will remain in full force and effect until your Account is closed and Altus Brands has delivered all services contracted for. You may terminate your Account by notifying Altus Brands at customerservice@proears.com in a signed writing stating your intent to terminate the Agreement created by these TOU and your use of the Website. Altus Brands may terminate this Agreement without liability at any time, without notice, and for any reason, including but not limited to a violation of a term or condition of these TOU as determined by Altus Brands in its sole discretion. If Altus

Brands terminates this Agreement, it will provide you with any goods acquired on your behalf and any funds from your Account less any fees or amounts owed to Altus Brands within a reasonable time after termination as determined by Altus Brands in its sole discretion.

Altus Brands Disclaimer of Warranties

ALTUS BRANDS PROVIDES THE WEBSITE ON AN “AS-IS” BASIS AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE, ACCURACY, OR NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES. IF YOU ARE LOCATED IN SUCH A JURISDICTION, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY TO UNDERSTAND YOUR RIGHTS UNDER THE LAW.

Limitation of Liability

ALTUS BRANDS WILL NOT BE HELD LIABLE TO YOU OR ANY OTHER PERSON FOR ANY CLAIMS, DAMAGES, JUDGMENTS, LIABILITIES, COSTS, CHARGES, OR FEES, INCLUDING ATTORNEYS’ FEES, WHETHER IN TORT, CONTRACT, PERSONAL INJURY, OR STRICT LIABILITY, INCLUDING, BUT NOT LIMITED TO, INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES, EXEMPLARY DAMAGES, INCIDENTAL DAMAGES, STATUTORY DAMAGES, SPECIAL DAMAGES, OR PUNITIVE DAMAGES, EVEN IF ALTUS BRANDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ALTUS BRANDS WILL NOT BE HELD LIABLE OR RESPONSIBLE FOR ANY CONTENT POSTED ON THE WEBSITE, INCLUDING, BUT NOT LIMITED TO, THE CONTENT OF ACCOUNTS OR ANY USER GENERATED CONTENT. ALTUS BRANDS IS A SERVICE PROVIDER AND DOES NOT ASSUME RESPONSIBILITY FOR ANY ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DESTRUCTION OF THE WEBSITE OR ANY PORTION THEREOF, UNAUTHORIZED ACCESS TO AN ACCOUNT, OR ALTERATION THEREOF. ALTUS BRANDS

RESERVES THE RIGHT TO DISCONTINUE THE WEBSITE AT ANY TIME AND WITHOUT LIABILITY.

Assignment

You acknowledge and agree that you are prohibited from assigning your rights and obligations under this Agreement. Altus Brands may assign its rights and obligations under this Agreement at any time, including but not limited to in a sale of the Website.

Choice of Law

This Agreement shall be governed in all respects by the laws of the State of Michigan without respect to choice of law provisions. You agree that any claim or dispute you may have against Altus Brands, its agents, or any successor in interest must be resolved by a court located in Grand Traverse County in the State of Michigan. You agree to submit to the personal jurisdiction of the courts located within Grand Traverse County, Michigan for the purpose of litigating or otherwise resolving all such claims or disputes.

Severability

If any provision of this Agreement is found to be invalid or unenforceable for any reason whatsoever, the remaining provisions will remain valid and unimpaired and will continue in full force and effect.

Integration

This Agreement, created by your use of the Website and these TOU, and its incorporated Privacy Policy constitute the entire agreement between the parties with respect to the use of the Website and the associated services provided by Altus Brands. There are no further understandings, agreements, or representations with respect to the subject matter of this Agreement. You acknowledge and agree that any additional provisions that may appear in any communication from you will not bind Altus Brands.

Waiver

You understand and agree that no term or provision of this Agreement will be deemed to have been waived and no breach will be deemed to have been consented to unless said waiver or consent is in writing and signed by the party to be charged.

Limitation on Actions

ALTUS BRANDS AND YOU BOTH AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE WEBSITE OR ALTUS BRANDS' RELATED SERVICES MUST COMMENCE WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES. FAILURE TO ASSERT SAID CAUSE OF ACTION WITHIN ONE YEAR WILL PERMANENTLY BAR ANY AND ALL RELIEF.

Reservation of Rights

ALTUS BRANDS

888.403.0183
support@max-arms.com
@maxarmsllc

We are available from 9am to 4:30pm EST
Monday to Friday, except federal holidays.