

Terms & Conditions

1. Acceptance of Terms

1. Etrade Universe, LLC DBA Lucky38.com (“EU”, “we” or “our”) provides its Services (as defined below or in an ancillary agreement) to you (“you” or “your”) which are exclusively governed by these Terms & Conditions (“Agreement”). By accepting this Agreement, by accessing or using the Services, you acknowledge that you have read, understood, have the authority to, and agree to be bound by this Agreement. The terms of your Order shall not modify this Agreement. If you are an individual, you certify that you are 18 years of age or older. If you are entering into this Agreement on behalf of your customer, business or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this Agreement, in which case the terms “you” or “your” shall also refer to such entity and its affiliates. If you do not have such authority, or if you do not agree to be bound by this Agreement, you must not accept this Agreement and may not use the Services.
2. We may change or revise this Agreement at our discretion. If any change or revision to this Agreement is not acceptable to you, your only remedy is to stop using the Services and send a cancellation email to support@lucky38.com. Otherwise, you will be bound by the changed or revised terms. EU may change or revise this Agreement from time to time by providing ten (10) days prior notice by emailing the email address associated with your account (“Notice”). Your use of the Services ten (10) days after this Notice shall constitute full acceptance of the revised or changed terms.

2. Description of Service.

The “Services” include, without limitation, the receipt, counting, storage, packaging, and shipment of physical goods sold or shipped by you (the “Goods”) pursuant to the order (“Order”),

3. Access to and Use of the Services – Your Obligations

1. You have no right to access our physical facilities or property. Under no circumstances, and at no time, during the Term of this Agreement or after, are you permitted to enter EU’s facilities, fulfillment centers, or premises without prior express written notice by us. As your Goods may be commingled with the Goods of other vendors in EU’s facilities, under no circumstances, during the Term or after, may you access the Goods while

the Goods are stored in EU's facilities, without prior express written consent of EU. If you are granted access, you will be monitored during the access period and your access can be terminated at our sole discretion.

2. EU reserves the right to use your name and/or company name as a reference for marketing or promotional purposes on EU's website and in other communication with existing or potential EU customers.
3. EU is not the importer of record for Goods stored at EU. EU shall not be held liable for complying with your instructions through the EU Services. You understand that EU does not inspect your Goods nor does EU take responsibility for the business decisions that you make and implement through the Services. For example, EU cannot control or ensure that a buyer or seller with whom you do business will remit payment for Goods in accordance with your agreement with them. For purposes of clarity, EU is not the Merchant of Record for any of your Goods. EU is not responsible for items damaged during the pick and pack process or for breakage of items during transit that have been picked and packed by EU.

4. Service Fees You Will Owe

1. "Service Fees" are the fees for any Services and any third-party fees (including, but not limited to carrier fees, shipping fees, rates of duty, international brokerage charges, freight charges, insurance premiums, taxes, or other charges incurred during your use of the Service).
2. You shall pay the following Service Fees:
 - Receipt of the Goods:
 1. A \$25.00 initial receiving fee to inventory and store the Goods, but if receipt of the Goods takes more than two hours, then you shall pay \$35.00 per additional hour for the remainder of the time required to inventory and store the Goods;
 2. **Receipt of the Goods Fee will not be charged if you have 25 or more orders per day on average counted for each month.**
 3. At specific cases, Receipt of the Goods Fee will be omitted for the first three months for a setup fee of \$500. This case will be marked in your Service Order Form ("SOF").
 - Storage Fee: We will not charge for up to 1000 cubic feet. If you require more storage space, we will provide separate fee schedule.
 - Fulfillment charges shall be calculated based on the number of items in the final packaged shipment: \$3 for the first item and \$2.5 for every additional item plus 50 cents for standard packaging.

Carrier (e.g., USPS, UPS) label will be paid directly to the carrier by you.

- Charges, costs, taxes and expenses identified in Section 5(g) and (h); and
 - Any charges or fees incurred by us associated with your payment for the Services by credit card.
3. EU reserves the right to adjust its pricing in response to currency fluctuations, including but not limited to, currency conversation rate changes, conversion fee changes, and/or discount rate changes, with 30 days advance notice to your email
 4. You acknowledge that you are responsible for, and agrees to reimburse EU for, all sales taxes, transportation taxes, Service Fees, reversals, charge-backs, claims, fees, fines, penalties and other liability incurred by EU (including costs and related expenses) in connection with the Services.
 5. You acknowledge and agree that all Service Fees, charges, and any other rates or amounts charged by EU to you hereunder are exclusive of applicable value added, sales/use or inventory, CDT (as defined in this Agreement) and service taxes ("Transaction Taxes") which may be levied in connection with the supply by EU of the Services to you. Where applicable, you shall pay all Transaction Taxes arising in respect of the Service Fees or other amounts charged to EU by you.
 6. All dollar amounts stated in this Agreement and the website will be in US dollars unless otherwise specified.
 7. Failure to promptly pay Service Fees is a material breach of this Agreement and EU may immediately suspend Services if prompt payment is not made by You. All Service Fees shall be payable as set forth in this Agreement. Time is of the essence for your payment obligations to us.

5. Payment Method and Liens

1. Unless otherwise specified by EU, we will collect payment from you via credit card or ACH for Service Fees due on a daily, weekly or monthly basis depending on the account set-up; if necessary, payment may instead be collected at a later point. EU cannot control any fees that may be charged to you by your bank related to the collection or disbursement of such payment, and EU disclaims all liability in this regard.
2. When you use the Services, all charges for the Services and any additional fees payable to EU will be immediately charged to the credit card associated with your account. You agree to pay EU the amount that is specified in accordance with this Agreement. If you dispute any charges

you must let EU know within thirty (30) days after the date that EU invoices you.

3. You agree and acknowledge that EU shall maintain a warehouseman's lien and security interest under the UCC for all Goods in EU's possession or control, regardless of whether a specific receipt is issued by EU, to cover all charges, expenses, costs and Service Fees set forth in this Agreement. In the event EU is required to exercise its lien or security interest, you shall be responsible for all necessary and reasonable costs incurred by EU to enforce the lien or security interest including, but not limited to, reasonable attorney fees. You will execute all agreements and documents so that EU may obtain, perfect and maintain its lien rights and security interest in the Goods. You will execute all documentation to permit us to perfect our liens.

6. Inbound Shipments – Your Obligations

1. You represent and warrant to EU that (i) you are the legal owner and/or has lawful possession or control of the Goods and has the sole legal right to store and thereafter direct the release and/or delivery of the Goods, (ii) there are no potential health, safety or environmental hazards associated with the shipment, warehousing or fulfillment of the Goods tendered to EU under this Agreement, (iii) the Goods do not contain any material that violates any federal, state and local law (collectively, "Laws"); and (iv) the Goods are not and do not contain any hazardous or dangerous materials under applicable Laws. If the Goods do not meet the foregoing requirements, You may incur additional fees from EU, or EU may reject the Goods without liability. This may result in a delay and You agree that EU shall not be liable for any loss or damage as a result of such delay or non-shipment. You will strictly meet or exceed any compliance obligations under these provisions. EU may, in its sole discretion, reject Goods if it determines that they are dangerous or hazardous.
2. You agree to provide EU, in a digital format to EU, with bills of lading for the inventory of all inbound shipments of Goods prior to the shipment arriving to EU's facility. All inbound shipments shall be properly labeled and clearly identify the units and quantities of carton, case, or master case. You represent and warrant that the information set forth on any shipment or delivery document, including, without limitation, information as to count, weight, description and condition of the Goods, is accurate and complete and may be relied upon by EU. If any inbound inventory received doesn't follow EU's WRO instructions, it will be subject to delays, and you may be charged additional \$25/day for every day that it remains unsolved. If the items in such shipment cannot be identified by EU, they may be discarded and EU assumes no responsibility for any associated

losses. The warehouse receiving order shall be attached to the side of the box and the product name shall be clearly and conspicuously written on the outside of box.

7. Delays or Non-Delivery

EU shall not be liable or responsible for any delays in domestic or international shipments of Goods or Orders, and is, without limitation, not responsible or liable for non-delivery or late delivery of Goods caused by third-parties, including carriers.

8. Fraudulent Orders

IT IS YOUR SOLE RESPONSIBILITY TO PROTECT YOURSELF FROM FRAUD. IT IS YOUR SOLE RESPONSIBILITY TO PAY ALL FEES RELATED TO ORDERS WHETHER THE ORDER IS FRAUDULENT OR THE PRODUCT IS DELIVERED OR NOT.

9. Returns

All non-Carrier related returns (international and domestic) that arrives to our fulfillment center will be charged \$3 processing fee. You shall be solely responsible for any fees assessed by any Carrier because of any shipments of Goods that are returned to EU by the Carrier for any reason whatsoever.

10. International Returns

International shipments that are not delivered are often returned by the Carrier and assessed return shipping, brokerage, and returns processing carrier fees. These fees assessed by the Carriers are billed through to merchants, often without notice. EU strives to work with you to circumvent International returns or abandoned inventory at your request; however, this is done on a reasonable efforts basis and EU reserves the right to charge you fees to the value of the original shipping cost, including all costs and expenses of returns. If a tariff is not available, EU will either put orders on hold until tariff information is available or override the order with no liability to EU.

11. International CDT

Customs, Duties and Taxes ("CDT") on any international shipment charged by the Carrier are your sole responsibility and will be charged back to you regardless of whether they were or were not in the initial shipping estimate, or whether the order was or was not delivered.

12. Required Removals

EU may, at its sole discretion, require you to remove unsuitable or unsellable Goods from its distribution centers. EU will notify You if it has any inventory that requires removal. Pick fees may also be assessed for labor incurred to remove inventory. If you do not remove the inventory within 30 days of receiving a required removal notice, EU may dispose of the inventory listed in the required removal notice. **You shall not be entitled to any damages or reimbursement for the value of Goods disposed of by EU if you do promptly remove the Goods upon EU's written request.**

13. Abandoned Account

If your Service Fees (or any other amounts owed EU) remain unpaid for a period greater than 30 days, then EU reserves the right, at its sole discretion, to terminate this Agreement, suspend its performance, and/or reclassify your Account as an "Abandoned Account." Additionally, any Account that remains unpaid for greater than 60 days will automatically be deemed an Abandoned Account. To the fullest extent permitted by law, upon an Account becoming an Abandoned Account, all rights to ownership of the Account Balance and Goods would then immediately be forfeited by you. Goods will become immediately and irrevocably unavailable to you, and liquidation proceedings would begin. You agree such Goods would be free and clear of liability, and that you would assume any liability, therefore. You would have no rights to the liquidation proceeds. You would also remain liable for any pending Service Fees above and beyond the liquidation proceeds.

14. Force Majeure

EU shall not be liable for any failure or delay in performance hereunder which may be due, in whole or in part, to fire, explosion, earthquake, storm, flood, drought or other adverse weather condition, accident, casualty, breakdown of machinery or facilities, strike, lockout, combination of workmen or other labor difficulties (from whatever cause arising, and whether or not the demands of the employees are reasonable or within EU's power to grant), war, civil disturbance, acts of terrorism, insurrection, riot, act of God or the public enemy, law, act, order, proclamation, decree, regulation, ordinance, instruction or request of Government or other public authorities, judgment or decree of a court of competent jurisdiction, delay or failure of carriers, shippers or contractors, labor shortage or inability to obtain transportation, equipment, operating materials, plant equipment or materials required for our performance, curtailment or suspension of operations to remedy or avoid an actual or alleged violation or violations of Federal, State or local law, as may be in effect from time to time during the Agreement period, or any contingency or delay or failure or cause of any nature

beyond the reasonable control of EU, whether or not of the kind hereinabove specified and whether or not any such contingency is presently occurring or occurs in the future. EU shall give notice of any force majeure event as soon as reasonably practicable by giving notice to your administrative email account.

15. Termination

You have the right to terminate this Agreement at any time, provided you do not have a balance due and owing (other than any amounts subject to a good faith dispute) by sending a termination request to support@lucky38.com.com. Subject to earlier termination as provided below, EU may terminate, at its discretion and without cause, this Agreement (or our shipments of Goods or Services hereunder) at any time by providing thirty (30) days prior notice to the administrative email address associated with your Account. In addition to any other remedies we may have, EU may also terminate this Agreement upon thirty (30) days' notice (or ten (10) days in the case of nonpayment) if you breach any of the terms or conditions of this Agreement. EU reserves the right to immediately modify, suspend or discontinue, temporarily or permanently, the Services (or any part thereof) if you are in breach of this Agreement. However, all rights to payment and the terms of Sections 4, 5, 6, 11, 12, 13, 14, 15, 16, 17, 18, 20 and 21 shall survive termination or expiration of this Agreement.

16. DISCLAIMER OF WARRANTIES

1. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by EU or by third-party providers, or because of other causes beyond our reasonable control. EU shall use reasonable efforts to provide advance notice in writing or by email of any Services disruption. EU shall not be liable for any such unavailability or disruption of Services.
2. THE SERVICES, INCLUDING THE EU PLATFORM AND CONTENT, AND ALL SERVER AND NETWORK COMPONENTS, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, AND EU EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS OR ANY ANCILLARY AGREEMENT, YOU ACKNOWLEDGE THAT EU DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, NOR DOES EU MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU FROM US

SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

3. Some states do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply to you. IN THESE STATES, COMPANY'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW UNDER THE TERMS OF THIS AGREEMENT.

17. LIMITATION OF LIABILITY

1. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, BY STATUTE OR OTHERWISE) SHALL EU BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST SALES OR BUSINESS, OR LOST DATA. FOR AVOIDANCE OF DOUBT, EU IS NOT LIABLE FOR ANY DIRECT DAMAGES, COSTS, LOSSES OR LIABILITIES IN EXCESS OF THE GOODS DAMAGE CAP OR THE AGGREGATE LIABILITY CAP SET FORTH BELOW, WHICHEVER IS THE LESSER AMOUNT.
2. Insurance, Damage and Loss of Goods:
 - I. INSURANCE IS AVAILABLE AT YOUR SOLE COST AND EXPENSE. NOTWITHSTANDING YOUR PURCHASE OF INSURANCE COVERAGE, IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION OF GOODS ("GOODS LOSS") FOR WHICH EU IS OR MAYBE LEGALLY LIABLE, YOU AGREE THAT EU'S LIABILITY SHALL NOT EXCEED THE GOODS DAMAGE CAP SET FORTH BELOW. FOR INSURANCE TO APPLY TO YOUR CLAIM, YOU MUST PURCHASE THE INSURANCE PRIOR TO THE GOODS LOSS. EU DOES NOT REPRESENT, WARRANT OR GUARANTY THAT INSURANCE WILL COVER ALL OR A PORTION OF YOUR GOODS LOSS. EU SHALL NOT BE RESPONSIBLE OR LIABLE IF INSURANCE COVERAGE IS NOT AFFORDED FOR THE GOODS LOSS OR IF COVERAGE IS DENIED.
 - II. EU'S MAXIMUM LIABILITY FOR GOODS LOSS (INCLUDING LOSS FROM ANY GOODS COUNT INACCURACIES) WILL BE CAPPED AT 5% OF THE TOTAL PRODUCT VALUE OR ONE MONTH OF THE AVERAGE BILLABLE STORAGE, WHICHEVER IS LOWER ("GOODS DAMAGES CAP"). FOR GREATER COVERAGE, YOU MUST ADD INSURANCE IN YOUR ACCOUNT SETTINGS ON THE GOODS THAT YOU WISH COVERED BY INSURANCE, IN WHICH CASE AN INCREASED

CHARGE WILL BE MADE BASED UPON SUCH INCREASED COVERAGE. NO SUCH COVERAGE SHALL BE VALID UNLESS PAID FOR BEFORE LOSS, DAMAGE OR DESTRUCTION TO ALL OR ANY PORTION OF THE GOODS HAS OCCURRED.

2. Exclusive Remedy. THE GOODS DAMAGE CAP SET FORTH IN THIS SECTION 17 SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AGAINST EU FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO LOSS, DAMAGE AND/OR DESTRUCTION OF GOODS, AND SHALL APPLY TO ALL CLAIMS, INCLUDING GOODS SHORTAGE OR ANY OTHER CLAIMS RELATING TO THE SERVICES (INCLUDING CONVERSION OR THEFT CLAIMS).
3. IN ANY EVENT, EU'S MAXIMUM AGGREGATE LIABILITY TO YOU, NOTWITHSTANDING THE NATURE OR GROUNDS FOR ALL CLAIMS, INCLUDING THE BREACH OF THIS AGREEMENT BY EU, SHALL NOT EXCEED \$1,500 FOR ANY CLAIMS NOT COVERED BY THE GOODS DAMAGE CAP. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS UNDER THIS AGREEMENT AND THE PARTIES RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT.

18. Indemnification

You shall defend, indemnify, and hold harmless EU from and against any claims, actions or demands, liabilities (including court costs and attorney's fees), tax obligations, fines and penalties, including without limitation reasonable legal and accounting fees and expenses, arising or resulting from your breach of this Agreement, any of Your Content, your negligence, fault, omissions or willful misconduct, your fraud or the misrepresentation in connection with the Services, or your access, contribution to, use or misuse of the Services ("Claims"). EU shall provide notice to you of any claim. EU reserves the right to assume the exclusive defense and control of any third-party Claims which are subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting EU's defense of such Claim. This indemnity shall include, without limitations, all Claims in tort, contract, by statute or otherwise, including Claims for personal injury (including death) and actual or tangible property damage.

19. U.S. Government Matters – Your Compliance with Trade Laws

You may not remove or export from the United States or allow the export or re-export of Goods subject to this Agreement or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of

Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the software and documentation installed by EU on your Equipment (if applicable) are “commercial items” and according to DFAR section 252.227 7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

20. Assignment

You may not assign this Agreement without the prior written consent of EU, but EU may assign or transfer this Agreement, in whole or in part, without restriction.

21. Miscellaneous

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect, and enforceable. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, representation and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Except as specifically set forth in this Agreement (or a Volume Agreement or Service Level Agreement), the terms of this Agreement shall take precedence over any contrary or conflicting terms in any other agreement. The failure of EU to exercise or enforce any right or provision of this Agreement shall not be a waiver of that right. You acknowledge that this Agreement is a contract between you and EU, even though it is electronic and is not physically signed by you and EU, and it governs your use of the Services. No agency, partnership, joint venture, or employment is created because of this Agreement and you do not have any authority of any kind to bind EU in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement or otherwise, the substantially prevailing party will be entitled to recover its costs, expenses, and attorneys’ fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

22. Governing Law – Prevailing Party in Litigation

This Agreement and all Claims or disputes between the parties shall be governed by the laws of the State of New Jersey without regard to its conflicts of law provisions. The UN Convention on the International Sale of Goods shall not apply. The parties submit to the exclusive personal jurisdiction and venue of these courts. The substantially prevailing party in any dispute or litigation between us, including those related to this Agreement or the Services, shall be awarded their reasonable court costs, expenses, and reasonable attorneys' fees.