

UPTICK TERMS OF SERVICE

UPTICK

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INTRODUCTION

UpTick Trading GmbH (“UpTick,” “we,” or “us”) operates the UpTick mobile application and related website (“UpTick”). By using UpTick in any way, you accept these Terms of Service (“Agreement”). If you do not wish to be bound by this Agreement, do not use UpTick.

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Who May Use UpTick

You must be at least 13 years old to use UpTick. Use is void where prohibited. By using UpTick, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement. If you use UpTick, you represent and warrant that you have never been convicted of a felony and that you are not required to register as a sex offender with any government entity.

License to Use UpTick

UpTick Trading GmbH grants you a limited, non-exclusive license to access and use UpTick for your own personal, non-commercial purposes. This license is personal to you and may not be assigned or sublicensed to anyone else. Except as expressly permitted by UpTick Trading GmbH in writing, you will not reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer, or disassemble UpTick. Nor will you take any measures to interfere with or damage UpTick. All rights not expressly granted by UpTick Trading GmbH are reserved.

Privacy

Your privacy rights are set forth in our Privacy Policy (Privacy Policy), which forms a part of this Agreement. Please review the Privacy Policy to learn about:

- What information we may collect about you
- What we use that information for

- What third-party information, if any, you are agreeing to share by using UpTick; and
- With whom we share that information

Registration

To use UpTick, you must register an account using your first name, surname and email. Further, you have to choose a unique username. In order to use our trading tournament feature, we also ask you to verify your phone number.

Termination and Cancellation

We may terminate or suspend service or your account or any other provision of services to you at our discretion without explanation and notice, though we will strive to provide a timely explanation in most cases. If you wish to terminate this Agreement or your UpTick account, you are solely responsible for properly cancelling your account. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

Disclaimers; Limitation of Liability

YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH OTHER UpTick USERS. YOU UNDERSTAND THAT UpTick TRADING GMBH CURRENTLY DOES NOT CONDUCT CRIMINAL BACKGROUND CHECKS ON ITS USERS. UpTick TRADING GMBH ALSO DOES NOT INQUIRE INTO THE BACKGROUNDS OF ALL OF ITS USERS OR ATTEMPT TO VERIFY THE STATEMENTS OF ITS USERS. UpTick TRADING GMBH MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USER. UpTick TRADING GMBH RESERVES THE RIGHT TO CONDUCT ANY CRIMINAL BACKGROUND CHECK OR OTHER SCREENINGS (SUCH AS SEX OFFENDER REGISTER SEARCHES), AT ANY TIME AND USING AVAILABLE PUBLIC RECORDS.

IN NO EVENT SHALL UpTick TRADING GMBH BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, EXEMPLARY, COMPENSATORY, CONSEQUENTIAL, AND/OR INCIDENTAL, ARISING OUT OF OR RELATING TO THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION, BODILY INJURY, DEATH, EMOTIONAL DISTRESS, AND/OR ANY OTHER DAMAGES RESULTING FROM COMMUNICATIONS OR MEETINGS WITH OTHER USERS OF THE UpTick SERVICE OR PERSONS YOU MEET THROUGH UpTick. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL INTERACTIONS WITH OTHER USERS OF THE SERVICE, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON.

UpTick Trading GmbH reserves the right to modify UpTick. You are responsible for providing your own access to UpTick. UpTick Trading GmbH has no obligation to screen or monitor any content and does not guarantee that any content available on UpTick complies with this Agreement or is suitable for all users.

UpTick Trading GmbH provides UpTick on an “as is” and “as available” basis. You therefore use UpTick at your own risk. UpTick Trading GmbH expressly disclaims any and all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose, non-infringement, and any other warranty that might arise under any law. Without limiting the foregoing, UpTick Trading GmbH makes no representations or warranties:

- That UpTick will be permitted in your jurisdiction;
- That UpTick will be uninterrupted or error-free;

- Concerning any content submitted by any user;
- Concerning any third party's use of content that you submit;
- That any content you submit will be made available on UpTick or will be stored by UpTick Trading GmbH;
- That UpTick, Co. will continue to support any particular feature of UpTick;
- Concerning sites and resources outside of UpTick, even if linked to from UpTick.
- To the extent any disclaimer or limitation of liability does not apply, all applicable express, implied, and statutory warranties will be limited in duration to a period of thirty (30) days after the date on which you first used UpTick, and no warranties shall apply after such period.

Code of Conduct; Prohibited Activities

In using UpTick, you must behave in a civil and respectful manner at all times. Further, you will not:

- Harass or stalk any other person;
- Harm or exploit minors;
- Act in a deceptive manner by, among other things, impersonating any person;
- Collect information about others;
- You will not express or imply that any statements you make are endorsed by UpTick Trading GmbH without our specific prior written consent.
- You will not distribute spam, and will not use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Service or its contents.
- You will not post, distribute or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior consent of the owner of such proprietary rights.
- You will not interfere with or disrupt the services or the site or the servers or networks connected to the services or the site.
- You will not post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- UpTick Trading GmbH has the right, but not the obligation, to monitor all conduct on and content submitted to UpTick.

Representations and Warranties

WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE MERCHANTABILITY OF OUR SERVICE OR FITNESS FOR ANY PARTICULAR PURPOSE. YOU AGREE THAT YOU ARE RELEASING US FROM ANY LIABILITY THAT WE MAY OTHERWISE HAVE TO YOU IN RELATION TO OR ARISING FROM THIS AGREEMENT OR OUR SERVICES, FOR REASONS INCLUDING, BUT NOT LIMITED TO, FAILURE OF OUR SERVICE, NEGLIGENCE, OR ANY OTHER TORT. TO THE EXTENT THAT APPLICABLE LAW RESTRICTS THIS RELEASE OF LIABILITY, YOU AGREE THAT WE ARE ONLY LIABLE TO YOU FOR THE MINIMUM AMOUNT OF DAMAGES THAT THE LAW RESTRICTS OUR LIABILITY TO, IF SUCH A MINIMUM EXISTS.

YOU AGREE THAT WE ARE NOT RESPONSIBLE IN ANY WAY FOR DAMAGES CAUSED BY THIRD PARTIES WHO MAY USE OUR SERVICES, INCLUDING BUT NOT LIMITED TO PEOPLE WHO COMMIT INTELLECTUAL PROPERTY INFRINGEMENT, DEFAMATION, TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS, OR ANY OTHER ACTIONABLE CONDUCT TOWARDS YOU.

WE ARE NOT LIABLE FOR ANY FAILURE OF THE GOODS OR SERVICES OF OUR COMPANY OR A THIRD PARTY, INCLUDING ANY FAILURES OR DISRUPTIONS, UNTIMELY DELIVERY, SCHEDULED OR UNSCHEDULED, INTENTIONAL OR UNINTENTIONAL, ON OUR WEBSITE WHICH PREVENT ACCESS TO OUR WEBSITE TEMPORARILY OR PERMANENTLY.

THE PROVISION OF OUR SERVICE TO YOU IS CONTINGENT ON YOUR AGREEMENT WITH THIS AND ALL OTHER SECTIONS OF THIS AGREEMENT. NOTHING IN THE PROVISIONS OF THIS "REPRESENTATIONS & WARRANTIES" SECTION SHALL BE CONSTRUED TO LIMIT THE GENERALITY OF THE FIRST PARAGRAPH OF THIS SECTION.

For Jurisdictions that do not allow us to limit our liability: Notwithstanding any provision of these Terms, if your jurisdiction has provisions specific to waiver or liability that conflict with the above then our liability is limited to the smallest extent possible by law. Specifically, in those jurisdictions not allowed, we do not disclaim liability for: (a) death or personal injury caused by its negligence or that of any of its officers, employees or agents; or (b) fraudulent misrepresentation; or (c) any liability which it is not lawful to exclude either now or in the future.

IF YOU ARE A RESIDENT OF A JURISDICTION THAT REQUIRES A SPECIFIC STATEMENT REGARDING RELEASE THEN THE FOLLOWING APPLIES. FOR EXAMPLE, CALIFORNIA RESIDENTS MUST, AS A CONDITION OF THIS AGREEMENT, WAIVE THE APPLICABILITY OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES, "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." YOU HEREBY WAIVE THIS SECTION OF THE CALIFORNIA CIVIL CODE. YOU HEREBY WAIVE ANY SIMILAR PROVISION IN LAW, REGULATION, OR CODE THAT HAS THE SAME INTENT OR EFFECT AS THE AFOREMENTIONED RELEASE.

Indemnification

You will indemnify, defend, and hold harmless UpTick Trading GmbH and its affiliates, directors, officers, employees, and agents, from and against all third party actions that: (i) arise from your activities on UpTick; (ii) assert a violation by you of any term of this Agreement; or (iii) assert that any content you submitted to UpTick violates any law or infringes any third party right, including any intellectual property or privacy right.

Choice of Law

This Agreement shall be governed by the laws in force in Germany. The offer and acceptance of this contract is deemed to have occurred in Germany.

Forum of Dispute

You agree that any dispute arising from or relating to this Agreement will be heard solely by a court of competent jurisdiction in or nearest to Berlin, Germany. If you bring a dispute in a manner other than in accordance with this section, you agree that we may move to have it dismissed, and that you will be responsible for our reasonable attorneys' fees, court costs, and disbursements in doing so.

You agree that the unsuccessful party in any dispute arising from or relating to this Agreement will be responsible for the reimbursement of the successful party's reasonable attorneys' fees, court costs, and disbursements.

Force Majeure

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, labor shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control.

Severability

In the event that a provision of this Agreement is found to be unlawful, conflicting with another provision of the Agreement, or otherwise unenforceable, the Agreement will remain in force as though it had been entered into without that unenforceable provision being included in it.

If two or more provisions of this Agreement are deemed to conflict with each other's operation, UpTick Trading GmbH shall have the sole right to elect which provision remains in force.

Non-Waiver

We reserve all rights permitted to us under this Agreement as well as under the provisions of any applicable law. Our non-enforcement of any particular provision or provisions of this Agreement or the any applicable law should not be construed as our waiver of the right to enforce that same provision under the same or different circumstances at any time in the future.

Assignment

You may not assign your rights and/or obligations under this Agreement to any other party without our prior written consent. We may assign our rights and/or obligations under this Agreement to any other party at our discretion.

Amendments

We may amend this Agreement from time to time. When we amend this Agreement, we will update this page and indicate the date that it was last modified. You may refuse to agree to the amendments, but if you do, you must immediately cease using our website and our Service. You must visit this page each time you come to our website and read and agree to it if the date it was last modified is more recent than the last time you agreed to the Agreement.

California Users and Residents

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about BeautySets must be addressed to our agent for notice and sent via certified mail to: Agent of UpTick Trading GmbH, Pappelallee 78/79, Berlin, Germany, 10437.

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