

## Terms of Use and Service Agreement

Last updated: 2023-09-13

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**YOU MUST READ THIS TERMS OF USE AND SERVICE AGREEMENT BEFORE USING GOODSMITH.**

The terms “we,” “us,” “our”, or “Goodsmith” refer to Goodsmith Home Care and Repair, Inc, a Delaware Corporation. All services that we provide or that are offered through the “Goodsmith App” are referred to herein as “Services.” The terms “Member”, “you” and “your” refer to you, the user, in your individual capacity. The term “Party” means you or us and the term “Parties” means you and us.

By using the Goodsmith App, you are agreeing to be legally bound in all respects by this Terms of Use and Service Agreement (“Agreement”).

This Agreement is subject to change at any time and in any manner at our sole and absolute discretion. Accordingly, you should review the Agreement from time to time. The terms and conditions of the Agreement existing at the time you order a particular service will govern our provision and delivery of that service to you.

**1. Nature of the Member Services and Our Relationship with You.** We offer home maintenance and repair services to residential properties. Upon timely payment of your Membership Fees for the subscription plan selected by you (and if applicable, any maintenance plan selected), we offer you, at the address provided, during our standard business hours (M-F, 8 a.m. to 5 p.m.), access to those Member Services listed online at [www.mygoodsmith.com](http://www.mygoodsmith.com). We may provide such Member Services using Goodsmith-employed technicians or independent contractor(s) selected in our sole discretion.

**2. Term.** This Agreement shall be on a month-to-month basis (the “Subscription Period”), unless terminated as set forth below.

**3. Fees.** Membership dues will be automatically charged every month on the anniversary day of signing up per the listed price online at [www.mygoodsmith.com](http://www.mygoodsmith.com) (the “Membership Fees”). Membership Fees are non-refundable. Payment for any Member Services is due upon receipt of invoice for Member Services rendered. We reserve the right to adjust Membership Fees or any other fees in our sole discretion. We reserve the right to bill for material costs on the purchase date, rather than on the service date.

**4. Payment Terms.** Invoices not paid or disputed within 10 days will be subject to automatic charge and may result in the immediate termination of this Agreement if our charge to your account is denied without refund of any fees already paid. Unpaid balances to Goodsmith or its affiliates without satisfactory payment arrangements, may result in external collection efforts. You will be responsible for reimbursing collection agency fees, which may be based on a percentage of the

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debt, and all costs and expenses, including reasonable collection efforts and attorney's fees incurred during the collection process. You agree that Goodsmith, its affiliates, and the designated external collection agency are authorized to contact you by phone or email using the contact information provided at the time of sign up. Furthermore, you approve the designated external collection agency to share personal contact and account related information with third-party vendors to communicate account related information via telephone, text, e-mail, and mail notification.

**5. Member Rules.** As a condition of your Membership, you agree to abide by the Goodsmith Member Rules and Regulations, which may be updated from time to time. Members shall:

- Be responsive to all communication and information requests from Goodsmith.
- Treat Goodsmith employees and contractors with respect (i.e., no foul language and/or aggressive behavior).
- Provide reasonable access to the area of your residence in need of service.
- Control and/or contain pets during service visits.
- Have an adult, with knowledge of the scope of work, in attendance for each service visit.
- Have at least one form of payment stored within the Goodsmith App at all times.
- Pay a \$50.00 penalty for cancellations within 24 hours prior to the service visit.
- Pay a \$100.00 penalty if an appointment is confirmed, we show up, and Member is not present.
- Pay 2x first hour rate for emergencies serviced by Goodsmith (and that third party emergency service fees subject to third-party providers own policies for after-hour charges).
- Agree that prepaid maintenance service dates/times that are proposed and never confirmed will be treated as cancelations (no refund or reschedule).
- Agree that a prepaid maintenance appointment that is confirmed and canceled with 24 hours is forfeited by Member.
- Agree not to solicit "off book" services from a Goodsmith technician.

**6. Our Warranty and Disclaimer.** Subject to the terms and conditions of this Agreement, we represent and warrant that we will perform the Member Services using personnel of commercially reasonable skill, experience, and qualifications, and shall perform work in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services. Our sole and exclusive liability and your sole and exclusive remedy for breach of the foregoing warranty shall be as follows: (a) we shall use reasonable commercial efforts to promptly cure any breach; provided that, if we cannot cure such breach within a reasonable time after your written notice of such breach, you may terminate the Agreement by serving written notice of termination within 30 days of when the original breach occurred; and (b) in the event the Agreement is terminated pursuant to this Section, Goodsmith shall, within 30 days after the date of termination, refund to you any Membership Fees paid by you as of the date of termination for

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the Member Services, less a deduction equal to the fees for Member Services up to and including the date of termination.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION, WE WILL PROVIDE YOU MEMBER SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GOODSMITH APP AND THE MEMBER SERVICES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. WITHOUT IN ANY WAY LIMITING THE SCOPE OF THE GENERAL WARRANTY DISCLAIMER ABOVE, WE MAKE NO WARRANTY OF ANY NATURE WHATSOEVER, THAT THE GOODSMITH APP OR MEMBER SERVICES WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS.

**7. Our Limit of Liability.** IN NO EVENT SHALL WE BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT WE HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO US BY YOUR PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**8. The Agreement Between You and Us to Arbitrate Disputes.** By entering into this Agreement, you are expressly agreeing that any dispute or conflict of any nature that arises between you and us will be resolved in binding arbitration. AS A RESULT OF ENTERING INTO THIS AGREEMENT, YOU ARE FOREVER WAIVING (I) YOUR RIGHT OR AUTHORITY TO BRING OR PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR ARBITRATION FILED AGAINST US, AND (II) YOUR RIGHT TO HAVE ANY CLAIM YOU HAVE AGAINST US DECIDED BY A JURY. If you have a claim against us, you may initiate arbitration against us by sending a written notice in accordance with this Agreement. Any arbitration under this Agreement will be administered by the American Arbitration Association under its Consumer Arbitration Rules by a single arbitrator.

**9. Termination of Our Relationship with You.** We may terminate this Agreement at any time, and without refund, if (a) you fail to pay an invoice for Member Services in a timely fashion, or (b) you fail to honor your obligations under this Agreement. Either Party may terminate this Agreement at any time provided your account is current (no outstanding invoices) and the terminating Party provides 30 days advance written notice to the other Party. Pursuant to Section 3 of this Agreement, all Membership Fees are non-refundable.

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**10. Notice.** A notice is effective only upon email receipt by the receiving Party via email to [members@mygoodsmith.com](mailto:members@mygoodsmith.com) or to the email address provided by you.

**11. Transfer of Membership.** Memberships may not be transferred to another location/residence unless you are relocating to a new location/residence within our service area and will remain the payor and primary user.

**12. Force Majeure.** We will not be in violation of this Agreement to the extent we are unable to provide Member Services due to any act of God, natural disaster, casualty, accident, shortage of labor or materials, app interruption or computer system failure, act of government, law, rule, or regulation, act of terrorism, or similar type of event or occurrence beyond our control.

**13. Governing Law.** With the sole exception of the arbitration provisions in this Agreement (which are governed by the Federal Arbitration Act), this Agreement must be construed in accordance with, and all disputes under this Agreement are subject to and will be decided under, Texas law without regard to conflict or choice of law principles.

**14. Integration.** This Agreement in the form it exists as of the time at which you purchase a particular Service will constitute the entire contract between us and you relating to that Service.

**15. No Waiver.** No delay on our behalf in exercising or any failure by us to exercise any right or remedy available to us under this Agreement will be construed as a waiver unless reduced to writing and signed by us.

**16. Severability.** If any provision of this Agreement is held invalid or unenforceable by any court or arbitrator of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not specifically held invalid or unenforceable.

**17. Successors and Assigns.** This Agreement is binding on your permitted successors and assigns, heirs, legal representatives, and personal representatives. This Agreement is binding on our successors and assigns.

**18. No Third-Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, there are no third-party beneficiaries of the Agreement.

**19. Rules for Interpreting this Agreement.** In construing this Agreement, the following rules apply: (a) The headings used in this Agreement are for ease of reference only and cannot be used to construe the Agreement. (b) The singular includes the plural, and the plural includes the singular. (c) Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural.