

TERMS OF USE AGREEMENT

Last Updated: April 2019

IMPORTANT! READ THIS ENTIRE AGREEMENT CAREFULLY.

THESE ARE THE GENERAL TERMS AND CONDITIONS GOVERNING YOUR USE OF THIS WEBSITE.

Welcome to the FS System website. This website, and the information, content and services it makes available (collectively referred to as the "Website"), is provided to You by GROWMARK, Inc. ("We", "Us", or "Our"). This Terms of Use Agreement (this "Agreement") sets forth the terms and conditions governing Your use of this Website. By accessing or using this Website You accept and agree to be legally bound by this Agreement and our [Privacy Policy](#) as they may be amended or supplemented from time to time.

1. **Modifications to this Agreement.** We may make changes to this Agreement from time to time in Our sole discretion, by posting a revised Agreement on this Website. Your continued use of the Website following the posting of a new version of the Agreement constitutes Your acceptance of any such changes. Accordingly, whenever You visit this Website You should check to see if a new version of this Agreement has been posted.
2. **Intended Audience.** This Website is directed to adults in the United States and Canada for business use, and is not intended for children under the age of 16.
3. **Privacy.** The personal information that we obtain through Your use of the Website, whether collected through online forms, a registration process, by email submissions via the Website or posts to the Website or otherwise, is subject to our Privacy Policy available at <https://www.fssystem.com/Privacy-Policy>. Please review the Privacy Policy before You use the Website. If You are unwilling to accept the terms and conditions of the Privacy Policy, You must not use the Website.
4. **Ownership and Use of Website Content.**
 - (a) **Content.** This Website is provided for the information and education of, and communication to, by and with, its affiliates ("Affiliates"), its subsidiaries ("Subsidiaries"), its member cooperatives ("Member Cooperatives"), and other retailers of Our products and services ("Retailers"), customers and the general public ("Users"). This Website contains a variety of: (i) copyrighted material, such as information, articles, opinions, other text, directories, guides, graphics, photographs, illustrations, images, video and audio clips, advertising and promotional materials, data, software, compilations, designs, graphical interface, and overall "look and feel," (ii) trademarks, logos, trade names, service marks, and trade identities, and the domain names and URLs associated therewith, whether registered or unregistered (collectively the "***Trademarks***"), and (iii) other forms of intellectual property (all of the foregoing collectively and individually are referred to as "***Content***").

- (b) **Ownership.** This Website is owned by Us. Some of the Content on the Website is provided by Us, Our Affiliates, Our Subsidiaries, Our Member Cooperatives, or Our Retailers, and other Content may be provided by Users or other third parties, such as User opinions and views provided via posts to blogs, chat rooms, or discussion forums. We or Our licensors own all right, title, and interest in and to the Content available via the Website, which is protected by United States, Canadian, and international copyright, trademark, patent, or other proprietary rights and laws.
- (c) **Copyright.** All copyrighted Content available on this Website is either Our property or used with permission of its owner. You should assume that all Content is copyrighted (regardless of whether or not a copyright notice appears on such materials) and that, except for the limited license granted in this Agreement, it may not be used without Our prior written consent or the written consent of the owner thereof.
- (d) **Trademarks.** All Trademarks displayed on this Website, whether registered or unregistered (and regardless of whether a trademark notice is present), are either Our property or their respective owners, and may not be copied, downloaded, uploaded, modified, reproduced or otherwise used or exploited without Our written permission or the written consent of the owner thereof.
- (e) **License.** We grant You a nonexclusive, nontransferable, revocable, limited license to view, copy, and print Content retrieved from the Website only for Your internal use, provided that You do not remove or obscure any copyright notice, trademark notice, or other proprietary rights notices displayed on or in conjunction with the Content. You may not use any Content available via the Website in any other manner or for any other purpose without the prior written permission of one of Our authorized representatives or the owner of such Content. All rights not expressly granted in this Agreement are expressly reserved to US. Your access to and use of this Website or use of any of the Content contained herein is also subject to this Agreement and all applicable state, provincial, national and international laws.

5. Website Content and Performance.

- (a) **Accuracy of Content.** While We strive to keep the Content that We post or make available on the Website accurate, complete, and up-to-date, We cannot and do not guarantee, represent or warrant that any of the Content contained in this Website is accurate, complete, timely or applicable to You or to any other third party, and We are not responsible for the accuracy, completeness, timeliness or applicability of any Content, whether provided by US, Our Affiliates, Our Subsidiaries, Our Member Cooperatives, Our Retailers, Users of the Website, or other third parties.
- (b) **Links to Other Websites.** The Website may provide links to other websites and resources (including but not limited to websites of Our Affiliates, Our Subsidiaries, Our Member Cooperatives, Our Retailers, and advertisers) that are not under Our control of or maintained by US. We are not responsible for the content of such sites or any technical or other problems associated with any such third-party website or

any link thereto, and We make no representations, warranties, or conditions with respect to the content, personal information collection practices, ownership, or legality of any such linked websites. The presence of any such links shall not imply that We endorse any of the materials at such linked sites. These links are provided solely as a convenience to You, and Your access and use of such websites is solely at Your own risk.

- (c) **No Uptime Guarantee.** We make no representation, warranty or condition regarding the availability or operability of the Website at any time.
- (d) **Linking to the Website.** If You link to this Website, You must adhere to these guidelines: (i) the link to this Website must not damage, dilute or tarnish the goodwill associated with any of Our names, Trademarks, or any other of Our intellectual property; (ii) the link to this Website must not create the false appearance that Your web site or organization is sponsored by, endorsed by, affiliated with, or associated with US; (iii) You may not "frame" this Website or alter its Content in any other way; and (iv) You may not link to this Website from a web Website that is unlawful, abusive, indecent or obscene, that promotes violence or illegal acts, that contains expressions of racism, that is libelous, defamatory, scandalous, or inflammatory or is otherwise deemed inappropriate, as determined by US in our sole discretion.

6. **Acceptable Use; Compliance with Laws.** You may use the Website only for lawful purposes, and You agree that You shall at all times comply with all applicable local, state, provincial, national, and international laws, statutes, rules, regulations, ordinances and the like applicable to Your use of the Website. You also agree that You will not do any of the following:

- **Inappropriate Submissions.** Submit to or on the Website, anything that is or may be: (i) harmful, threatening, abusive, harassing, degrading, hateful, or intimidating; (ii) defamatory, libelous, or disparaging of any person or entity; (iii) false, fraudulent, or tortious; (iv) obscene, indecent, pornographic, vulgar, profane, or sexually explicit; (v) intended to promote (or have the effect of promoting) violence, racial hatred, terrorism or illegal acts; (vi) infringing, or in violation or misappropriation of, any patent, trademark, trade identity right, trade secret, publicity right, privacy right, copyright or any other intellectual property right or any other rights of any third party; (vii) in violation of any other rights of any person or entity; (viii) in violation of any law or regulation; or (ix) otherwise objectionable;
- **Interfere with Other Users.** Disrupt the normal flow of dialogue or otherwise act in a manner that negatively affects other Users' ability to engage in real-time exchanges;
- **No Spam.** Submit any advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," investment opportunities, or any other form of solicitation;
- **Collect Personal Information.** Collect or harvest personally identifiable information about other Users of the Website or "stalk" or otherwise harass other persons;

- **Impersonation.** Impersonate any person or entity; falsely state or otherwise misrepresent Your affiliation with any person or entity, including US; forge headers or otherwise manipulate identifiers in order to disguise the origin of any submissions to or through the Website; or expressly state or imply that We endorse any statement You make;
- **Security, Cracking & Hacking.** Violate or attempt to violate the security of any portion of the Website, including but not limited to: (i) access Content not intended for You; (ii) log into a server or account which You are not authorized to access; (iii) attempt to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (iv) attempt to interfere with or disrupt the Website or the servers or networks that provide the Website, including without limitation, via means of submitting a virus to the Website, overloading, "flooding", "mailbombing" or "crashing" the Website; or (v) restrict or inhibit any other user from accessing or using the Website, including, without limitation, by means of hacking or defacing any portion of the Website.
- **Reverse Engineering.** Modify, adapt, translate, reverse engineer, decompile, or disassemble any portion of the Website.
- **Data Mining, Scraping, Etc.** Except for search engines presenting links to Users searching for US and related content, use any robot, spider, Website search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine," scrape, or in any way reproduce or circumvent the navigational structure or presentation of the Website or its contents.

7. Forums, Postings and Other User Generated Content.

- (a) **No Confidentiality.** We are pleased to hear from Users and welcome Your comments, postings and submissions of Content. However, none of the Content that You send us or post on the Website shall be subject to any obligation of confidence on Our part, and We shall not be liable for any use or disclosure of any such Content that You provide.
- (b) **Representations Made and Rights Granted.** You are responsible for all Content that You send us or submit, post, or otherwise make available to or through the Website. By doing so, You (i) represent and warrant to Us that such Content is not confidential and that You have all necessary permission to submit, post and otherwise make available such Content; (ii) grant to US, Our Affiliates, Subsidiaries, and Member Cooperatives a worldwide, nonexclusive, perpetual, fully sub-licensable, royalty-free right and license to use, exploit, reproduce, modify, adapt, publish, translate, create derivative works from, distribute (including, without limitation, making available on-line, electronically transmitting or otherwise communicating to the public), perform, and display such Content (in whole or in part) worldwide via the Website or otherwise, or to incorporate such Content in other works in any form, media, or technology now known or later developed without notice or compensation; and (iii) consent to all relevant acts or omissions in relation to Your moral rights in such Content which may or might otherwise constitute a breach or infringement of

those moral rights and to the extent permitted by law, waive all Your moral rights in such Content.

- (c) **No Obligation to Prescreen Content.** We have the right, but do not have any obligation to prescreen, monitor, refuse to accept, edit, move, or remove any Content provided by Our Affiliates, Subsidiaries, Member Cooperatives, Retailers, or Users or by any third party that is posted on or available through the Website.
- (d) **Don't Violate Third Party Rights.** You may not, and You agree not to, use the Website to: (i) transmit material that is copyrighted, unless You are the copyright owner or have obtained the permission of the copyright owner to transmit it; (ii) transmit material that reveals trade secrets or other confidential information, unless You own them and agree to make a non-confidential public disclosure of them, or have the permission of the owner to so transmit and make a non-confidential public disclosure of them; or (iii) transmit material that infringes on or misappropriates any other intellectual property rights of others or violates the privacy or rights of publicity of others.

- 8. Your Contact with Advertisers or Other Third Parties.** Your dealings with Subsidiaries, Member Cooperatives, Retailers, advertisers, or other third parties found on or accessible through the Website are solely between You and the third party. These dealings include, but are not limited to, Your participation in promotions, disclosure of information, use of software or other third party materials, reliance upon advertising claims, redemption of coupons or gift cards, applications for credit, the payment for and delivery of goods or services, and any terms, conditions, warranties, or representations associated with such dealings.

We do not make any representations, warranties or conditions with respect to any items or services that may be obtained from such third parties (including Affiliates, Subsidiaries, Member Cooperatives, and Retailers), and You agree that We have no liability with respect to any loss or damage of any kind incurred as a result of any dealings between You and any third party, or as a result of the presence of such third parties on the Website.

- 9. Disclaimer of Warranties with Respect to Website.** THE WEBSITE AND CONTENT IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOUR ACCESS AND USE THE WEBSITE AND CONTENT AT YOUR SOLE RISK. TO THE EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND UNDERTAKINGS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, AND NONINFRINGEMENT.

WE DO NOT MAKE ANY REPRESENTATION, WARRANTY OR CONDITION THAT THE WEBSITE OR CONTENT WILL MEET YOUR REQUIREMENTS, OR THAT ACCESS TO THE WEBSITE OR CONTENT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED. WE MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITE OR AS TO THE ACCURACY, QUALITY, OR RELIABILITY OF ANY CONTENT OBTAINED THROUGH THE WEBSITE. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE WEBSITE IS USED AT YOUR OWN RISK AND YOU WILL BE

SOLELY RESPONSIBLE FOR ANY DAMAGE TO, OR INTERRUPTION OF, YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH CONTENT.

- 10. Limitations of Liability.** IN NO EVENT SHALL WE, OUR AFFILIATES, SUBSIDIARIES, MEMBER COOPERATIVES, OWNERS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, VENDORS, SUCCESSORS AND ASSIGNS, BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES, OR ANY LOSS OF USE, LOSS OF PROFITS, LOSS OF DATA, OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THIS WEBSITE OR WITH ANY DELAY OF OR INABILITY TO USE THIS WEBSITE, OR FOR ANY CONTENT, INFORMATION, SOFTWARE, PRODUCTS AND SERVICES OBTAINED THROUGH THIS WEBSITE, THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES, ITEMS, OR WEBSITES, UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, THE STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE WEBSITE, OR OTHERWISE ARISING OUT OF THE USE OF THIS WEBSITE, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. FURTHER, SUCH PARTIES SHALL NOT BE LIABLE, REGARDLESS OF THE CAUSE OR DURATION, FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR UNAUTHENTICITY OF, THE CONTENT, INFORMATION OR SERVICES PROVIDED BY OR KNOW-HOW OR OTHER INFORMATION CONTAINED WITHIN THIS WEBSITE, OR FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO YOU, OR FOR ANY CLAIM OR LOSS ARISING THEREFROM OR OCCASIONED THEREBY.
- 11. Indemnification.** You agree to indemnify and hold Us, our Affiliates, Subsidiaries, Member Cooperatives, owners, and their respective directors, officers, employees, agents, representatives, affiliates, vendors, successors and assigns, harmless from and against any and all liability, damages, losses, claims, expenses of any kind (including, without limitation, reasonable attorneys' fees) directly or indirectly related to: (1) Your breach of this Agreement; (2) any misrepresentation made by You in connection with Your use of the Website; or (3) any content You, or any other person using Your password and account, submit, post, or transmit to or through the Website.
- 12. Modification or Suspension of the Website.** We reserve the right, at any time and without notice to You, to modify, add, suspend, or discontinue, temporarily or permanently, any or all of the Website, in its sole discretion. This includes the right to modify, discontinue or remove any Content, postings, links, pages, services, or other materials at any time and for any reason. You agree that We shall not be liable to You for any modification, general suspension or discontinuance of any aspect of the Website. We may, in its sole discretion, refuse or restrict anyone from access to any or all of the Website at any time without notice.
- 13. Sales of Products via Website.**

- (a) **No Offers.** Statements made on these pages concerning Our products or services do not constitute an offer, but are merely solicitations of an offer, where appropriate. References to and information concerning products and services on this Website are not complete and must be read in conjunction with the specific information accompanying such products, as the same may change from time to time.
- (b) **Terms of sale.** All products and services sold by Us via this Website are sold in accordance with any terms of sale separately provided by User as otherwise specified in the Content related to such sales.

14. Notice and Procedure for Making Complaints Regarding Content. In accordance with the Digital Millennium Copyright Act, We have designated a Copyright Agent to receive notice of claims of copyright infringement with respect to Content on the Website. To notify Us of Content on the Website that You believe infringes Your rights, please provide the following information to the Our Copyright Agent listed below:

- Your name, address, telephone number, and email address;
- A description of the copyrighted work that You claim has been infringed or, if multiple copyrighted works at the Website are covered by a single notification, a representative list of such works at the Website;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Us to locate the material, such as the URL or a reasonable description of where the alleged infringing material is located;
- A statement by You that You have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- A statement by You, made under penalty of perjury, that the information in the notification is accurate, and that You are the copyright owner or authorized to act on the copyright owner's behalf; and
- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest.

Our Copyright Agent for notice of claims of copyright or other intellectual property infringement is the ***General Counsel's Division of GROWMARK.***

Contact information for GROWMARK's General Counsel's Division is as follows:

GROWMARK, Inc.
Attn: General Counsel's Division
1701 Towanda Avenue
Bloomington, IL 61701
generalcounsel@growmark.com

15. Miscellaneous Terms.

- (a) **Location.** This site is primarily controlled and operated by Us from its offices within the State of Illinois, and Content may be stored or controlled on servers located

elsewhere in the United States and Canada. We make no representation that materials in the Website are appropriate or available for use in any location. Those who choose to access this site do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable.

- (b) **Severability of Agreement.** If in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction or its application to other parties or circumstances.
- (c) **Governing Law.** This Agreement and the resolution of any dispute related to this Agreement or the Website shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to any principles of conflicts of law. Any legal action or proceeding between Us and You related to the Agreement or otherwise arising out of usage of this Site shall be brought exclusively in a federal or state court of competent jurisdiction sitting in or having jurisdiction over the County of McLean, State of Illinois, and You agree to submit to the personal and exclusive jurisdiction of such courts.
- (d) **Entire Agreement.** This Agreement, including Our Privacy Policy, constitutes the entire agreement between You and Us and supersedes any prior Agreements or understandings between You and Us. No amendment or modification of this Agreement will be valid or binding upon either party unless made in writing and signed by Our authorized representatives.
16. **Contact Information.** If You have any questions or concerns with respect to this Agreement or the Website You may contact Our representative as follows:

GROWMARK, Inc.
Attn: Privacy Officer
1701 Towanda Avenue
Bloomington, IL 61701
WebsitePrivacy@growmark.com