

SMS Policy

Kona Ice TopCo, LLC

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The Beverly Ann's mobile message service (the "**Service**") is operated by Kona Ice TopCo, LLC ("**Beverly Ann's**", "**we**", "**our**", or "**us**"). Your use of the Service constitutes your agreement to these terms and conditions ("**SMS Policy**"), including your agreement to resolve any disputes with us through binding, individual-only arbitration, as detailed in Section 14 below. We may modify or cancel the Service or any of its features without notice. To the extent permitted by applicable law, we may also modify this SMS Policy at any time and your continued use of the Service following the effective date of any such changes shall constitute your acceptance of such changes. We will notify you in the event such changes materially affects your rights.

The Service and SMS Policy are also subject to Beverly Ann's [Privacy Notice](#) and [Terms of Service](#). This SMS Policy is not intended to modify other Beverly Ann's Privacy Notice or Terms of Service that may govern the relationship between you and Beverly Ann's. To see how we collect and use your personal information, including your mobile number, please see our [Privacy Notice](#).

1. **Service Description.** Without limiting the scope of the Service, users that opt-in to receive the Service can expect to receive messages concerning the marketing, promotion, payment, and delivery of information to you in connection with your relationship with Beverly Ann's. Service-related messages may include updates, alerts, and information (e.g., order updates, account alerts, etc.). Promotional messages may include promotions, specials, and other marketing offers (e.g., cart reminders).
2. **Opt-In.** The Service allows users to opt-in to receive recurring SMS mobile messages by affirmatively opting-in to receive the Service through online enrollment forms. Regardless of the opt-in method utilized to receive the Service, you agree that this SMS Policy applies to your use and enjoyment of the Service. By opting-in to receive the Service, you agree to receive autodialed or prerecorded marketing mobile messages at the phone number associated with your opt-in, even if your mobile number is registered on any state or federal Do Not Call list. While you consent to receive messages sent using an autodialer, the foregoing shall not be interpreted to suggest or imply that any or all of our mobile messages are sent using an automatic telephone dialing system ("**ATDS**" or "**autodialer**"). By signing up, you are confirming you are over the age of 18. You understand that you do not have to sign up for the Service in order to make any purchases, and your consent is not a condition of any purchase with Beverly Ann's. Your participation in the Service is completely voluntary.
3. **Opt-Out.** If you do not wish to continue to receive the Service or no longer agree to this SMS Policy, you may opt-out of the Service at any time by replying STOP, END, CANCEL, UNSUBSCRIBE, or QUIT to any mobile message received from Beverly Ann's in order to opt-out of the Service. Where available, you may also click the unsubscribe link in any mobile message to cancel the Service. You may receive a one-time opt-out confirmation mobile message confirming your decision to opt-out. No further messages will be sent to your mobile device, unless initiated by you. You understand and agree that the foregoing options are the only reasonable methods of opting-out. You acknowledge that our text message platform may not recognize and respond to unsubscribe requests that alter, change, or modify the keyword commands described above, and agree that Beverly Ann's and its service providers will have no

liability for failing to honor such requests. You also understand and agree that any other method of opting out, including, but not limited to, texting words other than those set forth above or verbally requesting one of our employees to remove you from our list is not a reasonable means of opting-out.

4. **Other Programs.** If you have subscribed to other Beverly Ann's mobile message programs and wish to cancel, except where applicable law requires otherwise, you will need to opt-out separately from those programs by following the instructions provided in their respective terms and policies.
5. **Message Frequency.** Message frequency varies. Beverly Ann's reserves the right to alter the frequency of messages sent at any time, so as to increase or decrease the total number of sent messages. You agree to receive messages periodically at Beverly Ann's sole discretion. The Service includes recurring mobile messages, and additional mobile messages may be sent periodically based on your interactions with Beverly Ann's.
6. **Fees.** We do not charge for the Service, but you are responsible for all charges and fees associated with text messaging imposed by your wireless provider. Message and data rates may apply. Check your mobile plan and contact your wireless provider for details. Not all wireless carriers, mobile devices, or handsets may be supported and any messages sent may not be deliverable in all areas. Beverly Ann's, its service providers, and the mobile carriers are not liable for delayed or undelivered messages. If you have any questions about your text plan, data plan, or any additional terms or conditions your mobile carrier may impose or the availability of it, please contact your mobile carrier.
7. **Support.** For support or assistance relating to the Service, text HELP to the number you received messages from or email Korporate@kona-ice.com. Please note that the use of this email address is not an acceptable method of opting-out from the Service. Opt-outs must be submitted in accordance with the procedures set forth above.
8. **Telephone Number.** We may change any short code or telephone number we use to operate the Service at any time and will notify you of these changes. You acknowledge that any messages, including any STOP or HELP requests, you send to a short code or telephone number we have changed may not be received and we will not be responsible for honoring requests made in such messages.
9. **Third Parties.** Beverly Ann's may route phone and text communications through a third party service provider, and we or the service provider may record telephone conversations you have with Beverly Ann's or its agents for quality control and training purposes, or for other purposes consistent with our Privacy Notice. By using the Service, you have consented to the foregoing. The wireless carriers supported by the Service are not liable for delayed or undelivered messages.
10. **Your Responsibilities.** To receive the Service, you must have a wireless device of your own, capable of two-way messaging, and be a wireless service subscriber with text message service. You agree to provide us with a valid mobile number. If you get a new mobile number, you will need to sign up for the Service with your new number. If at any time you intend to stop using the mobile telephone number that has been used to subscribe to the Service, including canceling your service plan or selling or transferring the phone number to another party, you agree that you will complete the user opt-out process set forth above prior to ending your use of the mobile telephone number. You understand and agree that your agreement to do so is a material part of this SMS Policy. You further agree that, if you discontinue the use of your mobile telephone number

without notifying us of such change, you agree that you will be responsible for all costs (including attorneys' fees) and liabilities incurred by us, or any party that assists in the delivery of the mobile messages, as a result of claims brought by individual(s) who are later assigned that mobile telephone number. This duty and agreement shall survive any cancellation or termination of your account or this SMS Policy.

11. **Prohibited Content.** You acknowledge and agree not to send any prohibited content through the Service. Prohibited Content includes:
 - a. Any fraudulent, libelous, defamatory, scandalous, threatening, harassing, or stalking activity;
 - b. Objectionable content, including profanity, obscenity, lasciviousness, violence, bigotry, hatred, and discrimination on the basis of race, sex, religion, nationality, disability, sexual orientation, or age;
 - c. Pirated computer programs, viruses, worms, Trojan horses, or other harmful code;
 - d. Any product, service, or promotion that is unlawful where such product, service, or promotion thereof is received;
 - e. Any content that implicates and/or references personal health information that is protected by the Health Insurance Portability and Accountability Act ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH") or other sensitive personal information (as defined in applicable law); and
 - f. Any other content that is prohibited by applicable law in the jurisdiction from which the message is sent.
12. **Indemnification.** YOU AGREE THAT YOU SHALL INDEMNIFY, DEFEND, AND HOLD US HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM YOUR FAILURE TO NOTIFY US OF A CHANGE IN THE INFORMATION YOU HAVE PROVIDED, INCLUDING ANY CLAIM OR LIABILITY UNDER THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, ET SEQ., OR SIMILAR STATE AND FEDERAL LAWS, AND ANY REGULATIONS PROMULGATED THEREUNDER RESULTING FROM US ATTEMPTING TO CONTACT YOU AT THE MOBILE TELEPHONE NUMBER YOU PROVIDED.
13. **Warranty Disclaimer.** The Service is offered on an "as-is" basis and may not be available in all areas at all times and may not continue to work in the event of product, software, coverage, or other changes made by your wireless carrier. You agree that we will not be liable for failed, delayed, or misdirected delivery of any information sent through the Service, any errors in such information, and/or any action you may or may not take in reliance on the information or Service. Delivery of mobile messages is subject to effective transmission from your wireless service provider/network operator and is outside of Beverly Ann's control.
14. **Dispute Resolution.** Any dispute arising out of or relating to the Service or this SMS Policy shall be resolved in accordance with the applicable provisions of the [Terms of Service](#).
15. **State Laws.** If you are a resident of Florida, New Jersey, Washington, or Oklahoma, you agree to the following terms, as applicable:
 - a. Florida. We endeavor to comply with the Florida Telemarketing Act and the Florida Do Not Call Act as applicable to Florida residents. For purposes of compliance, you agree that we may assume that you are a Florida resident if, at the time of opt-in to the Service, (1) your shipping address, as provided is located in Florida or (2) the area code for the

phone number used to opt-into the Service is a Florida area code. You agree that the requirements of the Florida Telemarketing Act and the Florida Do Not Call Act do not apply to you, and you shall not assert that you are a Florida resident, if you do not meet either of these criteria or, in the alternative, do not affirmatively advise us in writing that you are a Florida resident by sending written notice to us. Insofar as you are a Florida resident, you agree that mobile messages sent by Beverly Ann's in direct response to mobile messages or requests from you (including but are not limited to response to keywords, opt-in, help or stop requests and shipping notifications) shall not constitute a "telephonic sales call" or "commercial telephone solicitation phone call" for purposes of Florida Statutes Section 501 (including but not limited to sections 501.059 and 501.616), to the extent the law is otherwise relevant and applicable.

- b. New Jersey. In our efforts to comply with the New Jersey telemarketing law, (as applicable to New Jersey residents), you agree that we may assume that you are a New Jersey resident if, at the time of opt-in to the Service, the area code for the phone number used to opt-into the Service is a New Jersey area code. You agree that the requirements of the New Jersey telemarketing statute do not apply to you, and you shall not assert that you are a New Jersey resident, if you do not meet this criteria or, in the alternative, do not affirmatively advise Beverly Ann's in writing that you are a New Jersey resident. Insofar as you are a New Jersey resident, you agree that mobile messages sent by Beverly Ann's in direct response to mobile messages or requests from you (including but are not limited to response to keywords, opt-in, help or stop requests and shipping notifications) shall not constitute an "unsolicited telemarketing sales call" or "telemarketing sales call" for purposes of New Jersey Statute Title 56, Chapter 8 (including but not limited to section 56:8-128.), to the extent the law is otherwise relevant and applicable. Additionally, in efforts to comply with section 56:8-128, we will state our company name (or any D/B/A of Ours) at the start of every message we send to you.
- c. Washington: To the extent the law is relevant and applicable to the Service, we endeavor to comply with the commercial telephone solicitation requirements pursuant to the Revised Code of Washington (RCW) (including but not limited to sections 80.36.390, 19.158.040, 19.158.110 and 19.158) as applicable to Washington residents. For purposes of compliance, you agree that we may assume that you are a Washington resident if, at the time of opt-in to the Service, the area code for the phone number used to opt-into the Service is a Washington area code.
- d. Oklahoma: We endeavor to comply fully with the Oklahoma Telephone Solicitation Act of 2022 as applicable. For purposes of compliance, you agree that we may assume that you are an Oklahoma resident and are currently located in the state of Oklahoma if, at the time of opt-in to the Service, the area code for the phone number used to opt-into the Service is an Oklahoma area code. If the area code for the phone number used to opt-into the Service is not an Oklahoma area code, or, in the alternative, if you do not affirmatively send written notice to Beverly Ann's advising that you reside or are currently located in Oklahoma, You agree that the requirements of the Oklahoma Telephone Solicitation Act do not apply to you, and further agree that you will not assert that you are an Oklahoma resident, nor assert you are located in the state of Oklahoma at the time of receiving a communication from Beverly Ann's. Insofar as you are an Oklahoma resident or are otherwise subject to the laws of Oklahoma, you agree: (1) that mobile messages sent by Beverly Ann's in direct response to any form of messages or requests from you (including but are not limited to responses to keywords, opt-in, help or stop requests and shipping notifications) shall not constitute a "telephonic sales call" or

“commercial telephone solicitation phone call” for purposes of Oklahoma Statutes Title 15 (including but not limited to sections 775C.1, 775C.2, 775C.3, 775C.4 and 775C.5), to the extent the law is otherwise relevant and applicable; (2) that you have only opted-in to the Service with one phone number and that Beverly Ann’s can rely on the fact that mobile messages sent to any other phone number are being sent to other persons; and (3) that you will opt-out of the Service prior to any termination of the phone number used to opt-into the Service and that without such opt-out we can rely on the fact that messages sent to the number are sent to you with your consent as described above.

16. **Miscellaneous.** You warrant and represent to Beverly Ann’s that you have all necessary rights, power, and authority to agree to this SMS Policy and perform your obligations hereunder, and nothing contained in this SMS Policy or in the performance of such obligations will place you in breach of any other contract or obligation. The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of this SMS Policy is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this SMS Policy will otherwise remain in full force and effect and enforceable. Any new features, changes, updates or improvements of the Service shall be subject to this SMS Policy unless explicitly stated otherwise in writing. We reserve the right to change this SMS Policy from time to time. Any updates to this SMS Policy shall be communicated to you. You acknowledge your responsibility to review this SMS Policy from time to time and to be aware of any such changes. By continuing to participate in the Service after any such changes, you accept this SMS Policy, as modified.