



Terms & Conditions

EFFECTIVE DATE: November 1, 2009

ForceMax™ Website Terms and Conditions

Thank you for visiting the ForceMax™ website located at www.acaiforcemax.com (the "Site"). The Site is an Internet property of Farend Services Limited and its affiliated companies ("ForceMax™," "we" or "us"). You agree to the following ForceMax™ Website Terms and Conditions ("Terms and Conditions"), in their entirety, when you: (a) access or use the Site; (b) submit an application to become a ForceMax™ member ("Member" or "Membership"); and/or (c) purchase products or services offered on the Site ("ForceMax™ Products"). The ForceMax™ Privacy Policy ("Privacy Policy") and any and all other applicable ForceMax™ operating rules, policies, price schedules and other supplemental terms and conditions or documents that may be published from time to time, are expressly incorporated herein by reference (collectively, the "Agreement"). **Please review the Agreement carefully. If you do not agree to the terms and conditions contained within the Agreement in its entirety, you are not authorized to use the Site in any manner or form whatsoever.**

FORCE MAX™ IS NOT A COVERED ENTITY FOR PURPOSES OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), NOR IS THE INFORMATION PROVIDED BY YOU TO ForceMax™ CONSIDERED PROTECTED HEALTH INFORMATION UNDER HIPAA. AS SUCH, THE ADDITIONAL PRIVACY AND SECURITY PROTECTIONS AFFORDED TO CONSUMERS/PATIENTS UNDER HIPAA ARE NOT CONTEMPLATED BY, NOR CONTAINED WITHIN, THE AGREEMENT.

The information presented on the Site is in no way intended as medical advice or as a substitute for medical treatment. Nothing stated or presented on the Site is intended to be a substitute for professional medical advice, diagnosis or treatment. This information should only be used in conjunction with the guidance and care of your physician. You should always consult with your physician or other healthcare professional before taking any medication or nutritional, herbal or homeopathic supplement, beginning any diet, nutrition or fitness plan or adopting any treatment for a health problem, whether offered on the Site or otherwise. Your physician should allow for proper follow-up visits and individualize your diet, nutrition and/or fitness plan as appropriate. If you have or suspect that you have a medical problem, promptly contact your health care provider. For any products and/or services purchased through the Site, you should carefully read all product packaging and instructions. Never disregard professional medical advice or delay in seeking professional advice because of something that you have read on the Site.

Information and statements regarding products and/or services made available on or through the Site have not been evaluated by the Food and Drug Administration and are not intended to diagnose, treat, cure or prevent any disease.

1. Scope of Agreement. You agree to the terms and conditions outlined in the Agreement with respect to your use of the Site including, but not limited to, your submission of an application to become a Member and/or your purchase of ForceMax™ Products. The Agreement constitutes the entire and only agreement between you and ForceMax™ with respect to your registration for the ForceMax™ Products, Membership and/or use of the Site and supersedes all prior or contemporaneous agreements, representations, warranties and/or understandings with respect to your registration for the ForceMax™ Products, Membership, use of the Site, the content contained therein and/or the analyses, research, opinions and other information provided by or through the Site.

2. Modification of Agreement. We may amend the Agreement from time to time in our sole discretion, without specific notice to you; provided, however, that: (a) any amendment or modification to the arbitration provisions, prohibition on class action provisions or any other provisions applicable to dispute resolution (collectively, "Dispute Resolution Provisions") shall not apply to any disputes incurred prior to the applicable amendment or modification; and (b) any amendment or modification to pricing and/or billing provisions ("Billing Provisions") shall not apply to any charges incurred prior to the applicable amendment or modification. The latest Agreement will be posted on the Site, and you should review the Agreement prior to using the Site. By your continued use of the Site and/or your continued receipt of the ForceMax™ Products, you hereby agree to comply with, and be bound by, all of the terms and conditions contained within the Agreement effective at that time (other than with respect to disputes arising prior to the amendment or modification of the Dispute Resolution Provisions, or charges incurred prior to the amendment or modification of the Billing Provisions, which shall be governed by the Dispute Resolution Provisions and/or Billing Provisions then in effect at the time of the subject dispute or incurred charges, as applicable). Therefore, you should regularly check this page for updates and/or changes. Unless explicitly stated otherwise, any future offer(s) or product(s) made available to you on the Site that augment(s) or otherwise enhance(s) the current features of the Site shall be subject to the Agreement. **You understand and agree that ForceMax™ is not responsible or liable in any manner whatsoever for your inability to use the Site, become a Member and/or obtain any ForceMax™ Products.**

3. Requirements. The Site, Membership and/or the offered ForceMax™ Products are available only to individuals that are at least eighteen (18) years of age and that can enter into legally binding contracts under applicable law.

4. Application Process. In order to obtain ForceMax™ Products and/or become a Member, you must first submit the applicable application form ("Application") to ForceMax™ for review and initial approval. ForceMax™ reserves the right, in its sole discretion, to deny the Application of anyone at any time and for any reason, whatsoever. The information that you must supply on the Site in order to obtain ForceMax™ Products and/or enroll as a Member may include, without limitation: (a) your full name; (b) mailing address; (c) e-mail address; (d) phone number; (e) credit card information; (f) current weight; (g) goal weight; (h) height; (i) gender; (j) year of birth; (k) date of birth; and/or (l) any other information requested by us on the Application (collectively, "Registration Data"). You agree to provide true, accurate, current and complete Registration Data (not including Registration Data associated with your weight and personal goals), as necessary, in order to maintain it in up to date and accurate fashion. ForceMax™ will verify and approve all Applications in accordance with its standard verification procedures.

If ForceMax™ approves your Application, ForceMax™ will set up your specific account ("Services Account") and send a confirmation e-mail to the e-mail address that you provided at the time of registration. The confirmation e-mail will contain the following information: (i) your user name; and (ii) your password. You can access your specific Services Account at the Site using your user name and password, and then change your password and user name at your discretion. You are responsible for maintaining the confidentiality of your Services Account, user name and password and for restricting access to your computer. You agree to accept responsibility for all activities that occur through use of your Services Account, user name and password including, without limitation, any and all purchases made therethrough.

ForceMax™ may reject your application and/or terminate your Membership at any time and for any reason, in our sole discretion. Such reasons may include, without limitation: (A) where ForceMax™ believes that you are in any way in breach of the Agreement; and (B) where ForceMax™ believes that you are, at any time, conducting any unauthorized commercial activity by and through your Membership.

5. Membership Fees. Upon registering, providing the requisite Registration Data and ordering the ForceMax™ Products, the credit or debit card that you provided during registration or updated at a later date ("Active Credit Card") will be charged a non-refundable shipping and handling fee of **Two Dollars and Ninety-Five Cents (\$2.95)** ("Shipping and Handling Fee") for your initial fourteen (14) day trial membership ("Trial Membership"), you will receive a one (1) month supply of ForceMax™ Products and you will be automatically enrolled in our Member program. Please note that where the

initial delivery of the ForceMax™ Products is returned to you as an invalid or incorrect mailing address provided by the registration, any re-shipment of the ForceMax™ Products will incur an additional non-refundable Shipping and Handling Fee. We will use commercially reasonable efforts to ship your initial installment of ForceMax™ Products within seven (7) days to the shipping address that you provided during registration. Orders to shipping addresses located in: (a) the United States will be shipped via UPS Mail Innovations; (b) Canada will be shipped via Canada Post; (c) the United Kingdom will be shipped via Royal Mail and La Poste; and (d) Australia will be shipped via Australian post.

Once the fourteen (14) day Trial period is over, your Active Credit Card will be charged the monthly Membership fee of Eighty-Seven Dollars and Sixty-Two Cents (\$87.62) ("Monthly Fee"). Your next (1) month supply of ForceMax™ Products will be shipped thirty (30) days from the date that your initial one (1) month supply was shipped in connection with your Trial Membership. Thereafter, for as long as your Membership remains active, your Active Credit Card will be charged the Monthly Fee on a monthly basis, plus the Shipping and Handling Fee, for your ongoing Membership. You hereby authorize ForceMax™ (or its partners, affiliates and/or agents) to charge your Active Credit Card all such fees associated with Membership on a monthly basis. You acknowledge and agree that ForceMax™ will not obtain additional authorization from you for each installment of Monthly Fees charged to your Active Credit Card. In addition, you do not hold ForceMax™ responsible for any overdraft charges or fees which you might incur during the ongoing Membership.

All fees are payable in United States currency. For so long as your Membership is active, you will be billed, and you will be required to pay, all applicable charges. Failure to use the ForceMax™ Products does not constitute a basis for refusing to pay any of the associated charges. Subject to the conditions set forth herein, you agree to be bound by the Billing Provisions of ForceMax™ in effect at any given time. Upon reasonable prior written notice to you (with e-mail sufficing), ForceMax™ reserves the right to change its Billing Provisions whenever necessary, in its sole discretion. Continued use of the Site and/or receipt of the ForceMax™ Products after receipt of such notice shall constitute consent to any and all such changes; provided, however, that any amendment or modification to the Billing Provisions shall not apply to any charges incurred prior to the applicable amendment or modification.

ForceMax's™ authorization to provide and bill for the ForceMax™ Products is obtained by way of your electronic signature or, where applicable, via physical signature and/or voice affirmation. Once an electronic signature is submitted, this electronic order constitutes an electronic letter of agency. ForceMax's™ reliance upon your electronic signature was specifically sanctioned and written into law when the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Transactions Act were enacted in 1999 and 2000, respectively. Both laws specifically preempt all state laws that recognize only paper and handwritten signatures. Where you fail to make any scheduled payment for accrued fees, such overdue amounts will be subject to interest charges in the amount of one and one half percent (1.5%) per month, compounded monthly. Your Member account may be deactivated, and access to the Site denied, for non-payment.

6. Thirty (30) Day Guarantee: Where ForceMax™ offers its "30 Day Guarantee" promotion ("Promotion"), and where you have chosen to register for such Promotion, upon submitting your initial Application, your Active Credit Card will be charged only the non-refundable Shipping and Handling Fee, or Foreign Shipping and Handling Fee, as applicable, for your Trial Membership and you will receive a one (1) month supply of ForceMax™. If you do not cancel your Membership as set forth in Section 7 hereinbelow, and return the one (1) month supply ("Qualifying Return Products") at your expense as set forth below, your Active Credit Card will be charged the Monthly Fee of Eighty-Seven Dollars and Sixty-Two Cents (\$87.62). In order to qualify for a refund under the Promotion, we must receive the Qualifying Return Products within thirty (30) days of the date that Qualifying Return Products were shipped to you. Where we receive the Qualifying Return Products within that thirty (30) day period, you will be refunded any and all Monthly Fees that you have paid toward such Qualifying Return Products ("30 Day Guarantee"). All unused portions of the Qualifying Return Products returned to us as part of the 30 Day Guarantee shall be shipped at your cost. Any and all Shipping and Handling costs shall remain non-refundable. All refunds associated with the 30 Day Guarantee shall be credited to your Active Credit Card. All Qualified Return Products must be shipped to:

Farend Services Ltd.
22100 east, 26th Ave
Aurora, CO
80019
United States

7. Cancellation of Membership. You may cancel your Membership at any time if you are not completely satisfied. To cancel your Membership you must contact ForceMax™ customer service by contacting ForceMax™ via telephone at (888) 591-2190, Monday through Friday, 5:00 AM – 8:00 PM, MST. Saturday 8:00 AM – 5:00 PM, MST. Please have your e-mail address and other Registration Data available for efficient processing of your cancellation order.

If you decide to cancel your Membership prior to the expiration of the fourteen (14) day Trial Membership period, your Active Credit Card will still be charged the fee of **Eighty-Seven Dollars and Sixty-Two Cents (\$87.62)** at the end of the Trial Membership period. The following conditions apply to any cancellation: (a) you shall not receive any pro-rata refund of your Monthly Fees for partial months; (b) you shall not receive any refund for the Shipping and Handling Fee or Foreign Shipping and Handling Fee, as applicable; and (c) you shall not receive any refund for amounts previously paid up to the date of cancellation or termination and you remain liable for any and all unpaid charges billed by ForceMax™. You understand and agree that cancellation of your Membership is your sole right and remedy with respect to any dispute with ForceMax™. Upon any termination and/or cancellation of your Membership, your license grant, as set forth in Section 8 hereinbelow shall immediately terminate.

8. License Grant. As a user of the Site, you are granted a non-exclusive, non-transferable, revocable and limited license to access and use the Site, and associated Site content ("Content"). ForceMax™ may terminate this license at any time for any reason. Unless otherwise expressly authorized by ForceMax™, as a visitor to the Site, you may only use the Site and the Content for your own personal, non-commercial use. No part of the Site including, but not limited to, the Content, may be reproduced in any form or incorporated into any information retrieval system, electronic or mechanical. You may not use any automated means or form of scraping or data extraction to access, query or otherwise collect Content from the Site except as expressly permitted by ForceMax™. You may not use, copy, emulate, clone, rent, lease, sell, modify, decompile, disassemble, reverse engineer or transfer the Site, Content and/or any portion thereof. You may not create any "derivative works" by altering any aspect of the Site or the Content. You may not use the Site and/or the Content in conjunction with any other third-party content. You may not exploit any aspect of the Site and/or the Content for any commercial purposes not expressly permitted by ForceMax™. You further agree to indemnify and hold harmless ForceMax™ for your failure to comply with this Section 8. ForceMax™ reserves any rights not explicitly granted in the Agreement.

9. Proprietary Rights. The Content, organization, graphics, design, compilation, magnetic translation, digital conversion, software, services and other matters related to the Site are protected under applicable copyrights, trademarks and other proprietary (including, but not limited to, intellectual property) rights. The copying, redistribution or publication by you of any part of the Site and/or Content is strictly prohibited. You do not acquire ownership rights to any content, document, software, services or other materials viewed at or through the Site. The posting of information or material at the Site does not constitute a waiver of any right in such information and/or materials.

10. Legal Warning. Any attempt by any individual, whether or not a ForceMax™ customer, to damage, destroy, tamper with, vandalize and/or otherwise interfere with the operation of the Site is a violation of criminal and civil law and ForceMax™ will diligently pursue any and all remedies in this regard against any offending individual or entity to the fullest extent permissible by law and in equity.

11. Indemnification. You agree to indemnify and hold ForceMax™, its parents and subsidiaries, and each of their respective members, officers, directors, employees, agents, co-branders, content licensors and/or other partners, harmless from and against any and all claims, expenses (including reasonable attorneys' fees), damages, suits, costs, demands and/or judgments whatsoever, made by any third party due to or arising out of: (a) your use of the Site and/or ForceMax™

Products; (b) your breach of the Agreement; and/or (c) your violation of any rights of another individual and/or entity. The provisions of this Section 11 are for the benefit of ForceMax™, its parents, subsidiaries and/or affiliates, and each of their respective officers, directors, members, employees, agents, shareholders, licensors, suppliers and/or attorneys. Each of these individuals and entities shall have the right to assert and enforce these provisions directly against you on its own behalf.

12. Disclaimer of Warranties. THE SITE, THE ForceMax™ PRODUCTS AND/OR ANY OTHER PRODUCTS AND/OR SERVICES OFFERED ON THE SITE, ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS AND ALL WARRANTIES, EXPRESS AND IMPLIED, ARE DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW (INCLUDING, BUT NOT LIMITED TO, THE DISCLAIMER OF ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY AND/OR FITNESS FOR A PARTICULAR PURPOSE). IN PARTICULAR, BUT NOT AS A LIMITATION THEREOF, ForceMax™ MAKES NO WARRANTY THAT THE SITE, THE ForceMax™ PRODUCTS AND/OR ANY OTHER PRODUCTS AND/OR SERVICES OFFERED ON THE SITE: (A) WILL MEET YOUR REQUIREMENTS; (B) WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED; (C) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (D) WILL HAVE SECURITY METHODS EMPLOYED THAT WILL BE SUFFICIENT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SITE, OR AGAINST INFRINGEMENT; (E) WILL RESULT IN ANY SPECIFIC WEIGHT-LOSS, BENEFIT OR OTHER HEALTH-RELATED OUTCOME; AND/OR (F) WILL BE ACCURATE OR RELIABLE. THE SITE, THE ForceMax™ PRODUCTS AND/OR ANY OTHER PRODUCTS AND/OR SERVICES OFFERED ON THE SITE MAY CONTAIN BUGS, ERRORS, PROBLEMS OR OTHER LIMITATIONS. ForceMax™ WILL NOT BE LIABLE FOR THE AVAILABILITY OF THE UNDERLYING INTERNET CONNECTION ASSOCIATED WITH THE SITE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ForceMax™ OR OTHERWISE THROUGH OR FROM THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE AGREEMENT.

13. Limitation of Liability. YOU EXPRESSLY UNDERSTAND AND AGREE THAT ForceMax™ SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL AND/OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ForceMax™ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), TO THE FULLEST EXTENT PERMISSIBLE BY LAW FOR: (A) THE USE OR THE INABILITY TO USE THE SITE, THE ForceMax™ PRODUCTS AND/OR ANY OTHER PRODUCTS AND/OR SERVICES OFFERED ON THE SITE; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, CONTENT AND/OR ANY OTHER PRODUCTS PURCHASED OR OBTAINED FROM OR THROUGH THE SITE; (C) THE UNAUTHORIZED ACCESS TO, OR ALTERATION OF, YOUR REGISTRATION DATA; (D) THE FAILURE TO REALIZE ANY SPECIFIC WEIGHT-LOSS, BENEFIT OR OTHER HEALTH-RELATED OUTCOME; AND (E) ANY OTHER MATTER RELATING TO THE SITE, THE ForceMax™ PRODUCTS AND/OR ANY OTHER PRODUCTS AND/OR SERVICES OFFERED ON THE SITE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, IN THE AGGREGATE INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND ANY AND ALL OTHER TORTS. YOU HEREBY RELEASE ForceMax™ FROM ANY AND ALL OBLIGATIONS, LIABILITIES AND CLAIMS IN EXCESS OF THE LIMITATIONS STATED HEREIN. IF APPLICABLE LAW DOES NOT PERMIT SUCH LIMITATION, THE MAXIMUM LIABILITY OF ForceMax™ TO YOU UNDER ANY AND ALL CIRCUMSTANCES WILL BE FIVE HUNDRED DOLLARS (\$500.00). **NO ACTION, REGARDLESS OF FORM, ARISING OUT OF YOUR USE OF THE SITE, THE ForceMax™ PRODUCTS AND/OR ANY OTHER PRODUCTS AND/OR SERVICES OFFERED ON THE SITE, MAY BE BROUGHT BY YOU OR ForceMax™ MORE THAN ONE (1) YEAR FOLLOWING THE EVENT WHICH GAVE RISE TO THE CAUSE OF ACTION.** THE NEGATION OF DAMAGES SET FORTH ABOVE IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN YOU AND ForceMax™. ACCESS TO THE SITE AND/OR THE ForceMax™ PRODUCTS WOULD NOT BE PROVIDED TO YOU WITHOUT SUCH LIMITATIONS. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS ON LIABILITY AND IN SUCH JURISDICTIONS ForceMax™ LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

14. Third Party Websites. The Site contains links to other websites on the Internet that are owned and operated by third parties. ForceMax™ does not control the information, products or services available on these third party websites. The inclusion of any link does not imply endorsement by ForceMax™ of the applicable website or any association with the Site's operators. Because ForceMax™ has no control over such websites and resources, you agree that ForceMax™ is not responsible or liable for the availability or the operation of such external websites, for any material located on or available from any such websites or for the protection of your data privacy by third parties. Any dealings with, or participation in promotions offered by, advertisers on the Site, including the payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between you and the applicable advertiser or other third party. You further agree that ForceMax™ shall not be responsible or liable, directly or indirectly, for any loss or damage caused by the use of or reliance on any such material available on or through any such site or any such dealings or promotions.

15. Editing, Deleting and Modification. We reserve the right in our sole discretion to edit and/or delete any documents, information or other content appearing on the Site.

16. User Information. All materials that you submit through or in association with the Site including, without limitation, the Registration Data shall be subject to the Privacy Policy. For a copy of the Privacy Policy, please [Click Here](#).

17. Dispute Resolution Provisions. The Agreement shall be treated as though it were executed and performed in New York, New York and shall be governed by and construed in accordance with the laws of the State of New York (without regard to conflict of law principles). Should a dispute arise concerning the terms and conditions of the Agreement or the breach of same by any party hereto, the parties agree to submit their dispute for resolution by arbitration before the American Arbitration Association in New York City, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. Any award rendered shall be final and conclusive to the parties and a judgment thereon may be entered in any court of competent jurisdiction. To the extent permitted by law, you agree that you will not bring, join or participate in any class action lawsuit as to any claim, dispute or controversy that you may have against ForceMax™ and its employees, officers, directors, members, representatives and assigns. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the attorney's fees and court costs that ForceMax™ incurs in seeking such relief. This provision preventing you from bringing, joining or participating in class action lawsuits: (a) does not constitute a waiver of any of your rights and remedies to pursue a claim individually and not as a class action in binding arbitration as provided above; and (b) is an independent agreement.

18. Miscellaneous. Nothing herein shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending an outcome in arbitration. To the extent that anything in or associated with the Site is in conflict or inconsistent with these Terms and Conditions, these Terms and Conditions shall take precedence. Our failure to enforce any provision of the Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision. The parties do not intend that any agency or partnership relationship be created through operation of the Agreement.

19. How to Contact Us. If you have any questions about the Agreement or about the practices of ForceMax™, please feel free to contact us at the following telephone numbers, as applicable to you:

For customers in the United States and Canada: 888-591-2190
For customers in Australia – Toll-free 1-800-335-305
For customers in the United Kingdom – Toll-free - 0-800-680-0623