



## **Fenix General Agency, LLC Website Terms of Use**

# **LIMITATION OF LIABILITY**

YOU ASSUME ALL LIABILITY, RESPONSIBILITY AND RISK FOR YOUR USE OF THIS WEBSITE. FENIX GENERAL AGENCY, LLC IS NOT RESPONSIBLE FOR ANY DAMAGES OR INJURIES THAT RESULT FROM ANY PERSON'S USE OF THIS WEBSITE. THESE INCLUDE, BUT ARE NOT LIMITED TO, DAMAGES OR INJURY CAUSED BY:

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2. any use of any site linked to or from this site, including an inability to use or access any site;
3. any failure of performance, including but not limited to, any error, omission, interruption, defect, delay in operation or transmission;
4. computer virus or line failure.

FENIX GENERAL AGENCY, LLC IS NOT LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR INDIRECT DAMAGES.

EXCEPT AS PROVIDED IN THIS PARAGRAPH, ACCC IS NOT LIABLE EVEN IF WE HAVE BEEN NEGLIGENT, OR IF OUR AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POTENTIAL OF SUCH DAMAGES, OR BOTH. In some states the law may not allow us to limit or exclude liability for incidental or consequential damages. The above limitation may not apply and you may have the right to recover these types of damages. In any event, FENIX GENERAL AGENCY, LLC's liability to you for any and all damages, injuries, losses, and claims of any kind that may arise from your use of this website and the material and information contained on this website, regardless of the basis or legal theory, is limited and shall not exceed the amount you have paid to access our website.

THE LIMITATION OF LIABILITY AND ALL OTHER PROVISIONS SET FORTH IN THE TERMS OF USE FOR THIS WEBSITE SHALL EXTEND TO ANY AFFILIATE, SUBSIDIARY, PARENT, EMPLOYEE, DIRECTOR, OFFICER, AGENT, AUTHORIZED REPRESENTATIVE, OR LEGAL REPRESENTATIVE OF ACCC INSURANCE COMPANY TO THE FULLEST EXTENT PROVIDED HEREIN.

# DISCLAIMER OF WARRANTY

ANY AND ALL USE, CONTENT AND MATERIAL ON THIS ACCC SITE IS PROVIDED "AS IS". ACCC DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES CONCERNING THE USE OF THIS SITE AND ANY MATERIAL OR INFORMATION CONTAINED IN THIS SITE. THIS INCLUDES, BUT IS NOT LIMITED TO, WARRANTIES THAT:

1. the material and information on this website is of any particular level of quality or is fit for any particular purpose, use or function;
2. the function and performance of the website and the material and information contained on it will be uninterrupted or free from error or defect, or that defects will be corrected, even if identified and made known to us;
3. this website and/or the servers that support it and make it available for use are free if computer viruses or other harmful components or conditions;
4. information contained on this website is accurate as of, or on any particular date.

## GENERAL PROVISIONS

By using this website, you agree to all Terms of Use, which includes the Arbitration Agreement.

FENIX GENERAL AGENCY, LLC does not represent that the services, materials, or products it displays on this website are available for use in jurisdictions outside the United States, or in states where FENIX GENERAL AGENCY, LLC is not licensed to conduct business.

FENIX GENERAL AGENCY, LLC may modify these Terms of Use at any time, simply by updating this posting or the information on its website and without notice to you.

If any provision of the Terms of Use agreement is unlawful, void or unenforceable, it shall not affect the validity and enforceability of any remaining provisions.

## JURISDICTION; ARBITRATION AND DISPUTE RESOLUTION

Except as otherwise provided for hereunder, Texas law shall govern and control any dispute or action concerning this FENIX GENERAL AGENCY, LLC website. FENIX GENERAL AGENCY, LLC is based in Houston, Texas. By your use of this website, you

agree that any dispute over use, content or material on this website is required to be brought and heard in Houston, Harris County, Texas.

## Arbitration Agreement

**IT IS IMPORTANT THAT YOU READ THIS ENTIRE SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS. YOUR USE OF THIS WEBSITE IS SUBJECT TO YOUR CONSENT TO THE ARBITRATION AGREEMENT IN THIS SECTION WHICH PROVIDES THAT, EXCEPT FOR THE LIMITED AND SPECIFIC EXCEPTION STATED BELOW, ANY DISPUTE BETWEEN YOU AND ACCC SHALL BE RESOLVED BY BINDING ARBITRATION THAT REPLACES THE RIGHT TO GO TO COURT BEFORE A JUDGE OR A JURY. ARBITRATION MAY LIMIT YOUR RIGHTS TO DISCOVERY OR TO APPEAL. IT FURTHER PROVIDES THAT YOU WILL NOT BE ABLE TO BRING A CLASS ACTION OR OTHER REPRESENTATIVE ACTION IN COURT, NOR WILL YOU BE PERMITTED TO BRING ANY CLAIM IN ARBITRATION AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION.**

You or FENIX GENERAL AGENCY, LLC may, without the other's consent, elect mandatory, binding arbitration of any claim, dispute, or controversy raised by either you or FENIX GENERAL AGENCY, LLC against the other arising from: (1) this arbitration agreement; (2) your use of this website; or (3) the material and information on contained on this website (the "claim" or "claims"). Any and all such claims are subject to arbitration, no matter what theory they are based on or what remedy they seek, whether legal or equitable. As an exception to the arbitration provision, you may retain the right to pursue in a small claims court in Harris County, Texas, any claim that is within that court's jurisdiction, provided it proceeds on an individual basis. Any arbitration shall be conducted as an individual arbitration. No consent or agreement is given by FENIX GENERAL AGENCY, LLC to any arbitration pursued on a class or representative basis, and no arbitrator shall have authority to proceed with an arbitration on a class or representative basis. No arbitration will be consolidated with any other arbitration proceeding without the consent of all parties. This arbitration agreement applies to and includes any claims made and remedies sought as part of any class action, private attorney general action, or other representative action. By consenting to submit your claims to arbitration, you may be forfeiting your right to share in any class action awards, including class claims where a class has not yet been certified, even if the facts and circumstances upon which the Claims are based already occurred or existed. Unless otherwise agreed to by the parties in writing, the party filing a claim in arbitration must select either the National Arbitration Forum ("NAF") or the American Arbitration Association ("AAA") to administer the arbitration under its organizations rules, codes and procedures. In the event of a conflict between the rules, codes and procedures of the selected arbitration organization and this arbitration agreement or the Terms of Use for this website, this arbitration agreement or the Terms of Use shall control. The arbitration shall be brought, administered and heard

in Houston, Texas. The arbitration shall be before a single arbitrator. The arbitrator will apply applicable Texas substantive law, including the applicable statute of limitations, and will honor claims of privilege recognized at law. The arbitrator will have the power to award to a party any damages provided for under applicable law, but in so doing, the arbitrator shall apply substantive law regarding damages as if the matter had been brought in court, including without limitation, the law on punitive damages. The Federal Arbitration Act, and not state law, shall govern the arbitrability of all claims between you and FENIX GENERAL AGENCY, LLC, including any and all claims or disputes concerning the validity, construction, and performance of this arbitration provision. Any claim or dispute as to the enforceability of this arbitration provision's restrictions on your right to participate in or pursue a class action or class-wide arbitration shall be decided by a court and not an arbitrator, and shall be brought only in a United States District Court located in Houston, Texas, or in any court of competent jurisdiction within the Texas Court System located in Harris County.

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