

ONLINE SITE AND SALES

TERMS OF USE

OVERVIEW

This terms of use agreement ("Agreement") is entered into by and between Higginbotham Design & Engineering, Inc. ("Higginbotham," "we," "us," or "our") and you, individually or on behalf of the legal entity you represent ("user" or "you"). BY ACCESSING AND USING OUR WEBSITE, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THIS AGREEMENT. IF YOU DO NOT AGREE WITH AND ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THIS AGREEMENT, PLEASE CEASE USE OF OUR WEBSITE.

By visiting our site and/ or purchasing something from us, you engage in our "Service" and agree to be bound by the following terms and conditions ("Terms of Service", "Terms"), including those additional terms and conditions and policies referenced herein and/or available by hyperlink. These Terms of Service apply to all users of the site, including without limitation users who are browsers, vendors, customers, merchants, and/ or contributors of content.

Please read these Terms of Service carefully before accessing or using our website. By accessing or using any part of the site, you agree to be bound by these Terms of Service. If you do not agree to all the terms and conditions of this agreement, then you may not access the website or use any services. If these Terms of Service are considered an offer, acceptance is expressly limited to these Terms of Service.

Our store is hosted on Weebly, Inc. They provide us with the online e-commerce platform that allows us to sell our products and services to you.

SECTION 1 - ONLINE STORE TERMS

By agreeing to these Terms of Service, you represent that you are at least the age of majority in your state or province of residence, or that you are the age of majority in your state or province of residence and you have given us your consent to allow any of your minor dependents to use this site.

If you use any part of the site or Service that requires a user name or password, you agree to provide us with complete, accurate, and current registration information as prompted by the site. You are solely responsible for maintaining the confidentiality and security of your account, password and computer and phone equipment. You agree to notify Higginbotham immediately if you learn that the security of your account is compromised. Higginbotham reserves the right to take any action that it deems necessary or reasonable to ensure the security of the site, the Service or your account, including without limitation terminating your account, changing your password or requesting additional information to authorize transactions on your account. Higginbotham will not be liable to you for any action or inaction of Higginbotham under this paragraph, any compromise of the confidentiality of your account or password, or any unauthorized access to your account or use of your password. On the other hand, you may be liable to Higginbotham for losses incurred by Higginbotham as a result of someone else using your account.

We have engaged authorize.net and PayPal® to manage all financial transactions related to the Service and to tender all payments between users of the Service and Higginbotham. Higginbotham makes no representations or warranties regarding services rendered by authorize.net or PayPal®, and shall assume no liability for damages arising from or related to transactions using authorize.net or PayPal® payment services. By using authorize.net or PayPal® payment services, you agree to be bound by the terms and conditions imposed by authorize.net or PayPal®.

SECTION 2 - GENERAL CONDITIONS

We reserve the right to discontinue the operation of, or prohibit you from accessing or using the Service (or any components thereof) at any time and without liability to us, for any reason, including if you violate this Agreement. Using the Services does not create an employer-employee, principal-agent, joint-venture, franchise, partnership, or independent contractor relationship of any type between you and us.

You understand that your content (not including credit card information), may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. Credit card information is always encrypted during transfer over networks.

You agree not to reproduce, duplicate, copy, sell, resell, or exploit any portion of the Service, use of the Service, or access to the Service or any contact on the website through which the service is provided, without express written permission by us.

The headings used in this agreement are included for convenience only and will not limit or otherwise affect these Terms.

SECTION 3 - ACCURACY, COMPLETENESS AND TIMELINESS OF INFORMATION

We are not responsible if information made available on this site is not accurate, complete, or current. The material on this site is provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or timelier sources of information. Any reliance on the material on this site is at your own risk.

This site may contain certain historical information. Historical information, necessarily, is not current and is provided for your reference only. We reserve the right to modify the contents of this site at any time, but we have no obligation to update any information on our site. You agree that it is your responsibility to monitor changes to our site.

SECTION 4 - MODIFICATIONS TO THE SERVICE AND PRICES

Prices for our products are subject to change without notice.

We reserve the right at any time to modify or discontinue the Service (or any part or content thereof) without notice at any time.

We shall not be liable to you or to any third-party for any modification, price change, suspension, or discontinuance of the Service.

SECTION 5 - PRODUCTS OR SERVICES

Certain products or services may be available exclusively online through the website. These products or services may have limited quantities and are subject to return or exchange only according to our Return Policy.

We have made every effort to display as accurately as possible the colors and images of our products that appear at the store. We cannot guarantee that your computer monitor's display of any color will be accurate.

We reserve the right, but are not obligated, to limit the sales of our products or Services to any person, geographic region, or jurisdiction. We may exercise this right on a case-by-case basis. We reserve the right to limit the quantities of any products or services that we offer. All descriptions of products or product pricing are subject to change at any time without notice, at the sole discretion of us. We reserve the right to discontinue any product at any time. Any offer for any product or service made on this site is void where prohibited.

We do not warrant that the quality of any products, services, information, or other material purchased or obtained by you will meet your expectations, or that any errors in the Service will be corrected.

SECTION 6 - ACCURACY OF BILLING AND ACCOUNT INFORMATION

We reserve the right to refuse any order you place with us. We may, in our sole discretion, limit or cancel quantities purchased per person, per household or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address. In the event that we make a change to or cancel an order, we may attempt to notify you by contacting the e-mail and/or billing address/phone number provided at the time the order was made. We reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by dealers, resellers, or distributors.

You agree to provide current, complete, and accurate purchase and account information for all purchases made at our store. You agree to promptly update your account and other information, including your email address and credit card numbers and expiration dates, so that we can complete your transactions and contact you as needed.

For more detail, please review our Return Policy.

SECTION 7 - OPTIONAL TOOLS

We may provide you with access to third-party tools over which we neither monitor nor have any control nor input.

You acknowledge and agree that we provide access to such tools "as is" and "as available" without any warranties, representations or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of optional third-party tools.

Any use by you of optional tools offered through the site is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which tools are provided by the relevant third-party provider(s).

We may also, in the future, offer new services and/or features through the website (including, the release of new tools and resources). Such new features and/or services shall also be subject to these Terms of Service.

SECTION 8 - THIRD-PARTY LINKS

Certain content, products and services available via our Service may include materials from third-parties. Such links are provided to you only as a convenience, and the inclusion of any link does not imply affiliation, endorsement, or adoption by Higginbotham of the web site or any information contained therein.

Third-party links on this site may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy and we do not warrant and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or services of third-parties.

We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third-party.

SECTION 9 - USER COMMENTS, FEEDBACK, AND OTHER SUBMISSIONS

If, at our request, you send certain specific submissions (for example contest entries) or without a request from us you send creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, "Comments"), you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium any Comments that you forward to us. We are and shall be under no obligation (1) to maintain any Comments in confidence; (2) to pay compensation for any Comments; or (3) to respond to any Comments.

We may, but have no obligation to, monitor, edit or remove content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Service.

You warrant and agree that your Comments will not violate any right of any third-party, including copyright, trademark, privacy, personality or other personal or proprietary right. You further warrant and agree that your Comments will not contain libelous or otherwise unlawful, abusive or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Service or any related website. You may not use a false e-mail address, pretend to be someone other than yourself, or otherwise mislead us or third-parties as to the origin of any Comments. You are solely responsible for any Comments you make and their accuracy. We take no responsibility and assume no liability for any Comments posted by you or any third-party.

SECTION 10 - PERSONAL INFORMATION

Your submission of personal information through the store is governed by our Privacy Policy.

SECTION 11 - ERRORS, INACCURACIES, AND OMISSIONS

Occasionally there may be information on our site or in the Service that contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, promotions, offers, product shipping charges, transit times, and availability. We reserve the right to correct any errors, inaccuracies, or omissions, and to change or update information or cancel orders if any information in the Service or on any related website is inaccurate at any time without prior notice (including after you have submitted your order).

We undertake no obligation to update, amend or clarify information in the Service or on any related website, including without limitation, pricing information, except as required by law. No specified update or refresh date applied in the Service or on any related website, should be taken to indicate that all information in the Service or on any related website has been modified or updated.

SECTION 12 - PROHIBITED USES

In addition to other prohibitions as set forth in the Terms of Service, you are prohibited from using the site or its content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Service or of any related website, other websites, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet. We reserve the right to terminate your use of the Service or any related website for violating any of the prohibited uses.

SECTION 13 – YOUR REPRESENTATIONS AND WARRANTIES

In addition to the warranties provided by you throughout this Agreement, you hereby represent and warrant the following:

Requisite Authority: You hereby represent and warrant that you have all requisite power and authority to enter into this Agreement and perform your obligations under this Agreement on behalf of yourself individually or the company you represent, as the case may be.

No Unlawful Purpose: You hereby represent and warrant that you will comply with the terms of this Agreement and will not use the site or Services for any purpose that is unlawful or prohibited by this Agreement. You further represent and warrant that, in using the site and Services, you will comply with all applicable laws and regulations.

SECTION 14 - DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

THE SITE AND ALL PRODUCTS AND SERVICES DELIVERED TO YOU ARE (EXCEPT AS EXPRESSLY STATED BY US IN WRITING) PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, HIGGINBOTHAM DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HIGGINBOTHAM DOES NOT WARRANT THAT THE SITE, THE SERVICES OR ANY INFORMATION, CONTENT, MATERIALS, PRODUCTS OR SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE OR HIGGINBOTHAM'S SERVERS, OR ANY EMAIL SENT BY HIGGINBOTHAM IS ACCURATE, COMPLETE, RELIABLE, TIMELY, UNINTERRUPTED, SECURE, ERROR-FREE, OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, OR WILL OTHERWISE MEET YOUR REQUIREMENTS OR EXPECTATIONS. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE AND SERVICES IS AT YOUR SOLE RISK AND RESPONSIBILITY. HIGGINBOTHAM, ON BEHALF OF ITSELF AND ITS LICENSORS AND CUSTOMERS, MAKES NO WARRANTY OF NON-INFRINGEMENT WITH RESPECT TO THE SITE, SERVICES, ANY CONTENT, OR ANY OTHER MATERIAL.

In no case shall Higginbotham, our directors, officers, employees, affiliates, agents, contractors, interns, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from your use of any of the service or any products procured using the service, or for any other claim related in any way to your use of the service or any product, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of the service or any content (or product) posted, transmitted, or otherwise made available via the service, even if advised of their possibility. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law.

SECTION 15 - INDEMNIFICATION

You hereby release, and shall defend, indemnify, and hold harmless, Higginbotham and its owners, subsidiaries, affiliates, partners, officers, directors, agents, contractors, licensors, service providers, subcontractors, suppliers, interns and employees from and against any and all claims, actions, suits, proceedings, demands,

losses, liabilities, damages, judgments, settlements, penalties, costs and expenses (including without limitation all reasonable attorneys' fees), known and unknown, arising out of (i) your use of the Service or the site; (ii) any violation or breach of this Agreement; or (iii) any violation by you of any law or the rights of a third-party.

If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

SECTION 16 – COPYRIGHT

All content and copyrighted and copyrightable materials on the site, including, without limitation, the text, graphics, pictures, videos, sound files and other files, design, compilation, Higginbotham logo, and the selection, arrangement, organization and magnetic translation thereof ("Materials") are the property of Higginbotham or its third-party licensors and are protected by United States and international copyright laws. Higginbotham or its third-party licensors, own all right, title and interest in and to the Materials, and nothing in this Agreement shall be interpreted to grant a license or ownership interest in or to the Materials. None of the Materials may be copied, in whole or in part, without express written permission by the copyright holder, and all rights are expressly reserved.

SECTION 17 – Interim Designation of Agent to Receive Notification of Claimed Infringement Pursuant to 17 USC 512(C)(2)

Higginbotham respects the intellectual property of others. If you believe that your work has been copied and has been posted to the site or Services in a way that constitutes copyright infringement, please send a claim to Higginbotham's copyright agent as follows:

Gary Higginbotham
209 Tidwell Drive
Alpharetta, GA 30004
gary@higginbothamsteel.com

Upon receiving a claim of infringement, Higginbotham may, at its sole discretion, immediately remove any materials that are the subject of the claim without providing prior notice to the user responsible for such materials. Higginbotham may, at its sole discretion, decide to restore any remove materials depending on the specific facts of a given situation.

SECTION 18 - SEVERABILITY

In the event that any provision of these Terms of Service is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms of Service, such determination shall not affect the validity and enforceability of any other remaining provisions.

SECTION 19 - TERMINATION

This Agreement shall commence on the date you begin using the site or Services and shall remain in effect for the duration of such use. This Agreement may be terminated at any time by Higginbotham for any reason or for no reason. If you do not agree to the terms and obligations of this Agreement, you must immediately discontinue your use of the site or Services, and you may not use (and have no right to use) the site or the Services unless and until you acknowledge your agreement to this Agreement.

SECTION 20 - ENTIRE AGREEMENT

The failure of us to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision.

These Terms of Service and any policies or operating rules posted by us on this site or in respect to the Service constitutes the entire agreement and understanding between you and us and govern your use of the Service, superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and us (including, but not limited to, any prior versions of the Terms of Service).

Any ambiguities in the interpretation of these Terms of Service shall not be construed against the drafting party.

SECTION 21 - GOVERNING LAW

THESE TERMS OF SERVICE AND ANY SEPARATE AGREEMENTS WHEREBY WE PROVIDE YOU SERVICES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF GEORGIA. YOU AGREE THAT ANY CLAIM OR DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT, THE SITE OR THE SERVICES WILL BE SUBJECT TO THE JURISDICTION OF THE APPLICABLE STATE OR FEDERAL COURTS LOCATED IN FULTON COUNTY, GEORGIA, USA, AND YOU CONSENT TO EXCLUSIVE JURISDICTION AND VENUE IN SUCH COURTS.

SECTION 22 - CHANGES TO TERMS OF SERVICE

You can review the most current version of the Terms of Service at any time at this page.

We reserve the right, at our sole discretion, to update, change, or replace any part of these Terms of Service by posting updates and changes to our website. It is your responsibility to check our website periodically for changes. Your continued use of or access to our website or the Service following the posting of any changes to these Terms of Service constitutes acceptance of those changes.

SECTION 23 - CONTACT INFORMATION

Questions about the Terms of Service should be sent to us at gary@higginbothamsteel.com