

## TERMS AND CONDITIONS OF SERVICE

**THESE TERMS AND CONDITIONS OF SERVICE CONSTITUTE A LEGALLY BINDING CONTRACT BETWEEN THE "COMPANY" AND THE "CUSTOMER" AND ARE AN INSEPARABLE PART OF "THE APPLICATION FOR CREDIT AND SALES AGREEMENT".**

1. **DEFINITIONS.** (a) "**Company**" shall mean the E.T. Horn Company (DBA Horn), its subsidiaries, related companies, agents and/or representatives; (b) "**Customer**" shall mean the person or entity to which the company is selling goods, buying goods, or rendering service or contracting for service, as well as its agents and/or representatives.
2. **Limitation of actions & timely claim.** unless subject to a specific statute or international convention, all claims against company for a potential or actual loss, damage (concealed or visible), shortage or product specification discrepancy must be made in writing and must be received by the company within 30 calendar days of delivery of the goods to the intended destination. Customer shall make a careful and thorough inspection of goods received from the company. Customer's failure to give a written notice of any claim within the time period enumerated herein shall constitute unqualified acceptance of the goods, and customer thereby waives the right to file any future claim or suit with respect to these goods.
3. **No liability for the selection or services of third parties and/or routes.** unless services are performed by persons or firms engaged pursuant to express written instructions from the customer, company shall use reasonable care in selecting third parties, and in selecting the means, route and procedure to be followed in the handling, transportation, importation or exportation of goods. Company assumes no responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while the goods are in the custody or control of a third party or its agent. Quotations not binding. Quotations as to cost of goods, fees, transportation, storage, insurance, or any other charges given by the company to the customer are for informational purposes only and are subject to change without notice. No quotation shall be binding upon the company unless the company agrees in writing. The validity period must be noted in the quotation or it is deemed to expire automatically at the end of the business day on which the quotation was given.
4. **Reliance on information furnished.** Customer acknowledges that it is required to review all documents and declarations provided by the company. These include, but are not limited to any document(s) submitted or prepared for the customer's use or benefit by the company or by third parties. Customer will immediately advise the company of any errors, discrepancies, incorrect statements, omissions, or concerns regarding any document or declaration. Company relies on the correctness of all information given verbally and all documentation, whether in written or electronic format, furnished or approved by customer.

Company will rely on prepared documents and declarations not disputed or corrected by the customer in a timely manner. Customer shall indemnify and hold the company harmless from any and all claims asserted and/or liability or losses suffered by reason of the customer's failure to disclose information or for any incorrect or false statement made by the customer upon which the company reasonably relied. The



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customer agrees that the customer has an affirmative non-delegable duty to disclose any and all information required to legally possess, transport, import or export goods.

5. Declaring higher value to third parties. Third parties to whom the goods are entrusted may limit liability for loss or damage. The company will request excess valuation coverage only upon specific written instructions from the customer, which must agree to pay any charges assessed.
6. **DISCLAIMERS; limitation of liability.** Company provides no express or implied warranties of any kind for goods it supplies to customer. All warranties are limited to those specified by the actual manufacturers. Customer agrees that in connection with any and all services performed, the company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to customer including loss or damage to customer's goods, and the company shall in no event be liable for the acts of third parties. The company expressly disclaims any implied warranty of merchantability or fitness for a particular purpose. The company's liability shall be limited to the following: (1) where the claim arises from activities other than a sale of goods, **\$50.00 per shipment or transaction**, (2) where the claim arises from the sale of goods, replacement of the goods when possible or a credit or refund equal to the invoiced cost of the goods. The implementation of any such remedy is at the sole discretion of the company. In no event shall company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages. Neither shall the company be liable for loss of use or for loss of earnings or profits of the customer.
7. **Advancing money.** All charges must be paid by customer in advance unless the company agrees in writing to extend credit or other payment arrangements. The granting of credit and payment terms are always conditional and may be revoked at any time without notice. The granting of credit to a customer in connection with a particular transaction shall not be considered a waiver of this provision by the company.
8. **INDEMNIFICATION/HOLD HARMLESS.** The customer agrees to indemnify, defend, and hold the company, its officers and employees harmless from any claims and/or liability arising as a result of company's selling goods or providing any service to customer to or on behalf of the customer. Company reserve the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by customer, in which event customer will cooperate with company fully in asserting any available defenses.
9. **RETURNS.** No goods will be accepted for return without prior written approval. The net monetary value of any approved return shall be credited to the customer, reimbursed in cash or negotiable instrument, or used to offset amounts the customer owes the company. All such options will be decided at the sole discretion of the company. Returns are subject to inspection for condition and expiration dates. Returns may be subject to a re-stocking fee and freight charges, but any such fees or charges will be assessed at the sole discretion of the company.
10. **Validity of purchase order.** No terms or conditions of a purchase order, sales contract or similar document, regardless of how transmitted to the company shall have any force or validity nor shall it become part of any contract between the company and the customer unless approved in writing by both parties. Absent a mutually approved purchase order, sales contract, or similar document, the company's sales agreement & terms and conditions of service will govern. No modification or amendment unless written.



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Any modification or amendment to the company sales agreement and the terms and conditions of service will only be binding if signed in writing by both customer and company.

11. ENFORCEABILITY. The company sales agreement and the terms and conditions of service herein supersede all previous written or oral agreements. If any part of the sales agreement or the terms and conditions of service is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect the intent as nearly as possible and the remaining portions shall remain in full force and effect. In the event the company provides written agreement to terms and conditions for a specific transaction that differ from those enumerated herein, the terms and conditions set forth in such other document(s) shall govern that specific transaction only.
12. Governing law; consent to jurisdiction and venue. The sales agreement and the terms and conditions of service and the relationship of the parties shall be construed according to the laws of the state of Delaware. All disputes relating to the interpretation of the sales agreement and the terms and conditions of service shall be resolved in accordance with Delaware law. Company and customer (a) irrevocably consent to the jurisdiction of the United States federal and state courts located in the county of Los Angeles, state of California; (b) agree that any action relating to goods bought from company and any services performed by company shall only be brought in said courts; (c) consent to the exercise of in personam jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgement may be instituted in any jurisdiction.
13. Loss, damage or expense due to delay. Unless the goods bought by customer, or any services performed by the company on behalf of the customer are delayed by reason of the negligence or other controllable fault of the company, the company shall not be responsible for any loss, damage or expense incurred by the customer because of such delay. In the event the company is at fault, its liability is limited in accordance with the provisions of paragraph 7 above.
14. Non-waiver. Should company for any reason decide not to enforce any provision contained within the credit application and sales agreement including the terms and conditions of service, customer is aware that such inaction shall in no way waive company's right to enforce these same provisions for customer's non-performance regarding any and all past or future transactions. Any permanent waiver of provisions contained within the credit application & sales agreement including the terms and conditions of service must be in writing and must be signed by the company.
15. No responsibility for customer requests. In any transaction, customer may make a request of company and company will make every effort to comply. However, if such request is not made a written condition of the transaction and if it is not agreed upon in writing by company prior to the order processing, company will have no liability for failure to comply.
16. Title retention. Whenever goods are sold to customer by the company, until the goods are paid for in full: (a) legal and beneficial ownership in and to the goods shall remain with the company, but the risk shall pass to customer, (b) the relationship between the parties shall be fiduciary, and the customer shall hold the goods as Bailee for the company, and (c) customer shall store the goods separately from its own goods and mark them so as to be identified as being the property of company, without prejudice to any other rights of the company, the customer's right to possession of the goods shall cease on the expiration of the agreed



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period of credit if the goods have not been paid for in full at that time. For purposes of recovering the goods, the company is authorized to enter upon any premises where the goods are stored and retake the goods and may resell them as absolute owner. (d) If goods are purchased on an installment payment plan or on a "sale or return" transaction, customer conveys and grants to company a purchase money security interest in the goods to secure the payment of the principal, interest and all obligations of the customer to the company. (e) Whenever goods owned or controlled by company are transported to customer on a consignment basis, such goods are considered to be a "sale on approval" consignment. Company remains the absolute owner of the goods and is entitled to retake any and all such consigned goods at its discretion and expense during normal business hours of customer upon two hours' notice. Customer understands that there is no period of time for which he has any exclusive rights to the purchase or re-sale of consigned goods. (f) For purposes of securing the company's rights to ownership under this section, the customer authorizes company to sign and file appropriate financing statements.

17. Cancellation of orders. No cancellation of any purchase order (without regard to the method utilized to transmit such cancellation from the customer to the company) will be effective unless and until accepted by company in writing. In the event company accepts a cancellation, and without prejudice to the company's right to refuse to do so (or to do so on such terms as it shall specify), the customer agrees to reimburse the company against all losses and expenses incurred as a result of such cancellation.
18. If the credit application and terms and conditions of service are submitted by a customer with existing indebtedness to horn, all provisions contained within the credit application and terms and conditions of service shall govern such existing indebtedness.

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