



Metal Cricket

Metal Cricket - Terms & Conditions

Welcome!

Thank you for visiting Metal Cricket (“Metal Cricket” or “Us”) online, as well as for reviewing these Terms of Use. We want every user of our unique service to enjoy their visit and utilization of our website, as well as successful complete any anticipated transactions made regarding the items made available through our website. In order to accomplish this mutual enjoyment, we’ve set in place the following Terms of Use that we expect all our users and visitors to abide by.

Our Service

We established Metal Cricket to fill a void in the marketplace for quickly viewable and digitally accessible sale listings for used commercial equipment related to the oil and gas containment and processing industries. We have sought to fill this void by creating Metal Cricket, a Service offered through Nexo Solutions LLC, a Texas limited liability company, where we allow owners of used commercial equipment (including vessels, coalescers, separators, etc.) to list said equipment for consignment sale. We’re excited to help satisfy your commercial equipment needs through Metal Cricket, so please let us know how we’re doing!

General Acceptance

While you are a visitor or user of the Metal Cricket website you acknowledge, accept, and agree to abide by the Terms of Use stated herein. These Terms of Use constitute a valid, binding contract between you and Metal Cricket, and also sets out your rights and responsibilities while utilizing the Metal Cricket website. As such, we ask that you please read these Terms of Use very carefully. Remember, by utilizing our website, even as a visitor who has not consummated any transactions, you agree to our Terms of Use, so if you do not agree with our Terms of Use, then you may not utilize the Metal Cricket website.

Our Terms of Use slightly depending on whether you are a visitor simply perusing our website, or an active seller or purchaser of goods listed through our website. The distinctions between the Terms of Use applicable to how you utilize our website are discussed immediately below.

Metal Cricket

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Metal Cricket

Sellers

A. Online Sales

Metal Cricket offers sellers the possibility to utilize the Metal Cricket website to place for sale certain items of commercial equipment, as referenced above. This service is akin to a community message-board or classified advertisement section of a newspaper whereby we provide the hosting space for your items online via the Metal Cricket website, and you provide the descriptions, photos, and other information regarding such items and how they may be purchased. However, we have some rules regarding what types of items may be placed for sale on the Metal Cricket website.

First, if the items that you place for sale on our website violate the intellectual property of any other person or entity and you have not obtained a license or the authority to use that intellectual property, then we will refuse to list those items for sale through our website. You are solely responsible for ensuring you do not violate the intellectual property rights of others and you acknowledge, accept, and agree to hold us harmless in the event any third-party notifies us of any such violation. In the event that you have already placed any of your items for sale on our website, but we subsequently discover that said items violate the intellectual property rights of any other person or entity, then we will immediately remove your items from our website and cancel any pending transactions regarding your items to the extent Metal Cricket is assisting in the facilitation of such transactions. Please note such removal and cancellation does not alleviate your responsibility to tender payment to Metal Cricket any fees you incur by utilizing our website.

Second, we strive to provide visitors and users of our website with ease of accessibility and use, security, and trust, which enables our visitors and users to review items of merchandise and make an informed decision before entering a transaction through our website. To ensure and maintain this confidence in decision-making, we ask that you honestly and accurately represent both yourself and the items of merchandise that you place for sale through our website. In the event we believe there is a discrepancy or inaccuracy between the actual item and your representation of the item, then we will temporarily prevent you from placing the item on our website until we have had the chance to contact you and discuss same. Once any discrepancies or inaccuracies have been corrected, we will then either allow you to place the item for sale on our website or refuse to place the item for sale on our website. In other words, we all think our own stuff is great, but an honest representation of an item will always net you a fair price and a repeat customer, and we want you, as well as our users and visitors, to have the best experience with our website possible.

Third, as a seller utilizing our services and website, you explicitly acknowledge, accept, and agree to the fifteen percent (15%) transaction fee due to Metal Cricket for each transaction processed through our website, exclusive of all associated or other costs, for which you are also responsible. Please note that although we while we may assist in processing your transactions, you are solely responsible for all tax implications on all items sold on your behalf.

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Finally, we expect you to utilize our website, transact business, and generally present yourself, as the case may be, in a courteous, professional manner. This means that you are prohibited from interfering with any business carried on by Metal Cricket or by any other seller, person, or entity utilizing our website; from harassing any visitor, user, or other seller utilizing our website; and from using your status as a seller to negatively impact any service we may provide through our website. These restrictions include delivering unsolicited advertisements or spam mail to visitors, users, or other sellers utilizing our website.

It's possible that you may have customers from countries other than the United States of America attempting to enter transactions for items of merchandise you may have placed for sale on our website. It is your sole decision whether to process such transactions, and your sole responsibility to become familiar with the laws of foreign jurisdictions with regard to the rights of foreign customers. You agree that you will immediately inform Metal Cricket of any cancelled orders or refunds, which are your sole responsibility, but for which Metal Cricket may offer its assistance.

B. Consignment

Metal Cricket further offers sellers the possibility to utilize our services to have Metal Cricket place for sale certain products on behalf of said sellers. Consignment through the Metal Cricket website involves a seller delivering detailed descriptions, photographs, and all associated information related to an item of merchandise to Metal Cricket, which will then review and display said information on the Metal Cricket website for potential users and visitors of the Metal Cricket website to view, inquire about, and potentially purchase, all in exchange for a fee paid to Metal Cricket for same. Usually the consignor (you) sets a price floor below which the consignee (us) is not allowed to sell the item, and the consignee (us) then attempts to sell the item as far beyond the price floor as possible. However, we have some rules regarding what types of items may be placed for sale by utilizing our services.

First, if the items that you ask us to place for sale on our website violate the intellectual property of any other person or entity and you have not obtained a license or the authority to use that intellectual property, then we will refuse to list those items for sale through our website. You are solely responsible for ensuring you do not violate the intellectual property rights of others and you acknowledge, accept, and agree to hold us harmless in the event any third-party notifies us of any such violation. In the event that we have already placed any of your items for sale on our website at your request, but subsequently discover that said items violate the intellectual property rights of any other person or entity, then we will immediately remove your items from our website, cancel any pending transactions regarding your items, and return those items to you and your expense. Please note such removal, cancellation, and return does not alleviate your responsibility to pay us for our services.

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Second, we strive to provide visitors and users of our website with ease of accessibility and use, security, and trust, which enables our visitors and users to review items of merchandise and make an informed decision before entering a transaction through our website. To ensure and maintain this confidence in decision-making, we ask that you honestly and accurately represent both yourself and the items of merchandise that you request us to place for sale through our website. Only in very limited circumstances of close geographic proximity will Metal Cricket have the opportunity to inspect and view an item in person and/or onsite, so Metal Cricket cannot and does not guarantee the quality or description of any item you desire to place for sale through the Metal Cricket website. However, any purchaser will to inspect said items after delivery and purchase, and since we will assist any purchaser who receives a defective or non-conforming item any way we are able, it is imperative that be honest! In the event we believe there is a discrepancy or inaccuracy between the actual item and your representation of the item, then we will refrain from placing the item on our website until we have had the chance to contact you and discuss same. Once any discrepancies or inaccuracies have been corrected, we will then either place the item for sale on your behalf or refuse to place the item for sale on our website.

Third, as a seller utilizing our services and website, you explicitly acknowledge, accept, and agree to the fifteen percent (15%) transaction fee due to Metal Cricket for each transaction processed through our website, exclusive of all shipping costs, for which you are also responsible. Please note that although we while we may assist in processing your transactions, you are solely responsible for all tax implications on all items sold on your behalf.

Fourth, it is your responsibility to ensure the safe and secure storage and delivery of any items placed through the Metal Cricket website pending any potential purchase, as well as to tender payment for all necessary shipping and/or freight costs. In the event you desire Metal Cricket to inspect an item for verification of its condition, quality, and description, you shall be responsible for all costs incurred by Metal Cricket in performing such inspection, including any related travel and lodging expenses, to be determined by Metal Cricket on a case-by-case basis after discussion with you. Should any item Metal Cricket inspects not be as described, not in excellent and clean condition, or otherwise non-conforming with any information you have previously provided, then Metal Cricket may refuse to place said item for sale through the Metal Cricket website. Should an item of merchandise placed with us for sale prove to be counterfeit, then you acknowledge, understand, and agree that Metal Cricket has the ability to provide all information regarding said item to any governmental agency or authority with jurisdiction over same, whether or not requested by said governmental agency or authority.

Fifth, by consigning your commercial equipment items with Metal Cricket, you are granting Metal Cricket the exclusive right to sell said items on your behalf, and you will not attempt to sell said item through any other method or means unless otherwise agreed to by Metal Cricket in writing.

Sixth, all of your commercial equipment items remain completely yours pending the closing of any potential purchase and we do not acquire any rights, title, or interest in your items besides

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what is necessary to sell your items on your behalf through the Metal Cricket website pursuant to these Terms of Use.

Finally, we expect you to utilize our website, transact business, and generally present yourself, as the case may be, in a courteous, professional manner. This means that you are prohibited from interfering with any business carried on by Metal Cricket or by any other seller, person, or entity utilizing our website; from harassing any visitor, user, or other seller utilizing our website; and from using your status as a seller to negatively impact any service we may provide through our website. These restrictions include delivering unsolicited advertisements or spam mail to visitors, users, or other sellers utilizing our website.

It's possible that you may have customers from countries other than the United States of America attempting to enter transactions for commercial equipment items you may have requested Metal Cricket to place for sale on your behalf. It is your sole decision whether to process such transactions, and your sole responsibility to become familiar with the laws of foreign jurisdictions with regard to the rights of foreign customers. You agree that you will immediately inform Metal Cricket of any cancelled orders or refunds, which are your sole responsibility, but for which Metal Cricket may offer its assistance.

Buyers

You've probably already recognized by now that Metal Cricket is an open-community website that provides several methods for sellers to use our website to place for sale certain commercial equipment items and visitors, users, and buyers, like yourself, to utilize our website to transact for purchase those items of merchandise. Thus, it is important that you fully understand that you are not transacting directly with Metal Cricket, but from the various sellers that utilize our website. Metal Cricket cannot and does not endorse or guarantee any items of merchandise placed with us by sellers utilizing our website and cannot and does not enforce universal procedures for regarding the details of transactions involving such merchandise (i.e., shipping or payment methods, seller procedures, etc.).

In the event that you enter into a transaction through utilizing our website, you acknowledge, understand, accept, and agree to abide by our Terms of Use.

Remember that because we do not guarantee the merchandise placed for sale through our website by the sellers utilizing our website, it is your sole responsibility to thoroughly review items of merchandise and read all merchandise descriptions. While we do inspect items placed with Metal Cricket for accuracy and quality in a few very limited circumstances, it is possible that an item may not conform to the exact description offered by the seller of said item. By utilizing our website, you acknowledge and accept such risks. Basically, use the same common sense you always do when making purchases in person and/or onsite and you should be fine.

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Product Data

As discussed herein, the Metal Cricket website collects and processes important data necessary for the operation and use of the service we provide through our website. While we may make this data available to you as a user of our website at your request, and while you are free to retain a copy of this data, this data is the sole and specific property of Metal Cricket. This means that while you are able to retain and use the data generated through use of our website for your own personal purposes, you are expressly prohibited from attempting to commercialize this data or use this data in any manner that generates profit. The data generated through use of our website is the foundation of our business, and Metal Cricket alone has the sole and absolute right to commercialize this data or utilize this data for any purpose related to generating profit, including the sole and absolute right to sell this data.

By using our website online, you unequivocally acknowledge, understand, and agree that the data generated through such usage is the sole property of Metal Cricket, that you shall not make any attempt to commercialize or utilize this data for profit, and that only Metal Cricket has the right to commercialize and utilize the data for profit.

Remember, we certainly do not mind that you retain a copy of the data generated by your use of our website. In fact, we encourage you to review and maintain such data if it helps you further utilize our website to its fullest potential. However, please understand that any attempt by you to commercialize or generate profit using this data is unlawful, and, as such, any profits generated by any such unlawful attempts shall also automatically be the sole property of Metal Cricket.

Data Governance

The utilization of our website inherently involves the inclusion of personal information provided by you that may relate to your personal financial accounts and personal contact and/or identifying information. The transmission of this information to third-party payor processors is also inherent in the utilization of our website, if making a purchase through of any commercial equipment listed within our website, as you must provide this information in order to tender payment for the products you choose to purchase. By using the Metal Cricket website, you explicitly acknowledge and agree that Metal Cricket has no control over how third-party payor processors utilize your provided information and, as such, that Metal Cricket is not liable or responsible in any way for how any third-party which receives necessary personal information from you uses said information.

It is your sole and exclusive responsible to ensure the privacy and confidentiality of any financial and/or personal identifying information that you submit through our website. In the event that you discover any such login, password, and/or information has been comprised or is being used by a party that does not have your permission to do so, then you must immediately contact Metal

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Cricket so that we take all action available to us to assist in preventing any further unauthorized transactions from being consummated. To be clear, however, you shall remain liable for any transactions consummated through utilization of our website that uses your personal and/or financial information for same. Metal Cricket cannot and does not excuse any liability or responsibility which you may have regarding such unauthorized use with any third-party payor processors that facilitate payment through utilization of our website. Further, Metal Cricket is not a party to the payment transactions that occur between you and any third-party payor processors using your information to consummate transactions through utilization of our website.

You are solely and exclusively responsible for all information that you submit within our website and explicitly understand that such submission of information may not always be withdrawn once submitted. You further expressly acknowledge, assume, agree, and accept all risk associated with the submission of your information within our website and the transmission of your information to any third-party payor processors, including the reliance of Metal Cricket, any party selling equipment through our website, and any such third-party payor processors upon the accuracy, reliability, or quality of the information you submit. You also warrant and represent that any information submitted by you through the use of our website is solely and exclusively owned by you or that you have the express permission to submit said information. In the event you submit any information during the utilization of our website that is false or defamatory, not owned by you, to which you do not have permission of use, or violates any right, title, or interest of any third-party, you explicitly acknowledge, understand, and agree that you are potentially exposing yourself to legal liability and that Metal Cricket is not in any way responsible for such exposure.

As mentioned herein, we will use any information you submit to us by transmitting said information to third-party payor processors who will use said information in order to confirm your identity and associated financial accounts, and then use said information to assist in facilitating payment for any products you desire to purchase through the utilization of our website. You expressly acknowledge, understand, and agree that Metal Cricket has no control of the third-party payor processors actions or utilization of your information, and you further expressly understand and agree that Metal Cricket shall not be held accountable for any misuse of your information by such third-party payor processors. We will always transmit your information using secure, encrypted electronic transmission services and shall only transmit your information to third-party payor processors that demonstrate the ability to securely receive and maintain your information.

Your information you submit through utilization of our website is owned by you and Metal Cricket does not claim any ownership or interest in said information. However, by using our website you grant Metal Cricket express permission to transmit your data to third-party payor processors, as stated herein, as well as retain such data in order to assist and enhance your utilization of our website.

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Third-Party Data

Our website may host and present information and/or content, such as links and/or advertisements, regarding other companies, websites, and/or mobile applications (“Third-Party Content”). Metal Cricket neither endorses nor controls the information or data displayed, advertised, or otherwise represented through this Third-Party Content. Your use or utilization of any such Third-Party Content is done at your own risk and you expressly agree that Metal Cricket is not responsible for any aspect of such Third-Party Content. You further acknowledge that such Third-Party Content may require consent to additional third-party terms of service or use, privacy policies, or other terms and provisions that are not reprinted here and for which you remain responsible to familiarize, learn, and follow.

Metal Cricket does not review, filter, or otherwise screen or censor any Third-Party Content, and Metal Cricket may remove such Third-Party Content, in its sole and absolute discretion, in the event said Third-Party Content violates these Terms of Use or commits any other action we deem to be violative of Metal Cricket’s general goals and/or purpose. As such, we do not guarantee the accuracy, reliability, or quality of any Third-Party Content which you may be presented with through utilization of our website, and any further exchange, submission, or transmission of data or information between you and any third-party, including the consummation of any transactions of any kind, is solely between you and said third-party and Metal Cricket has no liability or responsibility with regard to same.

Intellectual Property

All aspects of our website constitute the sole property of Metal Cricket. This specifically includes, but is not limited to, all intellectual property associated with our website, such as design aspects, all technology used by or associated with our website, any trademarks or trade associated with our website or Metal Cricket, generally, and any patent rights associated with our website.

While your use and utilization of our website ensures that you are able to navigate and use same, including any information promulgated by Metal Cricket through such usage, and even utilize any information or data generated by said usage and utilization of the Metal Cricket website for solely non-commercial and non-financial personal purposes, the intellectual property associated with our website does, and shall always, remain exclusively with Metal Cricket.

Further, we continuously strive to ensure that we do not infringe upon the intellectual property of others, whether it be trademark, copyright, trade secret, or patent, and we want your help in making ensure that the rights of everyone using our website, whether as a customer, vendor, third-party payor processor, or otherwise, does the same. Thus, we ask that if you see any information or activity you believe to be infringing upon the intellectual property of either Metal Cricket, any

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other user or visitor of our website, or any third-party, you let us know immediately. We will investigate the situation after receiving such a report, but Metal Cricket expressly disclaims any liability for such investigation. Rest assured that your reports to us will be held in strict confidence.

By utilizing our website, you are granting Metal Cricket a non-exclusive license to submit, use, and transmit any information you make available through the use of our website. This license shall be worldwide, royalty-free, sub-licensable, irrevocable, and perpetual. If that sounds like scary legal language, don't worry. We do not want to steal or misappropriate the proof of your successful use of our website. If we did that, we'd be doing both you and us a disservice. What we do want to do, however, is have the ability to ensure that the transactions you choose to consummate through utilization of our website are successful, so as to promote both your business and experiences, as well as ours. In this way, we want to help you because that helps us both.

Also, by utilizing our website, Metal Cricket grants to you a non-exclusive, revocable, and non-transferable license to use the services and publicly-shared information offered through our website for non-commercial, non-profit-oriented personal purposes. As a condition of this license, you agree not to use the services provided through our website to perform and illegitimate or illegal actions, including, but not limited to, misappropriating the data generated through use of our website, breaking any law of any domestic or foreign jurisdiction, or avoid any fees or taxes incurred as a result of use of our website.

Please note that all images, written words, logos, and other media which appear on our website is the federally protected intellectual property, whether trademark, copyright, or otherwise, of Metal Cricket, and any unauthorized use of such media shall be considered as an unlawful violation of Metal Cricket's ownership rights of such media and prosecuted to the fullest extent the law allows.

Prohibited Use and Utilization

Through your use and utilization of our website, you expressly acknowledge, understand, and agree that you (1) will not utilize our website in any way which violates any applicable law of any jurisdiction that may apply to such use; (2) will not utilize our website in any way which violates these Terms of Use or any related policies that are promulgated by Metal Cricket and apply to your use of our website, as amended from time to time; (3) will not submit or transmit any information that infringes upon the intellectual property or confidential or proprietary rights of any other third-party in conflict with any applicable law of any jurisdiction that may apply to such action; (4) will not submit fraudulent or false information through utilization of our website that is designed to mislead or falsify your identity or assume the identity of any other third-party; (5) will not actually, or attempt to, reverse-engineer or gain unauthorized, unlawful access to any aspect of our website, including our computer systems, computer servers, or computer networks; and (6) will not attempt to damage or disrupt our website, whether through computer viruses, harmful programs, or otherwise.

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General Disclaimers of Warranty

WE, OUR SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND AGENTS, PROVIDE OUR WEBSITE AND THE SERVICES OFFERED THROUGH UTILIZATION OF SAME “AS IS” AND WITHOUT ANY WARRANTY OR CONDITION EITHER EXPRESS, IMPLIED, OR STATUTORY. FURTHER, WE DISCLAIM ANY AND ALL WARRANTIES POTENTIALLY APPLICABLE TO OUR WEBSITE, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

NEITHER METAL CRICKET NOR ANY OF METAL CRICKET’S AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND/OR AGENTS SHALL BE LIABLE FOR ANY PRODUCTS PROCURED OR TRANSACTED FOR THROUGH UTILIZATION OF OUR WEBSITE THAT RESULT IN THE CAUSATION OF INJURY OR THAT DO NOT SATISFY OR MEET EXPECTATIONS OR PERSONAL REQUIREMENTS OR THAT YOU OTHERWISE CONSIDER UNACCEPTABLE.

METAL CRICKET RELIES UPON YOU AND YOU ALONE TO INVESTIGATE AND DISCOVER AND UNDERSTAND ANY QUALITIES AND INGREDIENTS CONTAINED WITHIN PRODUCTS YOU CHOOSE TO PURCHASE AND TENDER PAYMENT FOR THROUGH UTILIZATION OF OUR WEBSITE. YOU UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT METAL CRICKET DOES NOT WARRANT OR REPRESENT THAT ANY INFORMATION REGARDING SUCH QUALITIES AND INGREDIENTS IS ACCURATE, ACCESSIBLE, RELIABLE, COMPLETE, OR FREE FROM ANY ERRORS. ALL DATA, INFORMATION, AND/OR CONTENT PROVIDED THROUGH OUR WEBSITE IS PROVIDED TO YOU FOR INFORMATION PURPOSES ONLY AND ANY RELIANCE ON SUCH INFORMATION IS UNDERTAKEN SOLELY AT YOUR OWN RISK.

Indemnity

You expressly acknowledge, understand, and agree to indemnify, hold harmless, and defend Metal Cricket, its affiliates, subsidiaries, officers, directors, employees, representatives, and agent from and against any and all third-party claims, actions, demands, losses, damages, costs, liabilities, and expenses, including costs of court and attorney’s fees, arising out of our relating to (1) your access or use of our website; (2) your violation of any applicable law of any applicable jurisdiction; (3) your violation of these Terms of Use; (4) your breach of any representation or warranty provided by you to Metal Cricket pursuant to these Terms of Use; (5) any products purchased or transacted for by you through utilization of our website; or (6) your infringement, or the infringement by any third-party using your access to our website, of any intellectual property or other right of any third-party. Metal Cricket reserves the right, at your expense, to assume the exclusive defense and

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control of any matter for which you are required to indemnify Metal Cricket and you agree to cooperate with our defense of said matter. You further agree not to settle any such matter without the prior written consent of Metal Cricket. You further agree to immediately notify Metal Cricket of any such claim or matter and Metal Cricket shall use all reasonable efforts to notify you of same upon Metal Cricket's being notified of same.

Dispute Resolution

In the event of any dispute that arises between you and Metal Cricket regarding these Terms of Use or your utilization of our website, you specifically acknowledge, understand, and agree that such dispute shall be subject to and resolved pursuant to the alternative dispute resolution procedures contemplated and described immediately below without the use of litigation in any circumstance.

In any such dispute, the dispute shall:

1. Be promptly negotiated between you and Metal Cricket in good faith.
2. In the event that such negotiation fails or upon the expiration or one (1) month of the event(s) giving rise to the dispute, whichever is sooner, the dispute shall then be submitted to non-binding mediation. The Party that first delivers notice of a dispute shall apply to the American Arbitration Association for a mediator, with the mediation to take place in Houston, Harris County, Texas.
3. In the event mediation fails to resolve all of the issues between you and Metal Cricket, or if mediation is not held within two (2) months of the event(s) giving rise to the dispute, then the matter or any remaining matters shall be submitted to final, non-appealable, binding arbitration. The arbitration shall be held by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The place of arbitration shall be Houston, Harris County, Texas. The arbitration will be conducted in English. The arbitrator may issue any preliminary, injunctive, and/or equitable relief. Nothing herein will serve to restrict the ability to apply for emergency relief. Either you or Metal Cricket may, after failure of the negotiation and mediation procedures contemplated and described herein, commence arbitration of the dispute by sending a written request for arbitration to the other party. The request shall state the nature of the dispute to be resolved by arbitration, and arbitration shall be commenced as soon as practical after the non-notifying party has received a copy of the written request. Neither you nor Metal Cricket may bring suit regarding any disputes, controversies, or claims subject to these Terms of Use or these alternative dispute resolution procedures in any venue other than an arbitration pursuant to same, except in order to enforce this arbitration agreement or enforce an arbitral award made pursuant to this arbitration agreement. In the event that either you or Metal Cricket attempts to bring an action in violation of this arbitration agreement, both you and Metal Cricket agree that the other party will be entitled to the arbitrator or judge entering an injunction to enjoin

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such unauthorized action. You and Metal Cricket shall initially share the cost of arbitration, but the prevailing party shall be awarded attorney's fees, costs, and other expenses of arbitration. All arbitration decisions shall be final, binding, and conclusive on all parties, and legal judgment may be entered based upon such decision in accordance with applicable law in any court having jurisdiction to do so. You and Metal Cricket agree that the arbitral award shall be recognized by any applicable courts pursuant to all applicable statutes, conventions, and treaties.

DMCA and Copyright Disclaimer

Metal Cricket is an online service provider as defined in the Digital Millennium Copyright Act of Title 17, Chapter 5, of the United States Code. We may at times provide legal copyright owners the ability to upload and publish various images and other media through our website. While we may allow our users to perform these tasks, we do not screen, review, or otherwise monitor the various images and other media uploaded through our website by our users.

We at Metal Cricket take copyright violation seriously and will assist in any way possible to protect the right of legal copyright owners, whether they be our users or otherwise. If you are a legal copyright owner whose copyrighted content appears on our website without your express authorization, then notify us in writing immediately so that we may identify and confirm the allegedly infringing content and take all appropriate actions to resolve same.

In the event you send us such written notice of alleged infringement copyrighted content, please make sure that you include all identifying information necessary to confirm both the content and your ability to act on behalf of that content. Specifically, please make sure to include the following in your written notice.

1. The name and contact information of the owner, or authorized representative of the owner, of the copyrighted content allegedly being infringed, specifically including the signature of that person and/or entity;
2. Clear and specific identifying information, including descriptions, samples, and/or reproductions, etc., of the copyrighted content allegedly being infringed;
3. The specific websites and/or web addresses where the copyrighted content allegedly being infringed can be located and viewed;
4. A declaration by the owner, or the authorized representative of the owner, of ownership of the copyrighted content allegedly being infringed, including any relevant documentation supporting same, and that the owner and/or representative has a good reason and good faith in believing that the copyrighted content is being unlawfully infringed; and
5. A declaration, made under penalty of perjury, that the information and claims contained within the written notice is both true and correct and all persons

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identified therein retain the exclusive right to publish, or otherwise use, the copyrighted content.

Again, Metal Cricket considers copyright violation to be a serious act, and for that reason, we must also state that person and/or entity who knowingly and materially misrepresents that certain other material or activity is an act of copyright infringement may be subject to civil liability pursuant to 17 U.S.C. § 512(f).

Termination

You are free to terminate your responsibilities pursuant to these Terms of Use at any time without penalty by simply ceasing all use and utilization of our website or notifying Metal Cricket that you no longer wish to utilize our website and declare your notice of termination of such use. Upon Metal Cricket's receipt of any such declaration or notice of termination, we may prevent you from further utilizing our website if you have not already taken steps to have done so. Such prevention shall include the termination of any license or permission granted to you pursuant to these Terms of Use. Alternatively, we reserve the right to prevent you from using or utilizing our website at any time and for any reason, in our sole and absolute discretion.

Consent for Electronic Communications

You agree and consent to receive all communications, information, correspondence, data, notices, disclosures, and other documents from Metal Cricket electronically that relate to your use of our website, generally. We may be required at times, under color of applicable law, to deliver to you such communications and/or information, including, but not limited to, these Terms of Use, as well as any other consents or approvals or relevant information associated with your use of our website. It is your sole responsibility to ensure that you have provided us with the correct and current contact information that will allow us to deliver you such information and Metal Cricket shall incur no liability on account of you having provided incorrect or false contact information or otherwise refusing or failing to keep such information current with Metal Cricket.

General Provisions

Governing Law. These Terms of Use are governed, construed, and administered according to the laws of the State of Texas, as from time to time amended, and any applicable federal law. No effect is given to any choice-of-law or conflict-of-law provision or rule (whether of the State of Texas or of any other jurisdiction) that would cause the application of the law of any jurisdiction other than those of the State of Texas.

Metal Cricket

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Metal Cricket

Severability. The invalidity or unenforceability of any provision of these Terms of Use does not affect the validity or enforceability of any other provision of these Terms of Use. If an arbitrator or arbitration tribunal of competent jurisdiction determines that any provision is invalid, the remaining provisions of these Terms of Use are to be construed as if the invalid provision had never been included in these Terms of Use.

No Binding Agreement for Other Transactions. You and Metal Cricket agree that neither you or Metal Cricket will be under any legal obligation of any kind whatsoever with respect to any other transaction by virtue of these Terms of Use, except for the matter specifically agreed to herein. These Terms of Use do not create a joint venture or partnership between you and Metal Cricket.

Entire Agreement. These Terms of Use constitute the entire understanding between you and Metal Cricket and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between you and Metal Cricket, with respect to the subject matter and provisions contained in these Terms of Use.

Assignment. You may not assign these Terms of Use, or any rights or obligations contemplated or described herein, whether by operation of law or otherwise, without the prior written consent of Metal Cricket. Any such attempt by you to assign such rights or obligations shall be considered null and void. Metal Cricket reserves the right to assign these Terms of Use to any third-party, including all applicable rights and obligations contemplated and described herein, without notice, penalty, or consent. Subject to the foregoing, these Terms of Use shall be binding upon and inure to the benefit of you and Metal Cricket, as well as the successors and permitted assigns of you and Metal Cricket.

Modification for Legal Events. If any arbitrator or arbitration tribunal of competent jurisdiction determines that any provision or any part of any provision set forth in these Terms of Use is unenforceable, the arbitrator or arbitration tribunal has the power to modify the unenforceable provision instead of severing it from these Terms of Use entirely. The modification may be made by rewriting the offending provision, by deleting all or a portion of the offending provision, by adding additional language to these Terms of Use, or by making other modifications as it determines necessary to fulfill the intent of said provision and these Terms of Use to the maximum extent permitted by applicable law. You and Metal Cricket agree that these Terms of Use as so modified shall be binding upon and enforceable against both you and Metal Cricket.

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PHEW!

Now that all that is out of the way, please understand that our business is made better by having you as a user. We will do everything we reasonably can to ensure a positive experience for you while using our website, and we ask that you try to do the same for us. To that end, you may contact us at any time regarding any questions, comments, concerns, or reports involving these Terms of Use. Thank you for visiting and using Metal Cricket!

Company Name: _____

Authorized Representative: _____ Title: _____

Signature: _____ Date: _____

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