



# Ho-Ho-Kus, Inc. Conditions of Sale

No: CUS2-2

Revision: Rel

Release Date: 2/17/2015

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## 1. GENERAL CONDITIONS

- 1.1 This sale is subject to the terms and conditions contained herein to the exclusion of all other terms and conditions. Nothing contained in any customer document or form, or in any written, e-mail, or oral communication between the parties, shall have any binding effect whatsoever. The only variation to these conditions which shall be binding under any circumstances shall be those signed by an authorized representative of Ho-Ho-Kus, Inc.
- 1.2 No waiver of the breach of any term or condition hereunder shall be deemed a waiver of any other provision herein, nor a waiver of the same or any similar term in the future. The waiver of any breach shall not be deemed a waiver of subsequent breaches of the same, similar or any other nature.
- 1.3 In the event of conflict or inconsistency between the conditions of Customer's purchase order, other document or form and these terms and conditions of sale, these terms and conditions of sale shall govern.

## 2. CANCELLATION AND CHANGES

- 2.1 This sale is not subject to cancellation, change, reduction in amount, or suspension or deferment of deliveries, except with the written consent of Ho-Ho-Kus, Inc. and upon terms which indemnify Ho-Ho-Kus, Inc. against loss.
- 2.2 A 100% Cancellation charge will apply for non-stock orders after 72 hours of purchase order receipt.
- 2.3 A request for change(s) in delivery schedule and/or quantity ordered requires written approval of Ho-Ho-Kus, Inc. If accepted by an authorized representative of Ho-Ho-Kus, Inc., such changes may be subject to price adjustment agreeable to both parties. No delivery schedule changes will be accepted if requested after fifty (50%) percent of the original quoted delivery period has elapsed.

## 3. TERMS

- 3.1 Payment terms shall be established by Ho-Ho-Kus. Subsequent terms are subject to change and will be confirmed at acceptance of any new contracts.
- 3.2 Unless otherwise agreed by Ho-Ho-Kus, Inc., all initial orders with a new Customer are shipped COD, or require payment in advance.
- 3.3 If the customer fails to make payment on this or any other sale to the Customer in accordance with said terms, in addition to any other remedies available to Ho-Ho-Kus, Inc. at law or in equity, Ho-Ho-Kus, Inc. may defer further shipments until such payments are made or cancel any unshipped balance. All unpaid balances shall begin bearing interest commencing thirty (30) days after same become due in accordance with said terms, at the lower of one and one-half (1 ½%) percent per month, or the highest legal interest rate. Customer agrees to pay all costs of collection including attorney fees.

## 4. CONFIDENTIALITY

- 4.1 All information furnished by Ho-Ho-Kus, Inc. and all information learned and or observed through the parties' performance hereunder is confidential.

## 5. DELIVERY

- 5.1 Delivery dates are quoted in good faith on a best effort basis but are not guaranteed.
- 5.2 Ho-Ho-Kus, Inc. does not assume any risk or liability for any loss, costs, damages, charges or expenses caused directly or indirectly by a delay in delivery for any reason including, but not limited to, acts of God, war, strike, breakdown, fires, governmental order or other causes beyond Ho-Ho-Kus, Inc.'s control. Delivery delays beyond Ho-Ho-Kus, Inc.'s control will not entitle the Customer to terminate a contract or delay obligations arising from such delays.

## 6. INTELLECTUAL PROPERTY

- 6.1 Any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks and copyrights and any applications for any of the preceding) in products, tools, designs, drawings, or design data owned or created by Ho-Ho-Kus, Inc. in the course of the performance of the contract or otherwise used in the manufacture, maintenance or repair of the products shall remain Ho-Ho-Kus, Inc.'s property unless otherwise expressly agreed in writing by Ho-Ho-Kus, Inc.
- 6.2 Notwithstanding any other provision herein, the Customer may not use Ho-Ho-Kus, Inc.'s proprietary data directly or indirectly to compete with Ho-Ho-Kus, Inc. or in any manner to obtain a competitive advantage over Ho-Ho-Kus, Inc.
- 6.3 The Customer may not sell, reverse engineer or copy any of Ho-Ho-Kus, Inc. proprietary product or parts, or assist any third party in the reverse engineering or copying of any of the Ho-Ho-Kus, Inc. proprietary product or parts, to make a competitive product or parts.

## 7. GOVERNMENT REGULATIONS



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- 7.1 Manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States Government, or any other governmental agency, which may prevent or interfere with fulfillment of this order.
- 7.2 Each party agrees to comply with all applicable governmental regulations as they relate to the import, export and re-export of information and/or products. Without limiting the foregoing, the parties shall not disclose or deliver any information or products provided hereunder in any manner contrary to any applicable export laws and regulations.

### **8. REJECTIONS, RETURNS, REPLACEMENT OR SHORTAGES**

- 8.1 Claim for errors, defects or imperfections in product sold to the Customer will not be accepted unless made within one hundred twenty days (120) after receipt of material. Rejected product, if defective, will be replaced in entirety or credit will be issued. Ho-Ho-Kus, Inc. shall not be liable for any claims for labor, installation, or any incidental, special, consequential or other damages or for loss of revenue, loss of use or loss of profit. Rejected product shall not be returned unless issued a return material authorization by an authorized Ho-Ho-Kus, Inc representative.
- 8.2 Claims for shortages must be made in writing to Ho-Ho-Kus, Inc. within ten (10) days after receipt of goods.
- 8.3 Ho-Ho-Kus, Inc. accepts no responsibility for damage or losses occurring after release of product by Ho-Ho-Kus, Inc. to any freight carrier. All claims in such regard will be made directly to freight carrier.

### **9. WARRANTY**

- 9.1 Ho-Ho-Kus, Inc. warrants that all products manufactured and sold by Ho-Ho-Kus, Inc. are made in accordance with the specified requirements of the contract between the Customer and Ho-Ho-Kus, Inc. and are free from defects in material and workmanship. The extent of Ho-Ho-Kus, Inc.'s liability for breach of such warranty, and when such defect is accepted by Ho-Ho-Kus, Inc., shall be limited, at Ho-Ho-Kus, Inc.'s option, to the price paid by Customer to Ho-Ho-Kus, Inc. for such product or part thereof, or to the replacement or repair of such product or part thereof. The warranty period will terminate twenty-four (24) months after delivery to Customer unless otherwise agreed by a signed contract by Ho-Ho-Kus, Inc. authorized representatives.
- 9.2 Failures to install, operate, or maintain the product in accordance with specification or any unauthorized modification of the product shall render the stated warranty null and void. The use of parts or products (i.e. paint, lubricant) not manufactured by or authorized by Ho-Ho-Kus, Inc. in Ho-Ho-Kus, Inc.'s products shall also render the above warranty null and void.
- 9.3 There is no other warranty, express or implied, including no warranties of suitability or merchantability and no warranty of fitness for any particular purpose. In no event will Ho-Ho-Kus, Inc. be responsible for special, incidental or consequential damages or for loss of profit, loss of revenues or loss of use.

### **10. TAXES**

- 10.1 Ho-Ho-Kus, Inc.'s quoted prices are less tax. Prices shall be subject to increase without notice by the amount of any sales, use or excise tax levied or charged either by the Federal, State, County, City or other Government Agency.

### **11. INDEMNIFICATION**

- 11.1 Customer shall indemnify, defend, and hold Ho-Ho-Kus, Inc. harmless against any expense, loss, costs, or damages including attorney fees resulting from any claimed or actual bodily injury, property damage or death, or any claimed or actual infringement of any patents, trademarks, copyrights, trade secrets, or any other industrial property rights, arising out of (1) compliance of Ho-Ho-Kus, Inc. with any of Customer's designs, specifications, or instructions, and (2) any use or sale of a product delivered hereunder, except to the extent arising out of Ho-Ho-Kus, Inc.'s negligence in design or manufacturing.

### **12. LAW AND JURISDICTION**

- 12.1 Jurisdiction with regard to any litigation between the parties shall be venued in the State of New Jersey, in Federal or State Court, as the case may be. These terms shall in all respects be construed according to and governed by the laws of the State of New Jersey.