

Terms of Use

1. Description of Website and Acceptance of Terms.

HXI, LLC, Delaware corporation ("HXI," "we," "us" or "our"), is the owner of the website located at www.hxi.com (the "Website") and provides all features, functionalities, user interfaces, content, software and services available on the Website. These Terms of Use govern your use of the Website. By visiting, registering with, or shopping at the Website, you unconditionally agree to be bound by these Terms of Use. If you do not agree to these Terms of Use in their entirety, you do not have permission to access or use the Website. Please read these Terms of Use carefully.

2. Changes to Terms of Use.

HXI reserves the right at any time to amend or modify these Terms of Use, to discontinue all or any portion of the Website, or to add or remove any features to or from the Website. HXI agrees to post all amended forms of these Terms of Use on the Website, and such amended forms shall be effective immediately upon posting. It is at all times your responsibility to read the most current form of the Terms of Use to ensure that you agree to the terms and conditions of any amendments thereto. You agree that this procedure for giving notice of amendments to the Terms of Use is reasonable. Your use of the Website constitutes your acceptance of any such amendment, modification, discontinuance, addition or removal.

3. Privacy and Data Protection.

The [HXI Privacy Policy](#), which is available on our Website, governs any information you submit via the Website and is incorporated by reference into these Terms of Use. All other policies posted by HXI are also incorporated into these Terms of Use by reference. Each reference to these Terms of Use herein includes reference to the Privacy Policy and all other policies posted on the Website. You shall comply with these policies when accessing or using the Website.

4. Accessing and Using the Website.

4.1. License. The Website is provided for your personal and noncommercial use. HXI grants you a limited, personal, nonexclusive, nontransferable, nonsublicensable, freely revocable license to access and use the Website as set forth in these Terms of Use. Except for the foregoing limited license, no right, title or interest shall be transferred to you.

4.2. Content. All "Content," including but not limited to all video, sound recordings, software, digital downloads, artwork, graphics, text, editorials and news, blog posts, Feedback (as defined in Section 6.6), interfaces, trademarks, logos, images, photographs, and any other element of the Website, including the layout, look and feel, organization, and coordination of such Content on the Website is the property of or is licensed to HXI, and is protected by U.S. intellectual property rights laws. Without the prior written consent of HXI, you shall not transmit, distribute, translate, publicly display, publish, record, retransmit, rent, sell, digitize, endorse, reproduce, alter to make new works, perform, or compile any Content in any commercial way.

4.3. Use Within Laws and Regulations. You agree to use the Website, including all features and functionalities associated therewith, in accordance with all applicable laws, rules and regulations, or

other restrictions on use of the service or content therein. You agree that you shall comply with these Terms of Use and shall not: (i) archive, download, reproduce, distribute, modify, display, perform, publish, license, create derivative works from, offer for sale, or use, except as explicitly provided herein, any Content or information contained in or obtained from or through the Website; (ii) delete the copyright or other proprietary rights notices from any Content; (iii) circumvent, remove, alter, deactivate, degrade or thwart any of the Content protections on the Website; (iv) use any robot, spider, scraper or other automated means to access the Website; (v) decompile, reverse engineer or disassemble any software or other products or processes accessible through the Website; (vi) insert any code or product or manipulate the Website in any way; (vii) use any data mining, data gathering or extraction method; (viii) collect any information in violation of HXI 's Privacy Policy; (ix) upload, post, e-mail or otherwise send or transmit any material designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with the Website, including any software viruses or any other computer code, files or programs; (x) remove, modify, disable, block, impair, or obscure any advertising in connection with the Website; or (xi) use or encourage the use of the Website for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, data protection and privacy.

4.4. Age. The Website is not intended to be used by minor children under the age of 18, or the age of majority in your province, territory or country. If you are between the ages of 13 and 18 (or between 13 and the age of majority in your province, territory or country of residence), you shall use the Website only under the supervision of a parent or legal guardian who shall be bound by these Terms of Use.

4.5. Termination. We reserve the right to suspend or terminate your use of the Website if you violate these Terms of Use or otherwise engage in any illegal or fraudulent use of the Website.

5. Third-Party Content and Applications.

5.1. Links. In an attempt to provide increased value to our visitors, HXI may link to websites operated by third parties. Such websites are not necessarily under HXI 's control, and HXI is not responsible for the content of any linked website or any link contained in a nonaffiliated linked website. HXI has selected the links on the Website for your convenience only. The selection or omission of links is not intended to endorse any particular companies or products. If you decide to access any of the third-party websites linked to the Website, you do so entirely at your own risk. Any links to any portion of the Website shall be the responsibility of the linking party, and HXI shall not be responsible for notification of any change in name or location of any information on the Website.

5.2. Third-Party Applications. You may encounter third-party applications, including, without limitation, websites, widgets, software or software utilities, that interact with the Website. Your use of these applications may be subject to third-party terms of use or license terms.

6. Intellectual Property.

6.1. HXI Retains Rights. Except as expressly set forth herein, all intellectual property rights in the Website and all material available therein, including, but not limited to, Content, text, graphics, logos, button icons, images, audio clips, data compilations, software, source code and object code, and the compilation, combination, look and feel or other works, concepts, inventions or other protectable aspects of the Website, are the property of HXI or its licensors. You agree and acknowledge that no title to any software or any other aspect of the Website shall pass to you under these Terms of Use.

7. Disclaimer of Warranties.

THE HXI PARTIES DO NOT REPRESENT OR WARRANT THAT THE WEBSITE OR ANY CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE, WILL BE AVAILABLE FOR USE, WILL BE FREE OF DEFECTS, VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT YOU ARE RESPONSIBLE FOR OBTAINING AND MAINTAINING THE COMPUTER HARDWARE, DEVICES, INTERNET CONNECTION AND/OR DATA PLAN NECESSARY TO ACCESS AND USE THE WEBSITE, AND ALL COSTS AND EXPENSES RELATED THERETO.

8. Limitation of Liability.

8.1. YOUR USE OF AND ACCESS TO THE WEBSITE AND ANY CONTENT IS AT YOUR OWN RISK. IN NO EVENT SHALL THE HXI PARTIES BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE ACCESS TO OR USE OF THE WEBSITE, ANY DELAY IN OR INABILITY TO USE THE WEBSITE, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS AND SERVICES ADVERTISED IN OR OBTAINED THROUGH THE WEBSITE, OR OTHERWISE ARISING OUT OF THE USE OF THE WEBSITE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF THE HXI PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THIS WAIVER APPLIES, WITHOUT LIMITATION, TO ANY DAMAGES OR INJURY ARISING FROM ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, FILE CORRUPTION, COMMUNICATION-LINE FAILURE, NETWORK OR SYSTEM OUTAGE, OR THEFT, DESTRUCTION, UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF ANY RECORD.

8.2. NOTWITHSTANDING THE FOREGOING, IF FOR ANY REASON ALL OR ANY PART OF THE ABOVE LIMITATION OF LIABILITY IS HELD UNENFORCEABLE, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE HXI PARTIES, UNDER OR IN CONNECTION WITH THESE TERMS OF USE, OR ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE ACCESS TO OR USE OF THE WEBSITE, ANY DELAY IN OR INABILITY TO USE THE WEBSITE, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS AND SERVICES ADVERTISED IN OR OBTAINED THROUGH THE WEBSITE, OR OTHERWISE ARISING OUT OF THE USE OF THE WEBSITE, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE FIFTY U.S. DOLLARS (\$50.00).

8.3. YOU ACKNOWLEDGE THAT, ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, HXI WOULD NOT ALLOW YOU TO ACCESS OR USE THE WEBSITE.

8.4. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS SHALL NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS UNDER APPLICABLE LAW. VOID WHERE PROHIBITED BY LAW.

9. Indemnification.

9.1. You shall indemnify, defend, and hold harmless the HXI Parties from and against any and all claims, actions, suits, losses, liabilities, expenses, damages, and costs, including attorneys' fees, arising out of, in connection with or resulting from: (i) your actual or alleged breach of these Terms of Use; (ii) any allegation that any Content or other material that you have submitted or transmitted to HXI infringes, misappropriates, or otherwise violates any party's copyright, trademark, trade secret or other

intellectual property rights; and (iii) any acts or omissions of you or any person or entity accessing the Website using your Account and password.

9.2. HXI reserves the right, at its own expense, but without the obligation to do so, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you shall cooperate with HXI 's defense of such claim.

10. Governing Law.

These Terms of Use shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard for its conflict of laws principles. Any action, claim or proceeding arising out of or relating to the Website or these Terms of Use must be brought in the appropriate court located in Massachusetts. You hereby consent to the exclusive jurisdiction of such court in any such action, claim or proceeding and submit yourself to such jurisdiction.

11. Miscellaneous.

11.1. Entire Agreement. These Terms of Use, together with the Privacy Policy and any other policies posted by HXI on the Website, constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all prior or contemporaneous communications and proposals, whether oral or written, between the parties with respect to such subject matter.

11.2. Severability. If any provision of these Terms of Use shall be held to be invalid, illegal, or unenforceable, then that provision shall be deemed severable from these Terms of Use and the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.

11.3. Waiver. Any failure by HXI to enforce any term or provision of these Terms of Use shall not be deemed a waiver of that or any other breach of that or any other term or provision of these Terms of Use. In addition, any failure to enforce any term or provision of these Terms of Use shall not constitute a waiver of a future breach of that or any other term or provision of these Terms of Use.

11.4. Assignment. HXI may assign these Terms of Use, in whole or in part, in its sole discretion.