

# **TERMS & CONDITIONS**

## **BINDING AGREEMENT**

By accessing this Website, you agree that these Terms and Conditions (hereinafter “Terms and Conditions”) form a binding agreement between you and M.S. FOSTER & ASSOCIATES, INC. (“M.S. Foster”). If you do not wish to be bound by these Terms and Conditions, do not use this Website. M.S. FOSTER reserves the right to change these Terms and Conditions at any time; accordingly, you should review these Terms and Conditions each time you view this Website. Your continued use of this Website signifies that you agree to be bound by these Terms and Conditions as they may be amended.

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## **EXCLUSION OF LIABILITY**

IN NO EVENT SHALL M.S. FOSTER, ITS LICENSORS, SUPPLIERS OR ANY THIRD PARTIES MENTIONED ON THIS WEBSITE BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, PUNITIVE, GENERAL, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, CLAIMS FOR PERSONAL INJURY, WRONGFUL DEATH OR LOST PROFITS, OR DAMAGES RESULTING FROM THE DELAY, FAILURE, INTERRUPTION, OR CORRUPTION OF ANY DATA OR DUE TO ANY BUSINESS INTERRUPTION) ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF OR INABILITY TO USE THIS WEBSITE OR THE CONTENT, INCLUDING ANY PRODUCTS ORDERED ON OR THROUGH IT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT M.S. FOSTER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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Any claims arising in connection with your use of this Website or any Content must be brought within one (1) year of the date of the event giving rise to such action or be forever barred.

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## **POSTING**

You agree that you will not post any communications or content of any type that infringe or violate any rights of any party. By submitting communications or content to any part of this Website, you agree that such submission is non-confidential for all purposes. If you post such communications or content, you automatically grant - or warrant that the owner of such content has expressly granted - M.S. FOSTER a royalty free, perpetual, irrevocable, worldwide nonexclusive license to include the work on this Website (and to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display the communication or content in any media or medium, or any form, format or forum now known or hereafter developed). You acknowledge that you are responsible for submissions, and you, not we, have full responsibility for the submissions, including, without limitation, legality, reliability, appropriateness, originality, and copyright. You further recognize that we do not want you to, and by making a submission you warrant that you shall not, provide any information or material to us that is defamatory, threatening, obscene, harassing, or unlawful, or that constitutes a trade secret or incorporates the proprietary material of another party.

We may, but shall not be obligated to, in our sole discretion, post any submission on this Website and identify you as the submitting party. We may, without notice to you, refuse or edit submissions for any reason or no reason, including, without limitation, those submissions that we determine in our sole discretion are inappropriate, unlawful, fraudulent, threatening, libelous, defamatory, obscene, encourage or constitute dangerous, violent, immoral, offensive, illegal, pornographic, or similarly inappropriate behavior, or that represent us in a negative way or in any manner not consistent with our brand and/or reputation, as may be determined in our sole and absolute discretion, or infringe or violate any party's intellectual property or other proprietary rights or these Terms and Conditions of Use.

Submissions should not be dangerous or unsafe for you or a third party to make or produce. Submissions also should not contain, include, or encourage images or activities that are dangerous, unsafe, or present unreasonable risk of harm to person or property, and submissions should not suggest or imply to any person to undertake any illegal, dangerous, unsafe, or unduly risky activity, as may be determined in our sole and absolute discretion. Submissions should not contain any intellectual property belonging to any other party, including, without limitation, trademark, copyright protected material, logo, trademark, service mark, storefront, trade dress, mascot, photograph, or other image of any person, business or company, other than us. Such inappropriate submissions are strictly prohibited, and any submissions in violation of the above requirements and restrictions will not be posted or shall be subject to removal without notice.

## **USE OF THIS WEBSITE**

Any use or attempted use of this Website (i) for any unlawful, unauthorized, fraudulent or malicious purpose, (ii) that could damage, disable, overburden, or impair any server, or the network(s) connected to any server, (iii) that could interfere with any other party's use and enjoyment of this Website, (iv) to gain unauthorized access to any other accounts, computer systems or networks connected to any server or systems through hacking, password mining or any other means, (v) to access systems, data or information not intended by us to be made accessible, (vi) to attempt to obtain any materials or information through any means not intentionally made available by us, or (vii) for any use other than the business purpose for which it was intended, is strictly prohibited. Examples of illegal or unauthorized uses of this Website include, but are not limited to: (i) modifying, adapting, translating, or reverse engineering any portion of this Website or its Content; (ii) using any robot, spider, site search/retrieval application, or other device to retrieve, scrape or index any portion of this Website or any other Submissions; (iii) reformatting or framing any portion of the pages or application images that are part of this Website; (iv) creating or transmitting unwanted electronic communications such as "spam" or chain letters to other users or otherwise interfering with other users' enjoyment of this Website; (v) Submissions purportedly made on behalf of any third party without such third party's prior written consent including, without limitation, registering, subscribing, attempting to register, attempting to subscribe, unsubscribe, or attempting to unsubscribe, any party for any services if you are not expressly authorized by such party to do so; (vi) submitting Submissions that falsely express or imply that such Submissions are sponsored or endorsed by us; (vii) submitting Submissions that disparage this Website or us; (viii) submitting Submissions that infringe, misappropriate or violate the intellectual property, publicity, privacy or other proprietary rights of any party; (ix) transmitting any viruses, worms, defects, Trojan horses, time bombs, cancel-bots, corrupted files or other items of a destructive nature; (x) submitting Submissions that are unlawful or promote or encourage illegal activity; (xi) displaying an advertisement as part of any Submission; (xii) any automated use of the information handling system, including, without limitation, the use of scripts to send messages through this Website; or (xiii) submitting false or misleading information.

While we prohibit such conduct and content on or through this Website, you understand and agree that you still may be exposed to such materials and that you use this Website at your own risk.

## **LINKS**

M.S. FOSTER may provide links on this Website, via advertising and otherwise, to other websites that are not under the control of M.S. FOSTER. M.S. FOSTER does not endorse or make any warranty of any type regarding the content contained on such websites or products and services offered therein. Your use of such websites is at your own risk and M.S. FOSTER is not liable to you for any loss or damage you may suffer by your use of such websites. You hereby waive any and all claims you may have against M.S. FOSTER regarding our inclusion of such links to third party websites or your use of those websites.

## **APPLICABLE LAW AND VENUE**

By accessing this Website, you and M.S. FOSTER agree that the statutes and laws of the State of Indiana, without regard to conflicts of laws principles thereof, will apply to all matters arising from or relating to use of this Website, except where preempted by the federal laws of the United States of America, in which case such U.S. federal law will apply. You and M.S. FOSTER also agree and hereby submit to the exclusive personal jurisdiction of Indiana and the venue of La Porte County, Indiana, with respect to such matters. You may not use this Website or export the materials on this Website in violation of U.S. export laws and regulations. Those who choose to access this Website from outside the United States do so on their own initiative and are responsible for compliance with local laws.

## **SEVERABILITY**

If any provision of these Terms and Conditions is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms and Conditions, which shall remain in full force and effect.

## **SURVIVAL**

The following provisions of these Terms and Conditions shall survive the expiration or termination of these Terms and Conditions: No Warranties, Exclusion of Liability, Applicable Law and Venue, Severability, Survival, Indemnification, Subscriber Agreement, and Complete Agreement.

## **WAIVER**

Any waiver of any of these Terms and Conditions shall not operate or be construed as a continuing waiver of such term or condition or any other term or condition.

## **INDEMNIFICATION**

In consideration of M.S. FOSTER allowing you to visit and use this Website, you agree to defend, indemnify and hold harmless M.S. FOSTER, and its divisions, subsidiaries, parents, affiliates, partners, chains, and its respective past, present and future officers, directors, stockholders, trustees, employees, agents, insurers, servants, managers, estates, predecessors and/or successors in interest, representatives, assigns, attorneys and all other persons, firms, or corporations with whom any of the forgoing may have been, are now, or may thereafter be affiliated (collectively "Releasees"), from any and all claims, charges, injuries (including, without limitation, death), actions, causes of action, sums of money due, suits, debts, liens, covenants, contracts, obligations, costs, expenses, damages (including, without limitation, special, general,

incidental, consequential, or other damages), judgments, agreements, promises, demands, claims for fees and costs, or liabilities whatsoever, in law or equity, arising out of or relating to your use (lawful or unlawful) of this Website, the Content, or any products ordered on or through the same, your breach of any of the Terms and Conditions set out herein, your use of any linked websites reached through this Website, your inability to access this Website for any reason, your reliance on any errors or omissions on this Website, or your contraction of computer viruses of any nature obtained through your use of this Website or any website accessed through this Website.

## **OTHER AGREEMENT**

These Terms and Conditions govern your general access of and use of this Website, however, your use of any other services offered by M.S. FOSTER or its affiliates is also governed by any other agreement with M.S. FOSTER or its affiliates relating to the provision of such services (the "Other Agreement"). In the event that any provision of these Terms and Conditions conflicts with any provision of the Other Agreement, the Other Agreement will control.

## **PRIVACY AND SECURITY**

### **WHAT INFORMATION DOES M.S. FOSTER ONLINE COLLECT, AND HOW IS IT USED?**

#### **General**

The information that customers provide to M.S. FOSTER Online is used:

- To allow our customers to purchase our products online;
- To provide our customers with personalized website content tailored to the particular interests of each individual customer;
- To continuously improve the convenience and functionality of our website;
- For market analysis and other internal purposes; and
- To provide to our customers promotions.

#### **"Your M.S. FOSTER" Account**

When you set up "Your M.S. FOSTER" Account you will be asked to provide your email address and a password, as well as provide other information. The information you provide in your "Your M.S. FOSTER" Account may allow M.S. FOSTER to personalize searches and facilitate the ordering process. During registration of "Your M.S. FOSTER" Account, M.S. FOSTER may ask for your name, address, e-mail address and other personal information, including other necessary data. The more information you

voluntarily provide (and the more accurate it is), the better M.S. FOSTER will be able to customize your experience.

## **Ordering**

Our website utilizes both a shopping cart and e-mail forms for customers to request information, products, and services. We may collect customers' contact information (such as e-mail addresses) and financial information (such as account or credit card information). This information enables us to process and fulfill our customers' orders and notify our customers of their order status. When you provide credit card information on our online form, you are connected to a secure server, which encrypts credit card information over the Internet.

## **Surveys and Promotions**

We may occasionally request information from users via surveys or contests. Participation in these surveys or contests is completely voluntary and the user therefore has a choice whether or not to disclose this information. Information requested may include contact information (such as name and shipping address), and demographic information (such as zip code, age, and/or income range). Contact information will be used to notify the winners and award prizes.

Survey information will be used for purposes of monitoring or improving the use and satisfaction of this site. We may also use this data to personalize the customer's experience at our site, showing them content that we think they might be interested in, and displaying the content according to their preferences. In addition, this information may be used internally by M.S. FOSTER for market analysis and other purposes.

## **Financial Information**

Financial information that is collected is only used to bill the user for products and services ordered online and for no other reason. M.S. FOSTER does not store credit card information on its servers or systems.

## **Mailing Lists**

Contact information from the "Your M.S. FOSTER" registration form, order forms, contest forms and other sources is also used to send promotional materials to our customers. In addition, the customer's contact information may be shared with selected partners of M.S. FOSTER who may want to contact our visitors. Users may opt-out of

receiving future updates by checking the appropriate box when opening or modifying their "Your M.S. FOSTER" account.

## **HOW DOES M.S. FOSTER ONLINE PROTECT THE INFORMATION IT COLLECTS?**

### **Passwords**

To provide you with an increased level of security, access to your personal information is protected with a password, which you select. We strongly recommend that you not disclose your password to anyone.

### **Registration & Financial Information**

All personal information that you provide to M.S. FOSTER including names, addresses, contact information, and credit card information are stored in a secure database. We utilize industry best practices in order to ensure that your data is secure.

### **Secure Server**

When you place orders through our website, you will transmit your order information, including your credit card number, to our secure server. Our secure server uses Secure Socket Layer (SSL) software, which allows us to receive information that your Web browser encrypts before transmitting to us. Since any order information you provide to M.S. FOSTER will be transmitted using a secure connection, customers with web browsers that cannot support this level of security will not be able to order products through M.S. FOSTER online.

### **Display of Credit Card Information**

M.S. FOSTER will never display more than five digits of your credit card number on the screen or on any invoices for your protection.

Survey information will be used for purposes of monitoring or improving the use and satisfaction of this site. We may also use this data to personalize the customer's experience at our site, showing them content that we think they might be interested in, and displaying the content according to their preferences. In addition, this information may be used internally by M.S. FOSTER for market analysis and other purposes.



## **DOES M.S. FOSTER ONLINE SHARE ITS INFORMATION WITH OTHER COMPANIES?**

### **General**

M.S. FOSTER does not sell your personal information to any third parties. However, we may provide your information to trustworthy third parties so that they can send you product and service offers that may be of interest. Users may opt-out of receiving future mailings by checking the appropriate box when opening or modifying their "Your M.S. FOSTER" account.

### **Aggregate Statistics**

M.S. FOSTER may provide aggregate statistics about our customers, sales, traffic patterns, and related site information to reputable third-party vendors. However, these statistics will include no personally identifying information.

### **Account Information**

M.S. FOSTER may release account information if it believes, in good faith, that such release is reasonably necessary to (1) comply with the law, (2) enforce or apply the provisions of our Terms and Conditions, or (3) protect the rights, property or safety of M.S. FOSTER, our customers or other individuals.

### **Credit Card Verification**

Please note that when you order products and services from M.S. FOSTER we will use a credit card verification company to validate the credit card and other information you provide before we can fill your order. We have an agreement with such company to ensure that our customers' personal information is kept confidential. Not only is it the same credit verification process that would be used if you presented your credit card at any M.S. FOSTER location, but there is an additional safeguard in that the billing information you provide for your credit card enables us to verify that you are the rightful owner of the card.

## **WHAT ARE "COOKIES" AND HOW ARE THEY USED BY M.S. FOSTER ONLINE**

"Cookies" are pieces of information that our website can send to your browser and which can later be stored on your computer's hard drive so that we can recognize you when you return. All web pages on M.S. FOSTER's website where you are prompted to log in or that are customizable require that you accept cookies. We may also use ads on our website that contain cookies. Our cookies do contain personally identifying information, such as email address, that enables us to provide features such as storing items in your shopping cart between visits and creating a personalized website based on your particular vehicle. Most Web browsers automatically accept cookies, but you can usually change your browser to prevent that.

### **CAN CUSTOMERS UPDATE OR CHANGE THEIR INFORMATION ONCE IT HAS BEEN INPUT?**

You can access your personal information at any time to update, correct, add or delete any of the data you have provided to us. To do so, access the "Your Account" page of the website with your e-mail account and password. By using the M.S. FOSTER website, you consent to the collection and use of this information by M.S. FOSTER.

### **EFFECTIVE DATE AND CHANGES**

These Terms and Conditions are effective as of their posting on this Website. From time to time, it may be necessary to update or modify these Terms and Conditions of Use. Accordingly, we reserve the right, in our sole discretion, at any time and without notice, to add to, change, update, modify or remove any portion of these Terms and Conditions of Use, and any such addition, change, update, modification or removal will be effective immediately upon its posting on this Website.

We may terminate, change, revise, modify, suspend or discontinue any aspect of this Website, including, without limitation, the availability of any features of this Website, at any time, so it is your responsibility to review these Terms and Conditions from time to time. You agree that your continued use of this Website constitutes an agreement to these Terms and Conditions. We may also impose limits on certain features and services or restrict your access to parts or the entire Website without advance notice and without liability. We may, at any time and without advance notice, terminate the authorization, rights and license given above and, upon such termination, you shall immediately destroy all Content. You may terminate this agreement by destroying: (a) all Content obtained from this Website and any related M.S. FOSTER site, and (b) all related documentation and all copies and installations, provided that any accrued rights, obligations, representations or warranties shall not terminate.

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