

# INFACO USA

## WEBSITE TERMS OF USE

Infaco USA, Inc. (“**Infaco**”, “**us**”, “**we**” or “**our**”), offers electric pruning shears and other equipment and tools (all together referred as the “**Product(s)**”) via the website hosted at the URL <https://www.infaco-usa.com/en> (the “**Website**”).

These Website terms of Use (“**Terms of Use**”) regulate your use of the Website. These Terms of Use form a binding agreement between you, visitor and/or user of this Website (“**you**”, “**your**”) and us.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THIS WEBSITE.

BY ACCESSING OR USING THIS WEBSITE, YOU AND THE ENTITY YOU ARE AUTHORIZED TO REPRESENT (IF APPLICABLE) SIGNIFY THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS OF USE AND TO THE COLLECTION, USE AND DISCLOSURE OF YOUR PERSONAL INFORMATION AS SET FORTH IN OUR PRIVACY POLICY, WHETHER OR NOT YOU ARE A REGISTERED USER ON OUR WEBSITE.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF USE, DO NOT ACCESS OR USE THE WEBSITE.

### 1 ACCESS TO OUR WEBSITE AND TOOLS

#### 1.1 General.

1.1.1 **Purposes.** We use the Website to promote and provide information on Infaco’s Products and allow you to access and buy our Products on the Website. Specific terms or agreements may apply to the use of certain features provided to you on the Website. Such specific features available on the Website may be subject to a separate agreement. For example, when you create an account and buy the Products, the terms of sale will be regulated by specific terms and conditions of sale. We, thus, invite you to review such specific agreements, when applicable.

1.1.2 **Eligibility.** To use the Website, you must be the age of majority in your jurisdiction and fully able and competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in these Terms of Use and to abide by and comply with these Terms of Use. You represent that you meet the eligibility requirements in this Section. In any case, you affirm that you are over the age of 18 years old, as our Website is not intended for children under 18 years old. If you are using this Website or opening an account on behalf of a third party, company, entity or organization, your use of the Website constitutes that third party’s acceptance of these Terms of Use. We reserve the right to revoke your ability to access our Products offered on the Website for any reason, at any time including as a result of a violation of these Terms of Use or Privacy Policy without notice.

1.1.3 **License to Use the Website.** Subject to your compliance with these Terms of Use, we grant you a limited, non-exclusive, non-sub licensable, non-transferable, and revocable right to access the Website and access the Products offered on this Website for your personal, non-commercial use, and as we otherwise intend. We reserve the right to monitor your use of the Website for the purpose of determining that your usage complies with these Terms of Use.

1.1.4 **Prohibited Conduct.** In order to use this Website or the Products offered on this Website, you agree not to engage in any of the following prohibited activities:

- (i) copying, distributing, or disclosing any part of the Website in any medium, including without limitation by any automated or non-automated “scraping”;
- (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Website in a manner that sends more request messages to the

- Infaco's servers than a human can reasonably produce in the same period of time by using a conventional web browser (except that Infaco grants the operators of public search engines revocable permission to use spiders to copy materials from our Website for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials);
- (iii) transmitting spam, chain letters, or other unsolicited email;
  - (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers;
  - (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure;
  - (vi) uploading invalid data, viruses, worms, or other software agents through the Website or Products;
  - (vii) collecting or harvesting any personally identifiable information, including account names, from the Website;
  - (viii) using the Website for any commercial solicitation purposes;
  - (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity;
  - (x) interfering with the proper working of the Website;
  - (xi) accessing any content through any technology or means other than those provided or authorized by the Website; or
  - (xii) bypassing the measures, we may use to prevent or restrict access to the Website, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Website or the content therein.

We may, without prior notice, change the Website; stop providing any Products or features of the Website, to you; or create usage limits for the Website.

## 1.2 Account Registration and Use.

- 1.2.1 **Account Registration.** If you wish to purchase any Product available through the Website (each such purchase, a "**Transaction**"), you may be asked to create an account and supply us with certain information relevant to your Transaction. You must provide us with complete and accurate account information. You must promptly update such information to keep it complete and accurate. By creating an account, you represent and warrant that all required account information you submit is truthful and accurate and that you will maintain the accuracy of such account information.
- 1.2.2 **Security of your Account.** You are entirely responsible for maintaining the confidentiality of your passwords and will be solely liable for any loss, damages, liability, expenses or attorneys' fees that you may incur as a result of someone else using your passwords or account, either with or without your knowledge. You will also be liable for losses, damages, liability, expenses and attorneys' fees incurred by Infaco or a third party due to someone else using your passwords or account. You agree to notify us immediately of any unauthorized use of your account or any breach of security.

## 2 **USER CONTENT**

- 2.1 **Definition.** Any text, photographs, videos, artwork, ideas, questions, reviews, comments, suggestions or other content that you submit or post to/on the Website or otherwise provide to us are referred to as "**User Content**". You retain ownership of your User Content.
- 2.2 **License Grant.** By sharing, submitting or uploading any User Content, you grant Infaco a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, sub-licensable and transferable license to use, copy, distribute, display, publish, perform, sell, transmit, adapt, translate, modify, reverse-engineer, disassemble and create derivative works from your User Content in any manner existing now or created in the future for the purposes of providing the Site to you.

- 2.3 Your Responsibility for User Content. You agree not to post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal; (ii) may create a risk of any other loss or damage to any person or property; (iii) seeks to harm or exploit children by exposing them to inappropriate content, asking for personally identifiable details or otherwise; (iv) may constitute or contribute to a crime or tort; (v) contains any information or content that we deem to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, or otherwise objectionable; (vi) contains any information or content that is illegal. You agree that you are solely responsible for all User Content that you post on the Website. Accordingly, you represent and warrant that (1) you have all rights, licenses, consents and releases necessary to grant us the required rights to disseminate any User Content and (2) neither your User Content nor your posting of your User Content or our use of your uploaded User Content on the Website, will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or any other intellectual property rights or rights of publicity or privacy or result in the violation of any applicable law or regulation.
- 2.4 No Obligation Regarding User Content. We will not have any obligation to hold any User Content in confidence or compensate you or anyone else for its use. We have the right to remove or edit any User Content for any reason or no reason at all.

### **3 INTELLECTUAL PROPERTY; THIRD-PARTY CONTENT**

- 3.1 Intellectual Property Rights, Infaco's Content. All content (other than User Content) on the Website or otherwise made available via the Website, including the text, notes, graphics, photos, sounds, music, videos, interactivities and the like ("**Content**"), the trademarks, service marks and logos contained therein ("**Marks**"), the design of the Website ("**Website Design**"), and all software and other technology used to provide the Website ("**Technology**"), are owned by or licensed to Infaco and/or its affiliates. Content is provided to you "as is" for your information and personal use only and may not be used, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever. We reserve all rights not expressly granted in and to the Website, Content, Marks, Website Design and Technology. Using the Website and/or Products does not give you any ownership of or right in or to any Content, Marks, Website Design and Technology.
- 3.2 Third-Party Content. The Website may contain links to and content from third-party websites, advertisers, products, special offers, or other events or activities that are not owned or controlled by Infaco. Infaco does not endorse or assume any responsibility for any such third-party Websites, information, materials, Products, or Products. If you access a third-party website from the Website, you do so at your own risk, and you understand that this Terms and Privacy Policy do not apply to your use of such Websites. You expressly relieve Infaco from any and all liability arising from your use of any third-party website, service, or content.

### **4 WARRANTIES AND DISCLAIMERS**

- 4.1 No Warranties. THE WEBSITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. INFACO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, AND ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT REGARDING YOUR USE OF THE WEBSITE AND THE CONTENT.
- 4.2 Use of Website is at Your Own Risk. INFACO DOES NOT REPRESENT OR WARRANT THAT THE WEBSITE OR EMAILS SENT TO YOU WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, FREE OF VIRUSES OR OTHER HARMFUL CODE, OR THAT ALL INFORMATION WILL BE ACCURATE OR COMPLETE. YOU AGREE THAT YOUR USE

OF THE WEBSITE SHALL BE AT YOUR SOLE RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR HARDWARE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF MATERIAL OR DATA. WE WILL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY CONTENT ON THE WEBSITE, ANY LINKS TO THIRD-PARTY WEBSITES OR ANY THIRD-PARTY WEBSITES.

- 4.3 Rights may vary from State to State. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTY, SO THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION MAY NOT APPLY TO YOU. IF YOU ARE DEALING AS A CONSUMER, YOUR STATUTORY RIGHTS THAT CANNOT BE WAIVED, IF ANY, ARE NOT AFFECTED BY THESE PROVISIONS. YOU AGREE AND ACKNOWLEDGE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND WARRANTY PROVIDED IN THESE TERMS OF USE ARE FAIR AND REASONABLE.

## **5 LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INFACO, ITS AFFILIATES, DIRECTORS, EMPLOYEES, ITS LICENSORS, ITS SUPPLIERS OR ANY THIRD PARTY MENTIONED ON THE WEBSITE, BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE AND CONSEQUENTIAL DAMAGES FOR ANY USE OF THIS WEBSITE, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, EVEN IF INFACO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THIS DISCLAIMER SHALL APPLY REGARDLESS OF THE NATURE OF YOUR CLAIM, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, VIOLATION OF STATUTES OR OTHERWISE. SOME JURISDICTIONS LIMIT OR DO NOT PERMIT DISCLAIMERS OF LIABILITY, SO THIS PROVISION MAY NOT APPLY TO YOU. TO THE EXTENT PERMITTED BY LAW, THE REMEDIES STATED FOR YOU IN THESE TERMS OF USE ARE EXCLUSIVE AND ARE LIMITED TO THOSE EXPRESSLY PROVIDED FOR IN THESE TERMS OF USE.

## **6 INDEMNIFICATION**

You agree to defend, indemnify and hold harmless Infaco and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Website, including any data or content transmitted or received by you; (ii) your violation of any term of these Terms of Use; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) any claim or damages that arise as a result of any of your User Content or any that is submitted via your account; (vi) any other party's access and use of the Website with your unique username, password or other appropriate security code or (vii) alleging bodily injury, death, property damage or other damages arising from your or a third party's use or misuse of any Product purchased by you on the Website.

## **7 USER CONSENT TO RECEIVE COMMUNICATIONS IN ELECTRONIC FORM**

For contractual purposes, you (a) consent to receive communications from us in an electronic form via the email address you have submitted; and (b) agree that all Terms of Use, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were in writing. The foregoing does not affect your non-waivable rights.

We may also use your email address, to send you other messages, including information about the us and special offers if you have subscribed to our newsletters. You may always opt out of such marketing email

by opting out as explained in our Privacy Policy. Opting out may prevent you from receiving messages regarding Infaco or special offers.

## **8 COPYRIGHT INFRINGEMENT; NOTICE AND TAKE DOWN PROCEDURES**

We respect the intellectual property of others and we expect our users of our Website to do the same. In connection with our Website, we have adopted and implemented a policy respecting copyright law that provides for the removal of any infringing materials and for the termination, in appropriate circumstances, of users of our online Website and Products who are repeat infringers of intellectual property rights, including copyrights, in compliance with the Digital Millennium Copyright Act of 1998 (“**DMCA**”).

If you believe that one of our users is, through the use of our Website and Products, unlawfully infringing the copyright(s) in a work, and wish to have the allegedly infringing material removed, please complete the following DMCA Notice and deliver it to our designated Copyright Agent:

1. your physical or electronic signature;
2. identification of the copyrighted work(s) that you claim to have been infringed;
3. identification of the material on our Products that you claim is infringing and that you request us to remove;
4. sufficient information to permit us to locate such material;
5. your address, telephone number, and e-mail address;
6. a statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and
7. a statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.

Please note that, pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact (falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney’s fees incurred by us in connection with the written notification and allegation of copyright infringement.

The designated Copyright Agent for Infaco is:

Attn: DMCA Notice

Address: Infaco USA Inc., 2356 Research drive, Livermore CA 94550

Email: [contact@infaco-usa.com](mailto:contact@infaco-usa.com).

## **9 TERM AND TERMINATION**

- 9.1 Term and Termination. These Terms of Use will become effective and binding when you use our Website and until terminated by you or us. We reserve the right to terminate these Terms of Use, your account, and your access to the Website at any time without notice and without liability to you. You may also delete your account at any time, for any reason, by following the instructions on the Website or sending us a message notification via our “Contact Us” form on the Website.
- 9.2 Suspension or Termination. We may deny your access to your account, Website at any time for any reason (such as breach of these Terms of Use) or no reason. If we terminate for no reason, we will fulfill our obligations related to any order outstanding at the time of termination or will refund you the order, if applicable.

## 10 MISCELLANEOUS MATTERS

- 10.1 Force Majeure. We shall not be liable for damages for any delay or nonperformance resulting from a) delays in receipt of final specifications, information, or instructions from you, (b) changes in specifications or instructions, or (c) force majeure, including without limitation, acts of God, strikes, riots, labor disturbances, material shortages, nonperformance by subcontractors or suppliers, abnormal manufacturing conditions or costs, delays or failures of carriers or communications, fire, flood, storms, ice, snow, accident, war, explosion, accidents, epidemics, governmental orders or regulations or inability to secure any necessary governmental or other permits, court orders, or any other reason beyond our reasonable control.
- 10.2 Governing Law; Venue. These Terms of Use and any disputes arising out of your use of the Website, shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of law provisions thereof. Any litigation, suit or other proceeding regarding the rights or obligations of the parties hereunder shall be conducted exclusively before the state and federal courts in and for Alameda County, California. The United Nations Convention on Contracts for The International Sale of Goods, the Uniform Law on the Formation of Contracts for the International Sale of Goods, and any international discovery and service of process conventions will be inapplicable. Any claim under these Terms of Use must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred. Claims made under the separate terms and conditions of sale for purchase of Products online are not subject to this limitation. No recovery may be sought or received for damages other than out-of-pocket expenses, except that the prevailing party will be entitled to costs and attorneys' fees. In the event of any controversy or dispute between Infaco and you arising out of or in connection with your use of the Website, the parties shall attempt, promptly and in good faith, to resolve any such dispute. If we are unable to resolve any such dispute within a reasonable time (not to exceed thirty (30) days), then either party may submit such controversy or dispute to mediation. If the dispute cannot be resolved through mediation, then the parties shall be free to pursue any right or remedy available to them under applicable law.
- 10.3 Severability. Each provision of these Terms of Use is severable from the others, and Infaco's rights and remedies herein are cumulative and in addition to those available at law or in equity. In the event that any portion of these Terms of Use is determined in any suit or proceeding to be invalid or unenforceable, such determination shall not affect the remaining Terms of Use, all of which shall remain valid and enforceable.
- 10.4 Waiver. A waiver of any condition or default is not a waiver of any subsequent default.
- 10.5 Notices. All notices and communications to be given under these Terms of Use shall be in writing and (i) if to Infaco USA Inc., delivered personally or sent by pre-paid, first class certified or registered mail, return receipt requested or by overnight courier: 2356 Research drive, Livermore CA 94550, Attn: Legal Notices; or (ii) if to you, by email.
- 10.6 Assignment. You may not assign or otherwise transfer any rights hereunder without our prior consent, and any such attempt is void. These Terms of Use are binding upon and for the benefit of the respective successors and assigns of the parties hereto.
- 10.7 Entire Agreement. These Terms of Use constitute the entire agreement between us and you and expressly supersede and replace any prior or contemporaneous agreements, whether written or oral, relating to the governing order acknowledgement, including any terms and conditions on any of other documents or purchase orders and any prior offers by trade show representatives and demonstrators. These Terms of Use shall be binding upon the parties and their respective successors and assigns. If any provision of these Terms of Use is held to be invalid or unenforceable, that provision shall be severed from these Terms of Use and the remainder of the provisions of these Terms of Use shall remain in full force and effect.

Last Updated on May 16, 2019.