

PURCHASE ORDER TERMS AND CONDITIONS

1. **Applicability.** These terms and conditions of purchase (these “**Terms**”) govern the purchase of certain goods (“**Goods**”) and/or services (“**Services**”) by Marx Brothers, Inc. (“**Company**”) from the supplier (“**Supplier**”) identified in an ordering document (e.g., an order confirmation, order form, invoice, or purchase order) (as applicable under the circumstances, an “**Order**”). The Company and the Customer are referred to in these Terms each as a “**Party**” and collectively as the “**Parties**”. Each Order, these Terms, any applicable addendum or statement of work, and the terms and conditions located at <https://marxbrothersinc.com/tcpurchasing/> (collectively, this “**Agreement**”) comprise the entire agreement between the Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement prevails over any of Supplier’s general terms and conditions of sale, including, without limitation, any terms set forth on an invoice from Supplier, regardless of whether or when Supplier has submitted its sales confirmation or such terms. Fulfillment of any Order constitutes Supplier’s acceptance of this Agreement. Each Order constitutes Company’s offer to Supplier and is subject to withdrawal at any time prior to Company’s receipt of Supplier’s written acceptance of such Order. If a written contract signed by both Parties is in existence covering the sale of Goods and/or provision of Services covered hereby, the terms and conditions of such contract will prevail. This Agreement will commence on the earlier of (a) the acceptance of the first Order, or (b) the start of performance and will end on (i) the end date specified in the last then-current Order, or (ii) completion of performance under the last then-current Order (unless earlier terminated by Company under Section 7 below) (collectively, the “**Term**”).
2. **Delivery of Goods.** Supplier will deliver any Goods in the quantities and by the date(s) specified in the associated Order (the “**Delivery Date**”). Unless otherwise specified in an Order, Supplier will ship all Goods DDP (Incoterms 2020 definition) to the address specified in the applicable Order (the “**Delivery Point**”). If the Delivery Point is a Company facility, Supplier will only deliver during Company’s normal business hours. Title and risk of loss passes to Company upon delivery of the Goods at the Delivery Point. Supplier acknowledges that time is of the essence with respect to Supplier’s obligations under this Agreement, including timely delivery of the Goods and Services, all performance dates, and project milestones. Supplier will include the applicable Order number on all correspondence and packaging related to such Order. Supplier will pack all Goods for shipment according to Company’s instructions or, if no instructions are provided, in a manner sufficient to ensure the Goods are delivered in an undamaged condition. All containers, packing, and crating materials will become the property of Company unless Supplier provides Company prior written notice that Supplier requires such materials be returned, in which case, Company will return such packaging material at Supplier’s risk and expense.
3. **Inspection.** Company has the right to inspect all or any portion of the Goods or Custom Work (as such term is defined below), in each case, after receipt. Company may reject all or any portion of the Goods and/or Custom Work if it determines the Goods and/or Custom Work, as applicable under the circumstances, are nonconforming, defective, or fail Company’s required acceptance testing. Any inspection or other action by Company under this Section will not reduce or otherwise affect Supplier’s obligations under this Agreement. Company may conduct further inspections after Supplier has carried out any remedial actions. The receipt of the Goods or Services, the inspection or non-inspection of or payment for the Goods or Services will not constitute acceptance of the Goods or Services and will not impair Company’s right to (a) reject the nonconforming Goods or Services, (b) recover damages and/or (c) exercise any other remedies to which Company may be entitled at law or in equity. Further, acceptance of the Goods or Services will not waive any rights or remedies at law or in equity of Company as a result of any breach of the applicable Order. Rejected Goods may be returned to Supplier or otherwise disposed of at Supplier’s cost and expense.

4. Price. The price of the Goods and/or Services is the price stated in the applicable Order (the “**Price**”). If no price is included in an Order, the Price will be the lower of Supplier’s then prevailing market price, time and material rates, or the Price Supplier last quoted Company. Unless otherwise specified in an Order, the Price includes all packaging, transportation costs to the Delivery Point, labels, labor, materials, production costs (including any design and fabrication work, dies, tools, molds, or similar items used to produce the Goods and/or Custom Work), insurance, customs duties and fees, and applicable taxes, including all sales, use, or excise taxes. If Supplier reduces its price for the same or like Goods or Services before payment by Company, then Supplier will reduce the applicable Price set forth in the corresponding Order accordingly. Supplier will provide Company with all cash discounts or other incentives as generally offered by Supplier to its customers. Purchases under this Agreement will be aggregated for purpose of calculating any volume discounts or rebates.
5. Payment Terms. Each invoice must include all information Company reasonably requests. Unless otherwise indicated in the applicable Order, Company will pay each invoice 60 days from the date of Company’s receipt of an accurate invoice, except for any amounts disputed by Company in good faith. Company may withhold payment if Supplier’s invoice is incorrect or does not conform to Company’s invoicing instructions. Without prejudice to any other right or remedy it may have, Company may deduct any amount owed by Supplier for any set-off or counterclaim Company may have against Supplier. Company may reject paper-based invoices once an electronic document has been transmitted and received by either Supplier or Company.
6. Records Maintenance. During the Term and for a period of two years after, Supplier must maintain complete and accurate records relating to the Goods and Services provided hereunder and, upon Company’s written request, will allow Company to inspect and make copies of such records.
7. Change Orders; Termination Without Cause.
 - (a) Company may make changes to the requested Goods or Services in writing (“**Change Proposal**”). Supplier will respond in writing to Company’s Change Proposal within five business days of receipt and, if applicable, include a firm cost proposal with any adjustments to Price or deadlines (“**Change Order**”) for the Change Order. If Supplier accepts a Change Proposal without a Change Order or if Supplier fails to respond to a Change Proposal within five business days of receipt, Supplier must proceed with the changed Goods or Services as requested by Company without any adjustments to Price or deadlines.
 - (b) Company may terminate any Order without cause with respect to any Goods not yet delivered or Services not yet performed by notifying Supplier. Upon notification, Supplier will take all reasonable steps to minimize costs due to Company’s termination. As Supplier’s exclusive remedy for termination under this Section, Company will pay Supplier for Supplier’s documented, unavoidable, out-of-pocket costs incurred before receiving notice of termination, less any savings Supplier realizes from Company’s termination or Supplier’s related mitigation efforts.
8. Representations and Warranties.

Supplier represents, warrants, and guarantees to Company:

 - (a) that the Goods, including Supplier’s manufacturing processes, practices, and procedures as applicable:
 - (i) will conform strictly to specifications, samples, or descriptions specified by Company and/or set forth in an applicable Order;
 - (ii) will be free from defects in material, design, or workmanship;
 - (iii) will not infringe or misappropriate any patents, copyrights, trademarks, or intellectual property rights of third parties;
 - (iv) will be produced, packaged, shipped, and performed in compliance with applicable laws and regulations;

- (v) will be of merchantable quality;
 - (vi) will be fit for any particular purpose for which the Goods are required by Company, to the extent known by Supplier;
 - (vii) are owned by Supplier immediately prior to delivery, and transferred to Company without violation of any agreement to which Supplier is a party or by which Supplier is bound; and
 - (viii) will be free of security interests, liens, and encumbrances;
- (b) that the Price for the Goods or Services is not less favorable than the Price currently extended to any other customer for the same or like Goods or Services in equal or lesser amounts;
 - (c) that the Services will be performed in a competent and workmanlike manner using qualified personnel;
 - (d) that the Services will be performed in accordance with generally recognized industry standards for similar services;
 - (e) that these representations, warranties, and guarantees will continue beyond any inspection, delivery, acceptance, payment, and/or use by Company of the Goods or Services;
 - (f) that Supplier will keep any Company's equipment in its possession in good working order, free from all liens, and will not dispose of or use such equipment other than in accordance with Company's written instructions; and
 - (g) that Supplier will visibly mark any Company equipment in its possession as owned by Company.
9. Remedies. The rights and remedies of Company in this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity.
10. Indemnification. Supplier shall indemnify, defend, and hold harmless Company and its affiliates, and its and their officers, directors, employees, agents, successors, and permitted assigns (each an **"Indemnified Party"** and, collectively, **"Indemnified Parties"**) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees, and the costs of enforcing any right to indemnification and the cost of pursuing any insurance providers, incurred by Indemnified Parties (collectively, **"Losses"**) arising out of or related to any third party claim brought against an Indemnified Party resulting from the: (a) negligent acts or omissions of Supplier or its affiliates; (b) intentional or willful misconduct of Supplier or its affiliates; and (c) violation of any law by Supplier or its affiliates. Notwithstanding the foregoing, Supplier is not obligated to indemnify, defend, or hold harmless an Indemnified Party against any claim to the extent that such claim or corresponding Losses arise out of or result from such Indemnified Party's negligence or willful misconduct.
11. Insurance. Supplier shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than one million dollars (\$1,000,000.00) for each occurrence and five million dollars (\$5,000,000.00) in the aggregate with a company rated "A-VII" or better by A. M. Best. Upon Company's request, Supplier shall provide Company with a certificate of insurance and policy endorsements for all insurance coverage required by this section and shall not do anything to invalidate such insurance. Supplier shall provide Company with 30 days' prior written notice in the event of a cancellation or material change in Seller's insurance policy.
12. Compliance with Policies, Legal and Regulatory Requirements.
- (a) Supplier shall not take any action that would cause Company to be in violation of any law applicable to Company. Supplier will promptly report to Company any request or demand for any undue financial or other advantage Supplier received in connection with the performance of this Agreement.

- (b) Supplier will fully comply with the export control, economic sanctions, customs, and anti-boycott laws and regulations of all governmental bodies with respect to the Goods and Services, including the Export Administration Regulations 15 C.F.R. Parts 730-774, and any regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("**Applicable Trade Laws**").
 - (c) If Supplier produces all or any portion of the Goods outside of the United States, Supplier will either (i) participate in an accredited supply chain security program that meets the Customs-Trade Partnership Against Terrorism minimum criteria and provide Company with proof of accreditation annually or (ii) comply with the minimum criteria outlined in such program and complete an annual security questionnaire.
 - (d) Supplier will comply with all of the Federal Acquisition Regulations clauses that are mandatory for subcontracts for commercial items; a list of these clauses is set forth in 48 C.F.R. § 52.212-5(e)(1).
 - (e) Supplier represents and warrants that neither it, nor anyone acting on its behalf (i) has violated or will violate the US Foreign Corrupt Practices Act; the UK Bribery Act; or any other applicable anti-bribery or anti-corruption law (the "**Applicable ABAC Laws**") in connection with this Agreement; (ii) is an individual or entity included in a restricted or prohibited list pursuant to one or more of the Applicable Trade Laws (a "**Blocked Person**"); (iii) is an entity in which one or more Blocked Persons has in the aggregate, whether directly or indirectly, a 50 percent or greater equity interest or an entity that is controlled by a Blocked Person; or (iv) shall use any funds received from Company directly or indirectly for the benefit of any Blocked Person or in any other way that would violate any of the Applicable ABAC Laws or Applicable Trade Laws.
13. Modification and Waiver. This Agreement, including any Change Order, may only be amended in writing stating specifically that it amends this Agreement and is signed by an authorized representative of each Party. No waiver by Company of any provision of this Agreement is effective unless in writing and signed by Company, and no failure or delay by Company in exercising any right or remedy may be construed as a waiver.
14. Confidential Information.
- (a) From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, intellectual property, trade secrets, third-party confidential information, customer data, marketing plans, and other sensitive or proprietary information (collectively, "**Confidential Information**"). Confidential Information shall not include information that, at the time of disclosure, is (i) in the public domain; (ii) known to the receiving Party; or (iii) rightfully obtained by the receiving Party on a non-confidential basis from a third party.
 - (b) The receiving Party shall not disclose Confidential Information to any person or entity, except to the receiving Party's employees, agents, or independent contractors (collectively, "**Representatives**") who have a need to know the Confidential Information for the receiving Party to perform its obligations hereunder. Representatives receiving Confidential Information from the receiving Party shall be obligated to comply with confidentiality obligations no less stringent than those contained herein and the receiving Party shall be liable for any disclosure by its Representatives in violation of this Agreement. Upon receipt of request by the disclosing Party, the receiving Party shall promptly (i) return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information in the receiving Party's or its Representatives' possession or (ii) destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed; provided, however, that the receiving Party may retain copies of Confidential Information that are stored in the receiving Party's backup and disaster recovery systems until the ordinary course of deletion thereof. The receiving Party shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information regardless of the expiration or termination of this Agreement.

- (c) The Parties acknowledge that in the event of a breach or threatened breach of this section the receiving Party may be without an adequate remedy at law. Therefore, in addition to all other remedies available at law, in the event there is a breach or threatened breach of this section, the disclosing Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for such breach or threatened breach and the receiving Party waives any requirement for the securing or posting of any bond.

15. Ownership.

- (a) If Supplier (i) creates, produces, or develops tangible or intangible work product or deliverables for Company under an Order, (ii) makes modifications to the specifications or any process related to the Goods or Services specifically for Company, or (iii) uses or makes modifications to the Confidential Information or intellectual property of Company ("**Custom Work**"), Company owns the Custom Work. Supplier hereby assigns to Company all rights, title and interest in the Custom Work.
- (b) Supplier grants Company a perpetual, non-exclusive, worldwide, fully paid-up and irrevocable license in Supplier's patents, know-how, or other proprietary processes and techniques that are required for Company to make, have made, use and sell the Goods or Custom Work. Notwithstanding the prior sentence, Company is not disclosing or licensing any trade secret information under this Agreement.

16. Force Majeure. Failure of either Party to perform any of its obligations under this Agreement as a result of an unforeseen circumstance that is beyond its reasonable control and not caused by the claiming Party will not constitute a default under or breach of this Agreement. However, if such an event will prevent Supplier from performing under this Agreement for a period of 14 consecutive days, Company may terminate this Agreement in whole or in part at its sole option. Supplier's economic hardship and unexpected cost increases caused by changes in market conditions are not force majeure events.

17. Assignment. Supplier may not assign its obligations and rights under this Agreement without the prior written consent of Company. Any change in the control of Supplier will be deemed an assignment under this Agreement.

18. Relationship of the Parties: Representatives. Supplier and Company are and will remain independent contractors with respect to each other, and nothing in this Agreement will be construed to place Supplier and Company in the relationship of partners, joint ventures, fiduciaries, or agents. Neither Party grants the other Party any right or any authority to assume or create an obligation or responsibility, express or implied, on behalf of or in the name of the other nor bind the other in any manner. Supplier is the sole employer of all employees performing hereunder and is responsible for all matters concerning such employees. Nothing contained in this Agreement will create any contractual relationship between Company and any Supplier representatives. Supplier will remain fully responsible for the performance of the Services and compliance with this Agreement by any Supplier representatives as if they were Supplier's own employees.

19. Governing Law. Without regard to its conflict of laws principles, the laws of the State of Alabama govern the formation, validity, construction, and performance of this Agreement. Any proceeding between the Parties is to take place in Jefferson County, Alabama, which will be the exclusive venue for any such dispute. The Parties expressly waive the application of the United Nations Convention for the International Sale of Goods.

20. Notices. The Parties will send notices, requests, or demands under this Agreement in writing. Notices will be deemed received by a Party (a) upon personal delivery, (b) five business days after being mailed by certified mail, return receipt requested, or (c) one business day after being sent by nationally recognized overnight courier. Notices to Supplier will be sent to the address on the Purchase Order and to Company at: Marx Brothers, Inc., 3100 2nd Ave. South, Birmingham, Alabama 35233, Attn: Chief Financial Officer.

21. Severability. If any term or provision of this Agreement is illegal or unenforceable in any jurisdiction, it will not affect any other term or provision of this Agreement or render unenforceable such term or provision in any other jurisdiction.
22. Survival. This Agreement's completion or termination will not affect any rights or obligations that by their nature must continue to have effect after such completion or termination.
23. Public Disclosures. Except as required by law or with Company's written consent, Supplier will not (a) disclose the existence of the Parties' relationship or the terms or subject matter of this Agreement; (b) issue press releases or any other publication regarding the existence, the terms and conditions, or the subject matter of this Agreement; or (c) use Company's or its affiliates' or licensors' corporate names, trademarks, service marks, logos, or other identifiers.
24. Governing Language. The governing language for this Agreement will be English, and no concurrent or subsequent translation of this Agreement into any language will modify any term of this Agreement.
25. Counterparts. The Parties may sign any number of counterparts to this Agreement, each of which will be deemed an original instrument, but all of which taken together will constitute one and the same agreement. Signed electronic copies of this Agreement or any other electronic documents bind the Parties to the same extent as original documents.
26. Authorization. The Parties respectively warrant that the persons entering into this Agreement are authorized representatives and have all requisite authority to execute this Agreement on behalf of such Party.
27. Order of Precedence. In the event of a conflict between an Order, these Terms, and any agreement executed by the parties, the order of precedence shall be as follows: an agreement executed by the parties, an Order, followed by these Terms.

ADDENDUM 1 – DIRECT MATERIALS

IF GOODS ARE A FINISHED PRODUCT OR AN INGREDIENT INTENDED FOR A COMPANY FINISHED PRODUCT, INCLUDING PACKAGING MATERIAL, THE FOLLOWING TERMS APPLY. THESE TERMS ARE IN ADDITION TO AND DO NOT REPLACE THE TERMS SET FORTH IN THE AGREEMENT.

1. Supplier Qualification. Supplier will provide all documentation required by Company to qualify the Goods, or any Supplier location supplying the Goods, and will promptly update this documentation upon Company's request.
2. Quality Audit. Supplier will allow Company reasonable access to visit and inspect the facility and review records relevant to quality and food safety. Supplier will conduct a third-party audit under a Global Food Safety Initiative standard on an annual basis and will provide Company with a copy of each report promptly upon receipt. Additionally, Supplier will provide copies of any federal, state, or local regulatory audits promptly upon receipt.
3. Recall. Supplier will provide immediate notice and any material information of any event that could result in a seizure, destruction, recall, or withdrawal of the Goods or any Company finished product which incorporates the Goods. Any such decision to seize, destroy, recall, or withdraw will be at Company's discretion.
4. Warranties. Supplier represents, warrants, and guarantees that:
 - (a) it will comply with applicable state and federal regulations, including Current Good Manufacturing Practices, Hazard Analysis, and Risk Based Preventive Controls regulations applicable to the Goods;
 - (b) it will comply with all sanitation, food safety, quality, or related requirements that Company may provide to Supplier from time to time relating to the Goods;
 - (c) it will promptly complete questionnaires and information requests provided by Company relating to quality or food safety;
 - (d) it will only supply the Goods from Company-approved supply locations;
 - (e) no Good is adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, or is an article which may not, under the provisions of sections 301 (Prohibited Acts), 402 (Adulterated Food), or 403 (Misbranded Food) of the Act, be introduced into interstate commerce; and
 - (f) no Good is adulterated or misbranded within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Caustic Poison Act, state Pure Food Acts or any other applicable federal, state, or local laws.
5. Insurance. If Supplier provides any food-related Goods, then Supplier will maintain commercial general liability and umbrella/excess liability policies that do not have an exclusion for fungi, mold, and/or bacteria in food products intended for consumption.