

TERMS AND CONDITIONS OF SALE

1. General.

- (a) These terms and conditions of sale (these “**Terms**”) govern the purchase of certain goods (“**Goods**”) from Marx Brothers, Inc. (the “**Company**”) by the customer (the “**Customer**”) 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 mutually agreed upon by the parties in writing, and the terms and conditions located at <https://marxbrothersinc.com/tcsales/> (collectively, the “**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. The Parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding the Order) is void. If a written contract signed by both Parties is in existence covering the sale of Goods covered hereby, the terms and conditions of the contract will prevail. These Terms may not be changed except with the written agreement of the Company and the Customer and may not be waived except with the written consent of the waiving party.
- (b) Subject to acceptance by the Company, each Order will be deemed an offer by the Customer to purchase those Goods set forth therein subject to these Terms. Once an Order is accepted by both the Company and the Customer, such Order may be cancelled by the Customer without the consent of the Company. The Company reserves the right to require the Customer to indemnify the Company for any loss arising from such cancellation as a condition of such consent.

2. Prices and Payment.

- (a) Prices quoted by the Company (whether verbally or in writing) may be withdrawn by the Company at any time prior to mutual acceptance of the applicable Order to which the quoted price relates. The price payable for the Goods shall be as agreed between the Customer and the Company in the Agreement and, unless otherwise agreed, are exclusive of VAT and costs of carriage.
- (b) Except as otherwise set forth herein, all payments for the Goods are non-refundable. Payment is due in cleared funds by the date specified on the Company’s invoice, unless otherwise agreed in writing by the Parties. Any discounts granted in relation to a certain term of payment will lapse in case that term is exceeded. The Company reserves the right to require payment before delivery and to amend the payment terms applicable to the Customer on notice to the Customer in the event the Company has concerns over the Customer’s creditworthiness or if such an amendment is necessary, in the Company’s opinion, as a result of market conditions. Payment will be made in full without deduction or delay by way of any set-off or counterclaim. Time for payment shall be of the essence. In addition to its other rights and remedies, the Company may, in its sole discretion, assess finance fees of 1.5% per month (or, if such fees are greater than those permitted by applicable law, the highest finance fees permitted by such law) for any late payments by the Customer. The Company shall be entitled to recover from the Customer all costs of collection, including reasonable attorney’s fees.

- (c) The Company reserves the right to increase the price of the Goods or to reduce the Company's supply commitments, whether in relation to a single Order or a number of Orders, over a period as necessary to take account of any increase in cost to the Company due to (i) any change in law, regulation, tax, duty, levy or other payment imposed upon the Goods after the date of the Agreement; or (ii) circumstances of hardship/force majeure or significant increases in prices, or reductions in availability of, raw materials, energy, services or other supplies required by the Company, on giving the Customer one month's prior notice together with an explanation of the reason for such changes. The Company also reserves the right to terminate, without liability, any Order the performance of which, as a result of any such change, will have a material adverse effect on the Company, which cannot be resolved by an increase in the price.

3. Delivery.

- (a) Unless otherwise agreed, delivery of Goods shall take place at the Company's place of business. Delivery shall occur when the Goods leave the Company's delivery equipment and pass into the vehicle of the Customer or its agent's or, in relation to packaged Goods, when the Goods are loaded onto such vehicle.
- (b) If it is agreed that delivery shall take place at the Customer's place of business, delivery shall occur when the Goods are unloaded at the Customer's premises. The Customer shall supervise the unloading process and shall provide adequate staff, equipment, instructions and assistance to enable the Goods to be offloaded at the Customer's premises.
- (c) The Company and the Customer may agree, or the Customer may request, a date or time or period for delivery of the Goods but any such dates/times are intended to be estimates. The Company shall use commercially reasonable efforts to comply with any date or time agreed for delivery but, subject to the other provisions of these Terms, the Company will not be liable for any loss, damages, charges or expenses caused by any delay in the delivery of the Goods, nor will any delay entitle the Customer to terminate or rescind the Agreement, unless such delay exceeds three weeks. The Company's liability for any failure or delay in delivery shall be limited to the excess (if any) over the price of the Goods or the price of replacement goods to the Customer, in the cheapest available market.
- (d) The Customer shall collect or take delivery of the Goods at the agreed time/date or during the agreed period, as applicable, and agrees to indemnify the Company against any costs or losses incurred by the Company as a result of any failure to do so (including, without limitation, additional delivery costs and demurrage and storage costs), other than where such failure arises as a result of the default of the Company. Upon such failure, the Company may sell the Goods and charge the Customer for any shortfall below the Agreement price and shall thereafter have no further liability under the Agreement.

4. Risk and Title.

- (a) The Goods are at the risk of the Customer from the time of delivery or, if the Customer fails to take delivery pursuant to Section 3(d), at the originally agreed delivery time.
- (b) The Company shall remain the sole and absolute owner of the Goods until such time as the price of the Goods and all other monies which are or which become due to the Company from the Customer have been paid to the Company by the Customer in cash or cleared funds.

5. Inspection. The Customer must carefully examine all Goods on arrival at the Customer's premises. In relation to packaged Goods, the Customer shall check that the packaging is intact and in good condition and that the correct quantity has been delivered. Any defects or discrepancies discovered as a result of such inspection must be notified in accordance with Section 7(a). If a defect is discovered, the Customer shall not use or mix the Goods following such discovery and the Customer's sole remedy shall be limited, as the Company may elect, to the replacement of the defective Goods or a refund of the price of the Goods. If the Customer fails to examine the Goods, the results of tests on the Goods carried out by the Company prior to delivery shall be conclusive evidence of the absence of defects reasonably discoverable on such careful examination.

6. Quality and Quantity.

(a) The Company warrants that (subject to the other provisions of these Terms), upon delivery the Goods will comply in all material respects with the specification for the Goods in the Agreement. In the event that the Goods do not comply with the express terms of the Agreement or there is a breach of these warranties, then the Company shall, at its option, either replace the defective Goods free of charge to the Customer or refund up to the maximum of the total payments made by the Customer to the Company under the applicable Order with respect of the defective Goods. Except for the warranties set out above, the Company does not give any warranties in relation to the Goods. No warranties may be implied.

(b) Delivery of a shortage or surplus not exceeding 10% of the quantity or weight of the Goods ordered shall, at the Company's option, be considered to be due execution of the applicable Order and the Customer shall not be entitled to object to or reject the Goods by reason of such surplus or shortfall and shall pay for such Goods at the pro rata rate set forth in such Order.

(c) The weight of the delivered Goods shall be determined in relation to packaged Goods: by multiplying the amount of package units by the weight per package unit as indicated thereupon.

7. Limitation of Liability.

(a) The Company shall not be liable for a breach of the Agreement or any defects or discrepancies in the Goods unless (i) the Customer gives written notice of a defect to the Company within two business days of the time when the Customer discovers or, if earlier, ought to have discovered the defect; (ii) the Company has been given a reasonable opportunity after receiving the notice of examining such Goods; and (iii) the Customer notifies the Company in writing of a claim within six weeks of delivery of the Goods.

(b) The Company shall have no liability for any loss or damage arising as a result of the Customer's breach of its obligations in the Agreement. The Customer shall be deemed to have full knowledge of the nature of the Goods and the Company shall not be liable for a breach of these Terms, or an unlawful act in relation thereto if any defect arises from failure to follow the instructions for use furnished to it by the Company, or good industry practice in relation to, without limitation, storage, handling, mixing and use of the Goods or willful misconduct, negligence or abnormal working conditions.

(c) Subject to Section 7(b), the Company's aggregate liability for breach of these Terms or the Agreement (including negligence, misrepresentation and breach of statutory duty) or an unlawful act in relation thereto shall be limited to the fees associated with the delivery giving rise to the liability.

(d) The Company shall have no liability whether in contract, unlawful act or otherwise for any (i) loss of profit, loss of goodwill, loss of brand or reputation or loss of future sales; or (ii) claims for consequential or indirect loss to the Customer or any other person in connection with the Goods.

- (e) The Company shall have no liability for failure to perform its obligations under the Agreement occasioned by any act beyond the reasonable control of the Company including, without limitation, act of God, act of terrorism, war, adverse weather, action by government or other authority strike, accident or breakdown of plant or machinery, power failure, crop failure or fire.
8. Indemnification: The Customer hereby agrees to indemnify the Company from any and all liability that may arise from the Customer's resale of the Goods.
9. Warranties and Disclaimers: The Company represents and warrants that, as of the time and at the place of delivery, (a) the Company has the right to convey good title to the Goods and (b) the Goods delivered will conform to agreed-upon specifications. EXCEPT FOR THE FOREGOING, THE COMPANY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
10. Financial Condition: If the Customer fails to make timely payment of any obligations or if the Company determines that there are reasonable grounds for insecurity concerning the Customer's performance, the Company may require immediate payment of all sums owed by the Customer; or demand adequate assurance of due performance. The Company may, in addition to its other rights or remedies, treat the Customer's failure to make immediate payment or provide adequate assurance of performance as a total breach of the Agreement.
11. Force Majeure. A Party will be excused from a failure to perform or a delay in performance caused by events beyond its reasonable control if that Party (a) takes reasonable efforts to remove the cause of its inability to perform or its delay in performance and (b) gives prompt notice to the other Party of the particulars of its inability or delay. In the event the Company is unable to supply the total requirements of its customers (including the Customer), the Company may allocate its available supply among its customers in a manner determined by the Company to be fair and equitable. The Company will have the right to terminate the Agreement, without any liability to the Customer, if either Party's performance is excused for more than 20 calendar days.
12. Destination Control. The Goods subject to the Agreement, if intended to be exported (or re-exported) from the United States, will be exported (or re-exported) in accordance with the United States Export Administration Regulations. Diversion contrary to United States' law is prohibited. The Goods may not be resold to, disposed of, or transported on or by a carrier owned, flagged, leased, or chartered by, any country (including Cuba), person or entity which would cause the Company to be in violation of or be penalized by United States or other applicable economic sanctions laws. Additional information is available from the Company upon request.
13. Returns. If the Customer rejects all or any portion of the Goods that comply with specifications, the Customer will be liable for (a) handling costs in the amount of 25% of the price of the returned Goods (b) actual freight charged by the Company's carrier for the return of the Goods; and the Company reserves the right to reduce the quantity of the Goods ordered by the Customer on future purchase orders for recurring incidents.
14. Assignment. The Customer may not assign its obligations and rights under the Agreement without the prior written consent of the Company. Any change in the control of the Customer will be deemed an assignment under this Agreement.
15. Relationship of the Parties: Representatives. The Customer and the Company are and will remain independent contractors with respect to each other, and nothing in the Agreement will be construed to place the Customer and the 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.

16. 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 the 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.
17. Notices. The Parties will send notices, requests, or demands under the 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 the Customer will be sent to the address on the last Order and to the Company at: Marx Brothers, Inc., 3100 2nd Ave. South, Birmingham, Alabama 35233, Attn: Chief Financial Officer.
18. Severability. If any term or provision of the 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.
19. Survival. The 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.
20. Public Disclosures. Except as required by law or with the Company's written consent, the Customer will not (a) disclose the existence of the Parties' relationship or the terms or subject matter of the Agreement; (b) issue press releases or any other publication regarding the existence, the terms and conditions, or the subject matter of the Agreement; or (c) use the Company's or its affiliates' or licensors' corporate names, trademarks, service marks, logos, or other identifiers.
21. Governing Language. The governing language for the Agreement will be English, and no concurrent or subsequent translation of this Agreement into any language will modify any term of this Agreement.
22. Counterparts. The Parties may sign any number of counterparts to the 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 the Agreement or any other electronic documents bind the Parties to the same extent as original documents.
23. Authorization. The Parties respectively warrant that the persons entering into the Agreement are authorized representatives and have all requisite authority to execute the Agreement on behalf of such Party.
24. 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.