

Sims Bros. Inc. Sales Terms and Conditions

1) Definitions

The terms “we,” “us” or “our” mean Sims Bros. Inc. or the Sims Bros. Inc. affiliate designated on the Contract. The terms “you” or “your” mean the Purchaser as listed on the Contract. The term “Contract” means the “Sales Contract” completed between the parties to confirm and set out the agreement between you and us for the sale of goods pursuant to the Standard Terms and Conditions. The term “Standard Terms and Conditions” means the terms and conditions of sale set forth in this document. The term “Material” means the goods described in the Contract that are the subject of the sale.

2) Controlling Terms and Conditions

If you sign the Contract or otherwise agree to its terms verbally or in writing, the Contract will constitute the entire agreement between you and us with respect to the sale of the Material. Said contract will supersede any prior agreements, written or oral, between you and us. You shall provide to us a written objection to any unacceptable terms within ten days of your receipt of the Contract. If the Contract confirms a verbal agreement between you and us, you must notify us immediately if any item of the Contract does not conform to your understanding of the verbal agreement. Failure to return a signed copy of the Contract or object to its contents will not excuse you from liability pursuant to the Contract.

3) Rejection of Terms and Conditions

Sims Bros. Inc. rejects all terms and conditions proposed by the buyer and objects to any term or condition on the offer, purchase order, condition of acceptance, confirmation or any other communication which is different from, inconsistent with, or in addition to the terms and conditions in the Contract.

4) Acceptance of Terms and Conditions

Purchaser’s failure to notify Sims Bros. Inc. of any objection within ten days of receipt or any confirmatory action, including acceptance of material, shall constitute acceptance of Sims Bros. Inc.’s specific terms and conditions.

5) Inspection

You agree to inspect the material within Twenty-Four (24) hours after delivery to its destination. Further, you agree to notify us immediately verbally or in writing, about any material which fails to conform to the specifications or grade as agreed to in the contract. Your failure to notify us within 24 hours will constitute your acceptance of the materials.

6) Acceptance

You agree to allow us a reasonable opportunity to inspect any alleged nonconforming material prior to any comingling, blending or action which affects the original state of the material as it was delivered within Forty-Eight (48) hours. Failure to notify us shall constitute your acceptance and acknowledgement that the material conforms to the specifications and grade as described in the contract. Your acceptance shall constitute an immediate and irrevocable acceptance of the materials. Should you refuse to accept the material without proper justification, we may exercise any or all remedies as afforded to us by the Uniform Commercial Code.

7) Limitation of Liability

SIMS BROS. INC. SHALL NOT BE LIABLE AND DISCLAIMS ANY OBLIGATION FOR THE LOSS OF USE OF THE GOODS SOLD, LOSS OF TIME, COST OR EXPENSE, INCONVENIENCE, COMMERCIAL LOSS, OR ANY OTHER INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES.

SIMS BROS. INC. SHALL HAVE NO OTHER LIABILITY ON ANY CLAIM OF ANY KIND WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, TORT OR OTHERWISE FOR ANY DAMAGE OR INJURY TO PERSON OR PROPERTY OR LOSS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THE TRANSACTIONS COMTEMPLATED HEREUNDER, OR THE PERFORMANCE THEREOF.

SIMS BROS. INC.'S MAXIMUM LIABILITY FOR DAMAGES AND PENALTIES ARISING FROM THE CONTRACT SHALL BE THE TOTAL INVOICE VALUE OF THE GOODS.

8) Disclaimer of Warranties

Sims Bros. Inc. warrants, with respect to the goods sold, that the material will conform to the specifications or grade as agreed to in the contract. SIMS BROS. INC. HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS AND MERCHANTABILITY. ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS, IS NON-TRANSFERABLE AND MAY NOT BE EXTENDED BY THE PURCHASER TO ANY THIRD PERSON.

9) Force Majeure

Sims Bros. Inc. shall not be liable for any delay in delivery should it be prevented from making said delivery by reason beyond our control, including, but not limited to, acts of God, fire, flood, natural disasters, strike, lockout, shortage of material or labor, damage to machinery, unavailability of fuel, police or government intervention. Delivery time and method shall be extended and permitted until the force majeure or event has ceased.

10) Payment Terms and Breach

You agree to make all payments when due pursuant to the contract. Accounts not paid in full within the terms of the contract are subject to interest at a rate 10% over prime as published in the Wall Street Journal. In the event you fail to make any payments when due, or in the event of any breach of contract, Sims Bros. Inc. shall be entitled to the following remedies:

- a) Suspend shipment
- b) Cancel the contract
- c) Recover all expenses incurred in the collection of said payment, including reasonable attorney fees
- d) Exercise all of its rights and remedies at law, equity and pursuant to the Uniform Commercial Code

11) Assignment

Neither the contract nor these terms and conditions nor any of the rights, interests or obligations under the contract shall be assigned, in whole or in part, by operation of law or otherwise by either of the parties hereto without the prior written consent of the other party.

12) Entire Contract

The terms and conditions contained in this agreement constitute the entire and final agreement between the Parties and supersede any and all prior oral or written agreements or discussions. The terms and conditions in this agreement may not be modified in any respect except in a writing which states the modification and is signed by both Parties hereto.

13) Severability

If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term. If application of this Severability provision should materially and adversely affect the economic substance of the transactions contemplated hereby, the Party adversely impacted shall be entitled to compensation for such adverse impact, provided the reason for the invalidity or unenforceability of a term is not due to serious misconduct by the Party seeking such compensation.

14) Applicable Law

The contract shall in all respects be governed by, construed and interpreted in accordance with, the Laws of the State of Ohio, without regard to the conflict of laws principles thereof. Any action or suit initiated by you relating in any way to the contract must be brought in a federal or state court located in Marion County, Ohio. You hereby consent to the jurisdiction and venue of the courts in the State of Ohio.