

Sims Bros. Inc. Purchasing 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 Seller as listed on the Contract. The term “Contract” means the “Purchase Contract” completed between the parties to confirm and set out the agreement between you and us for the purchase of goods pursuant to the Standard Terms and Conditions. The term “Standard Terms and Conditions” means the terms and conditions of purchase set forth in this document. The term “Material” means the goods described in the Contract that are the subject of the purchase.

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 purchase 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 does not conform to your understanding of the verbal or written agreement. Failure to object 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 seller and objects to any term or condition on the offer, sales order, and 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

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

5) Inspection and Rejection

All material received by Sims Bros. Inc. is subject to our inspection, rejection, testing and approval with respect to material, grade and other qualities in accordance with the contract. Sims Bros. Inc. inspection does not constitute acceptance.

6) Remedies

We will notify you of any partial or total rejection of material. In addition to all other rights, remedies and choices we may have by contract of law, including costs, damages and reasonable attorney fees, Sims Bros. Inc. may:

1. Rescind the order
2. Return the materials at Seller's cost
3. Withhold total or partial payment
4. Cure any defect while deducting any unpaid balance in accordance with the costs and expenses as a result of curing
5. Adjust the purchase price consistent with usages in the trade or course of performance

7) Warranty

In addition to any warranty implied in fact or law, you warrant the material conforms to the specifications and grade described in the contract and the material will be merchantable, free from defect and is fit for the general and particular purpose and use intended.

8) Indemnification

Seller agrees and warrants to Sims Bros. Inc. to defend, hold harmless and indemnify Sims Bros. Inc., its affiliates, successors, assigns and customers against all claims, lawsuits or other proceedings, including attorney fees, brought against Sims Bros. Inc. arising out of or resulting, directly or indirectly from:

1. Seller's performance in connection with the contract
2. Non-conforming or defective materials
3. Seller's breach of the contract
4. Seller's violation of federal, state or local laws or regulations/ordinances
5. Seller's breach of representations, warranties or obligations

9) Force Majeure

Sims Bros. Inc. shall not be liable for failure to perform its obligations should it be prevented from performing its obligations 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.

Performance of its obligations shall be extended and permitted until the force majeure or event has ceased.

10) Insurance

Seller represents and warrants that it will maintain, at its own expense:

1. Workers' Compensation Insurance
2. Employer's Liability Insurance
3. Commercial General Liability Insurance
4. Automobile Insurance

Upon Sims Bros. Inc. request, Seller shall furnish Sims Bros. Inc. the certificates of insurance indicating said coverage.

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.