

## MARVOLUS'S ADDITIONAL TERMS AND CONDITIONS

(PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY)

### Article I: Generally

#### 1.1 Governing Terms

Thank you for choosing Marvolus. By using Marvolus.com ("Our Website") in any way, including by browsing or registering an account; or by purchasing any item (a "Product") from our company using any method, including Our Website, phone, mail, fax, email, or Business Account Order Form, you are agreeing to comply with and be bound by our [Company Policies](#) and the following additional terms and conditions (these "Terms and Conditions"). Please review them carefully. If you do not agree to these Terms and Conditions, you should not use Our Website or otherwise order Products. Each of the terms "Marvolus", "us", "we" or "our" refers to Marv-O-Lus Manufacturing Company, the owner of Our Website. The term "you" refers to the user or viewer of Our Website, or any purchaser of our Products. These Terms and Conditions apply despite any conflicting, contrary or additional terms or conditions in any purchase order or other document or communication from us. The scope of this Article is intentionally broad. The specific provisions that follow do not limit that broad scope. **Please note the arbitration clause in section 10.16.**

#### 1.2 Limitation on Acceptance of Offer

These Terms and Conditions expressly limit your acceptance of any offer of sale of Products by us to the terms and conditions in these Terms and Conditions. This express limitation applies even if your terms of acceptance differ in some respects from these Terms and Conditions.

#### 1.3 Waiver and Modifications

We have the right to amend these Terms and Conditions at any time by posting the amended Terms and Conditions on Marvolus.com. If we materially amend these Terms and Conditions, we will notify you by posting notice of the amendment on the front page of Our Website. Any material amendment to these Terms and Conditions will be effective automatically 30 days after it is initially posted or, for users who register, purchase Products or otherwise provide opt-in consent during this 30-day period, at the time of that registration, purchase, or consent.

### Article II: Access to and Use of Our Website

#### 2.1 Copyright

The content, organization, graphics, design, compilation, magnetic translation, digital conversion and other matters related to Our Website are protected under applicable copyright, trademark and other laws regulating proprietary rights, including intellectual property rights. You do not have the right to copy, redistribute, use or publish any such matters or any part of Our Website, except as 2.3 below provides. You do not acquire ownership rights to any content, pictures or other materials you view

through Our Website. The posting of information or materials on Our Website does not constitute a waiver of any right in any of those information and materials. Some of the content on the site may be the copyrighted work of third parties.

## 2.2 Service Marks

"Marvolus<sup>TM</sup>", Marvolus.com and other marks we use in connection with our business are our service marks or registered service marks or trademarks. Other product and company names mentioned on Our Website may be trademarks of their respective owners.

## 2.3 Limited Licenses; Permitted Uses

(I) You are granted a non-exclusive, non-transferable, revocable license (a) to access and use Our Website strictly in accordance with these Terms and Conditions; (b) to use Our Website solely for internal, personal, non-commercial purposes; and (c) to print out discrete information from Our Website solely for internal, personal, non-commercial purposes, provided you maintain all copyright and other policies contained therein. You have no right to use any print-out or electronic version of any part of Our Website or its contents in any litigation or arbitration matter whatsoever under any circumstances.

(II) If you are a distributor of our products, in addition to the license above, you are granted a non-exclusive, non-transferable, revocable license to (a) access and use Our Website strictly in accordance with these Terms and Conditions (b) use Our Website and any of our copyrighted material from Our Website to assist in the sale and promotion of our Products, and (c) print out discrete information from Our Website to use in the promotion or sale of our Products.

## 2.4 Restrictions and Prohibitions on Use

Your license for access and use of Our Website and any information, materials or documents on Our Website (collectively, "Content and Materials") is subject to the following restrictions and prohibitions on use: You may not (a) copy, print (except for the express limited purpose permitted by Section 2.3 above), republish, display, distribute, transmit, sell, rent, lease, loan or otherwise make available in any form or by any means all or any portion of Our Website or any Content and Materials retrieved from Our Website; (b) use Our Website or any materials obtained from Our Website to develop, or as a component of, any information, storage and retrieval system, database, information base, or similar resource (in any media now existing or hereafter developed), that is offered for commercial distribution of any kind, including through sale, license, lease, rental, subscription, or any other commercial distribution mechanism; (c) create compilations or derivative works of any Content and Materials from Our Website; (d) use any Content and Materials from Our Website in any manner that may infringe any copyright, intellectual property right, proprietary right, or property right of us or any third parties; (e) remove, change or obscure any copyright notice or other proprietary notice or terms of use contained in Our Website; (f) make any portion of Our Website available through any technology now existing or developed in the future; (g) remove, decompile, disassemble or reverse engineer any of Our Website's software or use any network monitoring or discovery software to determine Our Website's architecture; (h) use any automatic or manual process to harvest information from Our Website; (i) use Our Website for the purpose of gathering information for or transmitting (1) unsolicited commercial email; (2) email that makes use of headers, invalid or nonexistent domain names, or other means of deceptive addressing;

and (3) unsolicited telephone calls or facsimile transmissions; and (j) use Our Website in a manner that violates any state or federal law regulating email, facsimile transmissions or telephone solicitations.

## 2.5. Registration

Certain sections of, or offerings from, Our Website may require you to register. In that case, you will provide us with accurate, complete registration information, using your real name and accurate information. Each registration is for your personal use only and not on behalf of any other person or entity. We do not permit (a) any other person to use the registered sections under your name; or (b) access through a single name being made available to multiple users on a network. You are responsible for preventing such unauthorized use.

## 2.6 Third Party Content

Third party content may appear on Our Website or may be accessible via links from Our Website. We are not responsible for and assume no liability for any mistakes, misstatements of law, defamation, omissions, falsehood, obscenity, pornography or profanity in the statements, opinions, representations or any other form of content on Our Website. You understand that the information and opinions in the third party content represent solely the thoughts of the author and is neither endorsed by nor does it necessarily reflect our belief.

## 2.7 Unlawful Activity

We reserve the right to investigate complaints or reported violations of these Terms and Conditions and to take any action we deem appropriate, including but not limited to reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to your profile, email addresses, usage history, posted materials, IP addresses and traffic information.

## 2.8 Use of Information

We reserve the right, and you authorize us, to the use and assignment of all information regarding Our Website's uses by you and all information provided by you in any manner consistent with our [Company Policies](#). All remarks, suggestions, ideas, graphics, or other information you communicate to us (collectively, a "Submission") will forever be our property. We will not be required to treat any Submission as confidential, and will not be liable for any ideas (including product, service or advertising ideas) and will not incur any liability as a result of any similarities that may appear in our future products, services or operations. Without limitation, we will have exclusive ownership of all present and future existing rights to the Submission of every kind and nature everywhere. We will be entitled to use the Submission for any commercial or other purpose whatsoever, without compensating you or any other person sending the Submission. You acknowledge that you are responsible for whatever material you submit, and you, not we, have full responsibility for the message, including its legality, reliability, appropriateness, originality, and copyright.

## 2.9 Content that You Create or Upload

We respect the intellectual property of others, and we ask you to do the same. You, the customer, warrant that you have appropriate intellectual property rights and hold any required copyrights for use of any and all content that you create or upload to be printed. We do not review uploaded files for copyright or trademark violations.

## 2.10 Content that We Create for You

We reserve the unlimited right to reproduce and use custom designs and images that we make for customers, irrespective of which party pays for such designs or images.

#### 2.11 Information and Press Releases

Our Website contains information and press releases about us. We disclaim any duty or obligation to update this information or any press releases. Information about companies other than ours contained in the press release or otherwise, should not be relied upon as being provided or endorsed by us.

#### 2.12 Legal Compliance

You agree to comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding your use of Our Website and the Content and Materials provided therein.

### **Article III: Warranty**

WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES), EXCEPT AS OUR [COMPANY POLICIES](#) EXPRESSLY PROVIDE.

### **Article IV: Title to Goods and Risk of Loss**

#### 4.1 Transfer of Title - Risk of Loss

Title to Products and risk of loss will pass from us to you after the Product has been (1) selected and ordered by you through any method we allow and (2) packaged by us for shipment to you.

#### 4.2 Return of Products - Risk of Loss on You

You will bear the risk and expense of returning any Products. Please refer to our Company Policies for our full return policy.

#### 4.3 Breach of Terms and Conditions - Risk of Loss Unaffected

Breach of these Terms and Conditions by either party will have no effect on the provisions of these Terms and Conditions that allocate risk of loss.

### **Article V: Our Obligation to Tender Delivery of Products**

#### 5.1 We Will Use Commercially Reasonable Efforts

We will use commercially reasonable efforts to initiate shipment and schedule delivery to accommodate your requested delivery dates.

#### 5.2 No Liability for Failure to Deliver on Delivery Date

You acknowledge that any delivery dates that we provide are estimates only and that we are not liable for any failure to deliver on those dates.

#### 5.4 Shipment of Products

All shipments by us are F.O.B. point of origin and you will be solely responsible for all transportation charges in addition to the price of the Products, unless we indicate otherwise. Subject to our right of stoppage in transit, delivery of the Products to the carrier will constitute delivery to you. Please see “Shipping Information” under [Company Policies](#) for more details.

#### 5.5 Right to Deliver in Installments

We have the right to make deliveries in severable lots, and to invoice for each such lot separately. You will pay those invoices when due, without regard to subsequent deliveries. Delay in delivery on one or more lots will not relieve you of your obligation to accept remaining deliveries. Please see “Backorders” under [Company Policies](#) for more details.

#### 5.6 Allocation of Sales

We have the right to allocate sales of Products among our customers in our sole discretion. As a result, we may, in our sole discretion, sell you less than the full amount or number of products that you ordered.

#### 5.7 Our Right to Cure Improper Tender

We have the right to cure any improper tender within a reasonable amount of time. We reserve the right, upon reasonable notice to you, to inspect any Products that you claim to be non-conforming, ascertain the facts and preserve the evidence. We do not and will not waive or limit our right to cure improper tender within a reasonable time. Please see “Warranties and Replacements” and “Return Policy” under our [Company Policies](#) for more details.

### **Article VI: Your Obligation to Accept Products**

#### 6.1 Inspection

You have no right to inspect the Products as a condition to payment or acceptance.

#### 6.2 Your Limited Right of Rejection

The terms of these Terms and Conditions relating to our tender of delivery of Products to you are not of the essence and you may only reject the Products if the failure of the tender to conform to the terms of delivery causes material loss or delay to you. You must accept or reject each shipment of Products as a whole. Acceptance of a part of any shipment will constitute acceptance of the entire shipment.

#### 6.3 Acceptance, and Time and Manner of Rejection

You must exercise your limited right of rejection (as Section 6.2 defines), by notice to us within two (2) days after our tender of delivery (as Section 5.2 defines) and before any part of the Products has been changed from its original condition. Your failure to notify us of your rejection within that period will be conclusive proof of your acceptance. Any notice of rejection must state each particular defect that is the basis of rejection. Defects that are not stated in any such notice are waived and will not constitute a basis for justifying rejection or claiming breach.

#### 6.4 Your Duties on Rejection

If you rightfully reject the Product, you will follow any reasonable instructions from us with respect to the Products.

#### 6.5 No Right to Revoke Acceptance

If you accept Products that we tendered under these Terms and Conditions, that acceptance will be deemed a complete discharge of all of our obligations. After any such acceptance, you will have no remedy against us nor the right to revoke such acceptance for any reason.

#### 6.6 Special Orders and Other Non-Cancelable Orders

Despite any provision of these Terms and Conditions to the contrary, orders for special, custom, value-added and other non-standard Products will be non-cancelable and non-returnable. Products of manufacturers that do not appear on Our Website, work-in-process and Products otherwise identified by us as "NCNR" or "Non-Cancelable and Non-Returnable" will be non-cancellable and non-returnable.

#### 6.7 Return of Products and Cancellation of Orders

You have no right to (a) countermand orders accepted by us; (b) defer shipments; or (c) return Products, except for returns that we allow under our "Return Policy" in our [Company Policies](#) on terms that will indemnify us against all loss, including the profit on any part of an order that is canceled or returned. We reserve the right to reject partial cancellations.

#### 6.8 Delivery of Wrong Quantity

Delivery of a quantity that varies from the quantity specified by you in a purchase order will not relieve you of the obligation to accept delivery and pay for the Products delivered.

### **Article VII: Our Remedies**

#### 7.1 Wrongful Rejection; Failure to Pay When Due

If you wrongfully reject a shipment, or fail to make payment when due, or repudiates all or any part of these Terms and Conditions, We have the right to pursue any legal or equitable remedies, with respect to any Products affected and with respect to these Terms and Conditions. In such an event, we will be entitled to reimbursement for costs of collection and reasonable attorneys' fees. We also have the right to withhold delivery of such Products, stop delivery of such Products in possession of a carrier or other bailee, and recover damages for non-acceptance or repudiation. The measure of damages will include but, not be limited to, the difference between the market price at the time and place for tender and the unpaid agreement price, together with any incidental damages, but less expenses saved in consequence of your breach.

#### 7.2 Cancellation

In addition to any other remedies that apply, if we are or become obligated for amounts in connection with any order that you cancel (whether or not that cancellation is wrongful), including, but not limited to, cancellation fees, restocking charges, other fees or charges to any of our suppliers, shippers or others, other costs and reasonable attorney's fees, then you will pay to us on our demand the total of those amounts plus an additional charge of 15% of that total.

## **Article VIII: Your Remedy**

### 8.1 Your Exclusive Remedy

Your recovery from us for any claim will not exceed your purchase price for the Product(s) giving rise to such claim, irrespective of the nature of the claim, whether in agreement, tort, warranty, or otherwise. That refund of your purchase price is your sole and exclusive remedy against us for any dispute arising as a result of these Terms and Conditions or any event related to these Terms and Conditions.

## **Article IX: Miscellaneous**

### 9.1 Terms and Conditions Are Entire Understanding

This document, along with our [Company Policies](#), contains the entire understanding and agreement of the parties on the sale of Products to you. There is no agreement, oral or otherwise, that is not in these Terms and Conditions.

### 9.2 Notice

All notices, and all other communications in connection with these Terms and Conditions ("Notices"), unless otherwise specified in the Terms and Conditions, must be in writing, and either (a) personally delivered to the intended recipient, (b) sent by certified U.S. mail, postage prepaid, to the last known address of the intended recipient, or (c) faxed to the intended recipient's last known fax number. Notices will be effective on the date of personal delivery, the third day after deposit in the U.S. mail as provided above or as of the date and time of the fax transmission, provided that the Notice by fax is transmitted on a business day between 9:00 a.m. and 5:00 p.m. Chicago time. A fax Notice transmitted any other time will be effective at 9:00 a.m. the next business day.

### 9.3 Agent on Your Default

If you default under these Terms and Conditions, any attorney of or designated by the law firm of PreroLaw, P.C., 8424 Skokie Blvd., Ste. 200, Skokie, Illinois 60077, will be deemed our agent and as such will have the authority to take all lawful action to enforce our rights hereunder, and has full authority to act in matters relating to the performance of these Terms and Conditions.

### 9.4 Exclusion of Parol Evidence

These Terms and Conditions and our [Company Policies](#) are the final expression of the agreement of the parties and the complete and exclusive statement of the terms of their agreement. Parol or extrinsic evidence is inadmissible to explain, vary, or contradict the express terms of these Terms and Conditions and our [Company Policies](#). No prior course of dealing between the parties, nor course of performance, nor usage of the trade is relevant to supplement, modify, contradict or otherwise explain these Terms and Conditions and our [Company Policies](#).

### 9.5 Acceptance of a Course of Performance Does Not Change Terms and Conditions

A party's acceptance or acquiescence in a course of performance under these Terms and Conditions does not affect the meaning of these Terms and Conditions, even if that party knows of the nature of the performance and has an opportunity to object to it.

#### 9.6 Severability

If any provision of these Terms and Conditions is held unconscionable, illegal or otherwise unenforceable, that provision will be deemed deleted and the balance of the Terms and Conditions will remain in full force and effect.

#### 9.7 No Assignability

You have no right to transfer, assign or delegate any rights, duties, agreements or obligations under these Terms and Conditions, by operation of law, merger or otherwise, without our prior written consent. Any attempted or purported assignment in violation of this Section will be void. We have the right to transfer, assign or delegate any rights, duties, agreements or obligations under these Terms and Conditions, by operation of law, merger, conveyance or otherwise.

#### 9.8 Terms and Conditions Binding on Successors and Assigns

The obligations, rights, terms and conditions of these Terms and Conditions will be binding on the parties and their respective successors and permitted assigns.

#### 9.9 Indemnification

You are solely responsible for determining the suitability and compatibility of your use and other application of any product you purchase from us and assume all risk and liability whatsoever in connection therewith. You will indemnify and hold harmless us and/or the original product manufacturer for any injury, loss, or damage, direct or consequential, arising out of use of such product. Our only obligation and the Manufacturer's only obligation will be to replace such quantity of the product proved to be defective as per our [Company Policies](#).

#### 9.10 Intellectual Property

Nothing in these Terms and Conditions will be construed to grant any rights or license to use any design or other intellectual property in any manner or for any purpose that we do not expressly permit. All drawings, tooling, set-up, fitting-up, design information, techniques and improvements (whether patentable or unpatentable) that we or our agents or employees make or conceive in the fulfillment of any purchase, are proprietary and will be our property.

#### 9.11 Force Majeure

We will not be liable for failure to fulfill its obligations in these Terms and Conditions or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. This list is not intended to be exhaustive. Our time for performance of any such obligation will be extended for the time period of such delay or we may, at our option, cancel any order or remaining part of an order without liability by giving notice of that cancellation to you.

#### 9.12 Choice of Law

These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Illinois, excluding its rules on conflicts of laws, and for international transaction, the United Nations Convention on the International Sale of Goods.

#### 9.13 Interpretation

Unless these Terms and Conditions otherwise expressly provide, these Terms and Conditions will be interpreted and construed in accordance with the rules of construction and interpretation set forth in the Illinois Uniform Commercial Code.

#### 10.15 Venue

Any action arising out of or related to these Terms and Conditions or its interpretation will be commenced exclusively in the state or federal courts located in Cook County, Illinois. You hereby consent to the jurisdiction of those courts, and expressly waive the jurisdiction of any courts located outside Cook County, Illinois.

#### 10.16. Arbitration

Any legal controversy or legal claim arising out of or relating to these Terms and Conditions or our services, excluding legal action taken by us to collect or recover damages for, or obtain any injunction relating to, Our Website, intellectual property, and our services, will be settled solely by final binding arbitration to be conducted by an arbitration tribunal in Chicago, Illinois pursuant to the rules of the American Arbitration Association. The arbitration tribunal shall consist of one arbitrator. If the parties cannot agree on the arbitrator, the office of the American Arbitration Association of Chicago, Illinois shall make the necessary appointment. The decision or award of the arbitrator shall be final, and judgment upon such decision or award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such decision or award and an order of enforcement. In the event of any procedural matter not covered by aforesaid rules, the procedural law of the state of Illinois shall govern. Notwithstanding the agreement to arbitrate contained in this section 10.16, any party may apply to any court having jurisdiction to enforce this Agreement to seek provisional injunctive relief so as to maintain the status quo until the arbitration award is rendered or the dispute is otherwise resolved.