

**Skratch Labs LLC**  
**Retail Terms and Conditions of Sale**

These Terms and Conditions (the "Conditions") bind Skratch Labs LLC ("Seller") and its customer ("Buyer") regarding the sale and purchase of Skratch Labs Products, and supersede all prior agreements, proposals and discussions among the parties with respect to the purchase and sale of Skratch Labs Products other than a written agreement signed by both parties. Any additional, inconsistent or different terms or conditions contained in a Buyer's purchase order or other documents submitted to Seller by or on behalf of Buyer at any time, whether before or after the date hereof, shall be deemed a material alteration and not a rejection of these terms and conditions, and are hereby expressly rejected by Seller. These Conditions shall be deemed accepted by Buyer without any such additional, inconsistent or different terms and conditions, except to the extent expressly accepted by Seller in a writing signed by Seller.

1. **Acceptance of Orders.** All orders are subject to acceptance by Seller at Seller's principal place of business. Seller's sales representatives, if any, have authority to transmit orders, but are not authorized to accept orders or otherwise bind Seller in any way. Seller reserves the right to withdraw Skratch Labs Products from sale and modify these Conditions without prior notice. Orders that do not originate from approved customers; do not conform to Seller's then current pricing policies or contain terms which conflict with these Conditions shall be considered rejected without further notice to the originator. In the event of a shortage of Skratch Labs Products, Seller reserves the right to allocate available Skratch Lab Products among customers in its sole discretion.

2. **Shipment and Risk of Loss.** Unless otherwise agreed, all sales are FOB Seller's shipping point, and title and risk of loss or damage transfers to Buyer at that point. Skratch Labs Products may not be returned to Seller without express written consent of Seller.

3. **Prices and Payment Terms.** Prices quoted are for the Skratch Labs Products described for one order and one billing. Prices applicable are those in effect at the time of acceptance of the order. Taxes (except Seller's income tax), special handling, storage or shipping charges, insurance, and other similar charges are additional and paid by Buyer. Unless otherwise agreed, payment in full is due prior to shipment in U.S. dollars in immediately available funds, without set off or deduction. Delinquent payments shall be subject to post maturity charges of one and one-half percent per month or the highest rate permitted by law at the point of delivery. A delinquent Buyer shall pay Seller's reasonable costs of collection, including attorney's fees and court costs. Seller in its sole discretion may withhold shipments, require advance payment prior to shipment, or cancel orders of any delinquent Buyer, notwithstanding earlier acceptance. Seller may increase prices at any time without prior notice. In the event of a price decline, Seller shall have no liability or obligation to refund any portion of payment resulting from prior sales.

4. **Minimum Advertised Price Policy.** Seller's dealers may advertise Skratch Labs Products at or above the minimum advertised price ("MAP"). The MAP is equal to the manufacturers' suggested retail price ("MSRP") published in Skratch Labs' most current suggested retail price list.

- a. If Seller determines in its sole and subjective discretion that a dealer has advertised any of the applicable Skratch Labs Products at retail prices below the Seller's suggested retail prices or minimum advertised prices, Seller reserves the right to immediately reject future orders placed by that dealer or to inform distributors that such dealer is no longer authorized to sell Skratch Labs Products;
- b. Seller reserves the right at any time to modify, suspend, or discontinue the MAP in whole or in part or designate promotional periods during which the terms of the policy change or designate periods of time during which the MAP Policy is not applicable;
- c. Seller will not discuss any decision relating to its MAP Policy or negotiate the terms of any such decisions with any dealer and will not seek or accept assurances of any kind as to the dealer's future conduct, and no other person is authorized to do so.
- d. No one, other than Seller's MAP Policy Administrator, is authorized to discuss, modify, or alter this MAP Policy.
- e. THIS IS A UNILATERAL POLICY ANNOUNCED BY SKRATCH LABS LLC FOR THE ADVERTISING OF SKRATCH LABS PRODUCTS. THIS POLICY IS SUBJECT TO CHANGE OR MODIFICATION AT ANY TIME IN SELLER'S SOLE AND SUBJECTIVE DISCRETION.

5. **Warranty and Limitation of Liability.** Representations regarding the composition and performance of Skratch Labs Products are believed reliable, but SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, REGARDING SUCH INFORMATION OR GOODS EXCEPT THAT SELLER WARRANTS THAT IT HAS GOOD TITLE TO THE GOODS AND THE GOODS WILL CONFORM TO THEN CURRENT SPECIFICATIONS AT THE TIME OF DELIVERY. SELLER EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller's liability for breach of the above warranty, whether at law, in tort or in contract, shall not exceed the cost to Buyer of the defective products. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL

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DAMAGES, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SAME.

**6. Ownership of Intellectual Property.** All know-how, designs, specifications, inventions, developments, processes, copyrights, trademarks, patents and applications therefore, and other information or Intellectual Property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, "Intellectual Property") will remain the property of Seller. Buyer shall have no claim to, nor ownership interest in, any Seller Intellectual Property. Buyer acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Seller Intellectual Property.

**7. Permissions.** Seller's brand features are protected by applicable trademark, copyright and other intellectual property laws. If you would like to use any of our brand features on your website, in an ad, in an article or book, or reproduce them anywhere else, or in any other medium, you may not do so without first obtaining written permission from Seller.

**8. Trademarks.** Buyer acknowledges Seller's sole ownership of and exclusive right, title and interest in and to the Seller's Trademarks. Buyer recognizes that the Seller's Trademarks possess substantial goodwill and agrees that it will not use or display Seller's Trademarks in a manner that would disparage or damage them, or represent that it has any ownership in, or attempt to license, the Sellers' Trademarks. All goodwill associated with Buyer's use of the Seller's Trademarks will be owned exclusively by Seller. Buyer will comply with Seller's latest trademark usage guidelines, which Seller may provide and circulate from time to time, as well as any other policies governing the use of (i) Seller's logos and other trademarks, and (ii) product images and other copyrighted materials.

**9. On-line Retail Sales.** Seller hereby limits the on-line retail sale of Skratch Labs Products to web retailers who have been approved by Seller via an application and approval process administered by Seller's Director of Sales. Accordingly, without the prior written approval of Seller, which may be withheld at Seller's sole discretion, Buyer is not permitted to sell Skratch Labs Products on any website, web-portal, third-party web-portal or other Internet-based platform of any kind. This prohibition includes any form of online shopping cart, including, but not limited to Fulfillment by Amazon ("FBA") arrangements, that would enable a consumer to order or purchase Skratch Labs Products on-line.

**10. Indemnity.** Buyer shall defend and hold Seller harmless from and against, and shall indemnify Seller for, any loss, liability, damage, judgment, penalty or expense (including administrative costs and expenses, attorney's fees and costs of defense) suffered or incurred by any person, or to any property, in relation to any action or inaction taken by Buyer whether intentional, negligent or

otherwise, or by any of Buyer's affiliates, directors, officers, employees, representatives or agents.

**11. Claims.** Claims made against Seller in connection with defective Skratch Labs Products must be made in writing within ten (10) days of the date of delivery or they are waived by Buyer and will not be considered by Seller. Claims for short shipments must be made within ten (10) days of delivery or they are waived. Buyer's sole remedy for defective Skratch Labs Products shall be in accordance with applicable Seller policies. Defective Goods are subject to inspection and review by Seller prior to adjustment of the claim. ANY LEGAL ACTION AGAINST SELLER IN CONNECTION WITH THE SALE OF SKRATCH LABS PRODUCTS, INCLUDING BUT NOT LIMITED TO QUANTITY, PRICES, PROMOTIONAL ALLOWANCES, PRODUCT PERFORMANCE, OR BREACH OF WARRANTY, UNDER ANY THEORY, MUST BE COMMENCED WITHIN TWO (2) YEARS OF THE DATE OF INVOICE. THEREAFTER, SUCH SUITS ARE BARRED, OTHER STATUTES OF LIMITATIONS NOTWITHSTANDING. Buyer expressly agrees to this limitation of actions by placing an order with Seller.

**12. Force Majeure.** Seller's performance under any order accepted pursuant to these Conditions shall be excused in the event of fire, explosion, flood, severe weather, accident, strike, governmental act, embargo, shortages of raw materials or fuel, computer system failure, war or military action, riot, civil disturbance or any other event beyond the control of Seller or which materially affects the economic basis of the bargain ("force majeure"). Seller's performance in the event of a force majeure shall be excused for so long as the cause continues, without liability. If the force majeure shall continue unabated for ninety (90) consecutive days, Seller may, at its option, cancel any order so affected without liability.

**13. Confidential Information.** Buyer agrees that no right, title, or interest in any Seller intellectual property is transferred from Seller by this sale of Skratch Labs Products.

**14. Assignability.** Orders accepted by Seller may not be assigned or otherwise transferred by Buyer without the prior written consent of Seller, which may be withheld in Seller's sole discretion. Any attempt to so assign or transfer shall not relieve Buyer of its obligation to accept and pay for Skratch Labs Products which it ordered.

**15. Entire Agreement.** These Conditions supersede all prior inconsistent undertakings by Seller, written or oral. Orders placed through electronic means are subject to these terms in addition to any other agreements concerning electronic procedures, and if there are inconsistencies between such other agreements and these Conditions, the terms hereof shall control.

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16. **Governing Law; Consent to Jurisdiction and Venue.** These Conditions shall be governed by the laws of the State of Colorado, USA, and the courts of Colorado shall have exclusive jurisdiction without reference to the choice of law, conflicts of law, or principles of any other state or country which might otherwise be applied.

17. **Miscellaneous.** These Conditions shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties; provided, however, that Buyer shall not assign its rights or obligations under the Conditions without Seller's prior written consent. No waiver of any provision of these Conditions by Seller shall be valid unless the same is in writing and signed by Seller. Seller reserves the right to unilaterally modify or amend any portion of these Conditions at any time without prior notice. The current version of these Conditions and any modifications or amendments supersedes all prior versions of these Conditions. The most current version of these Conditions may be found at Seller's website ([www.skratchlabs.com/retailterms](http://www.skratchlabs.com/retailterms)) and is otherwise available upon request.

These Skratch Labs, LLC Retail Terms and Conditions of Sale were updated and effective on June 1, 2013.