

## THE NEIMAN MARCUS GROUP LLC

### CORPORATE GIFT CARD PURCHASE TERMS AND CONDITIONS FOR COMMERCIAL CUSTOMERS

These Terms and Conditions apply to the sale of bulk purchases of NEIMAN MARCUS gift cards ("Gift Cards") by The Neiman Marcus Group LLC ("Neiman Marcus") to commercial customers ("Company") for distribution to its own customers and employees for Company's own marketing and promotional purposes. By purchasing Gift Cards, Company agrees to be bound by these Terms and Conditions as they may be modified from time to time ("Agreement").

#### 1.1 Company's Obligations.

- (a) Company shall place Orders for physical gift cards indicating the number of cards and denominations of each card needed. Denominations for individual Gift Cards are currently available at any value never to exceed \$1,000.00 USD on a single Gift Card, and with a minimum value never to fall below \$25.00 USD.
- (b) Company acknowledges and agrees that it is not purchasing Gift Cards for resale and will only distribute, and not sell Gift Cards. Customer further agrees that all persons and entities to whom Customer will distribute Gift Cards are pre-approved by NEIMAN MARCUS. At any time, if NEIMAN MARCUS is unable to verify Company's identity, or if NEIMAN MARCUS has other regulatory or administrative concerns with respect to a particular Company or the persons or entities to whom Company distributes Gift Cards, NEIMAN MARCUS may refuse to issue Gift Cards for that Company or to further limit the amount of Gift Cards activated for such Company.
- (c) Once Gift Cards are activated, they are considered to be equivalent to cash, and Company is responsible for lost or stolen Gift Cards **at the full face amount**.
- (d) Company shall not be entitled to use (for any purpose) any Marketing Material containing a NEIMAN MARCUS Mark unless approved by NEIMAN MARCUS in writing. Company shall not make any false or misleading statements regarding NEIMAN MARCUS or the Gift Cards or indicate that the Gift Cards are redeemable for cash. In no event shall Company resell Gift Cards at any time or for any purpose.
- (e) NEIMAN MARCUS shall have the option to refuse any Gift Card order for any reason. all orders received and honored by NEIMAN MARCUS from any employee, agent or representative of Company with apparent authority to place such an order, whether or not the person placing the order is in fact authorized.
- (f) Company shall not alter (physically, electronically, or otherwise) any Gift Card.
- (g) Gift Cards expire after five (5) years or longer period as may be required under applicable law in various states.
- (h) Either Party will provide to the other Party, on a confidential basis, with information reasonably requested by the other Party. Each Party will use commercially reasonable

efforts to provide the requested information in two (2) business days of its receipt of the request, which can be made by telephone, email or letter.

- (i) This Agreement will begin on the Effective Date and expire on the one (1) year anniversary thereof (“Initial Term”) and will renew thereafter for consecutive one (1) year renewal terms (each a “Renewal Term”). Either party may terminate this Agreement upon written notice provided at least thirty (30) days prior to the expiration of the then-current Initial Term or Renewal Term. In addition, either party may terminate this Agreement upon thirty (30) days prior written notice if the other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days’ written notice thereof. Further, NEIMAN MARCUS may terminate this Agreement on thirty (30) days’ written notice if the Gift Card Program does not comply or does not allow NEIMAN MARCUS to comply, with applicable laws or regulations. Upon termination or expiration of this Agreement, Company will cease all use of Marketing Materials and cease any and all public mention or promotion of the Program.
- (j) Company is solely responsible for all taxes owed with respect to the Distribution of Gift Cards and any applicable tax filings, reports or other tax regulatory compliance related thereto.
- (k) Company will maintain records of names, addresses, bank accounts and Gift Card Distributions for each seller for at least three (3) years after the Distribution of the applicable Gift Cards to such seller.

1.2 NEIMAN MARCUS’S Obligations. Within ten (10) business days following NEIMAN MARCUS’s receipt of payment for a conforming Order from Company, NEIMAN MARCUS shall use commercially reasonable efforts to ship the applicable Gift Cards to Company to a single location designated by Company in the Order. NEIMAN MARCUS shall charge Company an additional amount if Company requests another shipping method.

1.3 Termination or Refusal of Orders. NEIMAN MARCUS shall have the option to refuse any order for any reason. NEIMAN MARCUS shall have the right to terminate this Agreement and any order at any time for any reason, upon notice to Company. In the event of a termination of the Agreement or any order, any payment received by NEIMAN MARCUS for Gift Cards ordered but not delivered, will be returned to Company.

2. Gift Cards are not refundable for cash or returnable to NEIMAN MARCUS unless required by law, and cannot be used as payment on credit or corporate business accounts with NEIMAN MARCUS. Each Gift Card is subject to all terms and conditions that (i) are printed on the back of the card, (ii) contained in this Agreement (iii) located on the Web Sites, or (iv) that are otherwise published or provided by NEIMAN MARCUS with respect to the Gift Cards.

### **3. TERMS OF PAYMENT**

3.1 Discount. For each Order, Company may receive a Discount off the face value of Gift Card purchases as defined above, and the Discount is subject to the minimum order volume as

defined. Order by a Customer of Gift Cards of various denominations in the total face value amount of not less than five thousand dollars (\$5,000.00) from Neiman Marcus.

- 3.2 Payments. Company shall pay the full amount of the Order, net Discount, prior to NEIMAN MARCUS's shipping the applicable Gift Cards to Company.
- 3.3 Collection. In the event that Neiman Marcus must collect any moneys owed by Company, Company hereby agrees to pay interest at a rate of one and one-half percent (1.5%) per month or the highest percent permitted by law (whichever is lower) and Neiman Marcus's collection costs, including, but not limited to, reasonable attorneys' fees.

#### **4. INDEMNIFICATION**

- 4.1 Company shall defend, indemnify, and hold harmless NEIMAN MARCUS and NEIMAN MARCUS's parents, affiliates, and subsidiaries and their respective directors, officers, employees, and agents from and against any and all claims, damages, and losses arising from, or related to: (i) the breach of this Agreement by Company or Company's agents, employees, or any affiliates of Company that may receive the Gift Cards as a result of this Agreement, (ii) any failure by Company to comply with applicable laws and regulations with respect to the Distribution of Gift Cards, and (iii) any claim brought by any third party.

#### **5. DISCLAIMERS AND LIMITATIONS**

- 5.1 Disclaimers. GIFT CARDS are sold ON AN "AS IS," "WHERE IS," AND "WITH ALL FAULTS" BASIS. NEIMAN MARCUS DISCLAIMS ALL WARRANTIES (EXPRESS OR IMPLIED) ARISING OUT OF, OR IN CONNECTION WITH, GIFT CARDS, INCLUDING THE WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
- 5.2 Limitations. IN NO EVENT SHALL NEIMAN MARCUS BE LIABLE TO CUSTOMER UNDER THIS AGREEMENT (WHETHER IN TORT, IN STRICT LIABILITY, IN CONTRACT, OR OTHERWISE) FOR ANY (i) INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES. INCLUDING DAMAGES FOR LOST PROFITS, EVEN IF NEIMAN MARCUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (ii) AMOUNT THAT EXCEEDS THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AGGREGATE FEES PAID BY COMPANY TO NEIMAN MARCUS UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THESE LIMITS.

#### **6. GENERAL**

- 6.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to Texas's conflicts of laws principles. All parties hereby consent to the exclusive jurisdiction of the courts in Dallas County, Texas for all claims arising out of or under this Agreement.

- 6.2 Independent Contractor. NEIMAN MARCUS and COMPANY are independent contractors under this Agreement, and nothing in this Agreement shall be construed to create a partnership, joint venture, franchise, or agency relationship between NEIMAN MARCUS and Company. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party, nor may either Party hold itself out in any manner as an agent of the other, make any express or implied agreements, guarantees, representations, or warranties for the other, incur any debt, or become obligated or liable under any agreements of the other Party.
- 6.3 Marks. Except for the limited rights expressly granted by this Agreement, this Agreement grants to Company no other rights to the NEIMAN MARCUS Marks or to other Intellectual Property Rights of NEIMAN MARCUS. All rights not specifically granted to Company in this Agreement are reserved by, and remain in, NEIMAN MARCUS. Company shall never do or permit to be done any act or thing that impairs the rights of NEIMAN MARCUS with respect to the NEIMAN MARCUS Marks. All use of the NEIMAN MARCUS Marks, and all goodwill arising therefrom, shall inure to the sole benefit of NEIMAN MARCUS.
- 6.4 Modification. NEIMAN MARCUS may change this Agreement at any time, and such changed terms will apply to all purchases made after the change is effective. CUSTOMER may obtain the then-current version of this Agreement at any time.
- 6.5 Assignment. Company may not assign this Agreement to any third party without NEIMAN MARCUS'S prior, express, and written consent, which consent may be withheld in NEIMAN MARCUS' sole discretion.
- 6.6 Entire Agreement. The Agreement and any attachments to this Agreement constitute the complete understanding and entire agreement between the Parties and supersede any and all previous agreements, written or oral, between the Parties made or dated prior to the date of this Agreement. No waiver, modification or amendment of any provision of this Agreement will be effective unless it is in writing and signed by the Parties and the continuation of this Agreement will be sufficient consideration for any amendment.
- 6.7 Authorization. Each Party represents and warrants that such Party has the full and complete authority to enter into and perform this Agreement.
- 6.8 No Public Announcement. Company shall not issue a press release or other public announcement concerning this Agreement or the purchase of the Gift Cards without NEIMAN MARCUS's prior written consent.