

MODU FORM. INC.  
TERMS AND CONDITIONS

By placing an order for furniture, material or other products ("products" or "goods"), Buyer agrees to these terms and conditions which shall prevail over inconsistent provisions in any other form or document of Buyer.

**PRICES:** When quantity price discounts are quoted by Seller, such discounts are computed separately for each type of product to be sold and are based upon the quantity of each type and each size ordered at any one time for immediate delivery. If any order is reduced or canceled by Buyer with Seller's consent, it is agreed that prices will be adjusted upward to the higher prices, if applicable, for the uncanceled quantity. All prices in a catalog are list and FOB origin. Possession of this catalog or price list does not constitute an offer to sell. Pricing in a catalog or price list is for standard delivery. Standard delivery does not include truck unloading, removal of packaging, non-dock delivery, inside delivery, limited access delivery, residential delivery, lift gate, multiple drops on-site per shipment, multiple shipments per order (that could be accommodated by one delivery), uncrating or installation. Special requests for delivery should be made at the time of ordering.

**TAXES:** Unless otherwise specified in the quotation, the prices shown do not include any taxes, import or export duties, tariffs, or custom charges. Buyer agrees to pay Seller the amount of any federal, state, county, municipal or other taxes, duties, tariffs, or custom charges levied by any jurisdiction, foreign or domestic, which Seller may be required to pay on account of the ownership at the place of installation or during transit of the material or equipment which is the subject of this contract, or on account of the transportation, sale, or use of said material or equipment.

**PAYMENT TERMS:** Unless otherwise stated in a separate agreement or on the front of this form, payment terms are thirty (30) days, net from date of invoice, subject to approval by Seller of amount and terms of credit. Seller reserves the right to require payment in advance or C.O.D. and otherwise modify credit terms. When partial shipments are made, payments therefore shall become due in accordance with the above terms upon submission of invoices. If, at the request of Buyer, shipment is postponed for more than thirty (30) days, payment will become due thirty (30) days after the products are ready for shipment. Buyer agrees to pay interest on unpaid balances after 30 days from the date of invoice at the rate of one and a half percent (1.5%) per month. Buyer shall be responsible for all expenses and costs in connection with the enforcement by Seller of these terms and conditions and the costs of collection (including the fees of any collection agencies to whom the Buyer's account may be referred), plus reasonable attorneys' fees (which attorneys' fees shall not be less than 25% of the amount due, unless a lower amount is specified by applicable law).

**PLACING AN ORDER INTO PRODUCTION:** A signed purchase order or contract received via mail, fax or email is required before an order is processed. Orders are not scheduled in production, nor are materials purchased until all required information has been provided by Buyer. Lead time begins at the time of order scheduling.

**CUSTOMER'S OWN MATERIALS:** Seller reserves the right of preliminary approval for all Customer Furnished Upholstery Materials ("Customer's Own Materials" and also known in the furniture industry as COM/COL), prior to order acceptance. Even after such preliminary approval, Seller reserves the right to reject Customer's Own Materials if, upon physical inspection of the material, it proves unacceptable for use on Seller's products. When Customer's Own Materials are accepted, Seller assumes no responsibility for appearance, behavior, performance, condition, durability, color fastness, or any other quality after it is upholstered on a Seller product. Orders with Customer's Own Materials are not scheduled into production until all materials are received and inspected. At Seller's discretion, additional yardage, labor charges, or handling surcharges may be required as a condition of COM acceptance. Customer's Own Materials delivered to Seller without proper identification can be refused, and Seller shall have no responsibility for loss or any other claims.

**CALIFORNIA TECHNICAL BULLETIN 133:** When requested by a Buyer in writing on the Purchase Order, Seller will manufacture its goods to meet or exceed the flammability requirements of California Technical Bulletin 133. CAL TB133 requires actual tests of the complete unit (fabric, frame and filaments) and not just the components. The cost of a burn test is a minimum of \$500 (net), and possibly more, plus the costs of the product, the barrier and the fabric. Please allow a minimum of six (6) weeks for the production of the product and the completion of the test. Once the product successfully passes the burn test a certificate will be supplied. Seller cannot guarantee that the goods manufactured with Customer's Own Material will meet or exceed CAL TB133. When sending in Customer's Own Materials to have CAL TB133 added, Seller will need an additional yardage amount equal to either 5% of the total yardage, or 1 yard, whichever is the greatest. CAL TB133 cannot be added to leather. Moduform upholstered seating, wood sided seating and chairs offer an optional fire barrier, that, in many instances, has proven to aid in a successful burn test when certification is not required. An upcharge listed on each individual product page under the heading "CAL 133" is outlined. While Moduform recommends the barrier, we do not guarantee it will satisfy the CAL TB133 requirements without an actual burn analysis and accompanying certificate.

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**MODIFICATION OF SPECIFICATIONS:** Unless otherwise provided, Seller reserves the right to modify the dimensions, style or specifications of products ordered by the Buyer providing that the modification(s) will not materially affect the performance. Company reserves the right to substitute hardwoods due to availability at production. Due to the natural characteristics of wood, environmental effects and material upgrades, Seller cannot guarantee exact finish matches existing goods previously ordered from Seller.

**MATERIALS:** All furniture containing plastic, plastic laminates, wood, textiles or metal is sold subject to minor variations or irregularities of color, surface, grain and texture indigenous to their nature and over which we have no control.

**ORDER CHANGES:** All changes to an order must be made in writing and are subject to Seller's written approval, which may be granted or denied in Seller's discretion. If an Order Change is approved, administrative and/or labor charges may be incurred by the Buyer depending upon the production stage of the order. Once final production has begun, no changes can be accepted.

**STORAGE FEES:** If Goods are ready for shipment according to the terms of the order acknowledgement or subsequent change order, and the Buyer cannot receive as stated, the Goods may, at our discretion, be shipped to storage facilities, put in storage at the Buyer's expense or, stored at Seller's facility, if available. The Seller reserves the right to deny storage of the Goods at Seller's facility for any reason, including due to lack of available space. Storage fees at Seller's facility, if available, are 2% of purchase price per month. These storage fees can, at Seller's option, be added to the order total amount due or invoiced separately and issued monthly. If invoiced separately, it is required to be paid before shipment. All risk of damage, destruction, theft or loss while in storage, whether or not at Seller's facility, shall be the responsibility of Buyer.

**PACKING:** Unless otherwise specified, prices quoted herein include normal packaging. If special packaging is required by Buyer, an additional charge will be made.

**SHIPMENT:** Shipping dates are approximate. All requests for shipment or delivery by a certain date must be made in writing at the time of the Order, in which case Seller will make reasonable efforts to meet Buyer's request. All shipments will be made FOB origin in the absence of specific instructions. Seller will select carrier. Title to the material shall pass to the Buyer upon delivery thereof by Seller to the carrier or delivery service. Thereupon the Buyer shall be responsible therefor. Products held for Buyer, or stored for Buyer, shall be at the risk and expense of Buyer. Seller is not required to notify Buyer of shipment.

**DELIVERY:** Unloading at the destination is the responsibility of the Buyer. For all deliveries, it is understood that Seller or its agents are making a dock delivery only, and any further work of truck unloading, removal of packaging, inside delivery, limited access delivery, residential delivery, lift gate, multiple drops on-site per shipment, multiple shipments per order (that could be accommodated by one delivery), uncrating or installation is not authorized or paid for by Seller. For all deliveries, any circumstances for which Buyer is responsible that result in the delay of our carrier (including unsuitable receiving facilities, or facilities not open or available), will result in service charges applied at a rate of a minimum of \$75.00 per hour. Where re-delivery is necessary because of circumstances for which Buyer is responsible, the full cost of re-delivery will be charged. Any charges arising from failure to meet shipment, re-routing while in transit or carrier storage charges are the responsibility of the Buyer.

**INSPECTION BY BUYER UPON DELIVERY:** Before signing for delivery of goods, make notations of all visible damage and/or shortages on the Bill of Lading. If visual damage is not apparent, sign the delivery receipt "no visual damage." Written notice of a claim for shipping damage or shortages must be provided by Buyer to Seller and its designated carrier within five (5) days of delivery. Failure to provide such written notice to Seller and its designated carrier within five (5) days of delivery shall constitute acceptance of the goods and a waiver of any shipping damage or shortages discovered upon inspection. If Buyer sends a written notice of a claim for shipping damage to Seller, Buyer must retain all shipping cartons and packaging material for inspection by Seller, the shipper and / or their agents.

**FAIR LABOR STANDARDS ACT:** Seller certifies that products furnished hereunder have been or will be produced in compliance with the Fair Labor Standards Act, as amended, and regulations and orders of the U.S. Department of Labor Issued thereunder. Seller agrees that this statement may be considered as the written assurance contemplated by the October 26, 1949 amendment to said Act.

**CANCELLATION:** Requests for cancellation of an Order must be made in writing and may be granted or denied by Seller in Seller's discretion. If Seller allows the cancellation of an Order, the Buyer will incur costs and fees including a cancellation or restocking charge of a minimum of one third of the net sale plus additional costs and fees, depending upon what materials have been purchased and / or put into production. Orders specifying special finish cannot be canceled once finishing has begun. Cancellations cannot be accepted once final production has begun.

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**CANCELLATION BY THE U.S. GOVERNMENT:** In the event of the complete or partial termination or cancellation of this order for the convenience of the U.S. Government, settlement shall be made by negotiations in accordance with the Termination Clause for Subcontractors set forth in Armed Services Procurement Regulation 8-706. In the event Buyer attempts to terminate or cancel this order, entirely or partially, where it is not for the convenience of the U.S. Government, it shall constitute a breach of contract unless consent to said termination is obtained by Buyer from Seller in writing. In any event, the prices of all items delivered and all items which have been finished, but not yet delivered, will be adjusted upward to the applicable price for the lesser quantities thereby purchased. Seller may terminate or cancel this order in whole or in part at any time prior to the completion of performance by written notice to the Buyer without incurring any liability to the Buyer for breach of contract or otherwise.

**INSOLVENCY:** Seller may cancel any order in the event of the happening of any of the following or any other comparable event: insolvency of the Buyer, the filing of a voluntary petition in bankruptcy, the filing of any involuntary petition to have Buyer declared bankrupt provided it is not vacated within thirty (30) days from the date of filing, the appointment of a receiver or trustee for Buyer provided such appointment is not vacated within thirty (30) days from the date of such appointment, or the execution by Buyer of an assignment for the benefit of creditors.

**INDEMNITY AGAINST CLAIMS:** Buyer shall indemnify and hold Seller harmless of and from any and all liability, claims and demands whatever made upon it for personal injury, death or property damage as a result of the negligence or other wrongdoing of any employee of Buyer or of any agent or independent contractor engaged by Buyer. Furthermore, Buyer shall indemnify and hold Seller harmless from any injury or death or any of Buyer's employees or any agent or Independent contractor engaged by Buyer resulting from the installation, operation or use of goods supplied hereunder.

**BLANKET PURCHASE ORDERS:** Unless specifically agreed to in writing by Seller, Seller does not accept blanket, general or standing instructions or blanket purchase orders. All orders for products shall be submitted by Buyer on separate purchase orders.

**ASSIGNMENT:** Buyer shall not assign or transfer this contract or any interest in it, or monies payable under it, without the written consent of Seller; and any assignment made without such consent shall be null and void.

**ENTIRE CONTRACT:** The provision herein constitute all the terms and conditions agreed upon by the parties and shall replace and supersede any provisions on the face and reverse side of the Purchase Order or any attachment there to, or any prior general agreement inconsistent with the provisions hereof except that orders by a Distributor or Representative with whom Seller has a written agreement executed by both parties shall be subject to the provisions of such agreement. No amendment to or modification or alteration of terms and conditions set forth herein shall be effective against Seller without Seller's specific written agreement thereto. The provisions hereof shall not be modified by any usage or trade, or any course of prior dealings or acquiescence in any course of performance.

**RISK OF LOSS:** The risk of loss or damage to the goods shall pass to Buyer at the time Seller puts the goods in possession of the carrier.

**FORCE MAJ EURE:** Seller shall not be responsible or liable for any delay or failure to deliver any or all of the goods if such delay or failure is caused by any act of God, fire, flood, explosion, war, insurrection, riot, embargo, action, statute, ordinance, regulation or order of any government or agent thereof; shortage of labor, material, fuel, supplies or transportation; strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified, beyond Seller's control, which prevents, hinders, or interferes with manufacture, assembly or delivery of the goods. Any such cause, event, contingency, occurrence or circumstance shall not constitute grounds for cancellation by Buyer. In such cause, event, contingency, occurrence or circumstance, delivery dates shall be deemed extended for a reasonable period of no less than the period of such delay.

**SECURITY FOR PAYMENT:** To secure the payment of any unpaid balances of the purchase price due herein, Buyer does hereby transfer, set over, grant and convey to Seller a security interest in the goods and each of the parts thereof delivered hereunder together with all replacement parts, additions, repairs and accessories incorporated and/or affixed thereto hereafter, to have and to hold the said security interest(s) in said goods and each of the parts thereof forever; provided, however, if Buyer shall make or cause to be made according to the terms hereof payment in full of the purchase price due hereunder for the goods delivered and shall keep and perform the covenants and agreements herein contained that this security interest(s) shall automatically be terminated; otherwise it shall remain in full force and effect. Buyer hereby appoints Seller or its assignee as its attorney-in-tact solely for the purposes of executing, delivering and filing of any and all instruments that Seller or its assignee may reasonably deem necessary to perfect and to continue to perfect the security interest(s) and Buyer agrees to cooperate in whatever manner

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reasonably deemed necessary by Seller or its assignee to such effect and to protect the goods and each of the parts thereof delivered hereunder which are subject to the security interest(s). If the Seller repossesses the goods prior to payment by the Buyer of all amounts due hereunder, the Seller may sell the goods, as is, where is, free and clear of all rights of the Buyer at either public or private sale and apply the proceeds (after deducting expenses of repossession and sale) to the obligation of Buyer hereunder. The Buyer shall remain liable for any deficiency. The Seller may dispose of the goods in any commercially reasonable place and manner and the Buyer waives any notice of time, place and manner of sale.

**LIMITED WARRANTY:** Seller provides the following Limited Warranty to the original purchaser of its products: The products are warranted to be free from defects in material and workmanship for a period of five (5) years from the date of shipment, subject to the disclaimers and limitations stated herein. This limited warranty extends only to the original purchaser of the product. This Limited Warranty does not cover defects resulting from abuse, misuse, neglect, accidental damage or any use not in conformity with the printed directions or commonly intended application of the product. This Limited Warranty also does not cover defects which are in any way attributable to improper installation or to alterations or repairs made or performed by any person or entity not under the control of Seller. This Limited Warranty does not cover fabrics, finishes, filling materials, normal wear items, Customers Own Materials or Seller's Installation of Customer's Own Materials. Further, this Limited Warranty shall not apply to any goods or parts hereof which are obtained from manufacturers other than Seller and resold by Seller.

Seller or its designated agent shall have the right to inspect any product prior to executing any remedy provided by this Limited Warranty. The Original Purchaser shall be responsible for safeguarding and holding any alleged defective product for Seller's inspection. Seller shall have the option, in its sole discretion, to (a) instruct the Original Purchaser to ship the product, or any part thereof, to Seller at the Original Purchaser's expense and in accordance with Seller's shipping instructions, (b) to have its designated agent inspect the product at the Original Purchaser's premises, or (c) to require the Original Purchaser to supply to Seller digital photographs of the defective product, or any part thereof

If Seller requests that Buyer ship the defective product back to Seller, Buyer must include a copy of the packing slip, order, and/or receipt with the defective product(s), as well as a Return Merchandise Authorization Number provided on the telephone or via email by Seller. The Original Purchaser shall be responsible for all costs of packaging and shipment of the defective product.

AT SELLER'S OPTION AND SOLE DISCRETION, SHOULD ANY SELLER PRODUCT, OR PART THEREOF, BE DETERMINED BY SELLER TO BE DEFECTIVE, SELLER'S OBLIGATIONS AND LIABILITIES UNDER THIS LIMITED WARRANTY SHALL BE LIMITED TO SELLER'S CHOICE OF THE FOLLOWING: (A) FURNISHING A REPLACEMENT PRODUCT; (B) SUPPLYING REPLACEMENT PARTS FOR THE DEFECTIVE PRODUCT; (C) REPAIRING THE DEFECTIVE PRODUCT, OR DEFECTIVE PART OF THE PRODUCT; OR (D) GIVING THE ORIGINAL PURCHASER A CREDIT FOR THE DEFECTIVE PRODUCT, OR PART THEREOF. SELLER SHALL NOT REIMBURSE OR MAKE ANY ALLOWANCE TO BUYER FOR ANY LABOR CHARGES INCURRED BY BUYER FOR REPLACEMENT, ADJUSTMENT OR REPAIR OF ANY GOODS OR PARTS THEREOF OR FOR ANY OTHER WORK UNLESS SUCH CHARGES ARE AUTHORIZED IN ADVANCE BY SELLER.

THE LIMITED WARRANTY STATED ABOVE IS IN LIEU OF ANY OTHER WARRANTY OR REPRESENTATION, WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL. SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

THE LIMITED WARRANTY DOES NOT APPLY TO FABRICS, FINISHES, FILLING MATERIALS AND NORMAL WEAR ITEMS, CUSTOMER'S OWN MATERIALS OR SELLER'S INSTALLATION OF CUSTOMER'S OWN MATERIALS.

THE LIMITED WARRANTY IS LIMITED TO THE REMEDY SET FORTH ABOVE, AND EXCLUDES DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, LIQUIDATED OR OTHER DAMAGES RELATING TO OR ATTRIBUTABLE TO THE LIMITED WARRANTY OR THE PRODUCTS COVERED BY THE LIMITED WARRANTY UNDER ANY THEORY OF LAW OR EQUITY (WHETHER UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE OR OTHERWISE). THE OBLIGATIONS AND LIABILITIES OF SELLER AND THE REMEDIES OF BUYER SET FORTH HEREIN SHALL BE SELLER'S SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITIES AND BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR, RESULTING FROM OR IN CONNECTION WITH THE LIMITED WARRANTY OR ANY BREACH THEREOF.

ANY CLAIM FOR BREACH OF SELLER'S WARRANTIES SHALL CONCLUSIVELY BE DEEMED TO BE WAIVED UNLESS WRITTEN NOTICE OF SUCH CLAIM IS GIVEN TO SELLER WITHIN TEN (10) DAYS AFTER THE DATE ON WHICH THE CLAIMED DEFECT IS DISCOVERED.

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Furnishing of a replacement product or a replacement part under the terms of this Limited Warranty shall not begin a new warranty period related to such replacement product or part but rather shall be limited to the original warranty period associated with the defective product.

Seller's Limited Warranty shall be null and void if the Original Buyer transfers ownership of the warranted goods.

**LIMITATION OF LIABILITY:** THE SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO THE BUYER, OWNER OF THE GOODS OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUES, LOSS OF BUSINESS REPUTATION, LOSS OR DAMAGE TO OTHER PROPERTY OR EQUIPMENT, COST OF CAPITAL OR OF PURCHASED OR REPLACEMENT GOODS, OR EXPENSE, DELAY OR INCONVENIENCE CAUSED BY OR ARISING FROM THE PURCHASE, SALE, USE, REPAIR OR INABILITY TO USE THE GOODS OR BY ANY PERFORMANCE OR NON-PERFORMANCE UNDER, OR BREACH OF THESE TERMS AND CONDITIONS. THE SELLER'S SOLE LIABILITY FOR ANY DEFECTIVE GOODS SHALL BE ITS REPAIR OR ITS REPLACEMENT PURSUANT TO THE EXPRESS LIMITED WARRANTY SET FORTH ABOVE, OR IF AMENDED, AS APPLICABLE AT THE TIME OF MANUFACTURE OR REPAIR OF THE GOODS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSION MAY NOT APPLY TO ALL BUYERS. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF SELLER AS TO THE GOODS OR SERVICES DELIVERED HEREUNDER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS OCCURRED.

**ALL SALES FINAL:** All sales are final. Goods cannot be returned to Seller without Seller's written consent.

**FORMS OF PAYMENT:** Moduform accepts cash, cashier's or bank check, money order, bank wire and company check on approved credit. Payment by credit card is accepted only upon prior approval at time of quote.

**REQUESTS FOR AN ALLOWANCE:** Seller will not issue an allowance or credit for actual work performed to correct manufacturing defects without Seller's prior written consent. When making a request for an allowance, kindly provide the sales order, product model numbers, the reason for repair and digital photos. Reasonable touch-up and deluxing is the dealer's responsibility.

**HEADINGS:** The paragraph headings contained herein are for reference only and shall not affect in any way the meaning and interpretation of the terms and conditions set forth herein.

**APPLICABLE LAW:** The rights of Buyer and Seller and the terms and conditions contained herein shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts of the United States of America.

**ARBITRATION:** If a dispute arises between the parties, and the parties are unable to resolve it between themselves, then the matter may only be resolved by binding arbitration before a single arbitrator, in the Commonwealth of Massachusetts, by the American Arbitration Association ("AAA") and in accordance with the commercial rules of the AAA. The decision of the arbitrator shall be in writing and shall include findings of fact and a statement regarding the reasons for the arbitrator's decision.

**SEVERABILITY:** A judicial or administrative declaration in any jurisdiction, on the invalidity of any one or more of these provisions shall not invalidate the remaining provisions nor shall such declaration invalidate these terms and conditions outside such jurisdiction.

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