

Custer Office Environments, Inc.
Terms and Conditions

(Custer Office Environments, Inc. is hereafter referred to as “Seller”. Customer is hereafter referred to as “Buyer”.)

1. **QUOTATIONS AND ORDERS:**

- A. **TERM:** All prices shown are guaranteed for **30 days** from date of quotation.
- B. **ACCEPTANCE:** A Buyer’s order is considered bona fide, and Custer Office Environments, Inc. is obligated to perform to the order specifications, when the Buyer confirms the order in writing by either: (1) a hard copy purchase order from Buyer, or, (2) an authorizing letter signed by Buyer, or, (3) a signed Custer Office Environments, Inc. Customer Agreement which references the specific quotation or proposal.
- C. **MODIFICATIONS:** Any modifications to an approved and acknowledged order are subject to the Seller’s ability to conform and both Seller and manufacturer approval. Changes must be made in writing via a revised purchase order, change order or signed and dated acceptance of order. **A restocking fee, based on product cost and vendor policies, will be assessed on all changes made after acknowledgement date, or for any product cancellations.**
- D. **CUSTOMER REQUIRED DATE:** A mutually agreeable (between Buyer and Seller) delivery date is required for each order and will be used as the “customer required date”.
- E. **PROGRESS PAYMENTS:** **For orders under \$300,000, a progress payment of 40% of the quoted total is required on all orders and is due from Buyer at the time the order is placed with Seller. For orders over \$300,000, standard AIA billing will be required as follows:**
 - 30% of the quoted total will be invoiced at the time the order is placed
 - 30% of the quoted total will be invoiced when the order is shipped
 - 30% of the quoted total will be invoiced when the order is substantially installed
 - 10% of the quoted total will be invoiced upon completion of the punch list

Larger deposits are required if manufacturer(s) or service provider(s) require a larger deposit from Seller. All custom products, C.O.M. or C.O.L. require payment in full with the order and are non-cancelable. Other progress payments may be required throughout the order cycle depending on specific circumstances for each Buyer and order.

2. **INVOICING:**

- A. **TIMING:** If product is to be delivered and installed by the Seller, product and related installation and other services will be invoiced after delivery of the product to the job site, upon receipt of a delivery ticket signed by Buyer. Direct shipments from manufacturers to the Buyer will be invoiced upon shipment from the manufacturer. For other services not related to the purchase of product, invoicing will occur after the services have been rendered substantially complete, or on a monthly basis for ongoing service agreements.
- B. **PAYMENT TERMS:** **Invoices are net due upon receipt by the Buyer. Buyer agrees not to withhold payment on any invoice because of partial delivery or open punchlist items, except on those specific items in dispute.**
- E. **DELIVERY AND INSTALLATION:** Any applicable delivery and installation charges are to be paid by Buyer, are not included in the price of the product, and will be invoiced as separate line items or on a separate statement.
- F. **DELAYS:** If the customer required date is delayed by the Buyer, including delays caused by construction, and not the fault of Seller, all products will be stored until delivery and installation can be resumed. **Product will be invoiced at the time of originally scheduled customer required date, and payment is due upon receipt of invoice. Storage fees will be assessed by Seller beginning 30 days after the originally scheduled customer required date, and will be calculated on a per square foot basis.** On drop ship or direct ship orders, labor fees will be assessed at standard billing rates for any double handling of product necessitated by any delay.
- G. **SERVICE FEE:** **A service fee of 1.5% (18% APR) will be assessed on all unpaid balances after invoice**

due date. Buyer agrees to pay this fee when billed by the Seller.

3. **OTHER CHARGES:**

- A. **EXTRA HANDLING IF SITE NOT READY:** If the job site is not available on the mutually agreed upon customer required date, charges will be assessed to the Buyer for additional handling or redirecting of product at standard hourly rates or actual charges if performed by a third party.
- B. **EXTRA HANDLING DUE TO SITE CONDITIONS:** Charges will be assessed to the Buyer, at standard hourly rates or actual charges if performed by a third party, for excessive handling, storage and transportation incurred because of site conditions, activity of other trades, or other reasons not specifically identified in the quotation.
- C. **OVERTIME: Overtime necessitated by the customer, and not included in the original quote, will be billed at 1.50 times standard billing rates.**
- D. **SPECIAL PACKAGING OR HANDLING:** Any special packaging, handling, or storage at other than Seller's warehouse that is required, but that had not been provided in the quotation, will be invoiced to Buyer.
- E. **CREDIT CARD SURCHARGES:** Buyer agrees that Seller may pass through to Buyer any charges, costs or fees that it incurs as a result of Buyer paying Seller through the use of a credit card, debit card or credit facility, and that such passed-through charges, costs or fees may be subject to sales or use tax.

4. **DELIVERY AND INSTALLATION:**

- A. **RESPONSIBILITIES:** If the product is to be delivered and installed by the Seller, Seller will perform such services in a competent and timely fashion.
- B. **DELIVERY OR INSTALLATION CLAIMS:** If the product is to be delivered or installed by Seller, claims for product damaged as a result of Seller's negligence or actions will be processed by Seller, and Seller will repair products caused by its actions or negligence. Seller will not be liable for damages not caused by its actions or negligence. **If the product is to be drop shipped to Buyer's site, Buyer assumes all responsibility for damaged product.**
- C. **NORMAL BUSINESS HOURS:** Delivery and Installation will be made during normal working hours unless otherwise agreed upon at time of quote.
- D. **JOB SITE:** Job site will be clean and clear of all obstructions prior to installation. Buyer will provide adequate facilities and space for unloading, staging, moving, handling and storing product at job site. Buyer will furnish electrical current, heating, lighting, and elevator service at job site without charge to Seller.
- E. **ERECTION AND ASSEMBLY:** Seller's ability to erect, assemble, install, permanently attach, or bolt in place movable furniture is dependent upon trade regulations at the job site. If applicable trade regulations at the time of installation require employing tradesmen to complete the installation, the Buyer will pay the cost.
- F. **PROTECTION OF DELIVERED GOODS:** Buyer is responsible for security and safekeeping of product after transfer of ownership.
- G. **RISK OF LOSS:** Upon transfer of ownership of the product to Buyer, as determined under these Terms and Conditions, and except as otherwise provided in these Terms and Conditions, Buyer assumes all risk of loss for the product, and Buyer shall not be released from any obligations due Seller as a result of the product's loss, damage, or disrepair following transfer of ownership.
- H. **COORDINATION WITH BUYER CONTACT:** Buyer shall designate one person to coordinate the receipt, acceptance, and installation of product between the Seller and Buyer.
- I. **INSURANCE:** Seller will carry public liability, worker's compensation, property damage, and automobile insurance. However, fire, tornado, earthquake, flood, vehicle, general liability and other casualty insurance related to the job site, the product or the transit of the product will be provided and paid for by Buyer. Regardless of the date of installation, Buyer shall be solely responsible for maintaining insurance coverage for the product from the time ownership of the product passes to Buyer, under these Terms and Conditions. Upon request by Seller, Buyer will provide proof of such insurance.

5. **ADDITIONAL TERMS:**

- A. **WARRANTIES:** Seller makes no warranties of product sold hereunder whatsoever, including any warranty that the furniture is fit for any particular purpose. Seller agrees to act as Buyer's agent in event of claims as to defective materials or workmanship that may be made within the warranty period stated by the

manufacturer, supplier or fabricator. The Buyer shall, however, rely exclusively upon warranties provided by the manufacturer, supplier, or fabricator of all products sold hereunder.

- B. **TITLE:** If the order is a drop ship or direct ship, title, ownership and risk of loss for the product will pass to the Buyer upon receipt and acceptance by Seller of a signed and valid purchase order (or other agreement allowable under these Terms and Conditions) from Purchaser. If the order is not a drop ship or direct ship, title, ownership and risk of loss for the product will pass to the Buyer as the product is loaded on a delivery truck at Seller's facility. Seller, however, maintains a security interest in the product until Buyer pays in full for the product, delivery, installation and any other related services.
- C. **INTERPRETATION OF TERMS AND CONDITIONS:** This writing is intended by all parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code as adopted in **Michigan** is used in this agreement and not otherwise defined, the definition contained in the Code is to control.
- D. **PAYMENT AND SECURITY INTEREST:** Until Buyer makes payment in full for the product, delivery, installation and any other charges, Seller will have a security interest in the product. Upon the failure by Buyer to make any payment when due, Seller may remove the product from Buyer's facility or possession, and Buyer will cooperate with Seller in doing so; provided that Seller's failure to remove the product at any time will not be deemed a waiver of such right.
- E. **ACTS BEYOND REASONABLE CONTROL:** Seller shall not be liable for any delay or failure to deliver any or all of the product in case delay or failure is caused by labor disputes, strikes, wars, riots, civil commotion, fire, flood, accident, storm or other destruction whole or in part of the product or the manufacturing plant, lack or inability to obtain raw materials, labor, fuel, or any other cause, contingency or circumstances which prevent or hinder the manufacturer or delivery of the product beyond the reasonable control of the seller.
- F. **WAIVER:** No claim or right arising out of a breach of this agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- G. **ASSIGNMENT AND DELEGATION:** No right or interest in this agreement shall be assigned by either Buyer or Seller without the written permission of the other party, and no delegation of any obligation owed, or of the performance of any obligation either by Buyer or Seller shall be made without the written permission of the other party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes unless made in conformity with this section of this Agreement.
- H. **RESPONSIBILITY/OBLIGATION:** This Agreement constitutes the entire contract and exclusively determines the rights and obligations of the parties, any prior course of dealing, custom or usage of trade or course of performance notwithstanding. Seller's design, installation and/or service contracts are incorporated herein by reference and shall take precedence on any conflict of terms. This agreement and all rights and obligations of the parties shall be governed by the laws of the State of Michigan.
- I. **LEGAL FEES:** Should either party incur any expense in enforcing any terms, covenants, conditions, representations or warranties of the Agreement, the party in default will pay to the other all expenses so incurred including reasonable attorney's fees.
- J. **TAXES:** Buyer will be responsible for all Michigan or other state sales, use, excise or other taxes with respect to this transaction, including, but not limited to, (i) any sales or use taxes imposed on Seller as a contractor, installer or fabricator, and (ii) any sales or use taxes imposed on Seller in relation to the delivery or installation of the product. Buyer will indemnify Seller, and hold Seller harmless, for any sales, use, excise or other taxes in relation to the transaction that Seller should have collected from Buyer or paid, or for which Buyer is responsible under these Terms and Conditions, plus all related penalties and interest. Buyer acknowledges that Seller does not normally collect sales or use taxes for states other than Michigan, and agrees that Buyer will handle the reporting and payment of such out-of-state taxes (unless otherwise directed in writing by Seller). Buyer will pay to Seller the amounts of all sales and use taxes that Seller advises Buyer it must collect. For Buyer to claim an exemption from sales and use taxes, Buyer must provide Seller with a written exemption claim (in the spaces indicated below) and with all legally required information and other

information reasonably requested by Seller with respect to such exemption claim.

If Buyer claims exemption from Michigan sales and use tax, and from other sales or use taxes that Seller advised Buyer it must collect, they shall provide Seller with the reason for exemption, and their MI sales tax number.

Buyer will indemnify and hold harmless Seller for any sales or use taxes, penalties or interest incurred by Seller with respect to this transaction. Buyer will indemnify and hold Seller harmless for any costs or fees (including attorney fees) incurred by Seller in connection with an exemption claim by Buyer that is erroneous or that is not honored by any state or other taxing authority.

Seller

Buyer

Custer Office Environments, Inc.

By _____

By _____

Its _____

Its _____