

TERMS AND CONDITIONS

This quotation, which includes the preceding portion hereof (collectively, Quotation) is subject to the terms and conditions set forth below, and shall be void unless accepted by the Buyer signing a copy and returning it to Pivot Interiors (Seller) no later than thirty (30) days from the date of the Quotation.

1. Terms: All sales by Seller hereunder are final, and the terms of the Quotation may not be modified without the prior written consent of an authorized representative of Seller. Additional or different terms and conditions proposed by Buyer shall not be binding on Seller without Seller's prior written approval
2. Payment, Deposit, Credit Approval: Products and services shall be invoiced upon delivery. Payment is due net, not later than the date specified in the preceding portion of this Quotation. Unless waived by Seller in writing, Buyer shall deposit with Seller the deposit sum specified above in the preceding portion of this Quotation, which shall be payable concurrently with Seller's receipt of Buyer's written acceptance of the Quotation. All sales and shipments are subject to Buyer's credit approval by Seller. If Buyer's credit information is not available or if its credit is not approved by Pivot, payment by Buyer must be made in full at or before the time of purchase.
3. Proposed Purchase: The products and/or services covered by this Quotation (collectively, Purchase Items) are set forth above in the preceding portion of this Quotation.
4. Price: The total price (Price) for Purchase Items being provided by Seller is set forth above in the preceding portion of this Quotation. Unless otherwise noted, all applicable freight charges are included above in the preceding portion of this Quotation and, if not included therein, freight charges will be quoted and invoiced to Buyer as a separate line item. The Price, if not specified in the preceding portion of this Quotation, does not include applicable taxes, or other items specifically enumerated below.
5. Taxes: All applicable taxes on the Purchase Items will be in addition to the Price, and will be added to invoices and paid by Buyer when the invoice is due, at the rate in effect at time of invoicing. If Buyer claims exemption from taxes, Buyer shall provide Seller with a valid Certificate of Exemption concurrently with Buyer's acceptance of this Quotation.
6. Freight: All freight and related delivery charges applicable to the Purchase Items, unless already stated in the preceding portion of this Quotation, will be in addition to the Price, and will be added to invoices and paid when the invoice is due.
7. Changes, Cancellations, & Returns: Products and services sold to Buyer hereunder are custom designed and/or manufactured. All sales are final. No changes, cancellations or returns are allowed without the prior written approval of Seller and the applicable manufacturer. If changes, cancellations or returns are approved by Seller, all direct and indirect costs and expenses thereof shall be paid by Buyer.
8. Product Storage: If Buyer is unable or unwilling to accept delivery of Purchase Items within 30 days of product receipt at Seller's (and/or Seller's agents) facility, all resulting costs and expenses incurred by Seller and/or its agents, including costs of moving, handling and storage of Purchase Items pending delivery, shall be paid by Buyer. Such Purchase Items shall be invoiced and shall be paid in full by Buyer within thirty (30) days after date of invoice. Provided, however, all moving, handling and storage costs and expenses incurred by Seller and/or its agents shall be paid by Buyer immediately upon receipt of invoice.
9. Title & Security Interest: Title to all Purchase Items shall pass from Seller to Buyer upon delivery and payment in full of the invoiced amounts and all other costs and expenses due under this Quotation. Seller shall have and Buyer hereby grants to Seller a continuing first security interest in all Purchase Items to secure payment of the Price and all invoiced portions thereof, and other obligations of Buyer under this Quotation. All Purchase items shall remain personal property regardless whether affixed to real property. If Buyer shall default in payment under this Quotation, Seller shall have all applicable rights and remedies of a secured party pursuant to the California Commercial Code. Buyer agrees to execute a Security Agreement and related financing documents promptly upon Seller's request.
10. Delay: Due to uncertain factory shipping schedules common to the componentized modular furniture business, no obligation or liability shall be incurred by Seller for failure to deliver Purchase Items by any particular date. Seller shall not be liable for any loss, expense, claim or damage incurred by Buyer or others resulting from any delay or failure in shipment or delivery of Purchase Items caused in whole or in part by delay or default in transportation, labor disputes, inability in obtaining materials or product, natural disasters, acts of God, war or terrorism or any other cause not within the reasonable control of Seller.
11. LIMITATION OF WARRANTIES: SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR AS TO THE SUITABILITY OF ANY PURCHASE ITEMS OR SERVICES FOR ANY PARTICULAR PURPOSE. BUYER'S SOLE WARRANTY AND OTHER RIGHTS HEREUNDER FOR PRODUCT DEFECTS OF ANY KIND SHALL BE THE WARRANTY THAT IS PROVIDED BY THE MANUFACTURERS OF SUCH PRODUCTS. MOST MANUFACTURERS WARRANT THEIR PRODUCTS TO BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD OF AT LEAST ONE (1) YEAR FROM DATE OF DELIVERY, AND BUYER SHALL HAVE THE BENEFIT OF ANY SUCH MANUFACTURER WARRANTIES. SELLER AGREES TO SERVE AS FACILITATOR OF ANY CLAIMS MADE BY BUYER AGAINST MANUFACTURERS, BUT SELLER SHALL HAVE NO LIABILITY WHATSOEVER WITH REGARD TO ANY SUCH FACILITATION EFFORT. ANY CLAIM AGAINST A MANUFACTURER'S WARRANTY MUST BE MADE TO THE MANUFACTURER PROMPTLY UPON DISCOVERY OF A DEFECT. BUYER'S SOLE REMEDY FOR DEFECTIVE INSTALLATION PERFORMED BY SELLER SHALL BE TO REPAIR OR REPLACE, AT SELLER'S SOLE OPTION, THE SAME WITHIN THE FIRST YEAR IMMEDIATELY FOLLOWING DELIVERY. SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES. NO OTHER WARRANTIES OF ANY KIND ARE EXPRESSED OR IMPLIED, AND BUYER HEREBY DISCLAIMS ANY AND ALL RIGHTS THERETO. IN ADDITION, PRODUCT WARRANTIES MAY BE INVALIDATED ON NON-COMMERCIAL ITEMS (RESIDENTIAL OR RETAIL SOURCED) USED IN COMMERCIAL SETTINGS (INCLUDING WITHOUT LIMITATION OFFICES AND HOSPITALS). SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR AS TO THE SUITABILITY OF ANY PURCHASE ITEMS OR SERVICES FOR ANY PARTICULAR PURPOSE. THE SOLE WARRANTY OBLIGATION OF SELLER TO BUYER SHALL BE EXPRESSLY LIMITED TO THE WARRANTY SET FORTH IN THIS PARAGRAPH 11 ALONE.
12. LIMITATION OF DAMAGES: EACH PARTY'S TOTAL LIABILITY FOR DAMAGES OR CLAIMS ARISING OUT OF OR RELATING TO THIS QUOTATION SHALL NOT EXCEED THE AGGREGATE FEES PAID OR PAYABLE BY BUYER TO SELLER UNDER THIS QUOTATION UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE IN ANY WAY FOR SPECIAL, INDIVIDUAL, CONSEQUENTIAL, OR NON-DIRECT DAMAGES ARISING IN ANY WAY OUT OF THIS QUOTATION, HOWEVER CAUSED, WHETHER ARISING OUT OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, OR LOSS OF TIME, INCONVENIENCE OR COMMERCIAL COSTS. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY OF THE LIMITED REMEDIES SET FORTH HEREIN.
13. Finance Charges: A finance charge of 1.5% per month (ANNUAL PERCENTAGE RATE OF 18.0% PER ANNUM) will be charged on all past due accounts. In the event any action, suit or other proceeding is required to collect amounts owing to SELLER under this QUOTATION, Buyer shall reimburse all costs and expenses incurred therein by SELLER, including reasonable attorney's fee and costs.
14. Delivery and Installation Conditions: Buyer shall have the following obligations, which Buyer shall cause to occur at its sole cost and expense:
 - a. Job Site: Job Site, including all passageways, corridors and the areas designated for installation, shall be clean, free and clear of personnel, existing furnishings, construction materials or debris or any other obstruction.
 - b. Access: Doorways, openings and elevators shall be sufficient to allow delivery of Purchase Items without necessity of dismantling.
 - c. Utilities/Services Electricity, heat, lighting, elevator or hoisting services shall be furnished by Buyer without cost to Seller. Parking and adequate facilities for off-loading, staging, moving and handling of Purchase Items shall be provided by Buyer.
 - d. Hours of Delivery Job Site shall be open and available for delivery and installation of Purchase Items during Seller's normal business hours, Monday - Friday, 8:00 a.m. - 5:00 pm. Labor costs of Seller resulting from overtime work shall be invoiced to and fully paid by Buyer.
 - e. Shipping: Buyer accepts responsibility to inspect Purchase Items shipped directly by manufacturer to Buyer, to note on bills of lading of any damage, and to notify carrier of such damage within 24 hours of delivery. Any such damage shall not excuse or delay payment by Buyer of Seller's invoices.
 - f. Damage: After Delivery Any loss of or damage to product after delivery to Buyer, whether due to weather, fire, elements, other trades or other causes, shall be the sole responsibility of Buyer. Buyer shall hold Seller harmless from any such loss or damage.
15. Termination: This Quotation may be terminated by either party upon its issuance of written notice to the other party of its breach of the terms of the Quotation, which breach is not cured within fifteen (15) days of such notice. A termination by Seller of Buyer for breach will not relieve Buyer of its payment obligations to Seller existing at the time of such termination, and such sums shall become immediately due and payable. A termination by Seller of Buyer for breach shall not be the exclusive remedy of Seller, and Buyer shall be obligated to reimburse Seller in full for all costs Seller incurs in connection with cancellation of any orders which have not yet been shipped or any services which have not yet been rendered.
16. Authorization: Buyer represents and warrants that the person signing below on behalf of Buyer possesses full and proper authorization to enter into this Quotation, and acknowledges that the Quotation is legally binding agreement as to Buyer.
17. Governing Law: This Quotation shall be governed by the laws of the State of California (without regard to any conflict of laws provision), Any legal action regarding the enforcement or construction of the terms of this Quotation shall be determined solely and exclusively in the venue of the United States Federal Court or the Superior Court of the State of California, in the city of San Jose and the County of Santa Clara.
18. Entire Agreement: This Quotation contains the complete and exclusive agreement and understanding between the parties concerning the subject matter of this Quotation, and supersedes all prior and contemporaneous proposals, agreements, understandings, negotiations, representations, warranties, conditions, and communications, oral or written, between the parties relating to the same subject matter. The terms and conditions of this Quotation will prevail and control in the event of any different, conflicting or additional terms and conditions that may appear on any purchase order, acknowledgement, invoice or other writing issued by either party in connection with this Quotation. The express terms of this Quotation shall supersede and control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the terms of this Quotation. No amendment or modification of this Quotation shall be effective unless it is made in writing, and is signed by an authorized representative of Seller and Buyer.
19. Confidentiality: Buyer agrees, except upon the prior written consent of Seller, that it will keep and maintain in strict confidence the existence and contents of this Quotation, for a period of one (1) year from date hereof.
20. General:
 - a. Assignment: Neither this Quotation nor any portion thereof, nor any right or interest therein, shall be assignable or transferable by Buyer without the express written consent of Seller, and any attempted assignment or transfer by Buyer which is lacking such consent shall be void and of no effect whatsoever.
 - b. Attorneys' Fees: In the event of any legal action brought by a party to enforce or construe this Quotation or any of the provisions thereof, the party prevailing in such action shall be entitled, in addition to other relief, to recover its reasonable attorneys' fees and costs incurred therein.
 - c. Attorneys' Fees: Storage Services In the event that all or any portion of this Quotation pertains to Seller's providing to Buyer storage services relating to any items of property owned by Buyer, the following terms shall apply (i) SELLER MAKES NO WARRANTY WHATSOEVER, WHETHER EXPRESS, IMPLIED OR OTHERWISE, RESPECTING THE CONDITIONS APPLICABLE

TO THE STORAGE FACILITIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY RESPECTING THE SAFETY OF SUCH FACILITIES FROM FIRE, EARTHQUAKE, WAR, TERRORISM OR INSURRECTION, OR ANY OTHER RISKS, INCLUDING WITHOUT LIMITATION BURGLARY, ROBBERY OR THEFT;(ii) Buyer shall indemnify Seller from and hold Seller free and harmless from any claim or demand by any party against Seller, including attorneys' fees and costs, respecting any of Buyer's property items being stored by Seller; (iii) Seller shall at all times have, in addition to any other liens provided for herein, a lien and security interest against all items stored by Buyer with Seller from time to time hereunder, to secure the obligations of Buyer for all storage fees and related charges and other claims arising hereunder; and (iv) Seller shall have, without limiting its other rights and remedies, all the rights and benefits provided under the California Commercial Code and any other laws, in California or elsewhere, applicable to warehousemen and warehouse owners and operators. The signature of the Buyer below shall signify its agreement to the terms and conditions of this Quotation.