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## TERMS AND CONDITIONS OF SALE

### Parties

“AF” shall mean Hermes Supplies Inc. and Afra Furniture. “Purchaser” shall mean the entity or any subsidiary or affiliate purchasing or receiving products from AF or the person, firm, corporation or other business entity that places an Order. “Order” shall mean purchase orders issued by Purchaser and accepted by AF. “Product” shall mean products specified in the contract. “Contract” shall mean commercial or pro forma invoice issued by AF to the Purchaser based on an Order.

### Application of these Terms and Conditions

These Terms and Conditions shall apply to Orders issued and accepted or other contractual commitments to buy and sell AF’s products and shall become part of the Contract. AF hereby gives notice of its objection to any different or additional terms that may be included by Purchaser and these Terms and Conditions shall govern each Order notwithstanding any different, conflicting or additional terms and conditions which may appear on any form submitted by Purchaser. If Purchaser has not otherwise accepted these Terms and Conditions, Purchaser’s acceptance of any Products delivered by AF pursuant to any Order shall constitute Purchaser’s acceptance of these Terms and Conditions.

### Acceptance of Orders and Payment Terms

Information regarding ordering is found in the attached Schedule “A”.

Orders will be confirmed within 48 hours of receipt along with a Pro forma invoice including a detailed description of items, prices, shipping information, shipping date and the required deposit. Purchaser shall contact AF within 48 hours of receipt of the confirmation regarding any discrepancies. Otherwise, the Order will be binding.

Accepted Orders are considered firm and binding and are not subject to cancellation.

Unless otherwise agreed to in writing, an Order will not be scheduled for production until receipt of a non-refundable deposit equal to 50% of the invoice. The balance is due before the shipment of the Product.

AF is not responsible for delays caused by late payments or arrival of COMs, missing information or specifications.

## COM (Customer's Own Material)

Products to be made with COMs, will be scheduled for production only after all the materials are received and inspected by AF. All COMs must be shipped prepaid and with marked purchase order number and Purchaser's name. AF reserves the right to refuse any COM orders.

AF's Limited Warranty does not cover the quality and durability of Products which incorporate COMs. AF is not responsible for wear, tear or fading of any upholstery or other material, supplied by Purchaser. AF is not responsible for the quality and / or performance of the flammability or compliance with Flammability Codes of any COMs. Please review the Flammability Codes section in Schedule "A".

## Shipping, Packaging and Packing

Standard packaging and packing methods selected by AF will be used unless otherwise agreed in the Contract. Additional packaging and packing costs incurred at Purchaser's request shall be added to the applicable invoice and payable by Purchaser.

All prices are FOB Montréal, Québec. AF is not responsible for any loss or damage in transit between AF's storage facility and the product's final destination.

## Product Returns

Purchaser may not return and AF will not accept any returns without a written authorization issued by the AF Customer Service Department. All returned Products must be properly packaged in order to prevent further damage and must have attached a returned authorization issued by AF otherwise shipment shall be refused.

## Warranties and Recourses

AF warrants that at the time of delivery for shipment: (a) Products delivered shall be free of defects in workmanship and material and conform to any product descriptions that are made a part of the Order and (b) custom Products delivered shall conform to any specifications that are made a part of an Order and accepted by AF in writing. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, AF MAKES NO WARRANTY REGARDING PRODUCTS DELIVERED HEREUNDER AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER CREATED BY CONTRACT OR BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTY OF QUALITY THE WARRANTIES MADE HEREIN ARE MADE SOLELY TO PURCHASER AND SHALL NOT EXTEND TO OR BE ASSIGNABLE TO PURCHASER'S CUSTOMERS.

For new and unused Products, Purchaser must promptly notify AF, in writing, of any defect in the Product within (7) days of reception. Photos and an inspection may be required before making a final determination of the claim. Claims for damages or delays occurred during transit or unloading of product are not covered under this Limited Warranty and must be made directly to the freight companies.

The term of the warranties set forth by this Section will be the longer of: (a) the maximum term allowed by applicable law; or (b) sixty (60) months from date of invoice for the Afra Modeste, Afra Classic, Afra Modern, Elegant and Danish collections; thirty-six (36) months from date of invoice for the Theater collection and twenty-four (24) months from the date of invoice for the Contemporary collection.

For Products under warranty, AF's liability is limited to the repair and / or replacement of the defective Product as determined by AF. Purchaser shall bear all costs of transporting the non-conforming product (or part) back to AF for repair or replacement and then from AF back to Purchaser.

Any reimbursement for repairs made locally must be approved, in advance and in writing, by AF.

AF's obligation to repair or replace is expressly conditioned on Purchaser obtaining written return authorization from AF prior to returning such non-conforming Product.

AF shall not have any warranty obligations where the Product (or any part thereof) has been subjected to alteration, misuse, abuse or improper storage by Purchaser or end users or due to wear and tear or changes in wood color due to the natural aging of the wood. Unless AF expressly agrees in writing in advance, no set-off, compensation, allowance or credit shall be allowed for any non-conforming Product. The repair or replacement recourse as set forth in this paragraph shall be Purchaser's sole and exclusive recourse for non-conforming products delivered hereunder or claims under warranty.

## Limitation of Liability

IN NO EVENT SHALL AF BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, RENTAL REPLACEMENT COSTS, REPAIR COSTS NOT AUTHORIZED BY AF OR ATTORNEY'S FEES ARISING OUT OF ANY ORDER OR THE PRODUCTS SOLD THEREUNDER, WHETHER ARISING IN CONTRACT, EXTRA-CONTRACTUALLY, OR OTHERWISE, INCLUDING STRICT LIABILITY, INCLUDING BUT NOT LIMITED TO, LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT AND PRODUCT LIABILITY CLAIMS. IN NO EVENT SHALL AF'S AGGREGATE LIABILITY TO PURCHASER WITH RESPECT TO ANY PRODUCT DELIVERED PURSUANT TO ANY ORDER EXCEED THE AGGREGATE COMPENSATION PAYABLE TO AF HEREUNDER FOR THE PRODUCTS COVERED BY SUCH ORDER.

## Intellectual and Industrial Property of AF

AF retains title, copyright, industrial design and other proprietary rights to all aspects of the Products including all modifications and alterations thereto. Purchaser shall not manufacture, reproduce or imitate any of the Products.

## General

**Security Interest.** So long as any amounts remain to be paid by Purchaser, AF maintains a lien against, and Purchaser hereby grants to AF a security interest in the Products, including all proceeds related thereto or derived there from.

**Severability.** In the event that any provision of these Terms is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of these Terms shall remain in full force and effect and be construed to best effectuate the intention of the parties hereto.

**Waiver of Default.** Failure of AF to insist upon strict performance of any provisions hereof shall not be deemed a waiver of its rights and remedies.

**Entire Agreement.** These Terms constitute the entire agreement between AF and Purchaser with respect to the Products and supersede all proposals, oral and written, all previous negotiations and all other communications between the parties.

**Assignment.** Purchaser may not assign nor transfer its rights and obligations hereunder without the prior written agreement of AF.

**Force Majeure.** AF shall not be liable for non-performance or delay due to war, acts of the public enemy, acts of God, fire, flood, explosion, accident, or strike, sabotage, labour trouble, connected with any law, act, regulations, request or recommendation of any governmental authority; shortage or significant increase of costs of fuel, raw materials, energy sources or labour, breakdown of equipment beyond the reasonable control of AF interfering with the production and transportation of the Product covered by the Contract.

**Governing Law.** Any dispute between AF and Purchaser arising under or related to the Contract shall be resolved by or interpreted in accordance with the laws of the Province of Québec and that the Courts located in the District of Montreal will have jurisdiction over legal proceedings in respect of the Contract.

**Language.** The parties hereby acknowledge having required that these Terms and Conditions as well as all notices, documents and agreements related hereto be drawn up in the English language; les parties reconnaissent avoir exigé que les présentes Conditions Générales ainsi que tous avis, documents ou contrats s'y rapportant soient rédigés en langue anglaise.

# SCHEDULE “A”

## Ordering Information

All orders are to be sent via fax or emailed to:

### **AFRA FURNITURE CLAIM DEPARTMENT**

600 rue Hodge  
Montréal, Québec  
H4N 2A4

T: 514.908.0048

F: 514.908.1509

Email: [info@afrafurniture.com](mailto:info@afrafurniture.com)

### **The following information should be provided:**

- Contact name, including phone and fax numbers and email address
- The Afra Furniture Item Code (i.e. HER250CM)
- Choice of wood or metal frame finishing
- Upholstery specifications
- Quantity required
- Packaging specifications and shipping instructions
- Shipping information: ‘Shipping To’ and ‘Bill To’ information including delivery date on site, contact name and phone number at the delivery location
- Any other pertinent or important specifications

All orders are subject to delay due to labour, transport and supply difficulties, Act of God and all other events beyond AF’s control. All delivery dates quoted are approximate. Contact AF customer service to verify inventory and production schedules.

## Flammability Codes

All items are manufactured with premium grade materials and are tested at testing laboratories. Items include polyurethane foam and fabrics that meet California Technical Bulletin #117 requirements. If required, certain items can be manufactured according to California Technical Bulletin #133 and surcharge may apply. Contact AF for more information.

For any items that have not been tested, the testing could be done with lead-time 3-8 weeks depending on the item availability and testing requirements.

It is a Purchaser’s responsibility to determine the local flammability code requirements.

## Pricing and Minimums

**Product Prices:** Product prices are subject to change without notice to Purchaser.

**Minimum Order:** Some Products may be subjected to minimum order quantities.

**Storage Charges:** Postponed shipment beyond AF shipping schedule will result in a storage charge at a rate of five percent (5%) per month on total of commercial invoice.

**Collection Charges:** Purchaser shall be liable for all collection costs. Overdue accounts will be charged a late payment charge of two and one-half percent (2.5%) per month.

## Quality Product Information

All AF products are manufactured for commercial use only with premium grade materials, and are continually tested. Product information can be found on the website at [www.afrafurniture.com](http://www.afrafurniture.com) and in the AF product binder. All dimensions are considered approximate; AF reserves the right to make adjustments in dimensions without prior notice. AF reserves the right to make minor changes to specifications, materials and design and to discontinue items without prior notice.

Purchaser acknowledges that due to the variations in the color of wood in its raw state, product of wood finishes may have small variations in color. Personalized stain matching is offered at an additional cost of \$ 150 per stain match per order. Custom finish matches are valid for 12 months from sample date. After this time period, custom finishes should be rematched and reapproved.