

TERMS AND CONDITIONS FOR CONTRACT – Furniture and Walls**REVISION DATE: August 2017.****1 DEFINITIONS:**

Approved Quotation:	The written quotation issued by the Seller and approved by signature of the Buyer or its representative
Buyer:	The customer specified in Seller's invoice
Contract Price:	The total price listed in the Seller's invoices including applicable taxes
Contract Documents:	The documents that form the entire agreement between the Buyer and the Seller are listed below. In the event of a conflict between the Contract Documents, the documents govern in priority from highest to lowest in the order in which they are listed below. <ul style="list-style-type: none"> - The Terms and Conditions for Contract – Furniture and Walls - The invoices issued by the Seller to the Buyer - The Approved Quotation - The specifications, if any, attached to the Approved Quotation - The drawings, if any, attached to the Approved Quotation
Change Notice:	Where the Buyer and the Seller agree to a change to the Product or Work ordered, delivery dates, or other changes to the Contract Documents, the changes, including any adjustment to the Contract Price, shall be set down in a written Change Notice as agreed between the Buyer and the Seller. No change to the Contract Documents is authorized without a written Change Notice.
Product:	The furniture, walls and other product listed in the Approved Quotation
Seller:	Italinteriors Contract Inc.
Work:	The installation of the Product by the Seller, or its representative or agent, at the job site.

2 PURCHASE PRICE/PAYMENTS

In consideration of the performance by the Seller of its obligations hereunder, the Buyer shall pay to the Seller, at the times, in the manner, and subject to the terms set forth in the Contract Documents, the Contract Price including all applicable taxes.

The Contract Price shall be payable by the Buyer to the Seller, or as the Seller may direct, as follows:

- (1) A deposit of 50% of the Contract Price is required to initiate the order by the Seller.
- (2) A progress payment of 40% of the Contract Price is due upon delivery or readiness for delivery of the Product to the job site.
- (3) Additional amounts set out in invoices issued by the Seller, relating to Change Notices, storage costs, and other costs, are payable when due.
- (4) The balance of the Contract Price is due on completion.

Invoices are payable within 30 days of the date of issue. Deposit invoice must be paid in full to initiate the order. In the event the Buyer fails to pay any invoice when due, the interest will accrue at the rate of 5% per annum, and shall be due and payable by the Buyer.

3 ORDER ENTRY

Following receipt of the 50% deposit and the Approved Quotation including any required specifications or drawings, the order will be placed. 12 weeks' lead time (14 weeks' lead time for walls) is required from date of order to delivery of Product on site unless otherwise agreed in writing. Any changes made once the order is placed will require a Change Notice.

4 INSTALLATION/SCHEDULING/STORAGE

Installation will commence once the job site is deemed by the Seller, in its sole discretion, to be in a condition satisfactory for the installation of the Product. Delivery of the product will not take place until the job site is free from all construction and related debris, carpets are laid, walls are painted, and the ceiling is installed and finished.

If the Product is delivered or ready to be delivered to the job site but it has been determined by the Seller that the job site is not in a condition satisfactory for the installation, the Product will be put into storage in a location chosen by the Seller in its sole discretion (which may include a location at the job site), at the sole expense of the Buyer. The progress payment of 40% of the Contract Price is due and payable at this time regardless of whether the job site is ready to receive the Product. Charges for storage payable by the Buyer are as follows:

- (1) There will be no charges for the first 2 weeks of storage.
- (2) Thereafter, storage charges will be paid by the Buyer at a rate of \$2,000 per month or part thereof per 40 foot container or part thereof.
- (3) Additional handling or packaging charges may apply and shall be borne by the Buyer.

The Seller, intends to use non-union labour and the Contract Price is based on non-union labour rates, unless otherwise specified. Should the Seller be required to use union labour, the Buyer will be notified in writing immediately and the Contract Price will be adjusted to reflect rates for union labour.

All installation will take place Monday to Friday (excluding statutory holidays) during the regular business hours of 7:30 a.m. to 3:30 p.m. If any installation work is required by the Buyer to be done outside regular business hours, the Buyer will be responsible for payment of further charges including but not limited to overtime payments.

The Seller is not responsible for providing any electrical connection to the power source of the Buyer's building, and such work shall be co-ordinated by the Seller with the Buyer. Wall blocking is required at locations where the Unifor Product is attached to the wall. Wall blocking is required at locations where the Unifor walls intersect conventional walls or drywall ceilings. The Seller is not responsible for any building costs such as elevator use and security. Buyer will ensure appropriate access to loading docks, elevators, and other necessary access points. Any costs associated with product modification/cuts due to job site conditions will be the Buyer's responsibility. Seller is not responsible for damages to Product or the job site caused by third parties.

5 ITALINTERIORS WALLS

Due to Seller's tolerance level and quality standards, Seller requires (a) hold to height dimensions as per the architectural, issued for construction drawings, or (b) site verified heights from above finished floor to finished ceilings, 12 weeks prior to site delivery.

Seller also requires (a) verified width dimensions as per the architectural, issued for construction drawings, or (b) site verified widths from finished partitions, or (c) partition plans as laid out on site, as approved by the architect and general contractor, 10 weeks prior to site delivery.

Any changes made once the Order is placed will be treated as a Change Notice.

Acoustical tolerance ratings as indicated in any Seller technical documentation are lab tested results and differ from field ratings by up to 5 decibels depending on site conditions.

Floor height variations can affect the quality, performance, and aesthetics of the wall system. For optimum installation:

- (a) Unifor RP Wall System has the capability to compensate for floor levels up to 3/8" (10 mm) out of level. If this is exceeded upon site review when walls are to be installed then review and correction will be required such as spot floor leveling by others.
- (b) Unifor AP Wall System has the capability to compensate for floor levels up to 3/16" (5 mm) out of level. If this is exceeded upon site review where walls to be installed then review and correction will be required such as spot floor levelling by others.

Prior notification is required at time of order if the project is to meet LEED standards.

6 EXECUSABLE DELAY

A delay in the performance of, or failure to perform, an obligation of the Seller under this Contract which is caused by an event beyond the reasonable control of the Seller shall constitute an Excusable Delay. Excusable Delays consist of, but are not limited to: acts of God, labour strikes, transportation difficulties, accidents, inclement weather, lockout, riot, war, terrorism, industrial disturbance, governmental action or regulation, curtailment of or failure to obtain Product or sufficient or adequate raw materials, fuel, labour or utilities, industrial or machinery breakdown, or other causes beyond the control of the Seller.

The Seller shall not be liable for any delay or failure to deliver caused by any Excusable Delay. To the extent that any obligation of the Seller is not performed by a required date specified in the Contract Documents or is delayed or further delayed as a result of an Excusable Delay, the date for the performance of that obligation shall be postponed by the duration of the Excusable Delay and any reference in the Contract Documents to a date or dates for the performance of such obligation shall be a reference to such date or dates as amended by operation of this section, and payment in full for that portion of the Work which has been performed shall not be withheld or delayed by the Buyer on account of such delay.

7 INSPECTION/ACCEPTANCE/DEFECTIVE WORK

When the Work is completed at the job site, Buyer shall inspect the Work and Product to confirm compliance of the Work and Product with the Contract Documents. On completion of the Work, the Seller shall issue a final invoice to the Buyer. The Buyer has 10 days from receipt of the final invoice to provide Seller with written notice of any deficiencies in the Work or Product and the particulars thereof.

Failure of the Buyer to provide written notice of any deficiencies in the Product or Work within the timeframe listed above shall be deemed full acceptance by the Buyer of the Product and Work.

Where Buyer and Seller agree that Product or Work does not conform to the requirements of the Contract Documents, the Seller shall, at its sole discretion, exercise one or more of the following remedies:

- (1) rectify or repair the deficient Product or Work;
- (2) promptly remove and replace the deficient Product or Work; or
- (3) if in the Seller's opinion it is not expedient to correct such non-conforming Product or Work, the Seller may adjust the Contract Price to reflect the value of the non-conforming Product or Work.

Where Buyer and Seller cannot agree on whether Work or Product is non-conforming, the dispute will be referred to resolution pursuant to paragraph 10.

8 CHANGE NOTICES

The Buyer may request changes at any time and from time to time to the Contract Documents. Such requests must be made in writing and delivered to Seller. On receipt of a request for change, Seller will prepare a written proposal (a

"Change Proposal") to Buyer containing the following minimum information: effect on the Contract Price; effect on delivery dates; and impact on the Product or Work, if any.

The Seller may request changes at any time and from time to time to the Contract Documents. The Seller shall prepare a Change Proposal delivered to the Buyer relating to the change.

Each Change Proposal shall be submitted to the Buyer with a stated time period within which the Buyer shall either accept or reject the Change Proposal. If accepted by the Buyer, the Change Proposal becomes a Change Notice and the Seller shall be entitled to proceed with the change as an amendment to the Contract Documents. It is preferable, but not necessary, for the Change Proposal to be accepted by the Buyer in writing.

If a Change Proposal is not accepted by the Buyer, it does not become a Change Notice and Seller shall be under no obligation to implement the change requested in the Change Proposal.

If Seller and Buyer cannot agree on a Change Proposal, the dispute may be referred pursuant to paragraph 10.

9 TERMINATION FOR BREACH

(1) **DEFAULT:** Each of the following is a default by Buyer (a "Default"):

- a. Buyer fails to make any payment under the Contract Documents within 10 days after payment is due and payable; or
- b. Buyer fails to perform, observe or comply with any other obligation, term or condition of the Contract Documents; or
- c. any representation or warranty made by Buyer to Seller in connection with the Contract Documents is incorrect; or
- d. Buyer makes any assignment for the benefit of its creditors, becomes insolvent, commits any act of bankruptcy, takes any action to wind-up or dissolve, ceases or threatens to cease to do business as a going concern, or any proceeding in bankruptcy, receivership, winding-up, dissolution, liquidation or insolvency is commenced by or against Buyer or its property; or
- e. Seller in good faith believes and has commercially reasonable grounds to believe that the Contract Documents are or are about to be impaired or the Product is or is about to be placed in jeopardy.

(2) **REMEDIES ON DEFAULT:** On Default:

- a. The Contract Price, and all other amounts payable hereunder, shall immediately become due and payable with interest chargeable against the Buyer at a rate of 5% per annum. These are liquidated damages and not a penalty;
- b. Buyer shall, if Seller requests, immediately return the Product at Buyer's expense to Seller;
- c. Seller may take possession of the Product without demand, notice or resort to legal process and, subject to applicable law, may enter on the premises of the Buyer for such purpose;
- d. If Seller is able to obtain possession of the Product from the Buyer, Seller may sell, rent, or otherwise dispose of the Product at its sole discretion, without notice to Buyer, and retain the proceeds earned therefrom.
- e. All costs incurred by Seller on Default, including costs incurred to take possession of the Product and dispose of the Product, legal costs, expenses, costs to repair or restore the Product to its original condition (reasonable wear or tear excluded), carrier costs, costs of sale or lease, and other costs ("Enforcement Costs") shall be payable by the Buyer to Seller.
- f. If the proceeds obtained by Seller from the disposition of the Product under this provision by sale, lease, or otherwise, exceed the amount owed by the Buyer to Seller on Default, including Contract Price, interest and Enforcement Costs, Seller shall pay to the Buyer the excess from the proceeds of disposition.
- g. If the proceeds obtained by Seller from the disposition of the Product under this provision by sale, lease, or otherwise, are less than the amount owed by the Buyer to Seller on Default, including Contract Price, interest and Enforcement Costs, Buyer shall be liable to Seller and shall pay Seller the deficiency.
- h. If at any time after a Default and prior to Seller obtaining possession of the Product, Buyer pays to Seller the Contract Price, interest, and Enforcement Costs, Seller shall transfer title to the Product to the Buyer on an "as is, where is" basis without any condition, representation or warranty of SELLER whatsoever.
- i. All rights and remedies of Seller, either under the Contract Price or at law or in equity or otherwise afforded to Seller, are cumulative and not alternative.

10 DISPUTES

The parties shall use all reasonable endeavours to resolve any dispute, controversy or claim arising out of or relating to or in connection with the Contract Documents or the validity, performance, discharge or termination thereof (a "**Dispute**").

Any unsettled Dispute shall be resolved by arbitration in accordance with the provisions of the arbitrations legislation of the Province of Ontario, and in respect of any such arbitration the following conditions shall apply: the location shall be Toronto; the language of the arbitration proceeding shall be English; the number of arbitrators shall be three (3); the scope

of the arbitration proceeding shall be limited to the resolution of the Dispute submitted to arbitrators; the arbitration panel shall decide the Dispute in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein; and subject only to the arbitrations legislation of the Province of Ontario, the parties agree that the determination and award of the arbitration panel shall be final and binding on both parties. Where money is claimed to be due and payable and a party disputes its obligation to pay any portion thereof, the party so disputing its obligation may hold back only the disputed portion pending resolution of the Dispute. Unless the continued performance of any part of the Work by the Seller, given the subject matter of the Dispute, could lead to costs thrown away for the Seller, the Seller shall continue to perform the Work diligently, notwithstanding the existence of such Dispute.

11 TITLE and RISK

Title to the Product shall pass from the Seller to the Buyer only upon receipt by the Seller of payment in full of all amounts to be paid by the Buyer to the Seller hereunder. Risk of loss or damage to the Product shall remain with the Seller until delivery is made to the Buyer's job site after which, risk of loss or damage to the Product is the Buyer's.

Buyer assumes all risk of loss and liability for, and shall indemnify Seller and hold Seller harmless against, any and all loss, damage, claims, expenses, or injury to persons (including death), or property of Buyer, or others arising out of ownership, use, custody, control, or disposition of Product by Buyer, its agents or employees, or by any third parties.

Buyer shall maintain the Product at the specified job site and shall not move the Product from such location unless and until Seller is paid in full all amounts required by the Contract Documents.

Buyer acknowledges that it has selected the Product based on its own skill and judgment and further acknowledges and agrees that, except as specifically set out in the Contract Documents, no representation, warranty or condition, whether statutory or otherwise, express or implied, oral or written, collateral or otherwise is being given by Seller as to description, fitness for purpose, condition, merchantability, durability, freedom from latent defects, quality, suitability or durability, or in respect of any other matter or thing whatsoever, all of which are hereby excluded and waived by the Buyer. Seller will reasonably assist Buyer in obtaining the benefit of any warranty provided by the manufacturer of the Product, if available.

SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12 LIMITATION OF LIABILITY

Notwithstanding any other provision of the Contract Documents, the Seller's total liability resulting from or in connection with the Contract Documents shall not exceed the aggregate sum paid to the Seller up to the Contract Price. In no event whatsoever shall the Seller be liable for indirect or consequential damages or for loss of the Buyer's use or loss of the Buyer's profit.

13 CREDIT CHECK

Subject to applicable legislation, Buyer hereby consents to Seller conducting a credit investigation of Buyer and to Seller making inquiries with financial institutions or other persons in a business relationship with Buyer in connection therewith; Buyer hereby authorizes and directs such persons to answer Seller's inquiries.

14 MISCELLANEOUS

Notice - Any notice required or permitted to be given hereunder must be in writing and will conclusively be deemed to have been received by its recipient on the business day it is delivered or sent by email or facsimile transmission to the parties address above or at such other address as such party specifies to the other party in writing or, if sent by registered mail, provided there is no interruption in postal services, on the fifth business day after the day of mailing, addressed to such party at such address.

Entire Agreement/Amendment - The Contract Documents supersede all prior representations, arrangements, communications, negotiations, understandings or agreements of whatsoever kind, whether written or verbal, between the parties in respect of the subject matter of the Contract Documents or any part thereof and shall constitute the sole and only agreement between the parties in respect of such subject matter. Each of the parties represents to the other that it has not entered into the Contract Documents as a result of or in reliance upon any representation or warranty made to it by the other party other than as may be contained herein. Any terms or conditions proposed now or in the future by the Buyer regarding the Work, whether by purchase order, tender, or other document, and that conflict with the Contract Documents, are null and void and of no force and effect.

The rule of *contra preferentem* does not apply to the Contract Documents. Each party has had opportunity to make changes to the Contract Documents.

Governing Law - The Contract Documents are to be construed, interpreted and performed according to the laws of the Province of Ontario and the laws of Canada applicable therein, and shall in all respects be treated as an Ontario contract, and the parties shall attorn to the jurisdiction of the courts of Ontario.

No Implied Waiver - The failure of either party at any time to require performance by the other party of any provision of the Contract Documents shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of the Contract Documents constitute a waiver of any succeeding breach of the same or any other provision.

Relationship of Parties - The Seller and the Buyer are independent contracting parties and nothing in the Contract Documents shall make either party the agent or legal representative of the other for any purpose whatsoever, nor shall it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

Buyer has read and understood the Contract Documents and is signing the Contract Documents voluntarily and without duress. Buyer has had the opportunity to obtain independent legal advice before executing the Contract Documents.