

TERMS AND CONDITIONS

All kitchen and bath cabinetry, furniture, lighting, doors, flooring and materials, artwork, acoustical panels, and objects, (the "Products") sold by STUDIO 3125 ("Supplier") are governed by these terms and conditions, and every question, offer, acceptance, or agreement by Supplier is expressly conditioned on assent hereto by the buyer ("Customer") of these Terms and Conditions.

1. DELIVERY.

(a) Unless otherwise provided herein or in the Rider, shipment hereunder shall be F.O.B. Tempe warehouse. Any additional conditions or specifications applying to the order must be stated on the face hereof.

(b) Supplier shall not be liable for delay in delivery caused by fires, floods, accidents, hazards, strikes, labor conditions, shortages or incapability to obtain fuel, shipping space, transportation, or raw materials, including delay of material from Supplier's usual source of supply, the act or neglect of the carrier or any other person, including subcontractors and suppliers, any embargo, hostility, war, civil disturbance, government seizure or requisition, priorities which may be set by any government or its agencies, federal and state legislation, force majeure, or by reason of any cause whatsoever, whether domestic or foreign, whether direct or indirect, beyond the reasonable control of the Supplier. Supplier shall not be responsible therefore and in any such event, the date of delivery shall be correspondingly increased or extended or cancelled by Supplier at its option without liability hereunder. All risk of damage to or loss of the Products shall pass at the F.O.B. point and is assumed by Customer and such damage or loss shall not operate in any way to release Customer from any of its obligations. Shipping dates are approximate only and are subject to the prompt receipt of all necessary information. Every effort will be made to ship within the time estimated but due to the nature of Supplier's undertaking, notice is given that Supplier shall have no liability for loss or damage (including incidental and consequential damages) resulting from Supplier's delayed performance or shipment, for any reason whatsoever. Although the delivery date is generally approximately twelve (12) weeks from confirmation of the Customer's order to the factory, any changes requested by the Customer thereafter will delay the date of delivery; the Supplier shall not be responsible for delays caused as a result of Customer's changes to an order, and additional charges may apply.

(c) Partial shipment shall be accepted unless otherwise specifically agreed to in writing by Supplier.

TAXES. Unless otherwise provided herein, all prices are exclusive of federal, state, local and other excise, sales, use, property, transportation, occupational and other taxes relating to the sale, now or hereafter imposed, together with penalties and expenses, all of which shall be paid by Customer. Customer shall be responsible for collecting and/or paying any and all such taxes whether or not they are stated in any invoice for Products shipped and shall indemnify Supplier with respect thereto. Supplier, at its option, may, at any time separately bill Customer for any taxes not included in Supplier's invoice and Customer shall pay said taxes, or in lieu thereof, shall provide Supplier with a tax exemption certificate acceptable to the taxing authorities. Sales Taxes are charged with final payment and calculated based on tax rates effective as of the time of delivery. Any increase in sales taxes or changes to effective rates before the date of delivery will be the responsibility of the Customer. In the event of payment delay from the customer, sales taxes will be calculated based on the rate at the time of collection.

2. TERMS OF SALE AND DELINQUENCY CHARGE.

(a) Each shipment or delivery hereunder shall be construed and considered as a separate sale and Customer agrees to accept and pay for each such shipment or delivery as provided herein. Should Customer fail to accept or pay for each shipment or delivery, Supplier may, without prejudice to any other lawful remedy, defer further shipments or deliveries until acceptance hereof by Customer or payment is made by Customer, or at its option, Supplier may without liability whatsoever terminate this Agreement as to any unaccepted or undelivered portion thereof, as well as any other outstanding agreement with Customer, and Customer shall be responsible for any expenses and/or losses sustained by Supplier by so doing.

(b) Unless otherwise indicated herein or in the Proposal, payment terms are: 50% of the total payment due to the Supplier at signing of the Proposal and accepting Sales Contract and Terms and Conditions, and the balance of the total payment shall be due to Supplier prior to delivery of the Products to the FOB point. Customer's failure to obtain necessary building permits or any delay by Customer of construction shall not modify Customer's obligation hereunder. Supplier reserves the right to charge one and one-half (1½ %) percent per month (but no more than the maximum percentage permitted by law) on all balances not paid by Customer within the designated net terms. Supplier reserves the right to suspend delivery of the Products in the event that full payment

has not been received. Supplier reserves the right at any time to revoke any credit extended to Customer because of Customer's failure to pay for any Products when due or for any other reason deemed good and sufficient by Supplier. Supplier shall make no sale or shipment of any Products to Customer on open account, or in any manner, if at any time the financial responsibility of the Customer becomes impaired or unsatisfactory to Supplier, and the Customer does not provide full security to Supplier, or if at time of such sale or shipment, Customer is delinquent in the payment of any account to Supplier. In the event (i) Customer shall be in default of any of the terms and conditions hereof, (ii) Customer becomes insolvent, (iii) proceedings are instituted to declare Customer bankrupt, or (iv) a receiver is appointed for Customer in any court, Supplier may, at its option, terminate the contract and upon such termination by Supplier, any and all claims or demands against Customer held by Supplier shall immediately become due and payable.

3. **SECURITY INTEREST.** Customer hereby grants to Supplier and Supplier hereby retains a security interest in all of the Products sold by Supplier and held by Customer or Supplier, whether presently upon Customer's premises or after acquired, and all proceeds of their sale or other disposition. In the event Customer, shall be in default under this contract, Supplier shall have the remedies of a secured party under the Uniform Commercial Code in force in the State of Customer's place of business. Supplier may enter the premises of Customer and remove the Products or may require Customer to assemble the Products and make them available to Supplier for repossession. Customer agrees to pay Supplier's reasonable attorney's fees and costs for the collection of any amounts due hereunder or replevin of said Products.
4. **ADDITIONAL CHARGES.** Except as otherwise specifically provided herein, Supplier shall not be responsible for freight, transportation, shipping, storage handling, demurrage or similar charges. If such charges are by the terms of sale included in a price, any increase in rates becoming effective after the date hereof shall be for the account of Customer. In the case that a Customer delays for more than ten (10) business days in obtaining the Products from the Tempe warehouse or other FOB point, a storage fee will apply \$10 per week for each box of the Supplies.
5. **INSPECTION/ACCEPTANCE / RETURN.** Customer shall be conclusively deemed to have inspected the Products within five (5) days after receipt. Any deficiency in the quality or quantity of such Products must be reported within five (5) days after such deficiency is or should have been discovered by inspecting the Products. Customer's claims regarding any such deficiency shall be barred if not timely reported, except and to the extent that such claims are valid under Supplier's warranty. Customer may not return any Products, under warranty claim or otherwise, without first reporting to Supplier the reasons for such return and first obtaining and then observing such reasonable instructions as Supplier may give in authorizing any return. Once installation of the Products has commenced, the Supplier will not be liable for damages to the Products, as such damages will be presumed to have been caused by third parties.
6. **LIMITATION OF WARRANTY.** The manufacturer of the Products provides certain warranties, all of which shall be provided to the Customer upon request. This warranty policy only applies to the Products themselves and not to installation thereof or related materials, such as countertops or appliances.

THE MANUFACTURER'S WARRANTIES ARE THE ONLY WARRANTIES PROVIDED HEREUNDER WITH RESPECT TO THE PRODUCTS; THE SUPPLIER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY. LIABILITY UNDER THIS WARRANTY SHALL BE LIMITED TO THE REPLACEMENT OR REPAIR AT ITS FACTORY (BUT NOT THE INSTALLATION) OF ANY DEFECTIVE PRODUCT AT SUPPLIER'S OPTION. PARTS CLAIMED TO BE DEFECTIVE IN WARRANTY AND FOR WHICH REPAIR OR REPLACEMENT IS DESIRED SHALL BE, IF REQUESTED BY SUPPLIER, RETURNED TRANSPORTATION PREPAID TO SUPPLIER'S PLANT FOR INSPECTION. RESULTS OF ORDINARY WEAR AND TEAR, IMPROPER OPERATION OR MAINTENANCE, OR USE OF CORROSIVE OR ABRASIVE MATERIALS SHALL NOT BE CONSIDERED A DEFECT IN MATERIAL. ANY PART MANUFACTURED BY ANOTHER IS NOT COVERED BY SUPPLIER'S WARRANTY, BUT ONLY BY SUCH WARRANTY AS ITS MANUFACTURER GIVES.

7. **LIMITATION OF REMEDY.** If any portion of the Products delivered to Customer are defective or otherwise not in accordance with contract specifications, Supplier shall have the right in its discretion to either replace any defective part, or supply without charge F.O.B. ex-works, a similar part to replace such defective part, or refund that portion of the purchase price applicable thereto. Supplier shall have the option of requiring the return of these defective materials, transportation prepaid, to establish the claim. Supplier and Customer acknowledge the Customer's sole and exclusive remedy against Supplier shall be for the repair and replacement of defective parts as provided herein.

UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SUPPLIER AND CUSTOMER BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE AND WHETHER BASED UPON LOST GOODWILL, LOST PROFITS DAMAGE TO PROPERTY OR OTHER ASSETS, OR WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, NEGLIGENCE, MISREPRESENTATION, OR OTHERWISE.

INSTALLATION. Customer is to make, at his expense, all installation of the Products necessary for their proper operation. Customer will be responsible for any extra cost due to delay caused by "build-out" of the space not conforming to shop drawings specifications signed by Supplier. Signed shop drawings are considered Products hereunder (but manufacturer's warranty does not apply to same). In case of modifications to shop drawings Customer will be responsible for all the necessary additional and replacement items, shipping cost and labor on an hourly rate. In the event of purchase of appliances customer will be responsible for final electrical and plumbing installation. hook-up to be performed by a licensed electrician and plumber according with local codes and regulation. All necessary electrical and plumbing connection according to shop drawings must be ready before installation. Customer is responsible to secure required permits with local authorities. Shop drawings provided by Supplier are not to be used to application for permits with local authorities. Supplier is not responsible for any failure of the Customer to comply with local and state or other laws, rules or regulations

8. **CANCELLATION OF ORDERS.** Customer shall not cancel any order or cause the work or shipment to be delayed, except with the written consent of, and upon terms agreed to by, Supplier, and with full compensation to Supplier for any loss sustained by reason of cancellation. Unless otherwise indicated herein, 50% deposit is non-refundable in event of order cancellation, in whole or in part, by the Customer. Cancellation of the order, in whole or in part, voids any discounts or promotions contained in the original order. All remaining items on order will be charged at retail price.
9. **MISCELLANEOUS PROVISIONS.** The foregoing comprises the Supplier and Customer's entire agreement, and constitutes the final expression of all terms of the agreement between the Supplier and Customer, and is a complete and exclusive statement of those terms. The provisions specifications and/or prices are rejected by Supplier unless expressly agreed to in writing by Supplier.
- (b) If any term or condition or a part contained herein is held invalid, the remaining terms and conditions of this contract shall not be affected thereby.
 - (c) This contract may be modified or rescinded only in writing signed by both parties or their duly authorized agents.
 - (d) No claim or right arising out of a breach of this contract may be discharged in whole or in part by a waiver or renunciation of the claim of right unless the waiver or renunciation is in writing, signed by the aggrieved party.
 - (e) No delegation of any obligation owed, nor performance of any obligation by Customer shall be made without the written permission of Supplier. Any attempted assignment or delegation shall be wholly void.
 - (f) All rights available to Supplier under the Uniform Commercial Code, even though not specifically enumerated herein, are expressly reserved to Supplier as remedies available to it in case of Customer's breach.
 - (g) Arizona law shall govern all transactions to which these standard terms and conditions apply. Any legal action with respect to any such transactions must be commenced within one (1) year and one day after the cause of action has accrued. All limitations on Supplier's liability and remedies for breach of any duty of Supplier to any buyer or user of Supplier's Products are extended to Supplier's employees, representatives, affiliates, suppliers, distributors, and service providers, insofar as they may have any duties to any Customer or user of Supplier's Products.

