

# GP CONTRACT FURNITURE

276 Spearing Street  
Howard, PA 16841  
(814) 264-8134

## Terms of Sale (REV Aug 7 2023)

### 1. Exclusive Terms

All orders shall be governed by the following terms and conditions. These terms and conditions shall constitute the complete Agreement between the purchaser of the goods (herein called 'Buyer') and GP Contact Furniture (aka GP Cabinets LLC - herein called 'Seller') and shall supersede all prior and contemporaneous oral and written statements of any kind whatsoever made by the parties and their representatives.

### 2. Acceptance

Buyers' orders shall not constitute contracts of sale. Any added, varied, or conflicting terms in Buyer's Purchase Order, or elsewhere in any correspondence from Buyer, are hereby objected to and shall not bind Seller, unless expressly agreed to in writing signed at Seller's office in Howard, PA, by a duly authorized officer of Seller in a document making specific reference to this Agreement and specifically stating that it 'amends' this Agreement. Buyer shall notify Seller in writing, as soon as practicable after receipt of Seller's acceptance of Buyer's order, of any objection to the terms of this Agreement. Buyer's failure to notify Seller of any objection shall conclusively indicate Buyer's assent to and acceptance of all terms and conditions herein. Buyer expressly accepts the terms and conditions herein at the exact moment Seller commences performance on any purchase order requiring or providing for Seller to commence performance prior to Buyer's receipt of Seller's written acknowledgment.

### 3. Prices

Seller has the right to change, without notice, any prices and/or product design and specifications contained in its catalogs, website, quotes, or any other communication that does not expressly prohibit such change.

### 4. Taxes

Any applicable federal, state, local, government or other regulatory taxes or charges on the sale or shipment of the goods covered by this Agreement shall be added to the amounts invoiced by the Seller and subsequently paid by Buyer. Buyer agrees to hold Seller harmless from any and all applicable governmental and regulatory taxes or charges, whether or not invoiced by Seller to Buyer, including interest and penalties thereon, and any costs and expenses in connection thereupon.

## **5. Shipment, Freight, and Delivery**

Except as otherwise provided, all prices are F.O.B. Seller's shipping location. The decision as to place of shipment shall be solely that of Seller. It is understood that all freight quotations provided are based on type transit identified and on availability of equipment & scheduling availability at time of order entry. Date & timing of shipment availability may be restricted due to type of shipment listed, scheduling requirements around holidays or other events, final destination access & services, and by any limitations indicated by the hauler. Final scheduling dates, times, and other limitations will be determined at time of final order entry and communicated at that time. Seller accepts limited liability for transit product damages. Filing of freight damage claims with hauler is the responsibility of the Buyer or consignee (see 15 below). If needed or required additional shipment insurance & coverage can be provided to Buyer at additional cost.

## **6. Delay of Shipment & Storage**

Product lead time & projected shipment date will be advised, by Seller, on acknowledgement following order entry. After 10 calendar days of acknowledgement, requests for delay of shipment, by the Buyer, will result in storage fees being assessed if more than 30 calendar days beyond originally agreed upon shipment date. Storage rates are based on 2% of merchandise total per month. Minimum storage fee of 1 month is required. Storage fees will not be prorated. Monthly storage fees will be invoiced separate from original order and will be payable upon submission.

## **7. Terms**

Payment terms, except as otherwise provided, are 50% DEP/Bal Net 30 (upon completion of credit approval) from date of Seller's invoice. A late payment charge of one and one half percent (1.5%) per month (but not in excess of the legal maximum) may be added to all past due balances. Buyer is responsible for reasonable attorney's fees, costs and expenses incurred in connection with the collection of past due balances. Buyer shall have no right of set-off. Buyer's cancellation of orders is subject to a service charge to cover the costs of initial processing and/or production of the order and may be charged to Buyer. Certain ordered items, at the sole discretion of the Seller and communicated to Buyer prior to submission of the order for such items, are not subject to cancellation by Buyer. Buyer to contact Seller to determine payment options available.

## **8. Financial Responsibility**

Shipments and deliveries of all items shall at all times be subject to approval of Seller's Credit Department in Howard, PA. Seller at any time may require payment in advance or satisfactory security or guarantee that invoices will be promptly paid when due. Prior to credit approval orders will only be shipped on the basis of payment in advance. Buyer should submit a completed credit application with its initial order to expedite credit approval. In addition to and without limiting Seller's existing rights and remedies, Seller reserves the right to withhold further deliveries and/or terminate this or any other contract with Buyer if Buyer fails to comply with the terms of this or any other Agreement with Seller. Upon Seller's termination of this Agreement, all unpaid amounts Buyer owes Seller shall become immediately due and payable.

## **9. Buyer's Agreement to Defend**

Buyer agrees to defend, protect, and save Seller harmless against all suits at law or in equity and from all costs of such suits, reasonable legal fees, expenses, damages, claims, and demands arising out of or awarded in connection with any goods: (a) sold or supplied to Buyer by Seller that are not maintained and operated in accordance with Seller's recommended procedures, or (b) sold or supplied to Buyer by Seller to meet Buyer's specifications, requirements, or instructions.

## **10. Notice of Accident or Malfunction**

Buyer shall notify Seller promptly and in any event within thirty (30) days of any accident or alleged malfunction involving goods manufactured or sold by Seller. Buyer agrees to protect, defend, and save Seller harmless (as provided in paragraph 8), in the event that Buyer fails to give such notice to Seller and to so cooperate. Buyer agrees to provide reasonable support and cooperation to the Seller in the investigation of any accident or alleged malfunction of involving goods manufactured or sold by Seller.

## **11. Warranty**

Except as otherwise provided by written agreement, Seller warrants for a period of five (5) years from the date of shipment that the goods supplied to Buyer shall be of good materials and workmanship. Seller further warrants for a period of five (5) years that the goods purchased by Buyer, when properly installed, used, and maintained, will be free from defects in workmanship and materials and will conform to the published specifications supplied by Seller. Seller makes no warranty with respect to the following: (a) materials not manufactured by Seller, the use of which is suggested by Seller's general recommendations, application or installation procedures, or otherwise; (b) goods sold by Seller to Buyer for other than resale; and (c) all display items sold by Seller to Buyer. THE FOREGOING WARRANTIES ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR WARRANTIES ARISING OUT OF COURSE OF DEALING OR CUSTOM OR TRADE. SELLER DOES NOT ASSUME, NOR AUTHORIZE ANY REPRESENTATIVE OR OTHER PERSON TO ASSUME FOR IT, ANY OBLIGATION OR LIABILITY OTHER THAN AS EXPRESSLY SET FORTH HEREIN. Buyer is solely responsible to assure products are stored and placed in climate controlled location to limit product damage that can be cause through excessive temperature and humidity changes.

## **12. Limitation of Remedies**

Seller's obligations under the above warranties (contained in Section 10) are conditioned upon Seller actually receiving notice from Buyer of the alleged defect within five (5) years from date of shipment by Seller and the allegedly defective goods revealing an actual defect upon examination by Seller. Seller shall not be liable for any labor or other expenses incurred by Buyer in the removal, repair, or replacement of the goods or any component part claimed to be defective, nor shall Seller be liable for any expenses incurred by the Buyer in order to remedy any defect. Seller shall not be liable for any consequential, special, or contingent damages or expenses, arising directly or indirectly from any defect in the goods, or from Buyers use or inability to use such goods. The discharge of Seller's warranty obligation hereunder shall constitute fulfillment of all liabilities of Seller to Buyer, whether based on contract, negligence, or otherwise. The remedies set forth herein shall be the exclusive remedies available to the Buyer and in lieu of all other remedies, and the liability of Seller, whether in contract, in tort, warranty or otherwise, shall not exceed the price of the goods sold, supplied, or furnished by Seller. Any suit or action arising out of or relating to this Agreement, or the breach thereof, must be commenced within one (1) year after the cause of action has accrued. The foregoing shall not limit the time within which any suit or action must be brought to collect an amount agreed to be paid by Buyer or to enforce a judgment or to collect any amount awarded to Seller. The sole purpose of the stipulated exclusive remedy shall be to provide Buyer with a credit or replacement for, or repair of, defective parts in the manner provided herein. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing to credit Buyer's account, repair, or replace the defective part(s) in the manner prescribed herein.

## **13. Shortages**

Buyer must make claim for credit due to shortage within ten (10) days of the date of the shipment receiving date. Any shortage claims not made within this period is conclusively deemed waived by Buyer.

#### **14. Returns**

Buyer must receive, at the Seller's sole discretion, a Returned Materials Authorization (RMA) prior to returning any goods to Seller. Buyer must request an RMA within thirty (30) days of the date of the shipment by Seller in order to be considered. Seller will not issue an RMA for special order, non-stock, obsolete or made-to-measure goods. All goods returned to Seller must be in the original packaging and in resalable condition and must pass inspection before any credit is issued by Seller. It should be noted that products offered for sale, by the Seller, are manufactured to order – so authorization for returns are extremely limited.

#### **15. Handling Charges for Returns**

Buyer is subject to a handling charge of no less than twenty dollars (\$20.00) and no more than twenty percent (20%) of the sales price of the returned goods. Defective goods returned by Buyer to Seller, as verified by inspection, are not subject to a return handling charge.

#### **16. Damages**

Seller is not liable for any damages to goods sustained during shipment. Buyer is responsible for filing any damage claims with freight carriers and is subject to the rules of the freight carriers regarding the timing and processing of claims. IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES, ARISING FROM ANY SOURCE, REGARDLESS OF THE NATURE OF THE CLAIM, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. Reporting of shipment damages to Seller is to be done no later than 10 days after receiving date. If product is to be stored for period longer than 10 days, it is the responsibility of the Buyer to arrange for opening of cartons for closer inspection of product so shipment damage report can be provided to Seller within 10 day period.

#### **17. Defaults or Delays**

Seller shall not be liable for any default or delay in the production or delivery of all or any goods resulting either directly or indirectly from (a) accidents to, breakdowns, or mechanical failure of Seller's plant, machinery, or equipment; strikes or other labor troubles; labor shortages; fire; flood; wars; acts of the public enemy, acts of God; delays of suppliers; delays in transportation or lack of transportation facilities; embargos; shortages of, or reductions in energy sources; priorities, allocations, limitations, restrictions, or other acts required or requested by Federal, state, or local governments, or any subdivision, bureau or agency thereof; or (b) any cause beyond the control of Seller.

#### **18. Governing Law**

Both Buyer and Seller execute all orders with reference to the laws of the Commonwealth of Pennsylvania and the rights of all parties and the construction and effort of every provision of this Agreement shall be subject to and construed according to the laws of the Commonwealth of Pennsylvania, without giving effect to any conflicts of laws principles that would obtain a different result.

#### **19. Binding Effect**

The provisions of any order shall bind and inure to the benefits of Seller and Buyer and their respective successors and permitted assigns. However, neither this Agreement, nor any part thereof or right thereunder, may be assigned by Buyer without the prior written consent of Seller.

**20. Waiver**

The right of either party to require strict performance by the other party of any or all terms and conditions of this Agreement shall in no way be affected or impaired by prior waiver, forbearance, or course of dealing.

**21. Interpretation**

Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement should be prohibited or invalid under appropriate law, that provision will be deemed deleted and the remaining provisions of the Agreement will remain in full force and effect. The subject headings of the sections of this Agreement are included for the purpose of convenience only and will not affect construction or interpretation of any of its provisions.