



TERMS and CONDITIONS of SALE

1. AGREEMENT. The sale of furniture (“Goods”) by Appalachian University Systems, dba Smarter Furnishings (“AUS”), or any of its affiliates (“Seller”) to a customer (“Buyer”) is subject to these Terms and Conditions of Sale (these “Terms and Conditions”), which, together with any sales quotation (a “Quote”) delivered by Seller and accepted by Buyer, which is incorporated herein by reference, constitutes the entire agreement between the Buyer and Seller regarding the purchase and sale of the subject Goods (altogether, this “Agreement”). This Agreement is effective upon Buyer’s valid acceptance of a Quote, including payment of any required down payment, which thereby shall create an order for the Goods (an “Order”). For clarity, each Order shall be governed by a separate Agreement. Unless expressly provided in a writing that is signed by both Seller and Buyer, no term or condition other than as provided in this Agreement shall apply to a purchase and sale of Goods between the parties, including without limitation any oral or written statement, term or condition made or proposed by either party, whether before or after the effective time of this Agreement.

2. PRICING. Prices, including associated charges, costs, and fees, for Goods that are offered for sale by Seller shall be as set forth in Seller’s Quote. All prices are stated in United States Dollars.

3. PAYMENTS and SECURITY INTEREST.

(a) ***Terms of Payment.*** Unless otherwise provided in a Quote, a down payment of 50% of the total price is due at the time of Buyer’s valid acceptance of a Quote, and the balance of all amounts due in connection with the Order shall be due within thirty (30) calendar days after final delivery and/or assembly/installation, as applicable. All payments are due by Buyer in accordance with this Agreement, without regard to the receipt by Buyer, or the timing of receipt by Buyer, of Seller’s invoice(s).

(b) ***Additional Delivery/Assembly/Installation Charges.*** Additionally, in the case of (i) any materially incorrect and/or incomplete information provided by Buyer or its agents affecting the delivery and/or installation, as applicable, of the Goods; (ii) any modification, alteration or change to an Installation Plan, as described in Section 8, and/or (iii) changes by Buyer to delivery and/or installation timeframes, circumstances or conditions, Seller may impose and Buyer agrees to pay additional charge(s) equal to 115% of all related losses, costs (including without limitation internal labor costs), and expenses incurred by Seller. Examples of conditions or circumstances where the foregoing sentence may apply, without otherwise limiting the scope or application of the foregoing sentence, include: Buyer’s delay of delivery/installation timeframes; misinformation or omitted information regarding site conditions (including receiving, storage, and staging areas) for delivery/installation; and misinformation or omitted information regarding access to delivery/installation locations. Seller shall notify Buyer as soon as reasonably practicable of any additional charges imposed by Seller pursuant to this paragraph by delivery of an invoice therefor, and Buyer agrees to pay such invoice(s) within ten (10) calendar days of receipt of each such invoice.

(c) ***Late Fees.*** In addition to all other amounts Buyer may under this Agreement, Buyer shall owe and agrees to pay to Seller late fees on all past-due amounts, including previously accumulated and unpaid late fees, at the greater of: (i) one percent (1.0%) per month or (ii) the highest rate permitted by law. Buyer further shall owe and agrees to pay to Seller all reasonable costs, including without limitation attorneys’ fees, associated with Seller’s collection of amounts due under this Agreement.

(d) **Method of Payment.** All amounts due to Seller under this Agreement shall be payable in United States Dollars by check drawn on a domestic (United States) financial institution, payable to the name of the Seller, and timely remitted to Seller at 150 Commercial Court, Alabaster, AL 35007. If instructed by Seller in writing, Seller also may accept payment of amounts due to Seller under this Agreement by one or more forms of electronic payment. Payments due to Seller pursuant to this Agreement are considered made when good funds for the full amount(s) then due are received by Seller.

(e) **Security Interest.** Without in any way limiting the effect of Section 6 hereof, Buyer and Seller agree that Seller shall have, and Buyer hereby grants to Seller, a security interest in all Goods delivered and/or installed until full payment has been made by Buyer to Seller of all amounts owed under this Agreement in association with the Order that includes the particular Goods. Seller, in its discretion, may act to perfect the foregoing security interest with respect to any Goods, and in connection therewith, Buyer agrees to cooperate and execute any instruments deemed reasonably necessary or appropriate by Seller.

4. CANCELLATION OR MODIFICATION OF ORDERS. Orders may not be cancelled or modified by Buyer, in whole or in part, without Seller's express written consent, which shall be in Seller's sole and absolute discretion, and which may be conditioned upon Buyer's payment of a cancellation/modification charge, which charge shall be determined by Seller, considering, without limitation, estimated costs and expenses associated with relevant materials, labor, engineering, production, logistics, warehousing, and restocking, as well as lost profits. Buyer expressly understands and agrees that Seller is not obligated to take into account any liquidation or resell value associated with the relevant Goods in determining any cancellation/modification charge under this Section 4 and that Seller typically will not consent to cancellation or modification of any Order for special or custom Goods.

5. TITLE. Subject to Buyer's full and timely payment to Seller of all amounts owed under this Agreement for an Order, title to the Goods that are the subject of an Order shall pass Buyer at the time the Goods are delivered to Buyer (or according to Buyer's instruction) or, in the case of Goods to be installed by Seller, upon completion of the installation.

6. RISK OF LOSS. Buyer assumes full risk of loss and/or damage to Goods upon delivery of the Goods to Buyer (or according to Buyer's instruction) or, in the case of Goods to be installed by Seller, upon completion of the installation.

7. DELIVERY. Unless otherwise agreed in writing by the parties, Seller reserves the right to select the mode of transport and the carrier. Neither Buyer nor any consignee shall have the right to direct any shipment of Goods to any destination other than that specified in the bill of lading without Seller's written consent.

8. INSTALLATIONS. In the case of Goods to be assembled and/or installed by Seller, Buyer represents and warrants that the location and site where the Goods will be delivered, assembled, and installed shall be in a safe condition and ready to receive the delivery and installation of the Goods according to the delivery and installation schedule set forth in the Quote and information regarding installation site conditions and readiness provided to Seller by Buyer or Buyer's agents ("Installation Plan"). Buyer understands and agrees that the Installation Plan, including without limitation the number of working days required to complete an installation, may be modified, altered or changed based on actual circumstances and conditions at the installation site differing from the Installation Plan and, in such cases, additional charges may apply, as described in Section 3 above.

Buyer further understands and agrees that installation timeframes will be extended for each full and partial working day that Seller is denied or otherwise reasonably unable to access the installation site or that is not suitable for the assembly/installation of Goods, in the reasonable opinion of Seller, due to reasons not caused by Seller, including, but not limited to, circumstances or conditions such as the following: (i) any delay, disruption or interference unloading and delivering the Goods, including being denied access to unloading docks or bays, elevators and hoisting equipment; (ii) any delay, disruption or interference with the proper and timely availability of staging areas for storage and/or assembly of the Goods; (iii) any delay, disruption or interference with the completion of work preceding Seller's assembly/installation of the Goods, including without limitation ceiling, wall and floor finishes; (iv) any delay, disruption or interference caused by other tradesmen or materialmen occupying or storing fixtures and/or materials in areas scheduled for assembly or installation of the Goods; and (v) any delay, disruption or interference caused by the lack of a clean and safe site, including keeping passageways, elevators, stairways and other general walkways free of waste materials, packaging materials, obstacles, debris and tripping hazards.

9. BUYER'S INSPECTION. Within two (2) business days of completion of the assembly and/or installation of any Goods and within ten (10) calendar days of the delivery of any Goods that are not to be assembled or installed by Seller, Buyer agrees to and shall inspect the Goods for any damages, defects or shortages. Buyer agrees to notify Seller in writing should it discover any damages, defects, or shortages during the foregoing inspection timeframes, and to deliver any such notice(s) to Seller immediately, but in any event not later than one (1) calendar day after discovery of the damage, defect and/or shortage.

In the case of any alleged damage, defect and/or shortage timely notified to Seller, Buyer agrees to cooperate in providing Seller photographs and other information Seller may reasonably request and in connection with any claim Seller may make against the applicable carrier. Seller shall have ten (10) business days to investigate the alleged damage, defect, and/or shortage, after the later of Seller's timely receipt of notice from Buyer or Seller's receipt of all photographs and other information reasonably requested from Buyer. If Seller, in its reasonable opinion, agrees (i) that damage(s) existed at the time of delivery or completion of assembly/installation, as applicable, Seller will address the damaged Goods through prompt repair and/or replacement, in its discretion; (ii) that defect(s) exist, the applicable warranty provisions of Section 10 shall apply; and/or (iii) that a shortage existed at the time of delivery or completion of assembly/installation, as applicable, Seller will address the shortage through prompt delivery (and, if applicable, assembly and installation) of the missing Goods or missing parts/components.

10. WARRANTIES.

(a) ***Goods Manufactured by Seller.*** With respect to Goods manufactured by or on behalf of Seller, Seller makes only the limited, conditional warranties as set forth below under the (unnumbered) heading "General Limited Warranty" and no other warranties, express or implied are made to Buyer by Seller or any of its affiliates or manufacturers.

(b) ***Goods Manufactured by Others.*** With respect to any Goods not manufactured by or on behalf of Seller, as in the case of Goods purchased by Seller for re-sale from a third-party manufacturer (not under contract with Seller for the manufacture of such goods) or from a third-party dealer, Seller does not make any warranty and assumes no warranty liability for such Goods, but instead Buyer shall have only such warranties as may be made available by the respective manufacturer and/or dealer.

11. CREDIT APPROVAL. Processing of all Orders and shipments of all Goods to be made hereunder shall at all times be subject to the approval of Seller's credit department. Seller may invoice Buyer for each

separate delivery of Goods without regard to any other delivery or whether a particular delivery is only part of an Order. If Buyer is in default under any agreement with Seller, or if, in Seller's sole judgment, the financial responsibility of Buyer is unsatisfactory or is reasonably possible to become jeopardized, then Seller may at its option, without liability and without prejudice to any of its other remedies (i) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance or (ii) otherwise terminate any whole or partial Order.

12. FORCE MAJEURE. Seller shall not be liable for any failure to perform or delays in performance caused by acts of God; war (declared or undeclared), riot or act of terrorism; fire, explosions or floods; strikes, work stoppages, slow-downs, or other labor difficulties; shortage of vehicles, fuel, power, material or labor; embargo or delay in transportation; accidents; compliance with any order or request by a government agency or official thereof; or any other event or contingency beyond its reasonable control. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Seller to perform. Seller, may, during any period of shortage due to any of the above contingencies, allocate its available supply of materials, labor, and goods among itself and its customers in such manner as Seller, in its reasonable judgment, shall determine.

13. TERMINATION. In addition to Seller's rights to earlier terminate this Agreement otherwise provided herein, this Agreement shall automatically terminate as to each Order upon the completed satisfaction of both Seller's applicable delivery, assembly and installation obligations and Buyer's payment obligations, except that Sections 1, 10, and 14 through 19 shall survive any such termination.

14. NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES. UNLESS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

15. INTELLECTUAL PROPERTY. The parties acknowledge and agree that each party retains its respective ownership of its intellectual property rights and that nothing in this Agreement creates or shall give rise to any license, assignment or transfer of such rights. The parties further agree not to take action that would interfere with the other party's intellectual property rights.

16. NOTICES. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") must be in writing and addressed to the Party at its respective address set forth in the Quote (or to such other address that the receiving Party may designate from time to time in accordance with this Section). A Notice is effective only when received by the receiving Party and provided that the Notice complies with this Agreement.

17. DISPUTE RESOLUTION.

(a) ***Attempted Good Faith Resolution.*** Any dispute, controversy or claim arising out of or relating to this Agreement (each, a "Dispute") shall be submitted for negotiation and resolution to the Chief Executive Officer of Seller or his designee and to the chief executive officer of Buyer or his/her designee by delivery of written Notice by the party initiating the Dispute (each, a "Dispute Notice"). The parties agree to work in good faith to resolve the Dispute; provided that, if the parties are unable to resolve any Dispute within

30 days after delivery of the applicable Dispute Notice or such longer period as may be agreed in writing by the parties, either party may file suit in accordance with the provisions of this Section 17.

(b) **Choice of Forum.** Each party irrevocably and unconditionally agrees that it shall not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, including contract, equity, tort, fraud and statutory claims, in any forum other than District Court for the Northern District of Alabama or the courts of the State of Alabama sitting in Shelby County, Alabama. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and does waive any defense of inconvenient forum to the maintenance of any action or proceeding so brought. Each party agrees that service of summons and complaint or any other process that might be served in any action or proceeding may be made on such party by sending or delivering a copy of the process to the party to be served at the address of the party and in the manner provided in this Agreement for giving of notices, in addition to any other manner permitted by law. The parties agree that a final judgment in any action so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law.

(c) **WAIVER OF JURY TRIAL.** EACH PARTY AGREES TO IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(d) **Equitable Remedies.** Each party acknowledges and agrees that a breach or threatened breach by such party of any obligation under Section 15 would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy, and in the event of a breach or a threatened breach by such party of any such obligations, the other party shall, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security.

(e) **Remedies Cumulative.** The rights and remedies available to each respective party relative to this Agreement shall be cumulative.

(f) **Time Bar on Bringing Actions Against Seller.** Notwithstanding any statute of limitations or of repose that may otherwise apply, and except with respect to Seller's obligations, if any, under Section 10, Buyer unconditionally agrees that it shall not bring any claim or action against Seller arising from or related to this Agreement after one year from the date that Goods are finally delivered and/or assembled/installed, as applicable, pursuant to an Order.

18. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Alabama, without regard to its principles of conflicts of law.

19. MISCELLANEOUS.

(a) **Successors and Assignment.** This Agreement is binding on and inures to the benefit of the parties and their respective successors and permitted assigns, provided that this Agreement, including any Order, may not be assigned in whole or in part by Buyer without the express written consent of Seller.

(b) **Waiver.** No waiver by a party of obligation of the other party shall be effective unless in writing and signed by the party affected thereby. No such waiver shall be construed as a continuing waiver of the same obligation or as a waiver of any other obligation under this Agreement.

(c) **Headings.** Headings contained herein are for reference only and shall not be considered as substantive parts of this Agreement.

(d) **Counterparts.** This Agreement may be executed in counterparts. A signed copy of this Agreement delivered by means of electronic transmission permitted under this Agreement is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(e) **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable as a matter of law, such invalidity, illegality or unenforceability does not affect the validity and enforceability of the remainder of this Agreement.

(f) **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, confers on any person, other than the respective parties, their successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever.

General Limited Warranty

With respect to Goods manufactured by or under a manufacturing contract with Appalachian University Systems, dba Smarter Furnishings, or one of its affiliates (“Seller”), Seller warrants that such Goods (the “Covered Goods”), when sold, are new and have a clear title (exclusive of any security interest of Seller) and beginning at the time of delivery or, if installed by Seller, at the time of installation by Seller, are free of defects in materials and workmanship under normal use and service, according to the respective Category and during the applicable Coverage Period identified in the chart below, and subject to the limitations, exclusions, disclaimers and remedies contained in this General Limited Warranty.

During the applicable Coverage Period, Seller will repair or replace, at its sole discretion and free of charge, any covered defect. Such repair or replacement is the sole remedy provided by this General Limited Warranty. Any item repaired or replaced under this General Limited Warranty will itself be warrantied only for the remainder of the Coverage Period(s), if any, applicable to the originally purchased Good.

Other Limitations, Exclusions, & Disclaimers

This General Limited Warranty shall not apply to, and such occurrence or circumstances shall not be considered a defect: (1) any damage or failure due to misuse, mistreatment, neglect, alteration, abuse, or accident; (2) normal wear and tear, including without limitation compression and loss of shape of filling materials and surface scratches, dents and dings that occur with normal use; (3) any damage or failure which results from improper use, maintenance, cleaning or care; (4) any damage or failure related to sun exposure; (5) any damage occurring during shipping, handling, transportation or delivery; (6) any damage or failure caused by repairs or attempted repairs not made or authorized by or on behalf of Seller; and (7) any damage or failure caused by incomplete or improper assembly or installation.

THE COVERED GOODS ARE SOLD ONLY WITH SUCH WARRANTY AS IS EXPRESSLY PROVIDED IN THIS GENERAL LIMITED WARRANTY, AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE MADE. SELLER EXPRESSLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS GENERAL LIMITED WARRANTY DOES NOT COVER INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, AND SELLER EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS GENERAL LIMITED WARRANTY OR ANY BREACH OF THIS GENERAL LIMITED WARRANTY. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT FULLY APPLY. THIS WARRANTY GIVES YOU SPECIFIC RIGHTS, AND YOU MAY HAVE OTHER LEGAL RIGHTS WHICH VARY BY STATE.

Case Goods & Tables

Category	Coverage Period	Additional Exclusions
Wood/Laminate Components	25 years	Variations in raw materials, grain, color, texture, markings, and distressing
Electrical and Mechanical Components	1 year	
Metal/Steel Components	25 years	Variations in raw materials, color, texture, veins, and voids

Upholstered Furniture

Category	Coverage Period	Additional Exclusions
Frames	12 years	Decorative wood trim 5 years
Springs	5 years	
Fabrics	1 year	Shrinking, pilling, fading, and heavy soiling. Application of stain protectors voids the warranty. COM fabrics TBD with customer
Seat Cushion Cores	3 years	Compression of down material and occasional loss of feathers is normal. Softening and compression of foam is normal.
Mattresses	5 years	
Sleeper Mechanical Mechanisms	3 years	
Manual Motion Mechanisms	3 years	
Power Motors and Motion Components	1 year on motors and electrical components	
Leather	1 year	Variations in color, grain, texture, healed scars, and brands