

MARXMODA TERMS AND CONDITIONS OF SALE:

_____ initials of acceptance

1) **PROPOSALS AND ORDERS:**

- a) **AGREEMENT:** These Terms and Conditions of Sale (“Terms and Conditions”), together with the proposal referencing these Terms and Conditions, constitute the entire “Agreement.” All prices quoted. Prices good for 30 days after proposal date.
- b) **OFFER AND ACCEPTANCE:** All orders for the purchase of goods require a proposal prepared by MarxModa (“Seller”) which has been approved and signed by an authorized signatory of Buyer. All orders for drop shipment, delivery, and/or installation services require a proposal prepared by Seller which has been approved and signed by an authorized signatory of Buyer. Seller’s proposal shall constitute an offer and Buyer’s approval shall constitute acceptance of Seller’s offer. In the event that Buyer submits a purchase order, Seller’s proposal shall constitute a counteroffer and Buyer’s approval of the proposal shall constitute acceptance of that counteroffer. In any event, these Terms and Conditions shall control and any terms and conditions submitted by Buyer are expressly rejected.
- c) **MODIFICATION/CHANGES/CANCELLATIONS:** Any requested modification to an order is subject to the approval of Seller and the manufacturer or supplier of the goods ordered. Buyer shall pay all additional charges resulting from order modifications, cancellations, and changes. Express ship orders may not be changed or cancelled. All product is custom manufactured to customer specifications and therefore cannot be returned. Restocking programs are not available. Changes must be made via a revised purchase order, change order, or signed and dated revised proposal.
- d) **CREDIT APPROVAL:** All orders are subject to credit approval.
- e) **DEPOSITS:** A deposit of 50% is required on all orders greater than \$5,000.00. Orders under \$5,000.00 must be paid in full. Deposits must be received by Seller prior to the entering of any orders. No interest shall accrue against any such deposit.
- f) **SOLVENCY AND SECURITY INTEREST:** Buyer represents that Buyer is solvent. Seller retains a security interest in goods to secure payment of the price and all other indebtedness that Buyer now or in the future owes to Seller.

2) **INVOICING:**

- a) **TIMING:** Goods purchased under this Agreement will be invoiced after the goods leave the warehouse, whether by delivery or customer pickup. Drop shipments will be invoiced upon shipment from the manufacturer. Any goods being held at Buyer’s request will be invoiced in full upon Seller’s receipt of same. Delivery services will be invoiced upon arrival of the goods at the job site. Installation services will be invoiced upon completion of installation services.
- b) **PAYMENT TERMS:** Seller has the right to increase its prices at any time upon notice to Buyer to reflect any unusual or unforeseen increases in Seller’s cost. Buyer may not offset or recoup any claim against amounts due to Seller. If Buyer fails to pay any indebtedness that Buyer at any time owes to Seller, then Seller may consider Buyer’s failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell goods to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts. All invoices are due in full within thirty (30) days from the receipt of invoice. Credit card payments will be subject to a 3% processing fee. A monthly service charge of 1.5% A.P.R. will be assessed on all unpaid balances after invoice due date.
- c) **WITHHOLDING:** PAYMENT MAY BE WITHHELD ON ANY INVOICE ONLY FOR SPECIFIC MERCHANDISE NOT DELIVERED OR DAMAGED AND SUCH NOTICE OR WITHHOLDING SHALL BE IN WRITING.
- d) **FREIGHT:** Unless otherwise noted, all applicable freight and handling charges are not included in the proposal and will be invoiced as a separate line item after the Seller is invoiced by the carrier. Merchandise shipped directly from the Manufacturer to Buyer is shipped surface transportation FOB the factory with title and risk of loss passing to Buyer upon delivery to carrier by the Manufacturer. For orders delivered by Seller’s truck, title and risk of loss pass upon delivery to Buyer.
- e) **TAXES:** Unless otherwise noted, any applicable sales, use, excise, or any other taxes are not included in the proposal and will be invoiced as a separate line item added at the time of invoicing and the Buyer agrees to pay same. Buyer agrees to pay any and all applicable taxes. If Buyer possesses tax exempt status, a certificate of resale or tax exemption is to be provided prior to order placement.
- f) **DELAYS:** If Buyer is unable or unwilling to receive product at the prescribed shipping site on the mutually agreed upon delivery date, product will be deemed delivered and will be invoiced as if delivered, the furnishings will be stored until installation can be resumed, and will be considered accepted by the buyer for purposes of payment. In the event the buyer shall reserve the right to withhold 10% of the invoice amount of such shipments against the completion of the contract. Transfer and storage charges incurred shall be paid by the buyer. However, Seller shall not incur any obligation or liability to Buyer for failure to ship by any particular date.

3) **DELIVERY, INSTALLATION, AND DROP SHIPMENT:**

- a) **COMPLETION OF SERVICES:** After purchasing goods, Buyer and Seller may enter into a separate agreement for delivery, installation, or drop shipment. In the event Buyer and Seller do not enter into a separate agreement for delivery, installation, or drop shipment, the goods will be available for customer pickup. For purposes of this Agreement: (1) delivery shall be complete upon arrival of the goods to the customer’s designated site; (2) installation shall be complete upon Buyer’s completion of all installation services identified in the Agreement; and (3) drop shipment shall be complete upon arrival of the goods to the customer’s designated site.
- b) **INCURRING CHARGES:** No delivery charges shall be incurred by Buyer until after completion of delivery services. No installation charges shall be incurred by Buyer until after completion of installation services. No drop shipment charges shall be incurred by Buyer until after completion of drop shipment. Seller may require a deposit for delivery charges, installation charges, and/or drop shipment charges but Seller will refund the deposit if delivery, installation, and/or drop shipments are not completed pursuant to this Agreement.
- c) **TIMING:** When applicable, delivery and installation will be made using labor during Seller’s normal business hours of 7:00 a.m. to 4:00 p.m. Monday through Friday. Overtime delivery or installation performed at the Buyer’s request, will be subject to labor rates reflecting time and one-half for weekends and double time for weekends and Holidays. Shipping, delivery and performance dates are estimates only, and time is not of the essence. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right, but not the obligation, to determine the method of shipment and routing of the goods, unless otherwise stated in Seller’s proposal or acknowledgement.
- d) **SELLER’S INSTALLATION RESPONSIBILITIES:** If Buyer purchases installation services from Seller, then Seller will receive, inspect, stage, deliver and install Buyer’s goods. All furnishings will be left clean and in working order. Cartoning and packing materials will be removed to the Buyer’s waste disposal containers, and the premises will be left broom clean. When applicable, Seller may direct shipments directly to the job site.
- e) **BUYER’S ACCEPTANCE:** Buyer shall have an agent on the premises at the agreed upon delivery time to accept product deliveries and complete work. All merchandise shall be considered accepted after the Buyer or his agent has signed the delivery document. All claims or exceptions must be made in writing on the delivery ticket or bill of lading on the date of work completion.
- f) **DROP SHIPMENTS AND DELIVERY:** When Buyer does not order installation services, Buyer shall receive, inspect and install ordered goods. Buyer is also responsible for filing necessary freight claims in the event of damage. Buyer shall have no claims against Seller due to freight damage nor withhold payment on account thereof.
- g) **CONDITION OF JOB SITE:** Buyer’s job site shall be clean, clear of construction and free of debris prior to installation. Charges will be assessed to the Buyer for excessive handling, storage, and transportation, incurred because of site conditions, activity of other trades, or other reasons not specifically identified in the price quotations, at a standard hourly rate, or at actual charges, if labor is performed by a third party.
- h) **JOB SITE SERVICES:** Buyer shall furnish electrical current, heating, lighting, trash disposal containers, hoisting and/or elevator services, and suitable unobstructed dock space and staging areas at the job site without charge to the Seller. If Seller is required to remove or handle existing furniture, the additional cost of moving and transporting shall be billed to the Buyer on an hourly basis. Once the installation has begun, the Buyer shall assume any expense incurred by Seller due to such charges made at the Buyer’s request or for any reason beyond Seller’s control.
- i) **ELECTRICAL INSTALLATION:** A licensed electrician may be required to install electrical product including outlets, task lights, and hook-ups to base building power. If Seller determines that an electrician is required, the Buyer will be responsible for contracting and paying the electrician.

- j) **PROTECTION OF DELIVERED GOODS:** Buyer is responsible for security and safekeeping of product after delivery to Buyer's site, or into storage negotiated by Buyer if job site is not ready on mutually agreed upon delivery date, and shall assume any risk of damage or loss thereof. Unless Seller agrees otherwise in writing, Seller shall deliver the goods F.O.B. Seller's facility, except that, as described in § 4D below, risk of loss of the goods shall pass to Buyer upon identification of the goods to the Agreement between Buyer and Seller.
- 4) **ADDITIONAL TERMS:**
- a) **WARRANTIES:** Seller makes no warranties, express or implied of product sold hereunder whatsoever, including any warranty of merchantability or warranty the furniture is fit for any particular purpose. Seller will identify all manufacturers' warranties and provide to the Buyer's reasonable assistance to permit the Buyer to assert claims based upon such warranties directly to the manufacturer at Buyer's expense.
 - b) **TITLE:** Title and ownership of the goods transfers to Buyer immediately upon identification of the goods to the Agreement between Buyer and Seller.
 - c) **REVESTMENT OF TITLE:** Title and ownership of the goods sold under this Agreement shall revert in Seller if Buyer justifiably rejects the goods, justifiably refuses acceptance of the goods, justifiably revokes acceptance of the goods, or cancels the order pursuant to this Agreement.
 - d) **RISK OF LOSS:** Risk of loss to the goods transfers to Buyer immediately upon identification of the goods to the Agreement between Buyer and Seller.
 - e) **STORAGE FEE:** If Buyer orders delivery and/or installation services, and later cancels those services, then Buyer shall pay to Seller a storage fee of \$100.00/day for each day that Seller has possession of the goods.
 - f) **ACTS BEYOND REASONABLE CONTROL:** Seller shall not be liable for any delay or failure to deliver any of the entire product caused by labor disputes, strikes, acts of God, or other delays beyond the reasonable control of the Seller.
 - g) **ENTIRE AGREEMENT:** Unless otherwise agreed to in writing between Buyer and Seller, this Agreement is intended by all parties as the final expression of their agreement and supersedes all other purchase order of documents provided by the Buyer.
 - h) **RESALE:** On any resale of the goods, Buyer shall contractually limit its buyer's warranty against both Buyer and Seller to the same extent that Paragraph 4(A) above limits the Buyer's warranty.
 - i) **INDEMNITY:** Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including consequential and incidental damages and attorney fees that Seller incurs as a result of Buyer's breach of any of Buyer's obligations under these Terms of Sale or any claim resulting from Seller's interior design, project management, delivery, installation, or any other services.
 - j) **SELLER'S RIGHTS:** Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right.
 - k) **TIME FOR BRINGING ACTION:** Any action that Buyer brings against Seller for breach of these Terms of Sale or for any other claim that arises out of or relates to the goods or services must be brought within one year after the cause of action accrues.
 - l) **APPLICABLE LAW:** This agreement between Buyer and Seller shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in Michigan, that has jurisdiction over the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.
 - m) **ENTIRE AGREEMENT AMENDMENT:** Seller objects to and will not agree to any terms that are additional to or different from these terms. Terms that are printed on or contained in a purchase order or other form prepared by the Buyer which are additional to, in conflict with, or inconsistent with those herein shall be considered inapplicable and shall have no force or effect. Any change in these Terms of Sale must be by a writing signed by an authorized signatory of Seller.