

# Terms and Conditions

Wilkhahn

**1. Parties.** “We” and related terms and “WILKHAHN” refer herein to WILKHAHN, Inc. (d/b/a “Wilkhahn”), a Delaware corporation; “you” and related terms and “Purchaser” herein refer to any person or entity purchasing or offering to purchase Goods from WILKHAHN. The goods and services delivered or to be delivered by WILKHAHN to Purchaser are herein referred to as the “Goods.”

**2. Acceptance.** The terms and conditions of sale and delivery herein set forth (the “Terms and Conditions”) shall constitute the sole and exclusive agreement between WILKHAHN and Purchaser with respect to any transaction between WILKHAHN and Purchaser. Mere issuance of Purchaser’s form containing different or additional provisions shall not constitute a specific objection. An order shall not be effective until WILKHAHN shall have accepted it in writing. WILKHAHN’s acceptance of Purchaser’s order shall not constitute an acceptance of printed provisions on any form supplied by Purchaser which are different from or additional to any term hereof, unless specifically accepted in writing by an authorized officer of WILKHAHN, and such different or additional provisions are hereby expressly rejected.

**3. Orders.** A contract shall not be established except upon our written confirmation of an order. We shall be entitled to assume (a) acceptance of these Terms and Conditions (b) any additional terms and conditions set forth in our acknowledgment of order and (c) confirmation of your order, upon acceptance of the delivered goods or your compliance with our request for payment in advance or your having a letter of credit issued for our benefit. Should Purchaser require amendments to be made to its order subsequent to our confirmation of the same, no such amendment shall be effective, unless we agree to such amendment in writing; we may, at our discretion, refuse to accept all or part of any such request.

**4. Suspension and Cancellation.** Upon doubt of the Purchaser’s financial solvency or creditworthiness, we shall be entitled to suspend performing our contractual obligations. If Purchaser does not provide adequate assurance and/or adequate security to support the payment of any outstanding order within the time specified by WILKHAHN, WILKHAHN may thereupon cancel any open order and, without limiting the generality of the foregoing, shall not be obligated to deliver any of the ordered Goods and shall be entitled promptly to be indemnified and held harmless by Purchaser from and against any losses, damages, liabilities, costs and expenses incurred and suffered by it in connection with the suspension and/or cancellation of any order, (including without limitation lost profits and costs incurred for the acquisition of primary materials necessary to commence manufacture and otherwise fill the order).

**5. Prices and Delivery.** Written price quotations issued by WILKHAHN expire thirty (30) days from the date of issuance and may be withdrawn by written notice at any time during this period, unless the relevant offer shall have been accepted in writing by Purchaser. Unless specified otherwise by WILKHAHN in writing, prices are (a) F.O.B. (as defined by New York law) WILKHAHN’s warehouse, if the origin of the shipment is in the United States of America, or (b) F.O.B. (Incoterms 2010) WILKHAHN’s factory, if the origin of the shipment is outside the United States of America. Upon Purchaser’s request, WILKHAHN will identify the point of origin. Whenever possible, WILKHAHN will ship in accordance with Purchaser’s instructions within the contiguous United States of America. If a carrier and/or a method of shipment and/or routing are not specified, WILKHAHN will exercise its professional judgment in selecting a carrier, the method of shipment and/or routing, as the case may be, in order to deliver the Goods to Purchaser’s address indicated by Purchaser (the “Purchaser’s Site”) within the contiguous United States only. Unless otherwise agree in writing, WILKHAHN will charge for freight a percentage of the price, as referenced in the relevant price quotation and/ or invoice. WILKHAHN shall not be responsible for any other costs and expenses in connection with the transportation from the point of origin to the Purchaser’s Site, including without limitation, transport insurance and charges incurred at the point of destination such as any costs of storage, unpacking, assembly, installation or any other work, services or expenses performed or incurred at Purchaser’s Site. In any case, the risk of loss and damage shall pass over to Purchaser once the Goods have been put into the possession of the carrier at the point of origin.

**6. Time for Delivery.** Any delivery dates furnished by WILKHAHN to Purchaser are estimates only and do not bind WILKHAHN to ship or deliver the Goods on the dates indicated unless specifically so stated by WILKHAHN in writing to be binding. WILKHAHN reserves the right to make partial shipments and to submit separate invoices to Purchaser for each such partial shipment. If Purchaser defaults in its obligations in regard to any partial shipment, WILKHAHN may suspend any additional shipments unless and until Purchaser cures such default and shall have such other remedies set forth herein. Binding delivery dates are subject to change for any cause which interferes with WILKHAHN’s production, supply, transportation or installation of the Goods (whether or not caused or contributed to by WILKHAHN’s negligence or fault), including, but not limited to, any event of force majeure. If WILKHAHN fails to comply with designated, binding or other delivery dates, makes partial shipments, or fails to perform its obligations in accordance with any time limits, WILKHAHN shall not incur any liability whatsoever for any direct, indirect, consequential, incidental, special, exemplary or punitive damages (including claims for loss of profits or other claims) which may be incurred by Purchaser or any other person or entity. Title to the Goods sold hereunder shall pass from WILKHAHN to Purchaser at the time when the risk of loss and damages passes in accordance with the applicable shipping term as described in the last sentence of Section 5.

**7. Force Majeure.** In the event of delay due to war, riots, labor or industrial disputes, energy or other raw material shortages, transportation problems, accidents, administrative measures or disruptions in WILKHAHN’s or one his affiliates or direct or indirect supplier’s businesses or some other cause beyond WILKHAHN’s control, the time for any delivery shall be extended accordingly and WILKHAHN shall not incur any liability whatsoever for any direct, indirect, consequential, incidental, special, exemplary or punitive damages (including claims for loss of profits or Purchaser’s or any other person’s or entity’s claims arising out of or relating to changes in delivery dates, partial shipments or untimely performance) which may be incurred by Purchaser or any other person or entity. Upon the occurrence of a force majeure event, WILKHAHN may, at its sole discretion, elect, by a written notice to Purchaser, to cancel the order and determine not to ship some or all of the Goods.

**8. Storage.** Should Purchaser fail to accept Goods upon delivery by WILKHAHN on or within ten (10) business days of the delivery date set forth in the order acknowledgment or as otherwise agreed in writing, we shall be entitled to make arrangements for the storage of the Goods and be entitled to charge the Purchaser for the Goods as well as for storage costs plus a handling and administration charge of \$1,000.

**9. Taxes.** Except as otherwise provided by law, Purchaser shall be solely responsible to pay all income, sales, excise, or other taxes due in connection with any sale hereunder. If Purchaser claims an exemption from any tax, Purchaser shall submit the relevant exception certificate to WILKHAHN with the written order acknowledgement.

**10. Specifications.** The specifications contained in our order confirmation shall be authoritative in determining our obligations regarding the quality of Goods. Insofar as the order specifications make reference to specifications contained in brochures or other printed or other materials (e.g. on our website), such specifications shall be deemed merely to be examples, and shall not binding upon us. In the case of natural material such as wood or leather, Purchaser accepts that all specifications, representations or samples can only be understood to be exemplary depictions due to the natural variations of such materials.

**11. Inspection.** Purchaser shall diligently examine the delivered Goods and shall notify WILKHAHN of any non-conformance with any of the specifications without delay at the latest within one (1) business day of Purchaser’s receipt of the Goods.

**12. Limited Warranty.** WILKHAHN warrants that the Goods shall substantially conform to the design specifications established by WILKHAHN in regard to the Goods under normal use and service, in line with generally accepted industry standards and the relevant state of the art, unless otherwise agreed by WILKHAHN and Purchaser. If any failure to conform substantially to any specification is reported to WILKHAHN in writing within five (5) years after the date of receipt of the Goods by Purchaser and to the extent that any substantial non-conformance cannot be detected by a reasonable and customary inspection, such report shall be made within five (5) years after the receipt of the Goods by Purchaser. Purchaser will not be entitled to a warranty claim merely on the grounds of non-conformance of the Goods’ optical characteristic; Purchase must also demonstrate that the Goods’ functionality was compromised. WILKHAHN, upon being satisfied of the existence of such non-conformity, shall correct the same, at its sole election, either by repairing the non-conforming Goods or by delivering to Purchaser replacement of such number or quantity of the Goods as shall have a non-conformity within a reasonable period of time (which may exceed sixty (60) days). Purchaser shall separate non-conforming Goods from conforming Goods, and Purchaser shall be deemed to have accepted the conforming Goods. Purchaser shall not repair or have an unauthorized third party repair any non-conformity without WILKHAHN’s prior written consent. If WILKHAHN is unable or unwilling to correct such non-conformity by repairing or delivering replacement

# Terms and Conditions

Wilkhahn

Goods, whether due to the nature of such non-conformity, the use made by the Purchaser of the Goods, or for any other reason, WILKHAHN shall, at its sole election, reduce the purchase price accordingly or grant the Purchaser a credit against future purchases. WILKHAHN shall in no event be required to refund any part of the purchase price. The warranty set forth in this paragraph shall apply not only to the Goods but also to any replacement Goods. This warranty does not cover damage or defects caused by or resulting from (i) unauthorized repairs, alterations or modifications to the Goods, (ii) negligence, accident, abuse, misuse, improper, unsuitable or abnormal usage or storage of the Goods, (iii) failure to conform strictly to WILKHAHN's specifications and instructions in connection with the use, storage or repair of the Goods, (iv) defects due to specifications supplied by Purchaser, (v) exposure of the Goods to unreasonable temperatures or other environmental conditions, or (vi) storage and usage past specified product life. Ordinary wear and tear shall not be considered a defect in workmanship or materials. The foregoing shall be Purchaser's sole and exclusive remedies, and the liability of WILKHAHN hereunder is expressly limited to repair or replacement of nonconforming Goods or the grant of a credit, as the case may be. WILKHAHN SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSON FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE PAID BY PURCHASER AND WILKHAHN SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSONS, WHETHER BY WAY OF INDEMNIFICATION OR CONTRIBUTION OR OTHERWISE, FOR SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM DEFECTIVE WORKMANSHIP OR MATERIALS OR DESIGN, BREACH OF WARRANTY, DELAYS IN DELIVERY OR FROM ANY OTHER CAUSE WHATSOEVER, INCLUDING THE NEGLIGENCE OF WILKHAHN OR ANY ENTITIES CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH WILKHAHN. THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, AND THE WARRANTIES OR MERCHANTABILITY OR FITNESS FOR PURPOSE OR OTHERWISE, EXPRESS OR IMPLIED, ARE EXCLUDED. In the event of delivery delays for which WILKHAHN shall have agreed to be liable, WILKHAHN shall not be liable in any event for more than any amount of liquidated damages expressly agreed by WILKHAHN in writing. Any claim by Purchaser shall be made in writing, shall describe all relevant facts in sufficient detail (including all relevant documents) and shall not be delivered to Purchaser later than thirty (30) days after the relevant event resulting in the alleged damage. No Goods shall be returned without WILKHAHN's prior written consent. Goods which WILKHAHN consents to have returned shall be shipped by Purchaser at Purchaser's risk and expense, freight prepaid, to WILKHAHN's manufacturing plant or such other location as WILKHAHN may designate. WILKHAHN's warranty obligation is limited to the original Purchaser of Goods. High wear parts such as fabrics and other covering materials, metal framed stacking chairs and wood veneers are not covered by this warranty. WILKHAHN does not warrant matching of color, grain or texture of wood or leather because of natural color variations which cannot be controlled. Damage incurred in transit from the point of origin to the Purchaser's Site or occasioned by accident, negligence, abuse or alteration is not included in this warranty. WILKHAHN does not warrant the appearance, behavior or durability of Purchaser's own material or Purchaser's own leather applied to WILKHAHN Goods. Upholstery materials are not warranted against fading or irregularity in register. WILKHAHN will pass through other manufacturer's warranties where applicable and to the extent possible. WILKHAHN warranty applies only to WILKHAHN Goods. Warranty does not apply to attachments to WILKHAHN Goods. Any warranty expressed or implied is invalid when WILKHAHN components are used in conjunction with any components not manufactured or sold by WILKHAHN. Goods not installed or used in accordance with WILKHAHN installation and/or application guidelines are not included in this warranty. The warranty against defects only encompasses defects existing at the time of delivery and defects in Goods manufactured by us. The warranty does not cover material supplied by the Purchaser. We expressly point out that the surfaces of the goods are subject to wear and tear by reason of ordinary usage. We shall be entitled to charge the Purchaser for the costs incurred in examining the goods in the event of an unjustified claim of defects.

**13. Changes and Cancellation.** Orders may not be changed or cancelled, in whole or part, without prior written consent by WILKHAHN, which consent WILKHAHN may or may not grant at its sole discretion. Changes may effect delivery dates. WILKHAHN reserves its right to charge Purchaser for expenses incurred as a result of changes or any cancellation requested by Purchaser.

**14. Terms of Payment.** Unless otherwise agreed by WILKHAHN in writing, Purchaser shall make a non-refundable deposit equal to fifty percent (50%) of the total price, plus all fees, charges and expenses payable by Purchaser, including with respect to transportation and installation, by wire transfer in immediately available funds (the "Deposit") to WILKHAHN's following bank account:

HSBC Bank USA N.A.

Acc# 04888 3085

ABA# 02100 1088

Swift Code# MRMDUS33

WILKHAHN shall not be required to commence any work with respect to any order until the full amount of the Deposit shall have been received by WILKHAHN. Purchaser acknowledges and agrees that the Goods are specially manufactured for Purchaser and that the Deposit shall be non-refundable in all cases. The remaining fifty percent (50%) of the purchase price and all remaining fees, charges and expenses relating to any order shall be paid by wire transfer in immediately available funds to WILKHAHN's bank account as herein above designated upon delivery of the invoice to Purchaser. Invoices will ordinarily be issued to Purchaser upon the shipment of the Good or, if shipped from outside of the United States of America, within five (5) days after entering the United States of America. Purchaser is not entitled to make any deductions or set-offs from payments due to WILKHAHN. Upon default on the part of Purchaser to pay on time, Purchaser shall pay to WILKHAHN, subject to any further damages we may incur, a late charge of \$1,000 and interest on all outstanding sums at the rate of 5% above the prime lending rate (or, if lower, the highest legally permissible rate). All payments should be effected such that payment is credited on the date that payment shall be due. All banking and other charges in connection with any payment shall be paid by Purchaser.

**15. Copyrights and Designs.** We shall retain the ownership and copyright of all documentation delivered or shared with Purchaser, including but not limited to all illustrations, drawings, sketches and collections, which are to be promptly returned to us upon request and all copies which cannot be returned shall be destroyed and, upon request, Purchaser shall certify such destruction. We shall also have all rights relating to forms, prototypes and technical solutions relating to the Goods. Purchaser shall not be entitled to make or have made Goods by reverse engineering or otherwise using our Goods, or parts thereof, as a prototype or model. This prohibition includes the manufacture of such reverse engineered goods, whether independently or with or through an agent or a third party, as well as the direct or indirect participation in the distribution of such reverse engineered goods. ANY VIOLATION OF ANY PART OF THIS SECTION SHALL BE A WILFUL VIOLATION OF COPYRIGHT LAWS which may entitle Wilkhahn to collect statutory and other damages as well as expenses, including attorneys' fees, from Purchaser.

**16. Indemnity.** Purchaser shall indemnify, defend, reimburse and hold WILKHAHN harmless from and against all costs, losses, liabilities, damages and expenses (including attorneys' fees and expenses) (collectively, a "Loss" or "Losses"), arising out of or resulting from (i) any the breach by Purchaser of any of its obligations hereunder or (ii) any actual or threatened claim, demand, action or proceeding initiated by any third party arising out of or resulting from an act or omission of Purchaser.

**17. Dispute Resolution.** These Terms and Conditions shall be governed by the laws of the State of New York, without reference to its conflicts of law principles; provided, however, that the parties hereto expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sales of Goods. Each of WILKHAHN and Purchaser hereby irrevocably consents that (i) any action, suit or other legal proceeding arising out of or relating to any transaction hereunder may be brought in any federal or state court within the County of New York, State of New York, (ii) consents to the jurisdiction of such courts in any such suit, action or proceeding, waives any objection which it may have to the laying of venue of such suit, action or legal proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum, (iii) service of process may be accomplished using any of the methods described in Section 20 hereof, (iv) any judgment may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law and (v) nothing in this Section 18 shall affect the right of WILKHAHN to serve legal process in any other manner permitted by law or affect the right of WILKHAHN to bring any suit, action or proceeding against Purchaser or its property in any court of any jurisdiction. EACH OF WILKHAHN AND PURCHASER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION HEREUNDER. In connection with any controversy hereunder, each party shall be responsible for its attorneys' fees and disbursements and all court and related costs and expenses, except that if WILKHAHN shall be the prevailing party in any such controversy WILKHAHN shall be entitled to reimbursement of attorneys' fees and disbursements and all court and related costs and expenses from Purchaser.

# Terms and Conditions

Wilkhahn

**18. Confidentiality.** Purchaser agrees that all specifications, data and other technical, financial or other non-public information furnished by WILKHAHN to Purchaser constitute the property of WILKHAHN, are furnished solely for the purpose of WILKHAHN's performance hereunder, shall be held in strict confidence by Purchaser and may not be copied, made accessible to third parties or used without WILKHAHN's prior written consent. Purchaser shall promptly return all such information and all copies thereof (in whatever format, including electronic, digital, hard copy or other medium) to WILKHAHN upon WILKHAHN's request or, if such delivery is impossible, destroy such information and certify such destruction to WILKHAHN in writing. Such request may be made at any time prior to or after delivery of any Goods. The obligations of Purchaser hereinabove set forth shall survive cancellation or completion of any order.

**19. Notices.** Any notices given hereunder shall be in writing and shall be deemed given: (i) upon delivery, if by hand; or (ii) after one (1) business day, if sent between destinations within the continental United States, or two (2) business days, if sent between the continental United States and any other jurisdiction, if sent by air courier (e.g., UPS, DHL, Airborne or Fedex). All notices to WILKHAHN hereunder shall be given to Wilkhahn Forum New York, 601 West 26th Street, Suite 820, New York, NY 10001 and the sales representative of WILKHAHN responsible for Purchaser's account, and all notices to Purchaser shall be given to such address as indicated in the relevant order acknowledgment, or at such other address (or to such other person's attention), as shall be specified by like notice by the relevant party.

**20. Definition.** Purchaser acknowledges and agrees that (i) it shall be a "merchant" within the meaning of the Uniform Commercial Code, as in effect from time to time in the State of New York (the "UCC") and (ii) any transaction between WILKHAHN and Purchaser shall be deemed to be "between merchants" within the meaning of the UCC. Purchaser further acknowledges and agrees that it has the skill and knowledge of a merchant in the Goods, particularly in that it has a legal and/or purchasing department, business personnel or other agents who are familiar with the business practices involved in that transaction contemplated hereby or otherwise equipped to handle such a transaction.

**21. Miscellaneous.** The invalidity or unenforceability of any one or more of the terms and conditions of this form shall not affect the validity or enforceability of the remaining provisions hereof. The failure or omission of WILKHAHN to insist upon strict performance of any term or condition hereof or to exercise any right hereunder shall not be deemed to be a modification of any term or condition hereof or a waiver or relinquishment of the future performance of any such term or condition, nor shall such failure or omission constitute a waiver of the right of such party to insist upon future performance by the other party of any such term or condition. This document may be amended from time to time by WILKHAHN upon notice to Purchaser, and any such amended version shall supersede any and all prior versions thereof.