

## FORMICA CORPORATION TERMS AND CONDITIONS OF SALE

**ALL SALES OF PRODUCTS BY FORMICA CORPORATION ("FORMICA") SHALL BE GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS AND ANY OTHER DOCUMENTS REFERENCED HEREIN. FORMICA REJECTS AND OBJECTS TO ANY TERMS OR CONDITIONS PUT FORWARD BY BUYER THAT ADD TO OR VARY FORMICA'S TERMS AND CONDITIONS.**

**1. FORMATION OF CONTRACT.** An order is deemed by FORMICA to be an offer to purchase, which FORMICA may accept or reject in FORMICA'S sole discretion, including, without limitation, for credit reasons. FORMICA'S acceptance of an offer to purchase is binding on FORMICA only if made by written instrument or, if not by written instrument, by shipment of the products ordered. FORMICA'S acceptance is subject to FORMICA'S TERMS AND CONDITIONS OF SALE as stated herein. FORMICA and BUYER expressly intend that these TERMS AND CONDITIONS OF SALE shall govern all purchases of goods by BUYER, and that any different or additional terms purported to be made or conditioned by BUYER, whether through the use of BUYER'S purchase order form or otherwise shall have no force or effect unless approved in a separate writing signed by an authorized officer of FORMICA. The parties expressly intend that this Section 1 govern the interpretation of their rights and responsibilities and that it shall supersede any different interpretation that would result from the application of UCC section 2-207 regarding conflicting documents or legal authority to similar effect.

**2. AUTHORITY OF FORMICA'S REPRESENTATIVES.** No agent, employee or representative of FORMICA has any authority to bind FORMICA to any representation, warranty, or promise, whether made orally or in writing, concerning the products sold hereunder, other than as specifically set forth in writing in the master purchase agreement between the BUYER and FORMICA, the Order Acknowledgement form, Order Confirmation form or other written confirmation of order document signed by FORMICA (collectively the "Contract Documents"). Unless a representation, warranty or promise made by an agent, representative or employee of FORMICA is specifically set forth in the Contract Documents, it is not the basis of the sale and shall not be enforceable against FORMICA. BUYER affirms that its purchase of products from FORMICA is based solely on the representations, warranties and promises set forth in the Contract Documents or as provided herein.

**3. COST OF DELIVERY, TAXES AND OTHER CHARGES.**

BUYER shall pay any extraordinary costs of shipment and delivery of the products and all sales, use, excise or similar taxes, or other charges, which FORMICA is required to pay, or to collect and remit, to any Government (national, state, or local) and which are imposed on, or measured by, the sale. Payment of such items shall be due on receipt of invoice.

**4. TRANSFER OF PROPERTY AND RISK OF LOSS.** Unless otherwise indicated on the face hereof, risk of loss or damage to and responsibility for products shall pass to BUYER upon delivery to carrier at shipping point. No shipment shall be diverted or re-consigned without FORMICA'S prior written consent. Unless otherwise expressly stated in the Contract Documents, FORMICA shall select means of transportation and routing. FORMICA retains title to all products sold to BUYER until FORMICA receives payment in full of all amounts due in connection with the sale thereof. BUYER grants FORMICA a purchase money security interest in all goods sold hereunder to secure payment of the purchase price.

**5. PATENTS.** FORMICA reserves the right, without liability to BUYER other than refund of any portion of the price paid, to discontinue deliveries of any product, the manufacture, sale and/or use of which in the opinion of FORMICA, would infringe any letters patent, trade mark or industrial design or other intellectual property right now or hereafter issued, registered or existing and under which FORMICA is not licensed.

**6. PRODUCT WARRANTY.** FORMICA may provide product specific written warranties, as set out in FORMICA'S sales materials and/or as annexed hereto or referenced herein. In the absence of any such specific warranty for products sold hereunder, FORMICA warrants to original BUYERS who acquire new products from FORMICA, its subsidiaries or authorized resellers, that for a period of one (1) year from the date of first sale that such products will be reasonably free of defects in materials and workmanship, and that when properly handled and fabricated, will conform to applicable specifications. This limited warranty only applies to products which are stored, handled, fabricated and installed in the manner recommend by FORMICA. **FORMICA MAKES NO WARRANTY THAT PRODUCT IS SUITABLE FOR ANY PARTICULAR PURPOSE AND MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED.**

**ALL SALES OF FENIX® BRANDED PRODUCTS BY FORMICA ARE SUBJECT TO THE LIMITED WARRANTY PUBLISHED AT [www.fenixforinteriors.info](http://www.fenixforinteriors.info) AS OF THE DATE OF SHIPMENT.**

**7. DISCLAIMER OF WARRANTIES.** THE WARRANTIES SET FORTH HEREIN OR IN FORMICA'S WARRANTY DOCUMENTS WITH RESPECT TO A PRODUCT ARE THE ONLY WARRANTIES MADE BY FORMICA IN CONNECTION WITH THE PRODUCT AND THE TRANSACTIONS CONTEMPLATED AS A RESULT OF THIS SALE. **FORMICA HEREBY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** PRODUCTS SOLD HEREUNDER ARE SOLD ONLY TO MEET THE SPECIFICATIONS SET FORTH BY FORMICA IN WRITING AND AVAILABLE AT [www.formica.com/document-library](http://www.formica.com/document-library). FORMICA'S SOLE OBLIGATION TO BUYER FOR A WARRANTY REMEDY, AT THE SOLE OPTION OF FORMICA, SHALL BE REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE PRODUCTS PURCHASED, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES.

**8. APPLICABLE CODES; USE IN COMBINATION WITH OTHER MATERIALS, COMPONENTS OR SYSTEMS.** BUYER ASSUMES ALL RISK FOR ALL CLAIMS, COSTS AND DAMAGES ARISING OUT OF OR RELATING TO ANY FAILURE

OF THE PRODUCTS TO COMPLY WITH ANY APPLICABLE CODE(S) OR INDUSTRY STANDARD(S). BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS FORMICA FROM ANY AND ALL CLAIMS, COSTS, LIABILITIES OR DAMAGES OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF OR RELATING TO ANY FAILURE OF THE PRODUCTS TO COMPLY WITH ANY APPLICABLE CODE(S) OR INDUSTRY STANDARD(S) OR FOR ANY USE OR INSTALLATION OF THE PRODUCTS IN COMBINATION WITH ANY OTHER MATERIALS, COMPONENTS OR SYSTEMS.

**9. LIMITATION OF LIABILITY.** NO CLAIM BY BUYER OF ANY KIND, INCLUDING CLAIMS FOR INDEMNIFICATION, WHETHER AS TO QUALITY OR AMOUNT OF PRODUCTS DELIVERED OR FOR NON-DELIVERY OF PRODUCTS, SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED. **IN NO EVENT SHALL FORMICA BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, RELIANCE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR COVER, OR LOSS OF PROFIT, REVENUE OR USE, IN CONNECTION WITH, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS SOLD HEREUNDER, OR FOR ANY LIABILITY OF BUYER TO ANY THIRD PARTY WITH RESPECT THERETO.** BUYER SHALL INSPECT PRODUCTS FOR NONCONFORMITY PROMPTLY UPON RECEIPT. Failure by BUYER to give FORMICA written notice of claim within 30 days from date of delivery or, in the case of non-delivery from the date fixed for delivery, shall constitute a waiver by BUYER of all claims in respect of such products. Any action for breach of this contract (other than for nonpayment of the purchase price) must be commenced within one year after the occurrence of the breach.

**10. EXCUSES FOR NONPERFORMANCE.** If the manufacture, transportation, delivery, or receipt by either party of any products is prevented, restricted or interfered with by reason of any event or cause whatsoever beyond the reasonable control of the party so affected, such party shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference, and neither party shall be liable to the other for default or delay in performing its obligations, except payment obligations. If by reason of any such event or cause, the quantities of the products covered hereby, or of any materials used in the production thereof, reasonably available to FORMICA shall be less than its total needs for its own use and for sale, FORMICA may allocate its available supply of any such products among its existing or prospective purchasers and/or its own departments, divisions and subsidiaries in such manner as FORMICA deems reasonable, without thereby incurring liability for failure to perform this contract.

**11. RIGHTS OF FORMICA.** If, in FORMICA'S judgment, BUYER'S credit shall become impaired at any time, FORMICA may decline to make shipments hereunder except upon receipt of cash payments in advance or security or other proof of responsibility satisfactory to FORMICA. If BUYER fails in any way to fulfill the terms and conditions hereof, FORMICA may defer further shipments until such default is corrected. Remedies provided herein shall be in addition to, and not in lieu of, other remedies that may be available to FORMICA.

**12. APPLICABLE LAW/VENUE.** This contract shall be construed, and the respective rights and duties of BUYER and FORMICA are to be determined, exclusively according to the laws of the State of Ohio, without regard to principles of choice of law. The courts of Hamilton County, Ohio, USA have exclusive jurisdiction to hear disputes arising out of this contract.

**13. NON-ASSIGNABILITY.** This contract is not assignable or transferable by either party, except to its successor or to the transferee of all or substantially all the party's assets to which this contract relates.

**14. RETURNABLE CONTAINERS.** Returnable containers shall remain the property of FORMICA. BUYER shall maintain them in good condition and not use them to hold any other products

**15. GOVERNMENTAL LAW AND REGULATIONS.** FORMICA and BUYER each agree, to the extent applicable to their respective obligations hereunder, to comply with laws, rules, regulations, executive orders, priorities, ordinances and restrictions now or hereafter in force, including but not limited to (a) the Fair Labor Standards Act of 1938, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; The Age Discrimination in Employment Act of 1967, as amended; and (d) the rules, regulations and executive orders pertaining thereto.

**16. CANCELLATION.** If BUYER has and exercises a right to terminate any order, BUYER shall pay the costs incurred by FORMICA up to the date of termination, including, but not limited to, the costs to manufacture the subject products or the costs to return or cancel any products ordered from a third party.

**17. MISCELLANEOUS.** (a) No waiver by FORMICA of any of term, condition or breach by BUYER shall constitute or be deemed to be a waiver of any other term, condition or breach of any other instance of noncompliance with the same term or condition or any other such breach, whether prior or subsequent thereto. No waiver shall be deemed to occur as a result of the failure of any party to enforce any contractual term or condition.

(b) Each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be unenforceable, such provision shall be ineffective only to such extent, without otherwise invalidating such provision or any other provisions hereof. The paragraph headings are for convenience only.

(c) BUYER shall have no right of setoff, and no deduction of amounts due from BUYER to FORMICA shall be made without FORMICA'S express written approval.