

# TERMS AND CONDITIONS – CABANAS AND PAVILIONS

Florida Seating, Inc. acts as a special Florida Manufacturer's Representative on behalf of a Pavilion manufacturer ("Manufacturer"). By submitting an order (a "Customer Order") through Florida Seating for one or more Pavilions, Cabanas or similar items (the "Goods"), Customer hereby agrees and accepts the terms strictly as set forth herein (the "Contract"). Any additional or different terms proposed by Customer (including, without limitation, any terms contained or incorporated by reference in any Customer purchase order or related document) are objected to, rejected and are not binding on Florida Seating or constitute a part of this Contract.

- 1) GOODS:** The Goods are intended for purchase only by commercial customers. The Florida Seating website provides only representative samples, and all final Goods specifications shall be set forth in a "Final Customer Order" approved by the Manufacturer. Florida Seating is not responsible for determining whether a Good is suitable for the location (including but not limited to substrate and wind considerations) at which Customer intends to install the Goods, or whether the Goods comply with all laws, regulations and ordinances applicable to such location. Goods should be installed only by licensed, qualified contractors. Customer is solely and exclusively responsible for adhering to any safety instructions supplied by Manufacturer in the selection or installation of the Goods, or which are applicable to the Goods under applicable law, and Florida Seating disclaims any and all liability of any nature whatsoever for Customer's failure to do so.
- 2) FLORIDA SEATING RESPONSIBILITIES AS MANUFACTURER'S REPRESENTATIVE**  
Upon receipt of a Customer Order for a Good:
  - a) Florida Seating will forward the Customer Order to the Manufacturer for its approval and acceptance. Florida Seating will notify Customer of any additional information or advance payment deposit required to complete the manufacture of the Goods.
  - b) Upon Manufacturer's acceptance of a "Final Customer Order," including but not limited to any changes approved by Customer, Florida Seating will use reasonable efforts to facilitate Manufacturer's production and shipping of the unassembled Goods to Florida Seating with assembly instructions and any Manufacturer warranty or available product documentation.
  - c) Florida Seating will notify the Customer upon receipt of the Goods and will arrange for delivery, which will be F.O.B. Florida Seating's facility, unless otherwise agreed in writing between the parties.
  - d) If the Customer advises Florida Seating of any missing parts or assembly instructions from the assembly boxes within thirty (30) days of delivery, Florida Seating will use reasonable efforts to obtain such parts and/or instructions from Manufacturer.
  - e) If the Manufacturer makes any warranties to the Customer, Florida Seating will assign such warranties to Customer.
- 3) CUSTOMER RESPONSIBILITIES AND REPRESENTATIONS**
  - a) In addition to the terms and conditions set forth herein, Customer shall comply with any additional terms set forth in the Final Customer Order, including but not limited to those of pricing, payment, taxes, duties, import and legal compliance. Customer acknowledges and agrees that the final specifications will be determined by the Manufacturer, and such specifications may vary from any samples, photographs, or descriptions initially set forth on Florida Seating's website or other sales materials initially supplied by Florida Seating.
  - b) Customer represents and warrants that it will cause the Goods to be installed by a licensed, qualified contractor on commercial retail premises, and acknowledges that the Goods are not for consumer resale.
  - c) Customer, on its own or through licensed, qualified contractors, represents and warrants that it has the expertise to evaluate, select, assemble and install the Goods in accordance with applicable law, taking into account the environmental conditions particular to the installation location.
  - d) Customer acknowledges and agrees that Florida Seating does not design or manufacture the Goods, nor does it perform or supervise Goods assembly, installation, or repair, and it does not make any representations or warranties with respect to the foregoing.
- 4) SOLE LIMITED EXPRESS WARRANTY BY FLORIDA SEATING, AND EXCLUSIVE REMEDY:** Subject to all the terms set forth in this Contract, for a period of two (2) years from date of shipment by Florida Seating, Florida Seating expressly warrants that the frame of the Goods shall be free from structural defects for the intended use. For a breach of the foregoing limited warranty occurring during such two-year period, Florida Seating shall, at its expense and option, repair or replace such out-of-warranty Goods; provided, however, that Florida Seating shall not be responsible for any removal, installation, or reinstallation costs; and provided further, however, that if any such remedy shall fail of its essential purpose, Florida Seating's maximum and sole liability arising from or related to the Contract, or from any attempts to repair or replace such out-of-warranty Goods, shall be limited to payment of the purchase price, or the allocable portion of the purchase price which relates to the out-of-warranty Goods furnished under the Contract. **THE FOREGOING EXPRESS LIMITED WARRANTY AND EXCLUSIVE REMEDY SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTY AND REMEDY UNDER ANY AND ALL CIRCUMSTANCES.** The foregoing warranty shall be void if any of the following shall occur: (1) the Goods are not installed in accordance with the manufacturer's instructions by a licensed contractor who is qualified for this purpose; (2) Customer's improper storage, transportation, installation, repair, or use of the Goods; (3) unauthorized modification or misuse of the Goods; (4) damage resulting from lack of care or maintenance; (5) Customer's failure to pay the invoice in full under the terms of the Contract; (6) Customer's return of any Goods without an official return authorization number; or (7) Customer's violation of these Terms and Conditions or any other provisions of the Contract. Upholstery, cushions, and other materials are not covered by the Limited Warranty provided above.
- 5) DISCLAIMER OF ALL OTHER WARRANTIES: FLORIDA SEATING MAKES NO WARRANTY WHATSOEVER OTHER THAN THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 4 OF THIS CONTRACT. THE LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. In no event shall Florida Seating be liable for, and Customer shall indemnify and hold Florida Seating harmless from: (1) any and all damages, direct, indirect, general, special, incidental, or consequential, WHETHER RESULTING FROM FLORIDA SEATING'S NEGLIGENCE OR OTHERWISE, arising out of, in connection with, or resulting from the Goods sold hereunder, and (2) any and all claims, actions, suits, and proceedings which may be instituted in respect to the foregoing including, without limitation, those made by subsequent owners and users of the Goods.**
- 6) INDEMNIFICATION:** Florida Seating shall not be liable for any indirect, consequential, or punitive damages relating to the Goods, including but not limited to any property damage whatsoever or claims of any kind whether based on contract, warranty, or tort INCLUDING, WITHOUT LIMITATION, FLORIDA SEATING'S OWN NEGLIGENCE OR OTHERWISE, or for any loss or damage arising out of, in connection with, or resulting from the performance or breach of the Contract, or from any services or Goods covered by or furnished under the Contract. Customer agrees to indemnify and hold harmless Florida Seating against any and all liability associated therewith whatsoever whether based on contract or tort, AND WHETHER RESULTING FROM FLORIDA SEATING'S NEGLIGENCE OR OTHERWISE including, without limitation, all claims made by any third party.
- 7) RESALE:** FLORIDA SEATING EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE INCLUDING, WITHOUT LIMITATION, ANY LIABILITY TO OR WARRANTIES MADE FOR THE BENEFIT OF ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY TO WHICH OR TO WHOM CUSTOMER MAY SELL OR TRANSFER THE GOODS WHICH ARE THE SUBJECT OF THE CONTRACT. Notwithstanding the foregoing, all of these Terms and Conditions shall be binding upon Customer and all subsequent owners and users of such Goods. Without limitation of the foregoing, however, the Goods are sold subject to the condition that they shall not, nor shall any portion of them, by way of trade or otherwise, be lent, resold, or otherwise conveyed without similar conditions including, without limitation, this condition being imposed on the subsequent borrower, purchaser, or transferee.
- 8) FILING A CLAIM:** To file a claim, Customer must contact Florida Seating at 727-540-9802. Except as otherwise provided in these Terms and Conditions, all claims must be submitted within 30 days of delivery. Customer will be required to submit the following information as part of the claim:
  - a) Description of and pictures illustrating reasons for the claim
  - b) Invoice number
  - c) Quantity of Goods delivered

# TERMS AND CONDITIONS – PAVILIONS AND CABANAS

- d) Quantity of Goods included in the claim
- e) Proof of installation by a licensed contractor in accordance with the manufacturer's instructions
- f) Proof of care and maintenance in accordance with the manufacturer's instructions and appropriate for environmental conditions
- g) Other details relevant to the claim

After a valid claim has been submitted, together with all information required above, Florida Seating will do the following:

- a) Issue a return authorization number to the Customer, and the Customer is required to ship all Goods included in the claim at Customer's expense to a Florida Seating location of Florida Seating's choice. Such shipment will be F.O.B. destination. All Goods must be properly packaged to avoid freight damage. Goods may not be returned without a return authorization number.
  - b) After inspection, if the warranty claim is approved by Florida Seating, Florida Seating will, at its sole discretion, repair or replace the Goods at no charge, and will reimburse return freight charges. If it is unable to repair or replace the Goods, Florida Seating will credit a pro-rated amount back to the Customer. If the warranty claim is rejected, Customer shall be responsible for all freight charges and cost of the replacement Goods. Repairs or replacements do not extend the product warranty contained in these Terms and Conditions. Such warranty applies solely to Customer and only Customer is permitted to submit a claim as to the Goods.
- 9) TERMS OF PAYMENT:** All payments are due thirty (30) days after the date of Florida Seating's invoice, unless client's account is on pre-pay terms or Florida Seating otherwise expressly agrees in a writing signed by an authorized representative of Florida Seating. All credit terms requested for new accounts, and by existing customers who have previously been extended credit terms, are subject to credit approval in Florida Seating's sole discretion. Purchase orders that provide for partial shipment or shipments in installments, or orders that provide for delivery dates more than sixty (60) days after the date of acceptance of the purchase order by Florida Seating, are subject to credit review and approval both at the time the purchase order is being considered by Florida Seating, and prior to the time of shipment. At either of such times, Florida Seating may withdraw any credit terms previously offered to Customer, and Florida Seating may require full or partial payment prior to shipment. Florida Seating may require Customer to provide current financial information and credit references to Florida Seating at any time or times. Customer's failure to deliver current financial information or credit references to Florida Seating within ten (10) days after Florida's Seating's request shall constitute reasonable grounds for Florida Seating to suspend performance of its obligations under the Contract and to withdraw any credit terms previously offered to Customer. If Customer's financial condition is not satisfactory to Florida Seating at any time, Florida Seating may cancel the order or require full or partial payment in advance of shipment, or such other assurance of payment including, without limitation, advance payment, the furnishing of a letter of credit or personal guaranty, cashier's check on delivery, or business check on delivery, in Florida Seating's sole discretion and in a manner satisfactory to Florida Seating. Payment is considered as having been made on the date payment is received by Florida Seating; provided, however, that payment shall not be deemed to have been received with respect to a check unless funds are actually collected by Florida Seating with respect to such check. Interest on any past due payment or part thereof shall accrue at the rate of 1.5% per month, or if this interest rate exceeds the maximum contract rate allowed by applicable law, then at the maximum lawful contract rate, applicable from time to time.
- 10) TITLE AND RISK OF LOSS:** Title to and risk of loss of all Goods shall pass to Customer upon shipment by Florida Seating F.O.B. place of shipment. No subsequent loss or damage to the items, or arrangement of shipping by Florida Seating, as provided below, shall affect Florida Seating's obligations or liability under the Contract.
- 11) FORCE MAJEURE:** Florida Seating shall not be liable for any delay or failure to perform its obligations or those of the Manufacturer due to any cause beyond its reasonable control including, without limitation, fire, weather, accident, act of public enemy, act of terrorism, war, hostilities, rebellion, insurrection, strike, lockout, work slowdown, or similar industrial or labor action, sabotage, transportation delay, shortage of raw material, energy or machinery, act of God, act or omission of Customer, or the order or judgment of any federal, state, local, or foreign court, administrative agency, or other government office or body.
- 12) CHANGES, CANCELLATIONS AND RETURNS:** Customer Orders accepted by Florida Seating are not subject to changes or cancellation by the Customer except with Florida Seating's prior written consent. Any order that requires modification to the manufacturer's published specifications, a special order, or an order that is subsequently changed or cancelled by the Customer, is subject to the payment by the Customer of Florida Seating's fees and costs including, without limitation, material costs, labor services to be charged at Florida Seating's costs, Florida Seating's standard overhead rate and anticipated profit, and any loss on materials purchased or under contract by Florida Seating for the completion of the order. The Customer may return or exchange unused items only within 30 days of date of shipment. All returns must be in their original condition and packaging. The Customer must obtain in advance a return authorization number from Florida Seating. The Customer is responsible for the freight out and return shipping charges, unless the return is a result of an error of Florida Seating. Restock fee is 25% on returns and 15% on exchanges (product value for the exchange must be a minimum 85% of the returned product value). Items that are the Customer's own material ("COM"), the Customer's own leather ("COL"), or are customized or made-to-order cannot be returned or exchanged unless damaged or defective.
- 13) TAXES:** Unless specifically stated, prices listed do not include taxes. Any state or local governmental sales, use, excise, property, or other taxes, if any, shall be paid or borne by the or reimbursed by the Customer to Florida Seating if paid by Florida Seating. If the Customer is exempt from paying sales or use tax, a certificate of evidencing such exemption shall be provided to Florida Seating upon request.
- 14) ASSIGNMENT:** The Customer may not assign its rights or obligations under the Contract without the prior written consent of Florida Seating which may be granted or not granted in Florida Seating's sole discretion.
- 15) BINDING CONTRACT:** The Contract shall be binding upon the parties hereto, their permitted assigns, and their respective successors in interest by merger, operation of law, or by purchase of the entire or substantially all the business of a party.
- 16) ACKNOWLEDGEMENT:** Submission of an order pursuant to a quotation by Florida Seating to the Customer shall be deemed to be an acknowledgement and acceptance by the Customer of these Terms and Conditions and Customer's agreement that any additional or conflicting terms or conditions previously or hereafter proposed by the Customer are void and of no force or effect.
- 17) WAIVERS:** A waiver of any breach of any of the provisions of the Contract shall not be construed to be a continuing waiver of the breaches of the same or any other provision of the Contract.
- 18) NOTICES:** Any notice to Florida Seating required or permitted to be given under the Contract shall be sufficient, only if in writing and sent by registered or certified mail, return receipt requested, to Florida Seating's address stated above, attention: Maria Nikolova, President.
- 19) ATTORNEY'S FEES:** Upon the occurrence of any breach of the terms of the Contract by the Customer, or if an invoice to the Customer is not paid when due, or it becomes necessary to enforce or defend the Contract including, without limitation, these Terms and Conditions, the Customer agrees to pay all costs of collection, enforcement, or defense including, without limitation, attorneys' fees, whether incurred in or out of court, in one or more actions or proceedings, on appeal, in arbitration, in Bankruptcy Court, or in any insolvency proceedings or otherwise.
- 20) PENALTIES:** Florida Seating assumes no liability or liquidated damage clauses of any kind, unless specifically approved in a writing signed by Florida Seating's authorized representative in Florida Seating's sole discretion.
- 21) ENFORCEABILITY:** The invalidity, in whole or part, of any of provision of the Contract shall not affect the remainder of the Contract.
- 22) CHOICE OF LAW AND VENUE:** The Contract shall be construed under the laws of the State of Florida without regard to any conflicts of laws rules or principles that could result in the application of the laws of any other jurisdiction. Jurisdiction and venue for any action or dispute arising under or related to the Contract, the goods purchased under the Contract, or any dealings between the parties, arising from or related to any of the foregoing, shall be exclusively in a court of competent jurisdiction located in Pinellas County, Florida.
- 23) WAIVER OF JURY TRIAL:** FLORIDA SEATING AND CUSTOMER HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO OR ARISING OUT OF THE CONTRACT, THE GOODS PURCHASED UNDER THE CONTRACT, ANY DEALINGS BETWEEN THE PARTIES, OR ANY ACTS OR COURSE OF CONDUCT RELATED TO ANY OR ALL OF THE FOREGOING.