

# Okamura Terms & Conditions

## General

These Terms and Conditions of Sale set forth the terms and conditions pursuant to which the Dealer ("Dealer") will purchase and Okamura Corporation ("Okamura") will sell any Okamura-brand furniture or other products or any related services ("Products").

## Pricing

Okamura reserves the right to change published prices without notice. Prices in effect at the time of the order acceptance shall apply. All applicable taxes are extra. All prices are listed in the Okamura Price List. List prices shown apply to product only. Storage, freight, sales tax and any installation charges are additional. Unless otherwise specified by Okamura, all shipments within the contiguous United States are F.O.B. Chicago, IL. Title to all Products and risk of loss passes to Dealer, and the responsibility of Okamura ceases, when the carrier accepts shipment from Okamura at its facility in Chicago, IL or other place of shipment. A small order processing fee may apply to all invoiceable deliveries of less than \$3,000 based on list price, including billable replacement parts.

## Taxes

All sales, use, excise and other taxes applicable to the sale of the Products shall be paid by Dealer if applicable. If Dealer claims an exemption from any tax, Dealer shall submit to Okamura the appropriate exemption certificates.

## Terms of Payment

Upon approved credit, payment terms are: 50% down payment due with order placement, Due date of the remaining 50% will be described in Okamura's quotation and/or order confirmation, upon credit decision. Okamura's invoice shall be issued upon its shipment of the Products to Dealer. Okamura reserves the right to charge interest at the rate of 1.5% per month (but not more than the maximum percentage permitted by law) on all balances not paid by Dealer within the designated net terms.

## Order Acceptance

Orders will be accepted upon receiving of a written purchase order on Dealer's letterhead and issuance of order confirmation by Okamura. Faxed orders (1(312)645-0129) or orders by email (chicago@okamura-us.com) are acceptable; no verbal orders will be accepted. All purchase orders must contain a valid signature.

## Order Change and Cancellation

Purchase orders may not be changed, in whole or in part, without prior written consent of Okamura. Changes may effect

delivery dates. Expenses incurred because of changes shall be charged to Dealer. In no event may any order by Dealer be cancelled, regardless of reason.

## Delivery and Freight Charges

All delivery dates are approximate and based upon the prompt receipt of all necessary information from Dealer. Unless otherwise agreed by Okamura, Okamura will ship Products to Dealer via regular delivery carrier which Okamura designates, F.O.B. Chicago, IL. In most cases Okamura will endeavor to ship 8-11 weeks from the date the down payment received; this is only an estimate. Risk of loss shall pass to Dealer at the F.O.B. point. Notwithstanding the provisions contained in these Terms and Conditions to the contrary, Okamura shall not be responsible or liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from Okamura's delayed performance in shipment or delivery of the Products for any reason whatsoever.

## Claims

All risk of loss passes to Dealer at time of delivery to carrier at the F.O.B. point. Dealer shall inspect all Products upon receipt and notify Okamura within ten (10) working days after receipt of any damage or defects which are, or should be, apparent from an inspection of the Product and its packaging. Failure of Dealer to notify Okamura during the ten (10) working day period shall constitute acceptance of the Products and waiver of any apparent defects, errors or shortages. For all claims relating to Product damaged in transit or for any other claims relating to or arising out of the transportation of Products, Dealer must seek recovery from the carrier and Okamura has no liability to Dealer for such claims. Okamura may, upon request, assist Dealer with filing of such claims with the carrier, but Okamura will not be liable for any of these transportation related claims.

## Returns

In no instance will Okamura accept the return of any Products, except for eligible replacements under Okamura's Limited Warranty as applicable.

## Limited Warranty

For Products sold to the original end user customer by Dealer, Okamura warrants that such Products shall be free of defects in materials and workmanship, affecting normal function, during the applicable warranty periods set forth below and in Appendix I, subject to the terms and limitations hereof. The warranty provided herein shall be effective for the applicable periods specified in Appendix I, measured from the date of original manufacture by Okamura as identified by the labeled production lot number indicated on the mechanical region, relevant part or component, and shall become void thereafter.

See Appendix I for warranty periods by Product type and components, as well as additional exclusions from warranty.

Okamura further warrants that during the applicable warranty period, Products assembled by Dealer in accordance with Okamura's knockdown assembly manual shall conform to the Norms of ANSI BIFMA, except that any Products or component parts specifically designed and manufactured to the specific order of Dealer shall be excluded from all warranty coverage by Okamura.

All warranty periods are subject to 40-hour, 5 days a week, single shift use. Should any Product fail to conform to this Limited Warranty during the applicable warranty period from the date of original manufacture, Okamura shall, upon prompt written notice from Dealer, repair or replace, at its option, the affected part or parts.

**Dealer shall pass on to Dealer's customers the Okamura Limited Warranty as provided herein.** Except as required by law, Dealer shall not pass on to its customers a guarantee or warranty or any instruction for use or care of Products not expressly set forth herein or approved in writing by Okamura, or indicated in the technical and promotional materials or advertising supplied by Okamura.

The warranty provided herein shall be valid only when Dealer certifies the date of ultimate sale and the point of delivery.

During the above applicable warranty period, if Okamura finds a Product to be defective under this warranty, Okamura or its subsidiaries will, at the sole discretion of Okamura or its subsidiaries, either (i) supply genuine parts or their equivalent for the necessary repair of the defects, or (ii) refund the purchase price at which Dealer purchased such Product from Okamura. When Okamura or its subsidiaries elect to supply genuine parts or their equivalent for the necessary repair of the defects, these parts will be at no charge to Dealer if used for warranty services. Any repair service not covered by this warranty undertaken by or for Dealer, including all labor charges, shall be at the expense of Dealer.

Additionally, this warranty shall not apply in any of the following circumstances: (i) when photographic evidence and an inspection report is not provided to Okamura, (ii) when the applicable warranty period has expired, (iii) when Products are used in an irregular or overloaded manner, (iv) when the Products are rented or leased, (v) when Products are repaired or modified by those other than Okamura or its authorized repair service agents including Okamura's subsidiaries, (vi) when Okamura's repair guides are not observed; or (vii) as excluded in Appendix I.

OKAMURA'S WARRANTY IS EXCLUSIVELY AND ENTIRELY EXPRESSED HEREIN AND IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OKAMURA NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME ANY OTHER LIABILITIES ARISING OUT OF OR IN CONNECTION WITH THE SALE OR USE OF ANY PRODUCT. THE REMEDIES SET FORTH HEREIN SHALL BE THE EXCLUSIVE REMEDIES OF DEALER. IN NO EVENT SHALL OKAMURA OR ITS SUBSIDIARIES BE LIABLE FOR SPECIAL, INCIDENTAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, OR PUNITIVE OR EXEMPLARY DAMAGES, WHETHER A CLAIM FOR SUCH DAMAGES IS BASED UPON WARRANTY, CONTRACT, TORT, COMMON LAW, STATUTE OR OTHERWISE. THIS WARRANTY DOES NOT APPLY TO PRODUCTS THAT ARE ASSEMBLED BY DEALER OR DEALER'S CUSTOMERS NOT IN ACCORDANCE WITH OKAMURA'S KNOCKDOWN ASSEMBLY MANUAL OR INSTRUCTIONS, OR WHICH ARE OTHERWISE INCORRECTLY ASSEMBLED.

Notwithstanding the terms hereof, in no event shall Okamura warrant against or be responsible for normal wear and tear of any Products. Normal wear and tear of Products is not covered by, and is expressly excluded from, Okamura's warranty.

Okamura reserves the right to modify its Limited Warranty from time to time upon written notice to Dealer.

#### **Intellectual Property Infringement**

Okamura's liability for infringement (and the liability of all Okamura subsidiaries) is limited to Okamura's defense of any suit or proceeding brought against Dealer based on a claim that the Products sold hereunder, when employed in the manner intended by Okamura, constitutes an infringement of any current patent of the United States. If Dealer's use of the Products in the manner intended by Okamura is finally enjoined, Okamura shall, at its option, procure for Dealer the right to continue using the Products, replace the same with non-infringing Products, modify the Products so that they become non-infringing, but equivalent to the Products sold hereunder, or refund the purchase price (less allowance for use, damage or obsolescence). Okamura makes no warranty and shall offer no indemnification or defense against patent infringement resulting from portions of the Products made to Dealer's specifications or the use of Products in combination with any other Products or in the practice of any process and if a claim, suit or action against Okamura or any Okamura subsidiary is based thereon, Dealer shall defend, indemnify and save Okamura and any Okamura subsidiary harmless from and against any and all claims, losses or damages arising therefrom.

### **Arbitration**

(a) Except as provided in subparagraph (b) hereof, the parties agree that all disputes arising out of this agreement, the purchase or sale of Products and/or the relationship of the parties shall be settled by submission for arbitration to the American Arbitration Association ("AAA") at Chicago, Illinois under the Commercial Rules of Arbitration of the AAA. The parties agree to select a panel of three (3) arbitrators. Any judgment upon any award rendered by the arbitrators may be entered and enforced in any court having appropriate jurisdiction, and the parties consent to the personal jurisdiction of the state and federal courts for Cook County, Illinois for such purpose. Except as provided in subparagraph (b) hereof, if any suit or proceeding is filed in any court, the court shall, on application of one of the parties, stay the action until such arbitration has been had in accordance with these Terms and Conditions.

(b) The provisions of subparagraph (a) hereof to the contrary notwithstanding, Okamura reserves the right to bring court action (i) to collect monies due and owing in connection with the sale of its Products or (ii) for equitable relief or replevin in an appropriate case, and the parties' agreement to arbitrate hereunder shall not stay or otherwise affect Okamura's right to petition a court of competent jurisdiction for said relief.

### **Force Majeure**

Okamura's obligations hereunder are subject to, and Okamura shall not be held responsible for, any delay or failure to make delivery of all or any part of the Products due to acts or circumstances beyond the control of Okamura, including, but not limited to, labor difficulties, fires, casualties, accidents, acts of God, acts of war or terror, transportation difficulties, inability to obtain Products, materials or components or qualified labor sufficient to timely perform part or all of any obligation, or governmental regulations or actions. In the event of the occurrence of any of the foregoing, at the option of Okamura, Okamura shall be excused from the performance hereunder or the performance of Okamura shall be correspondingly extended.

### **Miscellaneous Provisions**

(a) These Terms and Conditions constitute the entire agreement between Okamura and Dealer as it relates to the purchase and sale of Products to Dealer by Okamura and the liability of Okamura and its subsidiaries, and supersede any and all prior agreements, correspondence, quotations or understandings heretofore enforced between the parties relating to the subject matter hereof.

(b) If any term or condition or part of these Terms and Conditions is held invalid, the remaining terms and conditions hereof shall not be affected thereby.

(c) These Terms and Conditions may be modified, canceled or rescinded only by a written agreement by both parties executed by their duly authorized agents.

(d) All rights available to Okamura under the Uniform Commercial Code except as specifically limited or excluded herein (even though not specifically enumerated), are reserved to Okamura as remedies available in the event of default or breach by Dealer.

(e) This agreement, any sale of Products to Dealer and the relationship of the parties hereto shall be deemed to have been made in and governed by the substantive laws of the State of Illinois, without regard to choice-of-law provisions. All references to "F.O.B." shall be as defined in the Uniform Commercial Code. The parties agree that the United Nations Convention of Contracts for International Sales of Goods shall not apply.

(f) Any failure by either party to enforce at any time any term or condition hereof shall not be considered a waiver of such party's right thereafter to enforce the same or any other term or condition hereof.

(g) The relationship between Okamura and Dealer shall be limited to that of Okamura and buyer, and no distributorship, dealership, franchise or other special relationship is intended, nor shall be created, by this Agreement.

(h) These Terms and Conditions shall be binding upon the successors and legal representatives of Dealer and Okamura.

### **Limitations of Liability**

OKAMURA AND ITS SUBSIDIARIES AND THEIR RESPECTIVE CONTRACTORS, SUBCONTRACTORS OR SUPPLIERS OF ANY TIER, SHALL NOT BE LIABLE TO DEALER OR ANY CUSTOMER OF DEALER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR PUNITIVE OR EXEMPLARY DAMAGES, ARISING FROM A BREACH OF THIS AGREEMENT OR BASED ON ANY OTHER LEGAL THEORY. Dealer's remedies set forth herein are exclusive and the liability of Okamura (and its subsidiaries) with respect to the breach of this agreement or any contract entered into between the parties pursuant hereto shall not exceed the price of the Product or part on which such liability is based.

## Appendix I. Warranty Periods By Product Type and Component, and Additional Exclusions from Warranty

Okamura reserves the right to modify its Limited Warranty from time to time, including, without limitation, to add, delete or modify the applicable warranty periods, the Products and components covered by warranty, and exclusions to warranty described in Appendix I.

For all Products manufactured after January 1, 2009, the warranty period is measured from the date of original manufacture by Okamura as identified by the labeled production lot number indicated on the mechanical region, relevant part or component, and shall become void thereafter.

Products; Finora, Sylphy, Choral, Okamura CP, Legender, Okamura CZ, Plimode

Structural components, including frames, shells, bases, operating mechanisms including adjustable arms	Seven (7) years
Casters	Three (3) years
Gas cylinder, coating finish, mesh fabric & cloth, cushions and arm-pads	Two (2) years

Products; LW, Alt Piazza (Chair), Runa, Repiroue, Leopard, Luce, Zart, Grata, T1

Structural components, including frames, shells, bases, operating mechanisms including adjustable arms	Five (5) years
Casters	Three (3) years
Gas cylinder, coating finish, mesh fabric & cloth, cushions and arm-pads	Two (2) years

Products; Risefit, Flaptor, NT, Cruise, Muffle, Nagare, Drape

Structural components	Five (5) years
Operating mechanisms and Casters	Three (3) years
Gas cylinder, coating finish,	Two (2) years

Products; SW

Structural components, including frames, legs, glides, and height adjustable mechanism	Five (5) years
Electrical devices, coating and surface finish of frames, legs, and panels	Two (2) years

Product; Traverse, Traverse Satellite, Alt Piazza (Table)

Structural components, including table top, frame, and legs	Five (5) years
Coating and surface finish of the tabletop and legs	Two (2) years
Electrical devices	One (1) year

Okamura does not warrant the following:

- Normal wear and tear
- Natural variations, scars, marks or wrinkles occurring in the leather
- Colourfastness of textiles
- Colour matching of textiles exactly to samples or swatches or past purchases
- COM or COL fabrics
- Natural variations in wood grain or figure or the presence of character marks.
- Colourfastness or the matching of colors of wood grain, including an exact match to samples or swatches or past purchases.
- Non-standard products (customized sizes, materials, finishes)
- Products exposed to extreme environmental conditions or improper storage conditions