

## MFS SUPPLY LLC'S TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (these "Terms") apply to the purchase and sale of products through MFS Supply LLC ("MFS Supply") and are hereby incorporated into the attached sales order, quote, or proposal (the "Agreement").

### TERMS & CONDITIONS:

**1. ARBITRATION. CUSTOMER ("CUSTOMER") AGREES THAT ANY DISPUTE (AS DEFINED HEREIN) BETWEEN CUSTOMER AND MFS SUPPLY WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") IN ACCORDANCE WITH THE CONSUMER ARBITRATION RULES THEN IN EFFECT, EXCEPT AS MODIFIED BY THIS SECTION 1. CUSTOMER AGREES TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT CUSTOMER WOULD HAVE IF CUSTOMER WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.** The arbitration will be conducted by submission of documents, by telephone, online or in person. The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the Agreement is void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any decision rendered in such arbitration proceeding will be final and binding on each of the parties, and judgment may be entered thereon in any court of competent jurisdiction. Should either party commence a Dispute in a forum other than the AAA, the arbitrator may award the other party its reasonable costs and expenses, including attorneys' fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this provision. Customer understands and agrees that, in the absence of this provision, Customer would have a right to litigate Disputes through a court and Customer has knowingly and expressly waived that right and agreed to resolve any Disputes through binding arbitration in accordance with the provisions of this paragraph. The interpretation and enforcement of these Terms shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.* In the event the AAA is unavailable to perform the arbitration services contemplated by this Section, either party may make an application to a court of competent jurisdiction to designate and appoint an arbitrator pursuant to Section 5 of the Federal Arbitration Act (9 U.S.C. § 5). For purposes of this Section: (a) the term "Customer" means the original purchaser and his, her, or its agents, affiliates, beneficiaries, or heirs; (b) the term "Dispute," means any dispute, controversy, or claim (whether in contract, tort, or otherwise, whether pre-existing, present, or future, and including statutory, consumer protection, common law, intentional tort, injunctive, and equitable claims) arising out of or relating to: (i) the Agreement or these Terms, their interpretation, or the breach, termination, applicability, or validity thereof; (ii) the purchase of any product, accessory, or otherwise from MFS Supply or the use of any product, accessory, or otherwise purchased from MFS Supply; or (iii) any other dispute arising out of or relating to the relationship between Customer and MFS Supply; and (c) the term "MFS Supply" means MFS Supply and its subsidiaries, affiliates, managers, officers, members, employees, beneficiaries, agents, or assigns. Information may be obtained from the AAA online at [www.adr.org](http://www.adr.org), by calling (800) 778-7879, or by writing to 1633 Broadway - 10<sup>th</sup> Floor, New York, NY 10019. In the event this provision is prohibited by any jurisdiction, the parties hereby agree that this provision shall be enforceable to the greatest extent permitted by law.

**2. AUTHORITY.** MFS Supply may cancel the Agreement at any time upon notice of cancellation to Customer after the date Customer signed the Agreement.

**3. SHIPMENTS; TITLE AND RISK OF LOSS.** MFS Supply will arrange for shipment of the products to Customer based on the delivery method selected by Customer in the Agreement to the Customer's shipping address. Customer will pay all shipping, handling, and delivery charges specified in the Agreement. Shipping, handling, and delivery charges are reimbursement for the costs MFS Supply incurs in the processing, handling, packing, shipping, and delivery of Customer's order. MFS Supply may use an independent carrier ("Carrier") to perform delivery. Title and risk of loss passes to Customer upon delivery to the shipping address specified by Customer. Shipping and delivery dates are estimates only and cannot be guaranteed. Customer is responsible for any fees or charges incurred by MFS Supply due to a refused shipment.

**4. DELIVERY.** MFS Supply performs local deliveries only to shipping addresses located within a fifty (50)-mile radius of MFS Supply's Solon facility. Otherwise, MFS reserves the right to utilize Carriers to perform deliveries. Customer agrees to have purchase and delivery information, including shipping address and contact information, transmitted to Carrier. Shipping charges for delivery of shipments to residences may include a residential delivery fee and/or liftgate fee. These charges will be specified in the Agreement and will be included in the shipping fee. Customer must provide accurate delivery information, including information regarding accessibility for deliveries, because special trucks are needed to accommodate residential streets as well as liftgates for unloading shipments. MFS reserves the right to pass on to Customer any extra charges incurred by Carriers due to incorrect information provided by Customer. MFS Supply or Carrier, as applicable, will contact Customer at the telephone number that Customer provided to schedule a delivery date and prior to scheduled delivery to provide Customer with an approximate time window for delivery. MFS Supply will deliver shipments in unit for an additional inside delivery fee, which will be specified in the Agreement and included in the shipping fee. Customer or Customer's representative, that is eighteen (18) years of age or older, must be present to receive the product at the agreed upon day and time window, even if the product will not be delivered inside the residence. If no one is available to receive the delivery, MFS Supply will take a photo of the delivered boxes as proof of delivery. Carriers, however, are not required to take these photos or transmit them to MFS Supply as proof of delivery. Customer has five (5) days from scheduled date of delivery to report to MFS Supply an issue with delivery of small parcel shipment, including non-delivery. For more information regarding delivery expectations and receiving capabilities, please refer to MFS Supply's Delivery Terms, which are attached hereto and incorporated herein.

**5. RETURNS AND REFUNDS.** MFS Supply will accept a return of products for a refund of Customer's purchase price, less the original shipping, handling, and delivery costs, provided such return is made within thirty (30) days of delivery with valid proof of purchase and provided such products are returned in their original packaging and original condition. Damaged items will not be accepted. Special order product, custom product, modified product, countertops, and cabinets assembled outside of MFS Supply are not eligible for return. To initiate a return, Customer must contact customer service at [customerservice@mfsupply.com](mailto:customerservice@mfsupply.com) or 800-607-0541 to obtain a Return Authorization Number ("RAN") before shipping Customer's product. Customer will receive an email including the RAN attachment, which Customer must print and include with Customer's package so that MFS Supply can identify and process Customer's refund. No returns of any type will be accepted without a RAN. Any returns without proper documentation may result in delayed processing. Customer is responsible for all shipping and handling charges on returned items. Customer bears the risk of loss during shipment. MFS Supply therefore strongly recommends that Customer fully insure Customer's return shipment against loss or damage and that Customer use a carrier that can provide Customer with proof of delivery for Customer's protection. Customer may also return product to any of MFS Supply's facilities in the United States. All returns are subject to a thirty-five percent (35%) restocking fee. All returns must be inspected by MFS Supply prior to issuing a refund. Refunds are processed within approximately ten (10) business days of MFS Supply's receipt of Customer's merchandise. Customer's refund will be credited back to the same payment method used to make the original purchase. For defective product returns, please refer to MFS Supply's warranty or the manufacturer's warranty, as applicable (see Section 6 of these Terms), included with the product or as detailed in the product's description on MFS Supply's website. For more information regarding MFS Supply's return policy, please refer to MFS Supply's Return Exchange and Refund Policy, which is attached hereto and incorporated herein.

**6. MANUFACTURER'S WARRANTY AND DISCLAIMERS.** MFS Supply sources products sold under MFS Supply's private labels onestock® and ProCabinets®, which are covered by MFS Supply's onestock® and ProCabinets® limited warranties, respectively. MFS Supply does not manufacture or control any of the other branded products it offers ("**Branded Products**"). The availability through MFS Supply of Branded Products does not indicate an affiliation with or endorsement of any product, service, or manufacturer. Accordingly, MFS Supply does not provide any warranties with respect to Branded Products offered. Branded Products, however, are covered by the manufacturer's warranty as detailed in the product's description on MFS Supply's website and included with the product. To obtain warranty service for defective products, please follow the instructions included in MFS Supply's onestock® or ProCabinets® limited warranties, or the manufacturer's warranty, as applicable. **EXCEPT AS EXPRESSLY SET FORTH IN WRITING BY MFS SUPPLY, ALL PRODUCTS OFFERED FOR SALE BY MFS SUPPLY ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. CUSTOMER AFFIRMS AS TO ANY BRANDED PRODUCTS THAT MFS SUPPLY SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY BREACH OF WARRANTY CLAIMS OR FOR ANY DAMAGES ARISING OUT OF THE MANUFACTURER'S FAILURE TO HONOR ITS WARRANTY OBLIGATIONS TO CUSTOMER.**

**7. LIMITATION OF LIABILITY.** MFS SUPPLY'S CUMULATIVE LIABILITY TO CUSTOMER AND ALL OTHER PARTIES FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THE AGREEMENT OR THESE TERMS SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO MFS SUPPLY UNDER THE AGREEMENT. MFS SUPPLY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGE, OR FOR LOST PROFITS ARISING OUT OF THE PRODUCTS PROVIDED UNDER THE AGREEMENT OR ANY BREACH OF THE AGREEMENT OR THESE TERMS REGARDLESS OF (A) WHETHER MFS SUPPLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) WHETHER SUCH DAMAGES WERE FORESEEABLE, OR (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. Some jurisdictions do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations and/or exclusions may not apply. In the event the above referenced limitation of liabilities and/or disclaimer of warranties are prohibited, the parties hereby agree that the liability of MFS Supply and its respective agents shall be limited to the greatest extent permitted by law. The limitation of liability set forth above shall not apply to (y) liability resulting from MFS Supply's gross negligence or willful misconduct, and (z) death or bodily injury resulting from MFS Supply's acts or omissions. Customer represents and warrants that Customer is buying the products from MFS Supply for Customer's own personal or household use only, and not for resale or export of the products. Customer further represents and warrants that all purchases are intended for final delivery to locations within the United States.

**8. FORCE MAJEURE.** In the event that MFS Supply is delayed or hindered in, or prevented from, its performance of any obligation of the Agreement as a result of strikes, lockouts, shortages, or failure of supply of labor, fuel or materials, acts of God, causes associated with weather, acts or requirements of any public authority, enemy act, act of war, act of terrorism, civil disorder or commotion, fire or other casualty, disease, epidemic or pandemic, or any other cause or circumstance beyond the reasonable control of MFS Supply, then MFS Supply will not be liable to Customer, nor be deemed to have defaulted or breached the Agreement or these Terms, for any delay, hindrance, or prevention in MFS Supply's performance under the Agreement or these Terms.

**9. AGREEMENT.** The Agreement set forth on the front page is incorporated herein and Customer's execution and acceptance of the Agreement is an express acceptance of these Terms. The quote/estimate set forth in the Agreement expires after thirty (30) days. If MFS Supply anticipates that a project is going to extend significantly past the targeted project end date set forth in the Agreement, MFS Supply reserves the right to adjust cost of goods and freight on the remainder of the project.

**10. DEPOSIT.** At its discretion, MFS Supply may require at the time of signing the Agreement a deposit on special orders, custom orders, modified orders, and orders that require an inventory commitment outside of MFS Supply's standard ordering levels.

**11. PAYMENT TERMS.** MFS Supply payment terms are net 30 days. Should Customer fail to timely pay the balance due in full, interest will be charged on all outstanding amounts at the greater of: (a) one and a half percent (1.5%) per month (eighteen percent (18%) APR), or (b) the maximum statutory interest rate permitted by applicable law. In the event Customer fails to satisfy the total balance due within ninety (90) days of the execution of these Terms, MFS Supply reserves the right to take any action permitted under law. Customer shall pay one-hundred dollars (\$100) for any returned check or reversed electronic payment. Shipping charges may increase from time to time, based on the cost of shipping, including gas. Customer agrees that any increases in Carrier shipping charges are not subject to MFS Supply notice requirements and do not give rise to Customer cancellation rights. Customer agrees to pay MFS Supply for any orders placed on hold for delivery. If Customer requests that a product be stored before shipping, MFS Supply will assess a storage fee effective on the day that the product would have shipped. If Customer is picking up purchased product from one of MFS Supply's facilities and the product is held at an MFS Supply facility for more than thirty (30) calendar days, MFS Supply will assess a daily storage fee of two percent (2%) of the total sales order value. Customers that purchase product from MFS Supply on terms will incur a three percent (3%) convenience fee at time of payment when making payments with a credit card toward Customer's account balance. Customers making a deposit that exceeds five-thousand dollars (\$5,000) on a new sales order using a credit card will incur a three percent (3%) convenience fee at the time of deposit.

**12. CANCELLATION POLICY.** Customer may not make changes to or cancel an order once Customer's order has entered build status. Customer will receive a notification twenty-one (21) days prior to Customer's order entering build status. Customer has until fourteen (14) days prior to the communicated build date cancel or change the order. Customer may only make changes to or cancel Customer's order specified in the Agreement by contacting customer service at [customerservice@mfsupply.com](mailto:customerservice@mfsupply.com) or 800-607-0541 prior to Customer's order entering build status. Some

jurisdictions may require that Customer be afforded a right to cancel that is a longer period than the time period it takes Customer's order to enter build status. In the event the above referenced cancellation period is prohibited, the parties hereby agree that Customer's right to cancel shall be limited to the greatest extent permitted by law.

**13. DISPUTES; NON-DISPARAGEMENT.** MFS Supply and Customer covenant and agree to use their respective best efforts to resolve any disputes regarding product, payment, or otherwise arising under the Agreement or these Terms. In the event Customer is not satisfied with the product purchased under the Agreement or these Terms, Customer covenants and agrees to promptly advise MFS Supply in a writing that specifically describes any issues or problems Customer has with the product provided by MFS Supply. Each party hereto covenants and agrees not to make false representations of a material fact, or defame, disparage, discredit, or deprecate the other party hereto, or to otherwise communicate with any person or entity (including but not limited to any electronic communications on social media or otherwise) in a manner tending to damage the other party hereto, in its or their reputation, office, trade, or business.

**14. WAIVER.** The failure by MFS Supply to enforce any right or provision of the Agreement or these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of MFS Supply.

**15. ENTIRE AGREEMENT.** These Terms, together with the Agreement, constitutes the final, complete, and exclusive agreement between the parties with respect to the products described in the Agreement, and supersedes any prior or contemporaneous oral or written agreement, proposal, or warranties and representations. These Terms prevail over any conflicting or additional terms of any quote, order, invoice, or other communications, whether written or oral. Any additions, modifications, or changes to the products to be provided, to the contract price, or any other changes to the Agreement or these Terms must be signed and dated by MFS Supply and Customer.

**16. SEVERABILITY.** If any provision of the Agreement or these Terms is held invalid, illegal, void, or unenforceable, that provision will be deemed severed from the Agreement or these Terms, as applicable, and the remainder of the Agreement or these Terms, as applicable, shall continue in full force and effect.

**17. ELECTRONIC SIGNATURE.** The Agreement and these Terms may be executed in separate counterparts with different parties signing different counterparts so long as each party signs one counterpart. The parties agree to conduct the transactions contemplated by the Agreement by electronic means as contemplated under the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq) and the Uniform Electronic Transactions Act. A party's execution or delivery of the Agreement and these Terms, or any other document relating to the transactions to be consummated in the Agreement, may be evidenced and effected by electronic signature, which will constitute a legal, valid and binding signature and have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile, or email electronic signatures. The parties hereby consent to the use of security procedures established by any third-party electronic signature capture service providers as may be chosen by MFS Supply.

The Agreement shall be effective only upon acceptance and/or signature by MFS Supply. Customer's submission of transactions under the Agreement shall constitute Customer's acknowledgment of acceptance of the Agreement and these Terms.

*By signing below, Customer accepts the Agreement and MFS Supply's Terms and Conditions of Sale.*

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

<b>CUSTOMER</b>	<b>MFS SUPPLY</b>	<b>APPROVED (MANAGEMENT)</b>
_____	_____	_____
<b>PRINTED NAME</b>	<b>PRINTED NAME</b>	<b>PRINTED NAME</b>
_____	_____	_____
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>
_____	_____	_____