

HUSSEY SEATING COMPANY
PURCHASE ORDER
TERMS AND CONDITIONS
EFFECTIVE JUNE 1, 2004

1. **ACCEPTANCE:** The earlier of Seller's commencement of work on ordered goods or shipment of such goods (or in the case of services, commencement of work or preparation therefore) shall be deemed an effective mode of acceptance of Buyer's offer to purchase contained in this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms of the offer contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer (unless such variances are in the terms of the description, price, quantity or delivery schedule of the goods or services) but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by the vendor without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and the back hereof. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and shall be rejected, however, this purchase order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods or services.

2. **PAYMENT; TAXES; PACKING AND SHIPPING:** Unless otherwise specified on the face of the order, the purchase price specified thereon will include all packaging and delivery

charges and all governmental sales and excise taxes and similar fees and charges whether now in effect or hereafter enacted. No additional charges of any type shall be added without Buyer's express written consent. Goods must be shipped by the particular route, method and carrier as stated in this order. As a condition to any payment under this order, Seller shall furnish to Buyer, upon request, an executed waiver of lien, including mechanics' liens and claims to the extent of such payment in form and substance satisfactory to Buyer. Payment will be made following receipt and acceptance of the goods or services and receipt, proper in form and substance, of documentation required by this order. Hussey purchase order number, item number, material description and Seller's name must appear on all pack lists, containers and invoices.

3. **DELIVERY/PERFORMANCE SCHEDULE:** Time is of the essence of this contract. Seller shall follow the delivery and performance schedule shown on this order. In the event of Seller's failure to deliver (or, in the case of services, to perform the same) as and when specified, Buyer reserves the right to cancel this order, or any part thereof, without prejudice to its other rights, and Seller agrees that Buyer may return part or all of any shipment so made and may charge Seller with any loss or expense sustained as a result of such failure to deliver. Seller shall notify Buyer if delivery will be later than dates shown, and if premium shipping methods are required by Buyer, Seller shall be liable for any premium costs incurred.

4. **RISK OF LOSS; INSPECTION AND ACCEPTANCE:** Risk of loss

shall transfer to Buyer at the time and place of actual receipt of goods by Buyer. Payment for the goods delivered hereunder or for services rendered shall not constitute acceptance thereof. No testing or inspection conducted by Buyer, whether prior to or after placement of this purchase order, and nothing contained in this purchase order, shall relieve Seller from the obligation of testing, inspection and quality control.

5. **REJECTION:** If Buyer, in its sole discretion, determines that any goods or services are not in conformity with this order or that the quantity supplied varies by more than 10% from the quantity called for on the face hereof, Buyer shall have the right, at its option, to reject either the entire order or the non-conforming portion, and seek damages to require correction, or accept the non-conforming goods with an equitable adjustment in price.

6. **CHANGES:** By delivery of written notice to Seller, Buyer may make changes at any time in drawings, designs, materials, specifications, packaging, delivery schedules, or methods of shipment or packaging on any item. If such changes result in an increase or decrease in cost, an equitable adjustment of price and delivery schedules will be made. Claims for equitable adjustment must be asserted by Seller within (10) days of the date of the change order, however, no such change will be acknowledged unless written confirmation of said change is received by the Seller from the Buyer prior to the performance of the work called for.

7. **BUYER'S PROPERTY:** All tools, dies, jigs, patterns, drawings, specifications, photographs, equipment, material and other items or information purchased by, furnished by, charged to or paid for by Buyer, and any replacement thereof shall remain the sole property of the Buyer. Such property shall be plainly marked "Property of Hussey" and shall be safely stored at Seller's expense apart from other property. Seller shall not substitute other property for Buyer's property and shall not use such property except in filling Buyer's orders. Seller shall hold such property at its own risk and upon Buyer's written request, shall redeliver the property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Buyer may file informational financing statements against Seller with respect to such property. Drawings, specifications, photographs, and other engineering and manufacturing information supplied by Buyer shall remain Buyer's property, shall not be copied or otherwise duplicated or disclosed without Buyer's written permission and shall be returned to Buyer upon completion of order or upon demand.

8. **WARRANTY:** All goods and services delivered hereunder shall be free and clear from all liens and encumbrances. Seller warrants that all goods or services furnished under this purchase order shall be free from defects of design, material and workmanship, shall be new, shall conform to all drawings and specifications and shall be of merchantable quality and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants that the same will be fit for such particular purpose. Seller warrants that goods or services furnished

will conform in all respects to samples, unless Seller has agreed to a higher standard. Such warranties, together with all other warranties and guarantees of Seller, shall run in favor of Buyer and its direct and indirect customers. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and Seller shall be responsible for reimbursement of the cost incurred by Buyer in doing so. These warranties will survive acceptance and Buyer's rights hereunder are in addition to any other rights and remedies available to Buyer under this order or applicable law. These warranties shall apply for longer of (a) five (5) years from the date of delivery to Buyer, and (b) if the goods are used or incorporated in goods sold by Buyer to a third party, a period coterminous with the period of Buyer's warranty for the product in which the goods have been used or incorporated.

9. **INTELLECTUAL PROPERTY INDEMNITY:** To the extent the subject goods are not manufactured pursuant to design specified by Buyer, Seller shall defend, indemnify and hold Buyer and its agents and customers harmless from any loss, damage, expense (including reasonable attorneys' fees) and liability (including costs of enforcing this indemnity) for infringement of patent rights or other rights with respect to such items, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services.

10. **INTELLECTUAL PROPERTY ASSIGNMENT.** Any intellectual property relating to the goods or services and related equipment, including but not limited to patents, trademarks, copyrights and trade secrets, developed by Seller specifically in connection with this

Agreement, shall be the property of Buyer's, and Seller hereby assigns and agrees to assign any such rights in the intellectual property to Buyer. Buyer shall have all rights incident to such ownership, (including all electronic and derivative rights) in all mediums of expression now existing or devised in the future, and may utilize those exclusive rights both in the United States and throughout the world. Seller shall execute any further documents necessary to carry out this Section 10 at Buyer's request.

11. **CERTIFICATION OF PRICE:** Seller certifies that the price or prices quoted by it for the goods or services to be furnished hereunder are not less favorable than those currently extended to any other customer for the same or similar goods or services in similar quantities. In the event that Seller reduces its price for goods or services in similar quantities during the term of this order, Seller agrees to reduce the prices hereof correspondingly.

12. **ASSIGNMENT AND SET-OFF:** Seller shall not assign or subcontract this order or any part hereof or any right hereunder without Buyer's written consent. Buyer may set off against amounts payable to the Seller hereunder or any claim or charge it may have against Seller, whether arising out of this or any other transaction with Seller.

13. **RIGHT TO TERMINATE:** Buyer may terminate this order at its sole option at any time by notice in writing to Seller, in which event Seller shall immediately stop all work and observe any instructions of Buyer as to work in process. Buyer's sole responsibility to Seller shall be to pay the contract price for goods or services as have been delivered as of the time such cancellation is effective and to reimburse Seller its actual costs of materials and direct labor expended by it in reasonable anticipation of its fulfillment of this order

which are not recoverable by Seller. In no event shall Buyer be responsible for any losses or damages incurred by Seller arising from or related to any change in position of Seller based upon Seller's anticipated continued sales of goods or services to Buyer.

14. BANKRUPTCY; DEFAULT: If Seller becomes insolvent, or makes an assignment for the benefit of its creditors, or if a petition in bankruptcy is filed by or with respect to Seller, Buyer may, by notice in writing, terminate this order without liability except for items already delivered. Buyer may, by written notice of default to Seller, terminate this order or any part if Seller fails to perform any of the provisions of this order or so fails to make progress as to endanger performance of this order in accordance with its terms. The rights and remedies of Buyer under this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

15. COMPLIANCE: Seller shall comply with all applicable laws and rulings, regulations and orders of duly authorized authorities pertaining thereto, and shall, upon request of Buyer furnish, within 10 days from such request, certification of compliance with laws, rules and regulations that may be applicable to this order.

16. EQUAL OPPORTUNITY: Seller warrants that it complies with Title VII of the Civil Rights Act of 1964, Executive Order 11246 as amended and of the rules, regulations and relevant orders of the Secretary of Labor and as such does not discriminate in its employment policies. Seller will take affirmative action to ensure compliance.

17. HOLD HARMLESS: Seller agrees to defend, indemnify and hold harmless

Buyer and its agents and employees from all claims, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of every description (including costs of enforcing this indemnity) during, arising out of, or connected with the performance of this contract, any defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification is in addition to the warranty obligations of Seller.

18. GOVERNING LAW: This order shall be construed and the rights of the parties interpreted in accordance with the law of the United States of America and State of Maine, including the Uniform Commercial Code as enacted in that state. The parties agree that any dispute arising under this order shall be brought in such Maine state court or federal court as has subject matter jurisdiction. The parties expressly waive any objection based on lack of personal jurisdiction or improper venue.

19. CONFIDENTIALITY: Seller and its employees, agents, officers, and directors shall not disclose to any third party proprietary or confidential information provided by Buyer (including, without limitation, product or customer information, product forecasts or actual product demand) without the prior consent of Buyer.

20. LIMITATION ON BUYER'S LIABILITY, STATUTE OF LIMITATIONS, NO EXCLUSIVITY: In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the

price allocable to the goods or services or unit thereof which gives rise to the claim. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within two years after the cause of action has accrued. Nothing contained in this order, and no course of dealing between the parties, shall obligate Buyer to buy all goods of the type specified on the face hereof from Seller; it being agreed and understood that any agreement with respect to exclusivity shall be express, in writing and signed by both parties hereto.

21. SUPPLEMENTARY INFORMATION: Any qualification plans, specifications, drawings, notes, instructions, engineering drawings or quality, packaging and marking requirements, notices, or technical data provided to Seller in connection with this Order or referred to in this order shall be deemed to be incorporated herein by reference as if fully set forth herein. In case of any discrepancies or questions, Seller shall refer to Buyer for decision or instructions or for interpretation.

22. ENTIRE AGREEMENT SEVERABILITY; NO WAIVER: The purchase order and any documents attached, electronically linked, engineering and manufacturing information (including forecasts and actual product demand) or referred to in this order constitute the entire agreement between the parties, which agreement can only be modified in writing signed by an authorized representative of both parties. Any provisions of this contract prohibited by the laws of any State or Court of proper jurisdiction shall, as to such state be ineffective to the extent of such prohibition without invalidating the remaining provisions of this contract. Failure of Buyer to enforce any right under this clause shall not be deemed a

waiver of any right hereunder.

23. **SERVICES:** Seller shall, except as otherwise stated on the face of this Agreement or a referenced quotation, furnish all labor, materials, tools, equipment, and do all things necessary to perform the work specified herein. In the event that Seller's work hereunder requires or contemplates performance of services by Seller's employees, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's

customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Buyer. Seller shall maintain all necessary insurance coverages, including public liability and workers' compensation insurance. Seller shall indemnify and save harmless and defend Buyer from any and all claims or liabilities arising out of the work covered by this paragraph..

24. **WAIVER:** The failure of the Buyer to insist in any one or more instances upon the full performance of any of the terms, covenants or conditions of this order or to exercise any rights it may have hereunder shall not be construed as a waiver of any legal rights it may have with respect to such nonperformance or be construed as Buyer's condoning further nonperformance of such terms.