

KREISS TERMS AND CONDITIONS – IMPORTANT – THIS IS A PART OF YOUR CONTRACT

These terms and conditions apply to your sale and/or order from KREISS Home Furnishings (“KREISS.”) These terms and conditions are in addition to those described in your invoice. Your acceptance of these terms and conditions, as well as those listed in your invoice, is signaled by your making an initial payment towards an order and/or by signing the invoice.

The following terms apply to all KREISS sales and are in addition to those listed on your invoice.

ALL MERCHANDISE SOLD IN STORE, SUCH AS FLOOR SAMPLES, IS SOLD “AS IS”. PLEASE EXAMINE CAREFULLY AS ALL SALES ARE FINAL AND NO REFUNDS OR EXCHANGES ARE PERMITTED. NO EXCEPTIONS.

Delivery of sale items is available for an additional cost.

1. Applicability. Your Invoice and these Terms (collectively, this “Agreement” or the “Terms”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Fulfillment of Client’s order does not constitute acceptance of any additional or contrary terms, conditions or amendments contained in any communication from Client, whether written or oral.

2. Custom Orders: Custom orders require special labor and material and are non-returnable. All orders placed are considered custom orders. Orders are processed immediately and **cannot be cancelled** once placed.

3. Design Services: Clients retaining KREISS for design services are required to make a retainer deposit in an amount determined by KREISS, in its sole discretion, to cover the design needs of the Client. This deposit constitutes a non-refundable flat-fee retainer for design services, which the parties agree is earned upon receipt, but will be convertible to store credit should Client place an order within ninety (90) days of first presentation of design.

If Client places an order for less than the amount of the deposit, the remainder will be retained by KREISS to offset its fee for design services.

Customer must place order within ninety (90) days of first presentation of designs. If client withholds cutting for approval or strike offs, then client is still required to place order within said ninety (90) day period, at risk of forfeiture of retainer. In the alternative, KREISS may choose to

proceed with the order utilizing a finish that, in its sole discretion, comes closest to meeting the requirements discussed with KREISS and its design professionals.

A 25% handling fee will be applied for outsourced/specified products not sold by KREISS. Design retainer includes, space planning via AutoCad, fabric, finish, color, and material selections. Elevations, 3D-renderings, installation, and other services are additional. Kreiss Designer Rates are billed at \$500/hr, plus \$150/hr for staff services related to design work.

Design retainer credit may only be applied to furniture purchases only. Fees placed with Company for design services may not be used or applied towards taxes, fees, shipping, rugs, accessories, linens or décor.

4. Prices: All prices are subject to change without notice. Prices do not include tax or freight, which are additional to the prices listed on your invoice, and will be billed separately.

5. Discounts: From time to time, KREISS may offer discretionary discounts or promotions in order to secure sales, or for preferred Clients. These discounts are variable and dependent on the size, timing demands and difficulty of orders, so KREISS reserves the right to withdraw, reduce or alter proposed discounts based on Client changes to proposed orders.

Discounts proposed as part of a design retainer are not available if the proposed order size upon which the design retainer is based is reduced. Design retainers converted solely to store credit in the amount of the retainer, or store credit from cancelled design retainers, cannot be used with any promotions or discounts.

6. Sales Tax: California and Arizona residents must pay sales tax on all orders. BUYER MUST PROVIDE A VALID RESALE CERTIFICATE AT THE TIME OF PURCHASE OR BE SUBJECT TO SALES TAX.

Other items such as customs duty charge and other fees and taxes may apply for international addresses as well as Hawaii, Alaska, and Puerto Rico.

7. Payment:

(a) Fifty percent (50%) of the sales price is due at time of order. Balance due upon completion of order, and prior to release of goods for shipment.

(b) To the extent that KREISS performs design services related to any order for which a deposit is received, KREISS reserves the right to bill Client against said deposit, at its normal rates for designers and staff, if Client fails to complete their order, or otherwise breaches the contract, engages in an

anticipatory breach or repudiation or unreasonably delays completion.

(c) Client authorizes KREISS to utilize provided credit card(s) to pay initial payment and balance due upon order completion. Client further authorizes KREISS to utilize checks or checking account information provided by Client for the purpose of completing all payments due by ACH transfer. Please allow (5) days for processing after receipt of check.

(d) Client shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. In addition to all other remedies available under these Terms or at law (which KREISS does not waive by the exercise of any rights hereunder), KREISS shall be entitled to suspend the delivery of any Goods if Client fails to pay any amounts when due hereunder and such failure continues for fourteen (14) days following written notice of completion thereof.

(e) Client shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with KREISS, whether relating to KREISS’s breach, bankruptcy, or otherwise.

(f) If the entire balance is not paid within thirty (30) days of notice of completion, then, in addition to the other remedies listed above, then Client’s entire deposit *and* the Goods shall be forfeited to KREISS. KREISS shall have complete discretion whether to continue to charge Client for storage and insist on Client accepting delivery. Furthermore, KREISS shall be permitted, but not required, to mitigate its damages by selling said goods to another Client, and retain any and all moneys received through such sale even if this amount exceeds the balance owed. In the event KREISS sells the goods under this provision then Client shall be liable to KREISS for storage fees, as well as the difference between the sales price and original order price, as well as attorneys’ fees and costs reasonably incurred in any litigation or collection attempts arising out of this agreement.

(g) Client agrees that they will not, under any circumstances, attempt to obtain a chargeback on any payments made by credit card, and that it will be responsible for all reasonably incurred attorneys’ fees and costs related to collection off fees made a subject of a client attempt to obtain a charge-back.

8. Lead Time: Lead times provided by KREISS are estimates and are not guaranteed. Delays caused by Client, including delays caused by failure to provide timely approvals and/or strike-

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offs, may cause a corresponding delay in completion and delivery.

9. Measurements: All KREISS products are handmade. Variations of + or – 2” in measurements are to be expected.

10. Client Responsibility for Access of Delivery: Client accepts responsibility for all measurements relating to pieces fitting their projects. Kreiss is not responsible for measurements relating to Client’s elevator, hallway, or staircase for delivery and installations.

11. Finish Waiver: Client understands, and has been informed, that all KREISS finishes are custom and executed by hand, one piece at a time. Consequently, no two pieces will be exactly alike (due to hand finishing, different woods, detailing, etc.) and KREISS cannot finish-match. Client further understands, and has been informed, that finishes will vary (at times substantially) from photos, samples, literature and finishes displayed on the showroom floor. As more fully described below, stone variation and veining, wood graining, variations in wood finish or fabric dye lot, and subjective opinions regarding seams/density/appearance of upholstered pieces, do not entitle Client to any modification or “redo” by Kreiss.

If, in Kreiss’ sole discretion, it agrees to modify any finish or fabric to meet customer preferences, customer agrees to accept full financial responsibility for said modifications.

12. Stone: KREISS stone is a natural material and may vary in color, texture and veining from samples, photos, literature, and finishes displayed on the showroom floor.

13. Fabrics: KREISS provides cutting for approval on all fabrics upon request. KREISS is not responsible for dye lot variations if Client does not request cutting for approval.

KREISS fabrics cannot be guaranteed against fading, shrinking, or cracking. Purchaser or workroom must examine all fabrics before cutting. Slight color variation are to be expected. Clients are cautioned that KREISS merchandise/fabrics should not be placed in direct sunlight, which may cause fading or discoloration.

14. Gift Certificates: Gift Certificates may not be combined with discount offers, promotions or sale pricing, and must be presented prior to or concurrently with the placement of any order.

Gift Certificates containing a balance in excess of ten dollars (\$10.00) may not be exchanged for cash.

Gift certificates that are distributed by Kreiss to a Client pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate by the consumer may contain an expiration date and/or dormancy fees, which will be listed on any such gift certificates.

15. Client’s Own Merchandise (“C.O.M.”): Please side mark all C.O.M. with your name, your representative’s name, and your order number. **WE ARE NOT RESPONSIBLE FOR RETURN OF EXTRA C.O.M. KREISS RESERVES THE RIGHT TO REJECT CLIENT’S C.O.M. and may request additional fabric after viewing C.O.M.** KREISS cannot be liable for flaws in C.O.M. or Client’s own Leather (“COL”).

(a) General C.O.M. Procedures: The following is provided as a general information guide to understanding the procedures governing C.O.M. fabrics.

- Yardage requirements and pricing as stated is based on 54” wide plain fabrics that do not require matching and that can be railroaded.
- Add 10% more fabric for repeats under 15 inches; 20% more fabric for repeats on 15”-24”; 40% more fabric for 45 inch goods.
- Pattern matching and non-railroad fabric have a 15% upcharge to price.
- KREISS railroads fabric unless otherwise instructed.
- Fabrics with stripes or general patterns are upholstered so the patterns or stripes run vertically unless otherwise instructed.
- Matching includes: Body inside to outside. Backs inside to outside arms. Back pillow will be matched to seat cushions, front band and flounce.
- Plaids will generally fall into the strip requirements plus an automatic horizontal match will occur thru the back pillows and seat cushions when possible.
- Center match florals, birds, etc. is subject to placement on C.O.M. and generally results in more unused fabric and additional labor time. Allow for 15% additional fabric above normal repeat.
- Due to cushion design (e.g. waterfall, knife edge) many fabrics with definite pattern direction will not result in a satisfactory match when cushions are turned over. It may be advisable to alter the cushion pattern to a boxed design to effect proper matching and direction of patterns on both sides of cushions. Please qualify your C.O.M.’s and authorize the factory on the RO.’s to make this change if necessary.

- Please contact the factory on all C.O.M. fabrics that require additional special tailoring or for those fabrics that do not conform to the above description.

16. Shipping: Client agrees to provide shipping destination of all orders, along with contact telephone numbers. All products are F.O.B. shipping point. Client is responsible for freight charges. Shipping and installation costs, if not listed on the invoice, are additional and may be billed separately.

Fulfillment of your order in a timely manner may require more than one shipment, depending on the availability of items. Total freight charges may increase in the event of a split shipment.

KREISS typically does not permit Client pick up of orders. If, in it’s sole discretion, KREISS does permit Client pick up, please allow 72 hours’ notice.

17. Refusal or Inability To Accept Delivery: If Client refuses to accept delivery of goods within fourteen (14) days of notice of completion, Client will be charged 5% of the order subtotal per month for storage, with a minimum charge of \$500 per month regardless of order subtotal.

If Client is unable to accept delivery when the order is complete and ready for delivery, KREISS is authorized to place Client goods with a third party storage facility, at Client’s cost, which will be added to Client’s outstanding invoice and is payable as costs accrue

If for any reason Client fails to accept delivery of any of the goods on the date fixed pursuant to KREISS’s notice that the goods have been delivered at the Delivery Point, or if KREISS is unable to deliver the goods because Client has not provided appropriate instructions, documents, licenses or authorizations, (i) risk of loss to the goods shall pass to Client; (ii) the goods shall be deemed to have been delivered

Kreiss shall not be liable for any non-delivery of goods (even if caused by Kreiss’ negligence) unless Client gives written notice to Kreiss of the non-delivery within thirty (30) days of the date when the goods would in the ordinary course of events have been received.

Any liability of KREISS for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or adjusting the invoice respecting such goods to reflect the actual quantity delivered.

18. Delivery Acceptance: KREISS inspects all orders, and subjects them to extensive quality controls immediately prior to packing and release to common

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carriers to ensure orders are in good condition and conform to KREISS standards. **Any claim for damages on this order must be submitted in writing to the carrier immediately.** Failure to report damages within twenty-four (24) hours of delivery shall constitute a waiver of any claim for damages.

Notice of any defect in purported workmanship or material must be given by the buyer to KREISS within 10 days after delivery to Client. In the event the Client fails to give notice within the specified period, KREISS will be relieved of all liability hereunder and Client agrees to accept goods as is. If, in its sole discretion, KREISS agrees that a repair or redo involving COM is needed then Client shall provide the fabric to KREISS, at their expense, for the repair or redo or in the event of a refund, KREISS' liability shall not include a Client's fabric (C.O.M.) or freight.

Client may not refuse delivery without written approval from Kreiss.

If, for any reason, Client rejects, denies, or otherwise fails to accept delivery, in spite of the foregoing paragraphs, Client shall be solely responsible for all costs associated with such failure to accept delivery, including without limitation all costs associated with shipping, redelivery and/or storage of goods.

KREISS goes to great lengths to ensure Client satisfaction. To that end, KREISS sometimes, in its sole and exclusive discretion, may address Client concerns regarding quality and finish of goods. KREISS' occasional willingness to address such concerns is not intended to create an obligation to meet what it, in its sole discretion, deems unreasonable or unusual claims. Nor should KREISS' willingness to occasionally work with Clients after delivery be deemed an admission that any goods are defective, which KREISS explicitly disclaims. Client or third party assertions regarding quality of goods are not dispositive as to whether goods meet KREISS' exacting standards.

19. Freight Claims: Shipping is handled via a third party and KREISS is not responsible for freight damage or other shipping issues after the goods are picked up from KREISS.

Shipments will be made by a carrier selected by us. No returns will be accepted without a RETURN GOODS AUTHORIZATION NUMBER and prior approval by KREISS. Please be advised that at the time of receipt of merchandise, it is your responsibility to inspect the merchandise and note any discrepancies and/or damages to your merchandise *on the carriers' Bill of Lading*. This enables you to file a claim. We cannot make that claim for you. If shipment is damaged in transit, DO NOT SIGN for the shipment

until the transportation company (or the delivery truck driver) has noted the nature and extent of damage. Call the transportation company within 30 days. All liability of freight damage lies between the Client and the freight carrier.

20. Title And Risk Of Loss: Title and risk of loss pass to Client upon delivery of the goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Client hereby grants to KREISS a lien on and security interest in and to all of the right, title, and interest of Client in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code.

21. Return Policy: All sales are final. Client may only return orders under exceptional circumstances and only with explicit approval from, and at the sole discretion of, KREISS. In the event KREISS exercises its discretion, and permits a Client to return an order, then the order shall be subject to restocking fees.

22. Inspection and Rejection of Nonconforming Goods:

(a) Client shall inspect the Goods within twenty-four (24) hours of receipt ("Inspection Period"). Client will be deemed to have accepted the Goods unless it notifies KREISS in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by KREISS. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Client's purchase order or invoice; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Client timely notifies KREISS of any Nonconforming Goods, KREISS shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Client in connection therewith. Client shall ship, at its expense and risk of loss, the Nonconforming Goods to KREISS's facility located at San Diego. If KREISS exercises its option to replace Nonconforming Goods, Client shall, after receiving Client's shipment of Nonconforming Goods, ship to Client, at Client's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Client acknowledges and agrees that the remedies set forth in Section 20(b) are Client's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 20(b), all sales of Goods to Client are made on a one-way basis and Client has no right to return Goods purchased under this Agreement to KREISS.

23. Warranties: All KREISS products will be sold on an outright sale basis and KREISS guarantees them to be in good condition and free of defects in material and workmanship at the time of delivery to the carrier. In the event of KREISS' breach of any warranty, Client's exclusive remedy will be that KREISS will repair or replace the defective product, provided that Client returns said defective product to KREISS at the Client's expense within thirty (30) days of receipt. In the event of a problem that requires KREISS to receive the merchandise back for whatever reason, the Client agrees to return merchandise at their expense.

THE WARRANTY PROVIDED IN THIS CLAUSE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PUPOSE.

Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by any warranties or representations by KREISS. For the avoidance of doubt, **KREISS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) 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.**

To the extent that any replacements or repairs are made pursuant to any express or statutory warranty, or by agreement of the parties, Client agrees to pay for all shipping costs between Client's home and the facility where said replacements or repairs will take place, using an insured and registered common carrier or a shipping company of Kreiss' choice.

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24. Limitation Of Liability:

IN NO EVENT SHALL KREISS BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT KREISS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL KREISS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO KREISS FOR THE GOODS SOLD HEREUNDER

The limitation of liability set forth in this Section 22 shall not apply to (i) liability resulting from KREISS's gross negligence or willful misconduct and (ii) death or bodily injury resulting from KREISS's acts or omissions.

25. Confidentiality/Non-

Disparagement: KREISS recognizes that many of its Clients maintain a high public profile and seek to maintain the strictest confidentiality in their business dealings. As such, KREISS endeavors to keep the names, orders details, addresses and related information confidential, unless otherwise authorized to release any such facts by the Client, or as otherwise required to be shared for a lawful purpose, such as collection or under a legal compulsion, in which case, KREISS agrees to notify Client.

In consideration for KREISS' agreement to keep Client information in confidence, Client agrees that it will refrain from sharing information regarding discounts, terms or conditions of their orders, publicly disparaging KREISS in any manner, including without limitation, by posting negative reviews to online review aggregators. Client understands and agrees that a suit for damages related to violation of this non-disparagement provision may be inadequate, as money damages will be difficult or impossible to ascertain. As a result, Client agrees that KREISS may seek injunctive or declaratory relief in relation to said disparagement, and may recover its reasonable attorneys fees from client incurred in connection with said action.

26. Compliance With Laws: Client shall comply with all applicable laws, regulations, and ordinances. Client shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement, including its obligation to accept delivery at the time and place specified by the Invoice and agreed to by KREISS. Client shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Client. Client assumes all responsibility for shipments of Goods requiring any government import clearance. KREISS may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

27. Termination: In addition to any remedies that may be provided under these Terms, KREISS may terminate this Agreement with immediate effect upon written notice to Client, if Client: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Client's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

28. Assignment: Client shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of KREISS. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Client of any of its obligations under this Agreement.

29: Force Majeure: KREISS is not liable for any failure or delay in performance due, in whole or part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond its reasonable control. Such causes include, without limitation, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, insurrection, riot, act of God or public enemy, law, act, order, export control regulation, proclamation, decree, regulation, ordinance, or instructions of any Government or other public authorities, or judgment or decree of a court of competent jurisdiction.

30. Waiver: No waiver by KREISS of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by KREISS. No failure

to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

31. Notices: All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), certified or registered mail (in each case, return receipt requested, postage prepaid) or electronic mail. Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

32. Choice Of Law: This agreement is entered into and deemed to be accepted in the State of California, regardless of the location of Client at the time of order or the State of Client's residence. The validity, interpretation, performance and enforcement of this agreement and its acceptance shall be governed exclusively by the laws of the State of California, and any dispute arising under or related to this Agreement shall be governed by the laws of the State of California.

33. Severability: Should any provision of this Agreement become or be deemed legally unenforceable, no other provision of this Agreement shall be affected, and this Agreement shall be construed as if the Agreement had never included the unenforceable provision.

34. Amendment And Modification: These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

35. Attorneys' Fees: Should any legal action arise from this Agreement the prevailing party to such action shall be entitled to recover its reasonable court costs and attorney's fees incurred from the non-prevailing party. Further, the proper venue for any such action shall be Los Angeles, CA, which is the location of the headquarters of KREISS, and all parties hereto do hereby submit to said court's jurisdiction for all purposes.