

**YEMM & HART**  
**GREEN MATERIALS**  
1417 MADISON 308 MARQUAND MO 63655-9153 USA  
TEL 573-783-5434 FAX 7544 yemmhart@hughes.net

**STANDARD TERMS AND CONDITIONS**

The following Standard Terms and Conditions ("Terms and Conditions") apply to all sales made by Yemm & Hart, Ltd. ("Seller") to the customer under the Acknowledgment ("Customer").

**Section 1. Agreement; Acceptance Agreement.**

1.1 Agreement. Seller agrees to provide the products ("Products") specified in the Acknowledgment ("Acknowledgment") in accordance with the terms of the Acknowledgment and these Terms and Conditions.

1.2 Order and Acknowledgment Acceptance. The issuing of an Acknowledgment (including any amendments or schedule(s) or exhibit(s) attached thereto) indicates acceptance of Customer's order of the Products specified therein by an authorized representative of Seller. If Customer agrees with the Acknowledgment as issued by Seller, Customer must sign the Acknowledgment and return it promptly to Seller within thirty (30) days from the date thereof.

1.3 Changes. Customer may not make any changes to the Products, materials, quantities, packing, lead time, place of delivery or method of transportation set forth in the Acknowledgment after it has been issued by Seller and signed by Customer and returned to Seller. Notwithstanding anything contained in these Terms and Conditions to the contrary, Customer may request to change the place of delivery or method of transportation as long as such change (a) does not change the price set forth in the Acknowledgment and (b) is prior to material moving into production of the Product. If a Customer requests that a change to the Products, materials, quantities, packing, lead time, place of delivery and method of transportation be made after the Acknowledgment has been signed by Customer and returned to Seller, then Customer must request and receive a new quotation from Seller for the change to the Products, materials, quantities, packing, lead time, place of delivery or method of transportation. A revised Acknowledgment will be issued to Customer by Seller, in Seller's sole discretion, to reflect such requested change(s) that must be signed by Customer and returned to Seller, and upon receipt by Seller of such revised Acknowledgment, the terms as finally determined by Seller and Customer shall be used in lieu of the initial Acknowledgment. Each executed and approved revised Acknowledgment shall be referred to as an "Approved Revised Acknowledgment." Each Approved Revised Acknowledgment: (i) shall be deemed an amendment to any Acknowledgment; (ii) shall be subject to these Terms and Conditions; and (iii) these Terms and Conditions shall be hereby modified to cause any references to "Acknowledgment" herein to be deemed to refer to the "Approved Revised Acknowledgment."

1.4 Suitable Products. Customer is solely responsible for determining the suitability of Seller's Products for their application in Customer's business, including, without limitation, the finished Product being available within the Customer's time frame, requesting and receiving necessary and appropriate material samples, an adhesive bond test before any Product is installed by Customer, and a finish test before any Product is sealed, decorated or finished by Customer.

**Section 2. Purchase Price, Deposit; Invoices.**

2.1 Purchase Price. Seller will furnish the Products in accordance with the prices and delivery schedule stated in the Acknowledgment. The prices set forth on the original quotation ("Quotation") and Acknowledgment shall be governed by these Terms and Conditions, and shall include the cost of labor, material, packing, crating, transportation, bank fees, if any, and all applicable local, state and federal taxes, including, sales, use, excise or other effective taxes, if any, imposed by the

applicable taxing authority. All prices referenced in the {Quotation} and {Acknowledgment} shall remain in effect until thirty (30) days after the date thereof, and thereafter, shall be subject to change at any time by Seller; provided, however, all published prices by Seller may change at any time and without notice to Customer.

2.2 Deposit. Contemporaneously with the execution of the Acknowledgment by Customer for the purchase of the Products specified therein, and prior to commencing any labor or production costs or incurring any other costs associated with the Acknowledgment, Seller requires that Customer deliver to Seller a non-refundable cash deposit, the amount of which will be indicated in the Acknowledgment, in lawful U.S. currency.

2.3 Prepayments. In Seller's sole discretion, a progress payment schedule will be included in the Acknowledgment. Proforma invoices will be issued by Seller upon request by Customer. The progress payment or the proforma invoice (as the case may be) shall be paid promptly to Seller by Customer to avoid any production or shipping delays of the Products. Progress payments and proforma invoices are due on the date indicated therein and shall be payable by Customer to Seller in lawful U.S. currency.

2.4 Invoices. A final invoice will be issued on the date of shipment of the Products to Customer (the "Final Invoice") and shall be payable to Seller in lawful U.S. currency. Customer agrees and acknowledges that any amounts indicated in the Final Invoice not paid within net thirty (30) days after the date of such Final Invoice shall bear a service charge of one and one-half percent (1 1/2) per month (eighteen percent (18%) per annum), until Seller is paid in full by Customer (not to exceed the maximum legal limit in the State of Missouri). A service charge of \$25.00 will be charged and paid by Customer to Seller for each check returned for any reason. In addition to any progress payment or issuance of a proforma invoice by Seller as set forth in Section 2.3 above, if, at any time, Seller deems the financial responsibility of Customer unsatisfactory, then Seller reserves the right to require additional advance payments or other securities or guarantees that the Final Invoice will be promptly paid, when due, by Customer.

**Section 3. Delivery; Shipping; Packing; and Inspection.**

3.1 Delivery; Shipping. All Products shall be delivered to Customer in the quantities, at the time, and to the destination, specified in the Acknowledgment; provided, however, upon the departure of any Product from either the Seller's or a third-party manufacturer's facility (as the case may be), Seller shall not be liable for any damages, claims, liabilities, obligations or otherwise arising or resulting from, or in connection with, any delay of shipment, or damage to shipment in transit, of the Products caused by any reason beyond the reasonable control of Seller, including, without limitation, any third-party manufacturer or supplier or any Force Majeure Event (as defined in Section 3.4 below). All Products are shipped "FOB shipping point" or "FOB origin". Therefore, all shipping and/or delivery damages, claims, liabilities, obligations or otherwise must be processed by Customer with the respective shipping carrier and shall not be a liability or obligation of Seller. Seller will make a good faith effort to assist Customer in every possible way with any shipping and/or delivery damage, claim, liability, obligation or otherwise; however, any claim and future proceedings related thereto are the sole responsibility of Customer. Any additional costs incurred by Seller to have any Products split into multiple shipments not previously included in the Acknowledgment will be borne by Customer.

3.2 Packing. All Products will be packaged, marked and prepared in accordance with good commercial

practices to obtain the lowest shipping, delivery and transportation rates.

3.3 Inspection. Customer must carefully inspect all Products immediately upon receipt and before signing the Bill of Lading for possible shortages, inaccuracies or any other errors, except for any damage to such shipment. In the event that any shipment of the Products to Customer contains any shortage, inaccuracy or any other error, excluding any damage, Customer must note the shortage, inaccuracy or error on the Bill of Lading and promptly notify Seller, in writing, within two (2) days of receipt of shipment of the Products, and failure to give such written notice to Seller shall constitute unqualified acceptance of the Products and a waiver of all such claims by Customer. Upon receipt by Seller of written notice within the two (2) day time period set forth in this Section 3.3, Seller, in its sole discretion, shall determine whether there was a shortage, inaccuracy or other error of the shipment of the Products sent to Customer. If Seller determines that there was a shortage, inaccuracy or other error of the shipment of the Products sent to Customer, then Seller agrees to pay the reasonable costs necessary to resolve any issues discovered during any inspection (including freight of any Product shipped to Customer).

3.4 Time. Time is of the essence in the performance of the Acknowledgment; provided, however, in the event of any Force Majeure Event, Seller reserves the right to suspend shipment of any Products covered under the Acknowledgment. For purposes of these Terms and Conditions, the phrase "Force Majeure Event" means, a war, civil unrest, strike, lockout, labor dispute, unusually severe weather, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, outbreak of disease, acts of terrorism, national emergency, governmental change, transportation curtailment, fuel shortages, natural disaster, acts of God, acts caused directly or indirectly by Customer (or Customer's agents, employees, contractors, subcontractors or any other representatives of Customer), delay by any third-party manufacturer or supplier, concealed freight damage or any other cause or contingency beyond the reasonable control of Seller.

#### **Section 4. Warranty**

4.1 Seller's Limited Warranty. Seller warrants ("Seller's Limited Warranty") to the original Customer that any Product manufactured by Seller's actions and sold to the original Customer under an Acknowledgment will be free from manufacturing defects in workmanship of materials under normal use and service, excepting any normally occurring variations resulting from the use of feedstock with recycled content, as follows: (A) for a period of five (5) years for synthetic resilient flooring Products from the date of shipment from Seller's facility; (B) for a period of three (3) years for natural cork Products from the date of shipment from Seller's facility; and (C) for a period of fifteen (15) years for polyethylene materials and fabrications (including, without limitation, any fabricated polyethylene panel Products, restroom and decorative partitions, toilet and shower stalls, doors, privacy screens, vanities, countertops, store fixtures, furniture and cabinets) from date of shipment from Seller's facility (each period, a "Seller's Limited Warranty Period"). The Seller's Limited Warranty is offered only to the original Customer under an Acknowledgment, and does not cover damage to any Product resulting from misuse, abuse, accident, casualty, neglect, improper handling, freight damage (whether concealed or not), misapplication or improper installation (including, installation in abnormal or adverse conditions of heat, moisture, dirt or corrosive substances) or modification to the Product, including, without limitation, bending or lamination. Customer's failure to timely pay any Invoice in full within the terms specified therein or herein will void all warranties, express or implied, with regard to any Product listed on that Invoice, including, without limitation, Seller's Limited Warranty.

4.2 Batch Sensitivity. Customer agrees and acknowledges that all Products and materials manufactured

and sold by Seller are batch sensitive, and that orders for Products and materials manufactured at different times by Seller could be dissimilar.

4.3 Typical Properties. All information provided by Seller is offered in good faith as representative of the characteristics found in materials offered and Products sold. Physical property measurements are typical values only and are subject to normal occurring variations in test method and Product manufacture. No guarantees are expressed or implied and Seller assumes no liability.

4.4 Accuracy of Information. Customer acknowledges that all of the information provided by Customer to Seller is in all material respects true, correct and accurate. Customers are advised to confirm, prior to executing and returning an Acknowledgment to Seller, that all of the information provided therein is current, applicable, reflects the information the Customer provided to Seller, and in accordance with Section 1.4 hereof, the Products are suitable to Customer's circumstances and application. Since the use of any materials and Products by Customer are beyond the control of Seller, no guarantees by Seller are expressed or implied and Seller assumes no liability, except as defined in Sections 4.1 and 4.5 hereof. In the event that any information provided by Customer to Seller is inaccurate, and due to such inaccuracies, a change must be made to the Products, materials, quantities or otherwise, at no time shall Seller be responsible for any such change (including, without limitation, the cost of labor, material or transportation), and Customer must follow the procedure set forth in Section 1.3 hereof.

4.5 Seller's Warranty for Replacement Parts Process. If a defect of a Product should appear which Customer believes is covered by the Seller's Limited Warranty under Section 4.1 above, Customer must follow and comply with all the applicable provisions of this Section 4.5. Seller's responsibility is limited to repairing the defective Product or furnishing Customer a replacement Product at no cost to Customer, except that, Customer is solely responsible for all shipping costs and labor to remove and install the Product or part thereof. During the applicable Seller's Limited Warranty Period, Customer must notify Seller, in writing, of any alleged defect of a Product or part thereof with reasonable specificity, and Customer must ship the reportedly defective Product or part thereof to Seller for inspection, freight prepaid, by Customer. Upon inspection of any allegedly defective Product or part thereof by Seller, Seller will either (a) ship a new replacement Product or part thereof to Customer, freight prepaid by Seller; (b) return repaired Product or part thereof to Customer, freight prepaid by Seller; or (c) if the allegedly defective Product or part thereof, is found to be non-defective by Seller, then Seller will return the non-defective Product or part thereof, to Customer, freight paid by Customer. Proof of a Customer's Acknowledgment is required prior to shipment of any Seller's Limited Warranty replacement Product or part thereof. Any repaired or replacement Product or part thereof will be shipped to Customer via Seller's freight service or by Customer specified freight service (if Customer pays for such service). Any Seller's Limited Warranty claim under Section 4.1 hereof, must be made during the applicable Seller's Limited Warranty Period specified herein and shall be asserted by Customer by contacting Seller at the following address:

Yemm & Hart, Ltd.  
1417 Madison 308  
Marquand, Missouri 63655  
Tel: (573) 783-5434  
Fax: (573) 783-7544  
Email: yemmhart at hughes dot net

**THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES WHICH EXTEND BEYOND THE ACKNOWLEDGEMENT, INVOICE OR THESE TERMS AND CONDITIONS. THE SOLE AND EXCLUSIVE REMEDY IS THE REPAIR OR REPLACEMENT OF THE PRODUCT OR PART THEREOF. IN NO EVENT SHALL SELLER BE**

**LIABLE FOR ANY INDIRECT, ACTUAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH, A DEFECT IN ANY PRODUCT, LABOR OR MATERIAL. NO REPRESENTATIVE OF SELLER HAS THE AUTHORITY TO MAKE ANY AFFIRMATION OF FACT OR PROMISE WHICH RELATES TO THE PRODUCTS EXCEPT AS STATED HEREIN.**

**Section 5. Confidentiality.**

Customer will treat as confidential all trade secrets and other information regarding Seller, its Products or business provided or made accessible by Seller under the Quotation, Acknowledgement, Invoice and these Terms and Conditions ("Confidential Information"). Customer will not disclose Confidential Information to any third-party, nor use that information, directly or indirectly, other than as contemplated by the Quotation, Acknowledgement, Invoice and these Terms and Conditions, without the express prior written consent of Seller. Notwithstanding the foregoing, Customer is not prohibited from disclosing Confidential Information (a) that was previously known to Customer before the disclosure thereof by Seller under the Quotation, Acknowledgement, Invoice and these Terms and Conditions; (b) which is now or becomes in the future, public knowledge other than by breach of the Acknowledgement, Invoice and these Terms and Conditions by Customer; (c) which is lawfully obtained by Customer from a source that is independent of Seller and is not obligated to keep the information confidential; (d) which is required to be disclosed by judicial or administrative process, provided Customer must promptly notify Seller and allow Seller a reasonable time to seek an injunction or other appropriate remedy or provisional judicial or administrative relief, if appropriate, in the sole discretion of Seller; or (e) which has been disclosed to Customer on a non-confidential basis by any third-party that is in lawful and rightful possession of the information and not under any obligation of confidentiality.

**Section 6. Cancellations.**

Cancellation by Customer of an order of Products specified in an Acknowledgement is subject to written acceptance by Seller, in its sole discretion. If such cancellation is accepted in writing by Seller, a refund of any progress or advance payment will be made after deducting all expenses and costs related to the Acknowledgement and incurred by Seller up to the point of cancellation of an order of the Products specified in the Acknowledgement (including, without limitation, manufacturing and production costs and Seller's customary charges for labor and profit for the manufacturing and management of the Products). In accordance with Sections 2.2 and 2.3 hereof, the non-refundable cash deposit, any prepayments or any progress payments will be imposed against Customer to indemnify Seller for any and all losses or expenses sustained as a result of any accepted cancellation of an order of the Products specified in the Acknowledgement by Seller. All Products are "built-to-order" items and may not be returned to Seller, subject to Section 4.5 hereof, and Customer agrees and acknowledges that the price and any non-refundable cash deposit stated in the Quotation and Acknowledgement includes the entire cost of the Products manufactured or acquired in pursuance hereof.

**Section 7. Independent Contractor.**

Seller is an independent manufacturer under the Acknowledgement and these Terms and Conditions, and nothing herein shall be construed to create a contractor sub-contractor relationship, partnership, joint venture or agency relationship between Seller and Customer. Neither party shall have the authority to enter into agreements of any kind on behalf of, or for the benefit of, the other party, and, shall have no power or authority to bind or obligate the other party in any manner to any third-party.

**Section 8. Indemnity.**

Customer will indemnify, hold harmless and defend Seller and its affiliates, and their respective officers, members, directors, managers, employees, agents, representatives and advisors (collectively, the "Indemnified Parties"), from and against, and will reimburse those Indemnified Parties with respect to, any and all claims, demands, debts, expenses, liabilities, fines, penalties, deficiencies, judgments or costs, including any reasonable attorneys' fees and court costs, amounts paid in settlement and costs and expenses of investigations, at any time and from time to time asserted against or incurred by any of those Indemnified Parties arising out of, relating to, in connection with, or resulting from or by reason of (a) any breach of the Acknowledgement, Invoice and these Terms and Conditions by Customer; or (b) any negligent act, willful act or omission of Customer. Seller shall have the right to apply such costs against any and all sums payable to Seller under the Acknowledgement, Invoice, these Terms and Conditions and any and all sums payable to Seller under this Section 8.

**Section 9. General Provisions.**

9.1 Binding Nature of Agreement; No Third-Party Beneficiaries. All of the terms and provisions of the Acknowledgement, Invoice and these Terms and Conditions will be binding upon, and will inure to the benefit of, the parties and their respective successors, permitted assigns, heirs and personal representatives. It is not the intention of the parties to confer third-party beneficiary rights upon any other third-party.

9.2 No Exclusive Agreement. Customer is free to engage others to provide services the same as, or similar to, Seller.

9.3 Notices. All notices or other communications required or permitted under these Terms and Conditions will be in writing and will be delivered by hand or overnight courier service, mailed by certified or registered mail, or sent by fax or email, using the recipient party's contact information identified in the Acknowledgement, Invoice or these Terms and Conditions. A party may change its contact information by notice to the other party. All notices and other communications given to a party in accordance herewith will be deemed to have been given on the date of actual receipt (with sufficient evidence of proof of delivery).

9.4 Assignment. Customer may not assign, delegate or transfer to any third-party any of its rights or obligations hereunder without the prior written consent of Seller.

9.5 Consent to Conduct Business Electronically. Except as may be specifically set forth in these Terms and Conditions, the parties may use and rely upon electronic records and electronic signatures, including, without limitation, to the extent signed and delivered by means of a facsimile machine, or as an attachment to an electric mail message in "pdf" or similar format, (a) for the acceptance, execution and delivery of the Quotation, Acknowledgement and any other agreements, undertakings, notices, disclosures or other documents, communications or information of any type sent or received in accordance with the Acknowledgement, Invoice and these Terms and Conditions, and (b) in providing their obligations or exercising their rights under the Acknowledgement, Invoice and these Terms and Conditions. For avoidance of doubt, the parties expressly agree and acknowledge that any Quotation, Acknowledgement, these Terms and Conditions or any other agreement relating to the Products may be accepted, or otherwise agreed upon, by Customer by and through any means of electronic transmission in lieu of a signed Acknowledgement by Customer in accordance with Section 1.2 above, including, without limitation, by way of an electronic mail message.

9.6 Construction. The terms "include," "including" and similar terms will be construed as if

followed by the phrase “without being limited to.” The words “hereof,” “herein,” “hereto,” “hereby,” “hereunder,” and similar terms in these Terms and Conditions refer to these Terms and Conditions as a whole and not to any particular provision or section of these Terms and Conditions. Unless otherwise expressly stated, the term “party” means a party hereto and “parties” means, collectively, all parties hereto. Where the context requires, the use of any gender shall include any and all genders or neutral genders.

9.7 Authority. Customer represents that it has the full power and authority to enter into the Acknowledgement and these Terms and Conditions, and the person issuing and executing the Acknowledgement on behalf of Customer has been properly authorized and empowered to take such action. Customer acknowledges that it has read the Acknowledgement, Invoice and these Terms and Conditions, understands them, and agrees to be legally bound by them.

9.8 No Waiver. No failure or delay by any party in exercising any right, power, or privilege hereunder will operate as a waiver of any right, power, or privilege hereunder. No waiver of any default on any one occasion will constitute a waiver any subsequent or other default. No single or partial exercise of any right, power, or privilege will preclude the further or full exercise thereof.

9.9 Dispute Resolution. The parties agree to resolve any disputes, controversies or claims arising out of, relating to, or in connection with, the Quotation, Acknowledgement, Invoices or these Terms and Conditions through email, telephone or face-to-face discussions and negotiations between each other. In the event that, after good faith discussions, such disputes, controversies or claims cannot be resolved solely between the parties, the parties may agree upon any type of formal or informal dispute resolution that is feasible under the circumstances, including referral of any such dispute, controversy or claim to any third-party for resolution. In the event of any dispute, controversy or claim still exists and the parties are unable to agree on a form for dispute resolution, such dispute shall be resolved by arbitration in accordance with procedures set forth in the American Arbitration Association. The parties may use all methods of discovery available under the Federal Rules of Civil Procedure. The final award shall award to the prevailing party its or his reasonable attorneys’ fees and expenses incurred in connection with the arbitration and may grant such other and further relief as determined by the arbitrator, including damages of reasonable out-of-pocket costs. The decision of the arbitrator shall be binding on the parties and each party shall have the right to bring an action in a state or federal court located in Kansas City, Jackson County, Missouri, to enforce and confirm any award under this Section 9.9. The arbitration shall be held in the Greater Kansas City, Missouri, metropolitan area. The law of the State of Missouri shall be the law used by the arbitrator in rendering the award

9.10 Survival. Upon termination of the Acknowledgement, Invoice and these Terms and Conditions, any and all rights and obligations of the parties under the Acknowledgement, Invoice and these Terms and Conditions shall terminate; provided, however, that any right or obligation which by its nature or express duration extends beyond the termination of the Acknowledgement, Invoice and these Terms and Conditions, including, those set forth in Sections 2, 3, 4, 5, 6, 7, 8 and 9 hereof, shall survive such termination and continue in effect.

9.11 Entire Agreement. The agreements indicated in the Acknowledgement, Invoice and these Terms and Conditions contain the entire agreement among the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or written. If any conflict exists among any of the terms of the Quotation and Acknowledgement, the terms and conditions of the Acknowledgement shall govern and control.

9.12 Prevailing Party Expenses. In the event that any party seeks to enforce the terms and conditions of the Acknowledgement or these Terms and Conditions, all costs and expenses (including any reasonable attorneys’ fees and dispute resolution costs pursuant to Section 9.9 above) incurred by the successful or prevailing party enforcing any term and condition of, or protecting the successful or prevailing party’s rights under, the Acknowledgement or these Terms and Conditions, shall be paid by the non-prevailing party.

9.13 Amendment. Except as otherwise provided herein, neither the Acknowledgement, Invoice or these Terms and Conditions may be modified or amended other than by an agreement in writing signed by duly authorized representatives of each of the parties.

9.14 Severability. The provisions of these Terms and Conditions will be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof will not affect the validity and enforceability of the other provisions hereof.

9.15 Publicity. Customer will not use any Seller’s trademark, name or logo in any publicity release, advertising or other promotional activity without the prior written consent of Seller. Seller’s published information in print or on their website is copyrighted by “Yemm & Hart, Ltd.” and all rights are reserved.

9.16 Governing Law; Venue. The Acknowledgement, Invoice and these Terms and Conditions will be governed by and will be construed, interpreted, and enforced in accordance with the laws of the State of Missouri, without regard or reference to conflicts of law principles. The parties hereby irrevocably and unconditionally consent and submit to the personal jurisdiction and venue of any state and federal court located in Kansas City, Jackson County, Missouri.