

**Herman Miller, Inc.**  
**Facility Purchasing Agreement**

Between

**Herman Miller, Inc.**  
855 East Main Avenue  
PO Box 302  
Zeeland, MI 49464-0302  
USA

(Seller)

and

**ACS/Associated Colleges of the South**  
1975 Century Boulevard Suite 10  
Atlanta, GA 30345  
USA

(Buyer)

November 14, 2001

*Effective Date*

September 30, 2003

*Expiration Date*

G2634

*Agreement Number*

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**Facility Purchasing Agreement**

between

**Herman Miller, Inc.**

and

**ACS/Associated Colleges of the South**

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## **Facility Purchasing Agreement**

This agreement ("Agreement") expresses the terms and conditions for the supply of products ("Products") between Herman Miller, Inc., together with its subsidiaries ("Seller"), 855 East Main Avenue, PO Box 302, Zeeland, Michigan 49464-0302, USA, and ACS/Associated Colleges of the South, together with its affiliated colleges and universities, ("Buyer"), 1975 Century Boulevard, Suite 10, Atlanta, Georgia 30345, USA. In consideration of the mutual promises and upon the conditions contained within this Agreement, the parties agree:

### **1. Scope of Agreement**

- 1.1 This Agreement covers those product lines referenced in the Discount Schedule and included in Seller's most current price list catalogs. Products furnished under this Agreement are intended for Buyer's own commercial use and are not intended for resale. Terms for Products sold by Seller's division, Herman Miller for the Home, are not included in this Agreement and may be specified in a separate schedule or added by amendment.
- 1.2 Buyer's domestic colleges and universities identified in the Discount Schedule are entitled to purchase Products under the terms of this Agreement.
- 1.3 The terms of this Agreement apply only to purchases for delivery within the United States; terms and discounts for purchases for delivery in other countries may be specified in separate schedules or added by amendment.
- 1.4 Buyer may purchase Products under this Agreement from Seller's authorized dealers. Terms and pricing may vary from this Agreement as mutually agreed upon between Buyer and Seller's authorized dealers.
- 1.5 Services are not included unless Service terms are provided in a separate schedule.

### **2. Term of the Agreement**

- 2.1 This Agreement becomes binding and enforceable after signature by both parties' legally authorized employees and expires September 30, 2003. It may be extended by a written amendment signed by both parties' authorized employees.
- 2.2 Either party may terminate this Agreement, without cause, with 30 days' prior written notice to the other party. This Agreement continues to govern any purchase order placed before the expiration or termination date until either the order is canceled or Products are delivered and installed and Buyer has paid for them.

### **3. Pricing**

- 3.1 Prices are determined by applying the appropriate discounts to Seller's published list prices in effect when Seller receives Buyer's completed purchase order.
- 3.2 If Buyer's requested shipping date is more than six months after Seller receives Buyer's order, the order may be repriced using the list prices in effect when Products are shipped.

3.3 Seller agrees to give Buyer 30 days' written notice of any increases in Seller's published list prices.

#### **4. Order Procedures**

4.1 Buyer may place orders with its authorized dealers and must reference this Agreement number on its written purchase order.

4.2 If Buyer orders Products incorporating Buyer-supplied fabrics or other materials ("COM"), those orders are subject to Seller's own procedures and conditions regarding those materials stated in Seller's price list catalogs.

4.3 Buyer may request expedited shipment on its purchase order by use of Seller's expedited shipment programs. The specific products offered are listed in Seller's separate expedited shipment catalogs.

4.4 Seller uses its best efforts to meet the estimated delivery dates, but if Seller is unable to do so, it will advise Buyer and work with Buyer to establish an acceptable date.

#### **5. Order Changes and Cancellations**

See Exhibit 2, Order Change and Cancellation Terms for Herman Miller-brand, Meridianbrand, SQA-brand, and Geiger-brand Products.

#### **6. Packaging, Shipping, and Returns**

6.1 Seller uses blanket, bulk, corner packaging, or polybagging for most Products; however, Geiger-brand seating Products ship cartoned. Meridian-brand Product orders of less than \$20,000 list value shipping direct to Buyer at Buyer's request, may be cartoned at additional charge.

6.2 Buyer may request Products to ship cartoned with the following charges as a percent of the net Product price:

- Meridian-brand Products, Geiger-brand Products 7%
- Balance of Systems, Storage, Seating, Furniture 2%

6.3 If Buyer requests special packaging, shipping methods, delivery requirements, or shipment of Products to a residential location, it is responsible for any extra costs that result.

6.4 Seller's list prices include surface freight to any point within the 48 contiguous United States. For orders shipped to Alaska or Hawaii, freight is included only to the port of embarkation. Shipments beyond that point are freight collect.

6.5 Orders placed with Seller's authorized dealers are governed by the shipping terms mutually agreed between Buyer and those dealers.

6.6 Products may be returned only with Seller's prior written approval.

## **7. Invoicing and Payment**

7.1 Orders placed with Seller's dealers are governed by the payment terms mutually agreed between Buyer and each dealer.

## **8. Leasing**

8.1 If Buyer elects to finance the acquisition of Products through third-party leasing, those Products may be purchased under this Agreement by any Buyer-designated lessor. The terms of this Agreement will apply to those transactions and will continue to apply to the relationship between Buyer and Seller.

8.2 Buyer must guaranty its lessor's payment to Seller and must execute any documents its lessor requires within 10 days after the invoice date of any Products leased.

## **9. Warranty**

Herman Miller, Inc., Limited Product Warranty as set forth in Exhibit 1.

## **10. Protection of the Parties**

10.1 If a third-party claim alleges that any Products or services that Seller finishes under this Agreement infringe on any United States patent, trademark, or copyright, Seller must defend Buyer and indemnify it against the resulting liability, damage, or expense. Buyer must give Seller prompt notice of any claim and must cooperate with Seller and its counsel in the defense of the claim. Seller is entitled to resolve the matter at its sole prerogative and expense. Seller reserves the right to substitute or modify Products so that they become noninfringing but remain functionally equivalent.

10.2 Seller agrees to comply with the Fair Labor Standards Act, as amended, and with all applicable laws and governmental regulations or orders prohibiting discrimination in opportunities for employment by reason of race, color, national origin, religion, sex, age, disability, or military service.

10.3 Seller is not liable for a delay or failure in shipment or performance of any part of this Agreement if the delay or failure is caused by:

- an act or omission of Buyer, its agents, employees, or contractors;
- the act of a governmental authority, including agencies and political subdivisions;
- revolution, riot, or other civil disturbance or disorder, including acts of enemies;
- strike, or other dispute with or among labor unions; or
- fire, flood, acts of God.

Seller is excused from further performance of its obligations for the duration of a force majeure cause.

10.4 Without Seller's prior written approval, Buyer must not use Seller's name, brand names, trademarks, commercial symbols, copyrighted text, and copyrighted images of Seller's Products on Buyer's internet or intranet website or in any publicity releases or advertising of any nature.

10.5 Seller is not liable for loss of time, inconvenience, lost profits, commercial loss, or other special, consequential, or incidental damages for any transactions under this Agreement.

## 11. Notification

Unless otherwise provided for in this Agreement, all notices given regarding this Agreement shall be in writing and mailed via certified or registered mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at other addresses as the parties may designate by written notice in the same manner as noted above. Any such written notice shall be deemed to be given when it is personally delivered to the addresses below.

### **To Buyer:**

Dr. Wayne Anderson  
President  
ACS/Associated Colleges of the South  
1975 Century Boulevard, Suite 10  
Atlanta, GA 30345

### **To Seller:**

Contracts Manager  
Herman Miller, Inc.  
Location 0222  
855 East Main Street  
Zeeland, MI 49464

## 12. Miscellaneous

- 12.1 Each party must send the other party any written notices or communications required under this Agreement to the respective address listed on the first page of this Agreement or to any other address that a party may substitute by written notice.
- 12.2 The parties' rights and duties that are intended by their nature to continue beyond the term of the Agreement survive the termination or expiration of the Agreement.
- 12.3 This Agreement may be modified, or rights or duties under the Agreement waived or discharged, only by a written amendment signed by both parties' authorized representatives. If either party fails to enforce any provision of this Agreement, that failure must not be construed as a waiver of that provision or of any other provision.
- 12.4 Seller is acting on its own behalf and on behalf of its subsidiaries; Buyer is acting on its own behalf and on behalf of its affiliated colleges and universities. This Agreement binds the parties and their successors and permitted assigns. Neither party may assign this Agreement, nor any portion of it, without the other party's written consent and that consent must not be unreasonably withheld.
- 12.5 This document, including its Discount Schedule, its Warranty Exhibit, and Change and Cancellation Exhibit, is the complete, exclusive, and final statement of the terms of agreement between the parties regarding its subject matter. It supersedes all prior and contemporaneous agreements, understandings, negotiations, proposals, and representations, whether written or oral. Any terms in Buyer's purchase order that are additional to or contrary to the terms of this Agreement are not effective.

To acknowledge agreement, the parties' duly authorized officers have signed below:

**Herman Miller, Inc**

Rod Stephens

*Print Name*

Director, Commercial Contracts

*Title*

11/14/01

*Date Signed*

November 1, 2001

*Issue Date*

#4

*Issue Number*

**ACS/Associated Colleges of the South**

Dr. Wayne Anderson

*Print Name*

President

*Title*

November 7, 2001

*Date Signed*