

# RESTORATION HARDWARE C O N T R A C T

## **TERMS & CONDITIONS FOR MADELEINE & VINTAGE CHAIRS AND STOOLS**

These Trade Terms & Conditions (these "Terms") constitute the terms and conditions that apply to Madeleine chairs, Madeleine barstools and Vintage barstools sold by Restoration Hardware ("Restoration Hardware Trade") to you.

ANY SALE OF PRODUCTS AND ANY RESTORATION HARDWARE TRADE OFFER OR ACCEPTANCE ARE EXPRESSLY CONDITIONED ON ASSENT TO AND ARE LIMITED TO THESE TERMS. YOUR SIGNATURE ON A RESTORATION HARDWARE TRADE QUOTATION OR YOUR SUBMISSION OF ANY EMAIL OR OTHER WRITTEN DOCUMENT ACCEPTING OR REFERENCING THE QUOTATION SHALL CONSTITUTE YOUR ACCEPTANCE OF THE RESTORATION HARDWARE QUOTATION AND THESE TERMS. ALL TERMS OR CONDITIONS THAT ARE IN ANY WAY INCONSISTENT WITH OR ARE IN ADDITION TO OR DIFFERENT FROM THESE TERMS ARE HEREBY EXPRESSLY REJECTED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NOTHING CONTAINED IN ANY PURCHASE ORDER OR SIMILAR DOCUMENT WILL IN ANY WAY MODIFY OR ADD TO THESE TERMS.

## **PRICING**

We recognize that there are often several decision-making steps to approve a large Trade order. All our Trade pricing is consequently guaranteed for 30 days from the date of the quotation.

## **ORDERS**

All orders for products submitted by you in response to a quotation from Restoration Hardware Trade shall be initiated by your signature and return of the quotation within 30 days from the date of the quotation. If no such quotation has been provided by Restoration Hardware Trade or if the quotation is more than 30 days old, your order shall not be binding upon Restoration Hardware Trade until accepted by Restoration Hardware Trade in writing, and partial shipment of an order shall not constitute acceptance of the entire order. All orders shall specify requested schedule and delivery destination and shall be subject to satisfaction of Restoration Hardware Trade's credit requirements.

## **ORDER CANCELLATIONS**

We will charge a 20% cancellation fee for order of stocked product, if the order is cancelled more than 48 hours after acceptance.

We will charge a 50% cancellation fee (i.e., the amount of the required deposit) for Trade special orders, if the order is cancelled more than 48 hours after acceptance. Any other changes or re-scheduling to an accepted order must be mutually agreed upon by the parties in writing, and may require additional fees.

## **PAYMENT**

Unless satisfactory credit terms are established by you in advance, payment for stocked product is required prior to product shipment and can be made via check, credit card (American Express, Mastercard, Visa and Discover) or by wire transfer. You shall pay all amounts due to Restoration Hardware Trade in U.S. dollars, unless otherwise agreed in writing.

Restoration Hardware Trade reserves the right to establish or alter credit limits and terms, to delay shipment of orders or to require alternate terms and conditions based upon your payment history and financial condition. Without limiting the generality of the foregoing, if you fail to pay or if your financial condition becomes impaired or unsatisfactory to Restoration Hardware Trade, Restoration Hardware Trade may require you to provide satisfactory security and may withhold further deliveries until such security is received.

Any amount payable by you that remains unpaid after the due date will be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate allowable by law from the due date until such amount is paid. You will reimburse Restoration Hardware Trade for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

Trade special orders include both custom merchandise, as well as large volume purchase orders, written specifically for the Trade customer. A nonrefundable 50% deposit is required for Trade special orders upon acceptance of Restoration Hardware Trade's quotation, and the remaining payment is required prior to product shipment. Special order payment can be made by check, credit card (American Express, Mastercard, Visa and Discover) or by wire transfer.

## **TAXES**

All prices payable for products are exclusive of all taxes. You will pay all applicable sales and use taxes, value added taxes, goods and services taxes, and other taxes (except for taxes based on Restoration Hardware Trade's net income), except to the extent you provide Restoration Hardware Trade with a valid resale or sales tax exemption certificate or other evidence of such exemption in a form acceptable to Restoration Hardware Trade.

## **SECURITY INTEREST**

In the event that Restoration Hardware Trade provides credit to you, Restoration Hardware Trade hereby reserves, and you hereby grant to Restoration Hardware Trade, a security interest and purchase money security interest in the products sold to you and the proceeds thereof, in the amount of the purchase price. In the event of default by you of your payment obligations to Restoration Hardware Trade, Restoration Hardware Trade has the right to repossess such products without liability to you. These security interests will be satisfied by payment in full. A copy of the invoice may be filed with appropriate authorities at any time as a financing statement and/or chattel mortgage, in order to

perfect Restoration Hardware Trade's security interests. On the request of Restoration Hardware Trade, you will execute financial statements and other instruments Restoration Hardware Trade requires to perfect its security interests.

## **SHIPPING AND HANDLING**

We will use commercially reasonable efforts to communicate the most current and accurate product delivery and inventory information, but there is no guarantee items will be available when payment is received. We will use commercially reasonable efforts to ship back ordered items on the date set forth in the quotation. In the event that an available date changes, you will be notified promptly. Delivery dates are estimates only, and Restoration Hardware Trade will not be liable for any damage, loss or expense incurred by you if Restoration Hardware Trade fails to meet the specified delivery dates. You agree that Restoration Hardware Trade may make partial shipments of Products, and each Product shipment will constitute a separate and independent transaction.

All goods will be packaged in the manner determined by Restoration Hardware Trade, unless otherwise requested by you and agreed to in writing by Restoration Hardware Trade. Our shipping and handling charges include any surcharges for over-sized items.

For delivery to a final destination within the United States, Restoration Hardware Trade shall deliver products purchased hereunder F.O.B. the designated shipping address in the order. Notwithstanding the foregoing, you shall reimburse Restoration Hardware Trade for all related shipping, handling and insurance costs and expenses. Title and risk of loss to the products will pass to you on delivery to the shipping address on record.

For delivery to a final destination within Canada, Restoration Hardware Trade shall deliver products purchased hereunder D.D.U. (Incoterms 2000) the designated shipping address in the order. Notwithstanding the foregoing, you shall reimburse Restoration Hardware Trade for all related shipping, handling and insurance costs and expenses. You shall be responsible for payment of all import duties. Title and risk of loss to the products will pass to you on delivery to the shipping address on record.

For delivery to a final destination outside the United States and Canada, Restoration Hardware Trade shall deliver products purchased hereunder F.O.B. the designated address within the 48 contiguous United States of the U.S. freight forwarder that you have selected as noted in the order. Notwithstanding the foregoing, you shall reimburse Restoration Hardware Trade for all related shipping, handling and insurance costs and expenses. Title and risk of loss to the products will pass to you on delivery to such freight forwarder. You shall be responsible for overseas transportation, customs formalities, customs fees, import duties, and export documentation. The Restoration Hardware Trade pro forma invoice serves as the Bill of Sale for export records.

Restoration Hardware Trade will provide "white glove delivery service" only if expressly stated in the order. Such white glove delivery service shall include unloading, unpackaging and assembly of the products at the shipping address on record immediately upon delivery. You shall be responsible for providing a suitable and safe environment at the shipping address on record for such white glove delivery service.

**White glove delivery service is provided "as is" and without any warranties of any kind.** To the extent permitted by applicable law, Restoration Hardware Trade disclaims all liability arising from or related to such white glove delivery service, including without limitation, any liability arising from acts or omissions of individuals providing such white glove delivery service.

No sales are meant to be allowed to any destination, person or entity in violation of applicable export laws and regulations of the United States, including without limitation the U.S. Export Administration Regulations ("Export Controls"). In the event of identification of any such person or entity, the order will be cancelled and the bill-to customer on record will be responsible for any cancellation charges. Furthermore, you shall comply with all Export Controls and shall not and shall require your representatives not to, export, direct, or transfer Restoration Hardware Trade products to any destination, person, or entity restricted or prohibited by the Export Controls.

## **PRODUCT RETURNS**

Product returns are only accepted for products with material defects in material or workmanship upon arrival or where Restoration Hardware Trade has made an error in fulfilling your order correctly. "Defects" are defined as imperfection in material or workmanship that will impair the use of the product. Products made of natural materials (e.g., marble, silk, etc.) shall not be considered defective due to variations of color or texture.

You should inspect all deliveries immediately upon arrival. All products are considered to be in good condition as of delivery and not delivered in error, unless they are reported defective or delivered in error within 5 business days of receipt at the shipping address on record. Please make note of any damage to boxes when you sign for your delivery. Report any damage to boxes, material defects or errors in delivery promptly to the Restoration Hardware Trade team by e-mail (trade@restorationhardware.com), phone (877-733-6200) or fax (415-507-1901) within 5 business days of receipt at the shipping address of record. No replacements/refunds will be given for products moved or re-shipped after receipt at the shipping address on record.

Defective products and products delivered in error may be returned to Restoration Hardware Trade only after obtaining a Return Material Authorization Number from Restoration Hardware Trade. The Restoration Hardware Trade team will arrange for pickup of such products. If Restoration Hardware Trade determines after inspection that such returned product contains a material defect in material or workmanship, Restoration Hardware Trade will, at Restoration Hardware Trade's option, repair or replace the product free of charge. If Restoration Hardware Trade determines that such returned product was delivered in error, Restoration Hardware Trade will correct such error and re-deliver the products ordered to you.

## **NO PRODUCT WARRANTY FOR MADELEINE & VINTAGE CHAIRS AND STOOLS PURCHASED FOR COMMERCIAL USE; ASSUMPTION OF RISK**

MADELEINE CHAIRS, MADELEINE BARSTOOLS, AND VINTAGE STOOLS ARE NOT INTENDED FOR COMMERCIAL USE. COMMERCIAL USE IS DEFINED AS USE IN HOTELS, RESTAURANTS, BARS, OR ANY OTHER SUCH PLACE WHERE THIRD PARTIES MAY USE THE MADELEINE CHAIRS, MADELEINE BARSTOOLS, OR VINTAGE STOOLS OUTSIDE OF A RESIDENTIAL OR HOUSEHOLD SETTING.

CLIENT ACCEPTS AND ASSUMES THE RISK OF ALL PROPERTY DAMAGE, PERSONAL INJURY OR DEATH RESULTING FROM THE COMMERCIAL USE OR MISUSE OF MADELEINE CHAIRS, MADELEINE BARSTOOLS, AND VINTAGE STOOLS BY

THIRD PARTIES (INCLUDING LOSSES, LIABILITIES, DEMANDS, PENALTIES, JUDGMENTS, DAMAGES, COSTS, AND EXPENSES RESULTING FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, AND OTHER PROCEEDINGS BY ANY THIRD PARTY).

RESTORATION HARDWARE DISCLAIMS ALL WARRANTIES (WHETHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE) RELATING TO THE MADELEINE AND VINTAGE PRODUCTS PROVIDED BY RESTORATION HARDWARE INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE (EVEN IF THE PARTICULAR USE OR PURPOSE IS DISCLOSED TO RESTORATION HARDWARE IN ADVANCE), FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN ANY COMMERCIAL ENVIRONMENT.

#### **LIMITATION OF LIABILITY FOR MADELEINE & VINTAGE CHAIRS AND STOOLS**

WITH RESPECT TO ANY MADELEINE OR VINTAGE PRODUCTS SOLD BY RESTORATION HARDWARE TO CLIENT, RESTORATION HARDWARE'S LIABILITY TO CLIENT FOR ANY REASON SHALL NOT EXCEED THE PURCHASE PRICE OF SUCH MADELEINE OR VINTAGE PRODUCTS SOLD TO CLIENT. IN NO EVENT SHALL RESTORATION HARDWARE TRADE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE AND/OR INDIRECT DAMAGES, OR FOR ANY LOSS OF BUSINESS, SALES OR PROFITS, ARISING FROM OR RELATED TO THE MADELEINE AND VINTAGE PRODUCTS OR THESE TERMS, WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.

You acknowledge that Restoration Hardware Trade has set its prices and entered into these terms in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. You agree that the limitations of liability and the disclaimers of warranties and damages specified in these terms will survive and apply even if found to have failed of their essential purpose.

#### **INDEMNIFICATION AND HOLD HARMLESS PROVISION**

CLIENT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RESTORATION HARDWARE TRADE AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL LOSSES, LIABILITIES, DEMANDS, PENALTIES, JUDGMENTS, DAMAGES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) RESULTING FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, AND OTHER PROCEEDINGS BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, CLAIMS, DEMANDS, ACTIONS AND OTHER PROCEEDINGS FOR PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, ARISING OUT OF, RELATING TO OR RESULTING FROM (A) CLIENT'S NEGLIGENT OR WILLFUL ACTS OR OMISSIONS; AND (B) ANY MADELEINE OR VINTAGE PRODUCTS SOLD TO CLIENT UNDER THIS AGREEMENT.

#### **GENERAL PROVISIONS**

Restoration Hardware Trade will not be liable for any delay or failure in performance arising out of acts or events beyond its control, including, but not limited to, acts of God, earthquake, fire, flood, acts of civil and military authorities, embargoes, riots, war, terrorism, labor disputes and strikes, product or supplier shortages, power failures, and interruption of or delay in telecommunications or transportation services.

You may not assign, delegate, or transfer these Terms or any right or obligation hereunder, whether voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of Restoration Hardware Trade, and any attempt by you to assign these Terms without such consent will be null and void. Restoration Hardware Trade may assign any of its rights or obligations under these Terms without your consent. Subject to the preceding sentence, these Terms will bind each party and its permitted successors and assigns.

If any provision of these Terms is held to be illegal, invalid or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from these Terms, while the remainder of these Terms will continue in full force and effect.

This Agreement and all matters arising out of or relating to this Agreement will be governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. The U.N. Convention on the International Sale of Goods shall not apply to these Terms or the products sold by Restoration Hardware Trade. Except for actions for injunctive or other equitable relief, which may be brought in any court of competent jurisdiction, any dispute regarding these Terms or the products sold by Restoration Hardware Trade shall be subject to the exclusive jurisdiction of the California state courts in and for San Francisco County, California, U.S.A. (or, if there is federal jurisdiction, the United States District Court for the Northern District of California), and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.

These Terms shall be deemed to have been drafted by all parties and, in the event of a dispute, neither party shall be entitled to claim that any provision should be construed against the other party by reason of the fact that it was drafted by the other party.

These Terms and any quotation provided by Restoration Hardware Trade constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of these Terms. These Terms may not be amended or modified except in a writing signed by a duly authorized representative of each party; no other act, document, usage, or custom will be deemed to amend or modify these Terms.

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Signature

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Date