

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In the following terms and conditions of sale "Godfrey Hirst" means Godfrey Hirst USA Inc, Godfrey Hirst Carpets of Canada Limited, their holding company and/or any affiliate supplying the goods, the "customer" means the person or corporation acquiring the goods, "goods sold" shall mean the goods the customer is acquiring from Godfrey Hirst and the "terms" means the following terms and conditions of sale of any order placed.

1.2 In the interpretation of these terms, words importing the singular include the plural (and vice versa) and words denoting a given gender shall include all other genders; a reference to a person, individual, corporation, trust, partnership, joint venture, statutory or other authority, association (incorporated or unincorporated), state or government includes any of the foregoing; and if more than one person is named and described as the customer the obligations of those persons under these terms are joint and several.

2. SALE AND PURCHASE OF GOODS

2.1 Upon the acceptance of the customer's order by Godfrey Hirst, Godfrey Hirst agrees to supply and the customer agrees to purchase the goods sold on the terms.

2.2 The terms contain the entire agreement and understanding of the customer and Godfrey Hirst in respect to the sale and purchase of the goods sold and supersedes all prior discussions and replaces in total any terms and conditions contained or referred in the customer's order. The terms can only be amended, varied or waived in writing signed by the customer and by a person authorised to sign such amendment, variation or waiver on behalf of Godfrey Hirst. Insofar as any incorporated terms and conditions may be excluded they are hereby excluded and negated.

2.3 If any quotation is made by Godfrey Hirst it is agreed that the quotation is merely an invitation to treat and will not be construed as an offer to sell by Godfrey Hirst. Godfrey Hirst reserves the right in its absolute discretion to accept or reject any offer made on the basis of any quotation or otherwise, without providing any reason.

3. PAYMENT FOR GOODS

3.1 Unless otherwise agreed, payment for goods sold and any other costs and expenses payable by the customer under the terms will be paid to Godfrey Hirst at or prior to delivery of the goods sold to the customer. Other terms of trading may be negotiated on a customer by customer basis.

3.2 Credit facilities are available and will be negotiated on a confidential basis. Credit terms will not automatically be granted.

3.3 Unless expressly stipulated by Godfrey Hirst to be a firm price, the prices charged by and payable to Godfrey Hirst for the purchase of goods sold shall be those prices charged by Godfrey Hirst at the date upon which the goods sold are delivered to the customer.

3.4 Prices, service fees (including, without limitation, cancellation, return, cut length, packing and storage fees) and terms of sale are subject to alteration without notice, however, prior notice will be given wherever possible.

3.5 It is agreed that should the customer fail for any reason to acquire the quantity of goods sold then without limiting the other rights and remedies of Godfrey Hirst the unit price charged for the goods sold may be amended to take into account any variation in the total quantity purchased.

3.6 Prices quoted do not include any applicable federal and provincial or state taxes. The customer is responsible for, and will indemnify and hold Godfrey Hirst harmless from, any applicable federal, provincial or state taxes, goods and services, harmonised sales or other taxes, whether state, provincial, federal or other applicable governmental level, associated with the order (other than taxes on Godfrey Hirst's net income). Customer must claim any exemption from tax at the time of purchase and provide the necessary supporting documentation. Any sales, use, value-added, goods and services, harmonised sales or other applicable tax is based on the location to which the order is shipped. If applicable, a separate charge for taxes will be shown on Godfrey Hirst's invoice.

4. INFORMATION OF THE GOODS SOLD

4.1 The customer acknowledges that:

(a) The description of the goods sold shall be as set out in the Godfrey Hirst order confirmation. All drawings, descriptive matter, specifications and advertising issued by Godfrey Hirst and any descriptions or illustrations contained in Godfrey Hirst' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods sold described in them. They will not form part of this agreement; and

(b) Variations consequent upon review of specifications, materials and/or source of goods may occur from time to time and the customer waives any right to receive details of information concerning the reviews or the implementation of those reviews or both and agrees to accept the goods sold subject to the varied specifications, material and/or source of goods sold

4.2 The customer further acknowledges that to the extent the goods sold are carpet:

(a) Roll sizes as stated on price lists and other information are average sizes only and variations will occur from time to time

(b) Shade or pattern variations may occur between samples chosen by the customer and the goods sold and from dye lot to dye lot but will be within recognised textile industry standards and will not be considered should carpet not be laid in strict accordance with sequential roll numbers (if relevant)

(c) All carpets are subject to some degree of bowing and/or skewing. Bowing of up to 1.5 inches (40mm) over any single width of carpet is acceptable, and, unless otherwise specifically provided, no guarantee or warranty is provided that bowing or skewing will be less than 1.5 inches (40mm) over any single width of carpet

(d) Tracking/shading/pile reversal or crushing is an inherent feature of cut pile products where it may appear from certain angles, that particular areas are lighter or darker than others. This is due to the pressure on the pile during use causing pile to lay in different directions resulting in light refraction and, unless otherwise specifically provided, is not a manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst

(e) Construction of some carpets may involve the occurrence of shift lines across the width of the carpet. Certain light sources shining across the carpet may accentuate these lines in the form of shadowing. This effect is not a manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst

(f) Where carpet design includes the random use of contrasting colours, at times these colours can coincide in production, causing an effect known as "bleed" or "similarity in look" pile carpets, shading effects of colour patterning may appear as panelling down the length of the carpet. Both shading and panelling are an accepted part of the design and in no way affect the carpet's performance.

(g) Carpet may fade or change character due to ozone damage where it has been exposed to direct sunlight. Dramatic colour change can also occur as the result of ozone, emissions from heating fuels and airconditioners, pesticides, cleaning agents, benzol peroxide, and other household items. The occurrence, known as ozone damage, is largely unexplained, but appears to be more prevalent in coastal areas with a high ultra-violet content. This is not a manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst

(h) All carpets are subject to some degree of matting and flattening, particularly in areas of high traffic (eg in front of seating areas, doorways, etc.). This is not due to any manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst

(i) Certain patterned products may contain minor irregularities or may be products in respect of which perfect pattern matching cannot be guaranteed, full details of which are set out on samples and/or in merchandising information supplied to the customer

(j) Unless the customer specifically requests more than one roll from the same dye lot, both at the time of ordering and at the time when the order is confirmed, and marks their requirement as "all same dye lot", Godfrey Hirst will use reasonable endeavours to accommodate the customer request but Godfrey Hirst is under no obligations to ensure that the goods sold are from the same dye lot and shall not be liable to the customer where it does not secure this.

(k) All products sold as budget items or as seconds quality, specials, mill ends, unwarranted products, remnants or "as is" or invoiced as Budget or Merchandise, are sold without warranty and all defects (if any) in such products shall, by the customer, be brought to the attention of any third party purchaser of such goods

(l) All carpet must be laid in accordance with the Carpet and Rug Institute Standard Installation Procedures for Commercial Carpet (CRI 104-2002) or Residential Carpet (CRI 105-2002) and otherwise in accordance with the Godfrey Hirst Installation Recommendations.

(m) The customer will bring to the attention of and seek acknowledgement from any third party purchaser of the goods sold, to the extent it may be relevant, of the issues raised in clauses 4.2(a) to (l) (inclusive).

5. DELIVERY

5.1 Godfrey Hirst will use reasonable endeavours to:

(a) in respect of goods sold freight collect, have the goods available for collection by the customer, or

(b) in respect of goods sold freight prepaid, deliver the goods sold to the customer,

(c) on or before the delivery date specified on the order (if any), but otherwise as notified by Godfrey Hirst to the customer (the "Delivery Date"). However, any Delivery Dates are an estimate only and time the goods are available for collection or delivered shall not be of the essence. The customer acknowledges Godfrey Hirst will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss) costs, damages, charges or expenses caused directly or indirectly by any failure to have available for collection or to deliver on the delivery date the goods sold (even if caused by Godfrey Hirst's negligence). Late availability for collection or delivery of the goods sold will not entitle the customer to rescind or repudiate any agreement.

5.2 Where the customer seeks the goods sold to be available for collection or to be delivered on a specified date, the customer must both at the time of ordering and on the customer's confirmation order clearly specify the proposed date. Godfrey Hirst shall where possible try to meet such dates but shall not be obliged to do so.

5.3 Godfrey Hirst, may at its option unless otherwise specifically agreed to the contrary, make the goods available for collection or deliver the goods sold by instalments. If the goods sold are available for collection or delivered by instalments then:

(a) Each collection/delivery shall constitute a separate agreement and failure by Godfrey Hirst to have available for collection or to deliver one or more of the instalments in accordance with this agreement or any claim by the customer that in respect of any one or more instalments shall not entitle the customer to treat this agreement as a whole as repudiated; and

(b) Godfrey Hirst is entitled to complete delivery of the goods sold by instalment despite any delay or failure by Godfrey Hirst to deliver any instalment.

5.4 The customer agrees to accept delivery of any goods sold freight paid at any time during normal business hours. The customer or customer's agent must provide all necessary assistance and facilities for off loading at its own cost, using only certified materials handling equipment and work practices within occupational health and safety guidelines.

6. SHOULD

(a) The customer fail to collect goods sold or accept delivery of the goods sold as provided in this clause;

(b) Godfrey Hirst defers delivery either when specifically requested by the customer or due to the failure of the customer to comply with the terms (including where the customer fails to accept the goods sold for any reason on or after the due date of delivery); or

(c) The customer requests goods sold to be available for collection or delivery of the goods sold be at a specified time or upon a time to be advised being after the date of invoice

6.4 The goods sold will be deemed to have been delivered on the date so notified and without prejudice to all other rights and remedies which Godfrey Hirst has under this agreement or at law or in equity, Godfrey Hirst may arrange storage of the goods sold at its warehouse or some other place it considers reasonable. The customer will be liable for all extra charges, losses or expenses incurred by Godfrey Hirst. If the goods sold are stored at Godfrey Hirst's warehouse, Godfrey Hirst will be entitled to storage charges at the rate then prevailing in the Godfrey Hirst price lists.

7. PASSING OF TITLE AND RISK

7.1 The goods sold shall be at the customer's risk (including for loss or damage caused by Godfrey Hirst's negligence) at the earlier of:

(a) delivery to the customer or the customer's agent or carrier; or

(b) should the customer or the customer's agent fail to accept delivery of the goods sold freight prepaid when they are delivered to the customer or the customer's agent or fail to collect the goods sold upon the goods being available for collection, unless otherwise determined by Godfrey Hirst, upon the failure to accept delivery or collect the goods by the customer or the customer's agent or carrier (as the case may be). In such event Godfrey Hirst shall be entitled to payment for the goods sold as if they were delivered and Godfrey Hirst may at its discretion store the goods at the risk and cost of the customer and all costs of storage and insurance shall be fully recoverable from the customer.

7.2 Upon the passing of the risk in the goods sold, the customer will keep the goods sold properly insured for their full reinstatement value in the joint names of Godfrey Hirst and the customer for their respective risks until title in the goods passes to the customer under clause 6.3.

7.3 Despite sub-clause 7.1, until:

(a) the goods sold have been delivered to the customer or the customer's agent or carrier and full payment has been made for all amounts owing by the customer to Godfrey Hirst so that the customer's total indebtedness to Godfrey Hirst under any contract or agreement whatsoever is discharged, or

(b) the customer has disposed of the goods to their customers in the ordinary course of business

7.4 The customer:

(a) Then;

(b) title and property in the goods sold remains with Godfrey Hirst and Godfrey Hirst reserves the right to dispose of the goods sold, and

(c) the customer will store the goods sold in a way which clearly manifests Godfrey Hirst's title to the goods sold and shall exercise all reasonable care in doing so.

7.5 The customer fails to pay any amount of the customer's total indebtedness to Godfrey Hirst pursuant to the terms when due or upon the occurrence of an event specified in clause 7.1 (a) to (d) hereof, Godfrey Hirst may without prejudice to any of its other rights and remedies:

(a) require the customer to deliver up the goods sold to Godfrey Hirst

(b) with or without notice enter upon any premises of the customer or any third party where the goods sold are stored and repossess the goods sold and in this regard, the customer grants Godfrey Hirst, its agents and employees an irrevocable licence at any time to enter any premises where the goods sold are stored, and;

(c) without notice, upon repossession of the goods sold, re-sell the goods sold to a third party.

The customer will indemnify Godfrey Hirst from and against, and will pay on demand to Godfrey Hirst all loss, damage, costs or expenses incurred by Godfrey Hirst in respect of any repossession and/or resale of the goods sold or any of them.

7.6 Any samples, books or other materials supplied free of charge to the customer by Godfrey Hirst remain the property of Godfrey Hirst and must, upon request by Godfrey Hirst, be returned immediately.

7.7 The provisions of this clause apply despite any provision of credit to the customer by Godfrey Hirst.

8. TERMINATION OR BREACH OF TERMS

8.1 Without prejudice to any of its other rights and remedies, if the customer or any company affiliated with the customer:

(a) commits any breach of this or any other agreement with Godfrey Hirst including and without limitation, failing to pay any moneys when due; or

(b) being a natural person, dies, appointment of a guardian for or has a receiver appointed over their assets or enters into bankruptcy; or

(c) being a company, commencement of any insolvency proceeding by or against the company, calls a meeting of its creditors or has an administrator, official receiver or receiver and manager of all or any part of its revenue or assets appointed or enters into liquidation or becomes subject to a winding up order of the court; or

(d) negotiates with or enters into any composition with their or its creditors or permits any judgement against it to remain unsatisfied for seven days; or have any distress, execution or other legal process levied upon it

then Godfrey Hirst may, without prejudice to its other rights and remedies, elect to do any one or more of the following:

(a) terminate the agreement immediately

(f) declare all moneys owing by the customer to Godfrey Hirst to be payable immediately

(g) require immediate return of any goods for which Godfrey Hirst has not been paid; and/or

(h) suspend or defer delivery of the goods sold or any other goods.

8.2 Without prejudice to any other rights, Godfrey Hirst may charge interest on any overdue payment. Interest shall accrue daily from the due date for payment at the lower of one and one-half (1½%) per month (19.50% per annum), or the highest rate allowed by law until receipt of payment whether or not terms are joint and several.

8.3 Time is of the essence in the performance of the customer's obligations under this agreement

8.4 The customer shall make all payments due to Godfrey Hirst under this agreement without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise unless the customer has a valid court order requiring an amount equal to such deduction to be paid by Godfrey Hirst to the customer.

9. RETURNS

9.1 Unless Godfrey Hirst has previously agreed in writing by issue of a permission to return and the goods are returned in good and marketable condition in the same condition as despatched from Godfrey Hirst (eg not cut), Godfrey Hirst will not accept any return of the goods sold by it. Consequently no credit or refund will be given and the customer will be required to pay the cost of return of the goods sold to Godfrey Hirst.

9.2 Should any permission to return be issued on a representation by the customer as to any fault in the goods sold or error by Godfrey Hirst and upon inspection by Godfrey Hirst upon the return of the goods sold such representation is not substantiated, the customer will pay and Godfrey Hirst will be entitled to fees as if the order were a cancelled order together with the inspection costs and transportation expenses associated with the return of the goods sold to the Godfrey Hirst warehouse and redelivery of the goods sold and/or delivery of any replacement goods sold.

9.3 Godfrey Hirst will choose the method by which the goods are to be transported to Godfrey Hirst and the expense of transportation shall be determined by agreement.

9.4 All authorised returns shall be packaged in a manner which will ensure that the goods sold are not damaged in transit and shall clearly be labelled with the addresses of the customer and Godfrey Hirst and the relevant permission or return number provided by Godfrey Hirst. All goods sold shall until delivered to Godfrey Hirst be at the customer's risk.

10. CANCELLATION OF ORDERS

10.1 Godfrey Hirst reserves the right to cancel any customer's order wholly or partially and Godfrey Hirst shall not be responsible for any loss or damage thereby suffered by the customer.

10.2 Godfrey Hirst may as a condition of acceptance of such cancellation, require payment in addition to cancellation fees, of such extra charges, losses or expenses incurred by Godfrey Hirst in association with the cancellation of such order.

10.3 All authorised returns shall be packaged in a manner which will ensure that the goods sold are not damaged in transit and shall clearly be labelled with the addresses of the customer and Godfrey Hirst and the relevant permission or return number provided by Godfrey Hirst. All goods sold shall until delivered to Godfrey Hirst be at the customer's risk.

11. LIMITATION OF LIABILITY

11.1 Godfrey Hirst's liability for warranty claims is limited to repair or replacement as set out in the applicable limited warranty.

11.2 In respect of any other claim, demand or action by the customer against Godfrey Hirst, its affiliates or any of their employees, directors, officers or agents (whether based on contract, statute, tort (including negligence), implied duties or obligations or other legal theory), including a breach by Godfrey Hirst under the terms (whether or not a fundamental breach), to the fullest extent permitted by law, Godfrey Hirst's sole and exclusive liability maximum liability shall not in any event exceed the total price of the goods sold giving rise to the claim.

11.3 The customer agrees and acknowledges that, to the fullest extent permitted by law, Godfrey Hirst, its affiliates, and any of their employees, directors, officers or agents (whether based on contract, statute, tort (including negligence), implied duties or obligations or other legal theory), including a breach by Godfrey Hirst under the terms (whether or not a fundamental breach), to the fullest extent permitted by law, Godfrey Hirst's sole and exclusive liability maximum liability shall not in any event exceed the total price of the goods sold giving rise to the claim.

11.4 The customer, will, to the fullest extent permitted by law, indemnify and keep indemnified Godfrey Hirst against all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against Godfrey Hirst by any third party or by any of the customer's employees, officers or agents (whether based on contract, statute, tort (including negligence), implied duties or obligations or other legal theory, or otherwise) directly or indirectly out of or in respect of the use, custody or purchase and supply of the goods sold.

12. FORCE MAJEURE

12.1 To the fullest extent permissible at law, Godfrey Hirst will not accept any liability whatsoever in respect to delay or damage to goods sold by reason wholly or in part of industrial dispute, shortages of materials or labour, shipping delays, accident (whether occasioned by the negligence of Godfrey Hirst or its affiliates or agents) or any other cause of force majeure, fire, explosion, any Act of God or any other cause whatsoever which prevents or hinders the reasonable conduct of Godfrey Hirst or which by the exercise of reasonable diligence it is unable to prevent. In any such case, Godfrey Hirst shall be entitled to suspend either totally or in part delivery of the goods sold, and the operation of this agreement, so far as necessary, shall be suspended without liability for damage against Godfrey Hirst.

13. GENERAL

13.1 Clerical and typographical errors in computation, typing or otherwise in the documents of Godfrey Hirst including catalogues, advertising material, publications, price lists, drawings, delivery dockets, invoices, statement or credit notes shall be subject to correction by Godfrey Hirst by means of re-issue or adjusting of the relevant document and save for any error of a substantial nature shall not entitle the customer to cancel this agreement or seek or obtain a reduction or variation in the purchase price of the goods sold.

13.2 It is agreed that Godfrey Hirst may assign or subcontract any part of this agreement to any other person or corporation and Godfrey Hirst may subcontract the manufacture and/or supply for any part of the goods sold or any material services to be supplied.

13.3 No failure by Godfrey Hirst to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, remedy, power or privilege under this agreement shall operate as a waiver and shall not in any way preclude any further exercise or enforcement of this agreement or the exercise or enforcement of any other right, remedy, power or privilege under this agreement or provided by law.

13.4 For goods to be delivered by Godfrey Hirst to the customer in Canada or collected by the customer from Godfrey Hirst's Canadian distribution points: It is agreed this agreement is made and the sale will be consummated in Toronto, Ontario and the terms and conditions of any agreement between Godfrey Hirst and the customer shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to principles of conflict of law and excluding the United Nations Convention of the International Sale of Goods. Without limiting the foregoing, Godfrey Hirst and the customer irrevocably and unconditionally: (a) agree that any suit, action or other legal proceeding arising out of or relating to the terms or any transaction hereunder must be brought in Toronto Ontario; (b) consent to the exclusive jurisdiction of the federal and provincial courts located in Toronto Ontario; and (c) waive any objection relating to improper venue or forum non conveniens to the conduct of any proceeding in such court.

14. MERCHANDISE/CLAIMS PROCEDURE

14.1 The customer agrees to thoroughly inspect the goods sold prior to cutting or on-selling the goods sold and provide notice of any claim or intention to make a claim as provided in clause 14.2.

14.2 If the customer fails to give such notice of claim then to the extent permitted by law the goods sold shall be deemed to have been delivered to the customer and the customer waives any rights which the customer may have but for the existence of this clause would have had against Godfrey Hirst in relation to the goods sold.

14.3 Claims

(a) Except where any claim is made by the customer under any legislation and the time period in which claims can be made cannot be excluded under such legislation (in which case the limitation under those acts shall apply), the customer will forward all claims in writing together with full particulars thereof in respect of any matter arising out of this agreement to Godfrey Hirst within the following periods:

(i) in respect of a claim that the price invoiced was incorrect – within 7 days of the date of issue of invoice

(ii) in respect of any claim goods sold are lost, damaged prior to the risk in the goods sold passing to the customer, short delivery, delivery of the wrong goods or that the length of rolls are not in accordance with the order made by the customer and accepted by Godfrey Hirst - prior to any material being cut from the rolls or on-selling the goods sold

(iii) and if not so notified, other than as provided to the contrary by law, the customer forever releases and discharges Godfrey Hirst from all actions, suits, charges, claims demands or any liability whatsoever in any way arising out of or in connection with the goods sold.

(b) In the case of any claim, Godfrey Hirst representatives and/or agents are to be granted full access to any site where goods sold subject to the claim may be laid and/or, if required, be provided with the goods sold and/or materials subject to the claim, equipment or installation technique for consideration and review.

(c) Subject to any obligations or rights under consumer legislation, the customer acknowledges that the customer will not be entitled to make any claim, nor shall Godfrey Hirst be held in any way responsible in respect to:

(i) goods sold which have been cut or installed where the defect was visible prior to cutting or installation (as the case may be), including without limitation, defects in colour, pattern, dyelot, dyelot or length

(ii) damage resulting from improper installation or cleaning or application of any chemicals or unfair abuse or snagging (ie severance of loops by sharp edges, animal claws, etc)

(iii) shrinkage, bubbling or rucking of any goods sold which have not been power stretched during installation and secured firmly to the floor or any carpet installed in an area subject to excessive moisture (ie bathrooms, kitchens and toilets)

(iv) goods sold which were manufactured in accordance with any sample which had previously been used for decoration or displays, as in that case, a colour match cannot be guaranteed

(v) missing tufts (other than on the basis of reinserting such missing tufts)

(vi) bowing/skewing, pile crushing, shading and watermarking, fading, tracking, matting and flattening and pattern irregularities or pattern matching problems as exemplified from warranty or otherwise acknowledged as acceptable by the customer under clause 4.2 (c) - (i)

(vii) products exempted from warranty under clause 4.2(i)

(viii) claims relating to goods used to cover stairs or claims regarding issues associated with "wear" where goods are installed in a "commercial application" (other than goods sold by Godfrey Hirst to the customer specifically for commercial use)

(ix) claims in regard to "odor" occurring after the carpet has been altered, fabricated or installed

(x) claims concerning access to the goods sold and/or materials, equipment or installation technique for any site to inspect the goods sold subject to the claim and/or are refused access to the goods sold and/or materials, equipment or installation technique for any site

15. PROCESSING OF CLAIMS

15.1 In the case of replacement of goods sold more than 12 months old, a usage factor of 20% per annum will be deducted.

15.2 Where a third party has purchased the goods sold from the customer and complains to the customer, Godfrey Hirst or any government or consumer affairs bureau, authority or department, media or any other similar organisation, the customer shall:

(a) within 7 days inform Godfrey Hirst in writing of such complaint;

(b) use its best endeavours to inspect the goods sold and provide to Godfrey Hirst a report (containing such details as Godfrey Hirst reasonably requires) as to the state and condition of the goods sold, whether the complaint is in the opinion of the customer justified and the reasons for the conclusion reached by the customer.