

## TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale shall apply to the sale of goods and services (collectively, "goods") by Godfrey Hirst to the customer. These terms and conditions of sale replace any previous terms and conditions of sale.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In the following terms and conditions of sale, any credit application form or other associated or collateral documents (unless a contrary intention is stated) "Godfrey Hirst" means Godfrey Hirst USA Inc., Feltex USA Inc., Godfrey Hirst Carpets of Canada Limited, their holding company and/or any affiliate to the extent any such entity is supplying the goods, the "customer" means the person or entity whose order for the purchase of goods is accepted by Godfrey Hirst, and "terms" means the following terms and conditions of sale or any one or more of them.

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, limited liability company, trust, partnership, joint venture, statutory or other authority, association (incorporated or unincorporated), state, government or other entity includes any of the foregoing; a reference to any law or a provision thereof includes any statutory modification or re-enactment or any legislative provision substituted therefor and all ordinances, codes, rules, regulations and other statutory instruments issued thereunder; and if more than one person is named and described as the customer the obligations of those persons under these terms will be joint and several. The headings used do not form part of these terms and are for convenience only.

### 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 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 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 authorized to sign such amendment, variation or waiver on behalf of Godfrey Hirst. The only other terms and conditions which are incorporated in these terms are those terms and conditions which are incorporated by law in an agreement of this nature under any law and which cannot be excluded. Nothing in these terms whether express or implied, will be taken to exclude, restrict or modify any such non-excludable conditions, warranties or rights. Insofar as any incorporated terms and conditions may be excluded they are hereby excluded and negated.

2.3 Godfrey Hirst may vary these terms and conditions by notice in writing to the customer. The customer agrees that the purchase of any goods after the date of notice of variation will be deemed to be acceptance of such varied terms and conditions.

2.4 A quotation shall not constitute an offer to sell goods to the customer. 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 the goods 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 to the customer. Other terms of trading may be negotiated on a customer by customer basis.

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

3.3 Despite any other clause in these terms, Godfrey Hirst may, at its sole discretion, grant or withdraw the customer's credit facilities at any time without notice or at its discretion alter the customer's credit limit for any reason (including to meet the customer's then buying needs). Godfrey Hirst will notify the customer of any alteration in the credit limit by notice to that effect either by email, letter or facsimile to the customer's contact details in their credit application or as subsequently advised, or in the following monthly account statement.

3.4 Should there be any variation to any of the information supplied by the customer to Godfrey Hirst or in the structure or nature of the customer's business (including without limitation, any recapitalization, reorganization, reclassification, consolidation, merger, sale or disposition of all or substantially all of the customer's assets or sale of 50% or more of any class of voting securities of the customer or similar change or event) the customer shall forthwith notify Godfrey Hirst in writing.

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

3.6 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.

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

3.8 Prices quoted do not include any applicable federal, provincial, state, local or foreign taxes. The customer is responsible for, and will indemnify and hold Godfrey Hirst harmless from, any applicable sales, transfer, use, value-added, goods and services, harmonized sales or other taxes of any kind, whether federal, provincial, state, local or foreign 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, transfer, use, value-added, goods and services, harmonized 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.

3.9 Unless otherwise agreed to by Godfrey Hirst, the only accepted means of paying accounts will be by cash, bank guaranteed check, COD, electronic funds transfer, or subject to payment of such additional charges as may be applied from time to time, by MasterCard®, Visa® or American Express® credit cards, such additional charge being payable at the same time as the account to which it relates is due.

### 4. INFORMATION REGARDING THE GOODS

4.1 The customer acknowledges that:

(a) The description of the goods 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's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They will not form part of these terms; 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 or information concerning the reviews or the implementation of those reviews or both and agrees to accept the goods subject to the varied specifications, material and/or source of the goods; and

(c) The customer has not, in acquiring the goods for any particular purpose, relied upon the skill, judgment or recommendation of Godfrey Hirst or any of its employees or agents.

4.2 The customer further acknowledges that to the extent the goods 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 and from dye lot to dye lot, but such variations will be within recognized textile industry standards. A dye variation may occur in a single production run from beginning to end and, no claim will 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) The following characteristics of certain products are not manufacturing defects and will not give rise to any liability on the part of Godfrey Hirst (nor will any claim be made in respect thereof);

(i) 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, due to the pressure on the pile during use causing pile to lay in different directions resulting in light refraction.

(ii) 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.

(iii) Where carpet design includes the random use of contrasting colors, at times these colors can coincide in production, causing an effect known as phasing and/or in loop pile carpets, shading effects of color patterning can appear as panelling down the length of the carpet.

(iv) Fading or changing of character due to ozone damage where the goods have been exposed to direct sunlight and/or unexplained dramatic color changes as the result of ozone, emissions from heating fuels and air conditioners, pesticides, cleaning agents, benzyl peroxide, and other household items (known as ozone damage) particularly in coastal areas with a high ultra-violet content.

(v) Some degree of matting and flattening, particularly in areas of high traffic (e.g. in front of seating areas, doorways, etc).

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

(f) 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 its requirement as "all same dye lot", Godfrey Hirst will use commercially reasonable efforts to accommodate the customer's request, but Godfrey Hirst is under no obligations to ensure that the goods are from the same dye lot and shall not be liable to the customer where it does not secure this.

(g) 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, REPRESENTATIONS, PROMISES, OR CONDITIONS RELATING TO THE GOODS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF QUALITY, CAPABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL DEFECTS (IF ANY) IN SUCH PRODUCTS SHALL, BY THE CUSTOMER, BE BROUGHT TO THE ATTENTION OF ANY THIRD PARTY PURCHASERS OF SUCH GOODS;

(h) 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 or else the limited warranties applicable to the goods will be voided;

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

(j) The customer will not tamper with any Godfrey Hirst labelling on samples, or, without the prior consent of Godfrey Hirst, sell goods under brands or product names other than the brand or product name under which the goods are sold to the customer by Godfrey Hirst.

4.3 If the goods are supplied to the customer's design, the customer warrants that the manufacture and supply of such goods by Godfrey Hirst will not infringe any patent, copyright, registered design or other rights of any person; and the customer is responsible for, and will indemnify and hold Godfrey Hirst harmless from, all losses, obligations, liabilities and expenses incurred by Godfrey Hirst as a result of any breach of such warranty.

### 5. DELIVERY

5.1 Godfrey Hirst will use commercially reasonable efforts 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 to the customer, in each case 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").

5.2 However, any Delivery Dates are estimates only and time the goods are available for collection or delivered shall not be of the essence. THE CUSTOMER ACKNOWLEDGES THAT TO THE FULLEST EXTENT PERMISSIBLE BY LAW, GODFREY HIRST WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND LIKE LOSS) COSTS, LOSSES, CHARGES OR EXPENSES CAUSED DIRECTLY OR INDIRECTLY BY ANY FAILURE TO HAVE AVAILABLE FOR COLLECTION OR TO DELIVER ON THE DELIVERY DATE THE GOODS (EVEN IF CAUSED BY GODFREY HIRST'S NEGLIGENCE. Late availability for collection or delivery of the goods will not entitle the customer to rescind or repudiate any order or agreement.

5.3 Where the customer requests that the goods 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 use commercially reasonable efforts to meet such dates, but shall not be obliged to do so.

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

(a) Each collection/delivery shall constitute a separate agreement, and the 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 claims to that effect by the customer that is 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 by instalments despite any delay or failure by Godfrey Hirst to deliver any instalment.

5.5 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.

5.6 Should:

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

(b) Godfrey Hirst defer 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 for any reason on or after the Delivery Date); or

(c) The customer request that the goods be available for collection or that delivery of the goods be at a specified time or upon a time to be advised being after the date of invoice, then the goods 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 these terms or at law or in equity, Godfrey Hirst may arrange storage of the goods 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 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.

5.7 Goods delivered to the customer will be dispatched from Godfrey Hirst's warehouse at the customer's expense; and where the customer does not designate a carrier and Godfrey Hirst arranges transportation of the goods by an independent carrier, Godfrey Hirst will have absolute discretion as to the appointment of the independent carrier provided that Godfrey Hirst will in no way be responsible whatsoever for any negligence (willful or otherwise) or any action or inaction on the part of that carrier

### 6. PASSING OF TITLE, RISK AND SECURITY INTEREST

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

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

(b) should the customer or the customer's agent (i) fail to accept delivery of the goods freight prepaid when they are delivered to the customer or the customer's agent or (ii) fail to collect the goods upon the goods being available for collection, unless otherwise determined by Godfrey Hirst, upon the failure to so 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 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.

6.2 Upon the passing of the risk in the goods as described in clause 6.1 above, title in the goods will pass to the customer.

6.3 Godfrey Hirst may require that the customer allow Godfrey Hirst to take and maintain a first priority security interest, ranking in priority to any other security interest or other encumbrance (including, without limitation, a purchase money security interest in the goods and to the extent permitted by law in the jurisdiction where the customer is situated, other assets of the customer, or other similar security interest in jurisdictions where a purchase money security interest is not available). In such event, the customer agrees to execute and deliver to Godfrey Hirst a security interest, in a form satisfactory to Godfrey Hirst, that provides Godfrey Hirst with a first priority PMSI and lien (or other security interest as applicable) on the goods and to ten extent permitted by law in the jurisdiction where the customer is situated, all or a portion of the customer's other assets and/or proceeds of the sale of the goods, and Godfrey Hirst shall be authorized to file all applicable financing statements and other applications, notices, or other registration documents in any jurisdiction or office, and to take any other actions that Godfrey Hirst believes are required to ensure that such security interest and liens attached and are perfected.

6.4 The customer acknowledges that until the goods have been paid for in full, the customer may resell the goods before full payment has been made for all amounts owing by the customer to Godfrey Hirst solely on the following conditions:

(a) Any sale may only be made by a bona fide sale at full market value in the ordinary course of business of the customer; and

(b) Such part of the proceeds of sale as represent the amount owed by the customer to Godfrey Hirst in respect of the goods sold will be held by the customer in trust for Godfrey Hirst and must be held in a separate account or otherwise clearly identified in the books and records of the customer;

(c) The customer will, immediately on demand, provide Godfrey Hirst with a copy of any books and records of the customer, including bank statements, which record amounts received as proceeds from the resale of goods supplied to the customer by Godfrey Hirst, and invoices and sales contracts between the customer and any resale purchaser; and

(d) On reasonable notice, the customer will grant access to Godfrey Hirst or its authorized attorney, agent or representative to its premises for the purposes of inspection of the books and records described in paragraph (c) of this sub-clause.

6.5 The customer agrees that with respect to any goods subject to a security interest in favor of Godfrey Hirst, the customer will not, without Godfrey Hirst's prior written consent, enter into a forward sale contract nor assign or factor any claim against a customer nor sell, lease, dispose of or permit the goods to be encumbered in any way except as provided in clause 6.4. 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 promptly.

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

### 7. TERMINATION OR BREACH OF TERMS

7.1 Without prejudice to any of its other rights and remedies available at law or equity, if the customer or any affiliate of 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, has a guardian appointed for, has a receiver appointed over his or her assets, enters into bankruptcy or if the estate of such natural person has an application or an order made, proceedings commenced or an application to a court or other steps taken for the bankruptcy, insolvency or administration of that estate; or

(c) being a company or other legal entity, has an application or an order made, proceedings commenced, a resolution passed or

proposed in a notice of meeting or an application to a court or other steps taken for the bankruptcy, insolvency, winding up, dissolution, official management or administration of that company; or

(d) enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or

(e) ceases, suspends or threatens to cease or suspend the conduct of its business, or disposes or threatens to dispose of its assets other than in the ordinary course of business;

(f) is, or is deemed under any applicable law to be, or admits in writing that it is, unable to pay its debts as and when they fall due, or stops or suspends or threatens to stop or suspend the payment of all or any class of its debts; or

(g) has a bankruptcy trustee, receiver, receiver and manager, administrator, provisional liquidator or liquidator or similar official appointed to it or over its assets, or over any part of its assets, or a distress, attachment or other execution is levied or enforced against the customer or its assets;

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

(i) terminate or cancel any open orders or agreements with the customer, exercise all rights and remedies available to a secured creditor under Article 9 of the Uniform Commercial Code or the applicable personal property and security or similar legislation in the jurisdiction in which the customer is situate, exercise all rights and remedies available to a seller of goods under Article 2 of the Uniform Commercial Code or the applicable personal property and security or similar legislation in the jurisdiction in which the customer is situate, and/or withdraw any credit facilities extended to the customer by Godfrey Hirst;

(ii) declare all moneys owing by the customer to Godfrey Hirst to be payable due and immediately;

(iii) suspend or defer delivery of the goods or any other goods;

(iv) require immediate return of any goods for which Godfrey Hirst has not been paid;

(v) Without notice, resell the goods to a third party; and/or

(vi) Enter upon any premises owned or occupied by the customer where Godfrey Hirst reasonably believes the customer may be storing unpaid goods supplied by Godfrey Hirst (either directly to the customer or through any intermediary) and repossess such goods without being liable for any damage caused; in that regard the customer grants Godfrey Hirst, its agents and employees an irrevocable mandate and license at any time to enter any premises where the goods are sold and/or stored.

(h) The customer will indemnify and hold harmless 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 or exercising its rights hereunder.

7.2 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 percent (1½%) per month (19.56% per annum), or the highest rate allowed by law until receipt of payment whether or not judgement is obtained and Godfrey Hirst shall be entitled to recover attorneys' fees and other costs of collection in connection with seeking to recover any past due amounts or interest thereon.

7.3 Time is of the essence in the performance of the customer's obligations under these terms.

7.4 The customer shall make all payments due to Godfrey Hirst without any deduction whether by way of set-off, counterclaim, 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.

7.5 In addition to its other rights and remedies at law and equity, if the customer is past due with respect to any payments to Godfrey Hirst, the customer is insolvent, or if in the opinion of Godfrey Hirst, the customer's credit is impaired, Godfrey Hirst shall have the right to (i) demand payment in full for any goods before delivery or performance or before proceeding with the manufacture of the goods; (ii) withhold shipment in whole or in part; and (iii) recall goods in transit.

## 8. RETURNS

8.1 Unless Godfrey Hirst has previously agreed in writing by issue of a permission to return the goods and the goods are returned in good and marketable condition in the same condition as delivered by, or picked up, from Godfrey Hirst (e.g., not cut), Godfrey Hirst will not accept any return of the goods. Consequently, no credit or other notes will be issued for any goods returned without such agreement.

8.2 Should any permission to return be issued on a representation by the customer as to any fault in the goods or error by Godfrey Hirst, and upon inspection by Godfrey Hirst upon the return of the goods 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 to the Godfrey Hirst warehouse and redelivery of the goods and/or delivery of any replacement goods.

8.3 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 Godfrey Hirst.

8.4 All authorized returns shall be packaged in a manner which will ensure that the goods 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 shall until delivered to Godfrey Hirst be at the customer's risk.

## 9. CANCELLATION OF ORDERS

9.1 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.

9.2 The customer acknowledges that:

(a) any request by the customer for a cancellation of an order for the goods might or might not be accepted in the sole discretion of Godfrey Hirst and Godfrey Hirst may decline to accept the cancellation for any reason whatsoever and without assigning the reasons therefore;

(b) should Godfrey Hirst accept any cancellation, the customer will pay and Godfrey Hirst will be entitled to the cancellation fees at the rate then prevailing in the Godfrey Hirst price lists; and

(c) cancellation of roll cut length or sample orders will generally not be accepted after the goods have been manufactured, cut or assembled; provided that Godfrey Hirst may as a condition of any such 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. WARRANTIES

10.1 The limited warranties applicable to all Godfrey Hirst products are included on product samples or can be obtained by calling Godfrey Hirst on its customer service telephone lines as published from time to time. THESE LIMITED WARRANTIES ONLY EXTEND TO AND ARE ENFORCEABLE BY RETAIL CONSUMER CUSTOMERS AND NOT BY THE CUSTOMER.

10.2 TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY PROVIDED IN GODFREY HIRST'S LIMITED WARRANTY APPLICABLE TO THE GOODS, GODFREY HIRST AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM, AND THE CUSTOMER WAIVES, ALL OTHER WARRANTIES (THE WARRANTY STATEMENT BEING IN LIEU OF ALL OTHER WARRANTIES), REPRESENTATIONS, PROMISES, OR CONDITIONS RELATING TO THE GOODS, EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF QUALITY, CAPABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The customer agrees that it will, other than at its own risk and on its own behalf, make no representation whatsoever or give any warranty to any subsequent purchaser of the goods and will indemnify and hold Godfrey Hirst harmless 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 customers, employees, agents or contractors arising directly or indirectly out of any representation or warranty made by customer on behalf of Godfrey Hirst or that is inconsistent with Godfrey Hirst's standard limited warranty described in clause 10.1.

## 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 RESPECTIVE 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 MAXIMUM LIABILITY SHALL NOT IN ANY EVENT EXCEED THE TOTAL PRICE OF THE GOODS 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, DO NOT ACCEPT AND WILL NOT IN ANY EVENT BE LIABLE OR RESPONSIBLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES OR EXPENSES OF ANY KIND (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND LIKE LOSS), OR CLAIMS BY THIRD PARTIES ARISING FROM ANY CLAIM OR ACTION, INCIDENTAL OR COLLATERAL TO, OR DIRECTLY OR INDIRECTLY RELATED TO THE PURCHASE OF THE GOODS, WHETHER SUCH CLAIM IS BASED ON CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE), IMPLIED DUTIES OR OBLIGATIONS OR OTHER LEGAL THEORY, EVEN IF GODFREY HIRST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE; AND THE CUSTOMER FOREVER RELEASES AND DISCHARGES GODFREY HIRST, ITS AFFILIATES, AND ANY OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS OR AGENTS FROM ALL SUCH RESPONSIBILITIES AND LIABILITIES AND ANY CLAIMS, DEMANDS OR CAUSES OF ACTION IN RESPECT THEREOF. Godfrey Hirst will not, unless otherwise required by law, be liable or otherwise responsible for the cost of furniture and fittings removal.

11.4 The customer will, to the fullest extent permitted by law, indemnify and hold Godfrey Hirst harmless from and 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 customers, employees, agents or contractors arising directly or indirectly out of or in respect of the use, custody or purchase and supply of the goods.

11.5 Any action against Godfrey Hirst and/or its affiliates for alleged breach of these terms or any related warranty or any related contract for sale of goods must be commenced within one (1) year after the cause of action has accrued, or such longer period as otherwise provided in the applicable laws in the jurisdiction in which the customer is situated.

## 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 the goods by reason wholly or in part of industrial dispute, shortages of materials or labor, shipping delays, inability to obtain any necessary export or import licenses, accident (whether occasioned by the negligence of Godfrey Hirst or its servants or agents or otherwise howsoever), war, riot, act of terrorism, fire, explosion, any Act of God or any other cause whatsoever beyond the reasonable control 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, 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, with the exception of any error that materially and adversely affects the customer's order as determined in good faith by Godfrey Hirst, shall not entitle the customer to cancel any order or seek or obtain a reduction or variation in the purchase price of the goods.

13.2 It is agreed that Godfrey Hirst may assign or transfer any part of these terms and any order to any other person or entity and Godfrey Hirst may subcontract the manufacture and/or supply for any part of the goods or any material services to be supplied.

13.3 A certificate signed by Godfrey Hirst's credit manager shall be conclusive evidence of any debt owing by the customer to Godfrey Hirst as set out in that certificate.

13.4 No failure by Godfrey Hirst to exercise or enforce, no delay in exercising or enforcing, and no partial exercise or enforcement of, any right, remedy, power or privilege hereunder shall operate as a waiver or in any way preclude any further exercise or enforcement of these terms or the exercise or enforcement of any other right, remedy, power or privilege hereunder or provided by law.

13.5 This agreement is made and all sales of goods hereunder will be deemed to have been consummated, in the case of customers situated in Canada, in Toronto, Ontario, Canada, and in the case of all other customers, in the State of Georgia, and the terms and conditions of any agreement between Godfrey Hirst and the customer shall be governed by and constructed in accordance with, in the case of customers situated in Canada, the laws of the Province of Ontario and the laws of Canada applicable therein, and in the case of all other customers, the laws of the State of Georgia, 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 of any transaction hereunder must be brought, in the case of customers situated in Canada, in Toronto, Ontario, and in the case of all other customers, in Fulton County, Georgia; (b) consent to the exclusive jurisdiction of the federal and state or provincial courts (as applicable) located in Toronto, Canada (in the case of customers situated in Canada) and Fulton County, Georgia (for all other customers); and (c) waive any objection relating to improper venue or forum non conveniens to the conduct of any proceeding in such court.

13.6 Godfrey Hirst is committed to the privacy of all individuals with whom it deals. To review a copy of our privacy policy outlining Godfrey Hirst's policies on handling personal information of its customers that are individuals, please click on the privacy link at the bottom of our web page [www.godfreyhirst.com](http://www.godfreyhirst.com), or call our head office in Australia on +613 5225 0222

13.7 This Agreement and all related documents have been drawn up in the English language at the express request of the parties. La présente convention ainsi que tous les documents connexes ont été rédigés en anglais à la demande expresse des parties.

13.8 Where the customer is a trustee: The customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by Godfrey Hirst and warrants that it has full power and authority to enter into these terms and make application for credit on behalf of the trust and that it (and the trust and all the trust's real and personal property) shall be bound by these terms and that it enters into this Agreement both personally and as trustee, irrespective of whether or not it discloses to Godfrey Hirst that it is a trustee at the time of entering into this or any other credit agreement with Godfrey Hirst.

## 14. MERCHANDISE/CLAIMS PROCEDURE

The customer agrees, should it be alleged by the customer or by its customer or any other person that the goods are defective or fail for any reason to be in accordance with these terms or Godfrey Hirst's limited warranty applicable to those goods, or if there are any complaints raised by any person concerning the goods, to follow and comply with the merchandise/claim procedures adopted from time to time by Godfrey Hirst (which procedures it is specifically agreed that Godfrey Hirst may change from time to time without notice to the customer) and otherwise as follows:

### 14.1 Inspection

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

(b) If the customer fails to give such notice of claim then to the extent permitted by law the goods shall be deemed to have been delivered to the customer in accordance with these terms and the customer waives any rights which the customer may have had, but for the existence of this clause, against Godfrey Hirst in relation to the goods.

### 14.2 Claims

(a) Except where any claim is made by the customer under any law and the time period in which claims can be made cannot be excluded under such law (in which case the limitation under such law shall apply), the customer will forward all claims in writing together with full particulars thereof in respect of any matter arising out of these terms to Godfrey Hirst, at its office noted on the applicable invoice for the goods, 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, and

(ii) in respect of any claim that the goods are lost or damaged prior to the risk in the goods passing to the customer, or any claim of 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 or of any other claim that the goods are not in accordance with these terms or Godfrey Hirst's applicable warranties - prior to the earlier of (1) any material being cut from the rolls or and (2) re-selling the goods,

and if the customer fails to so notify Godfrey Hirst within the applicable period, then, 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.

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

(c) To the fullest extent permitted by law, 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 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 color, pattern, dyelot, quality or length;

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

(iii) shrinkage, bubbling or rucking of any goods 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 (i.e., bathrooms, kitchens and toilets)

(iv) goods which were manufactured in accordance with any sample which had previously been used for decoration or displays, as in that case, a color 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 pattern irregularities or pattern matching problems as exempted from warranty or otherwise acknowledged as acceptable by the customer under clause 4.2;

(vii) products exempted from warranty under clause 4.2;

(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; or

(x) claims concerning the goods, where Godfrey Hirst's representatives and/or agents are refused access to any site to inspect the goods subject to the claim and/or are refused access to the goods and/or materials, equipment or installation technique for review.

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

### 14.3 Processing of Claims

Where a third party has purchased the goods 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 organization, the customer shall:

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

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