

GODFREY HIRST NEW ZEALAND LIMITED TERMS AND CONDITIONS OF SALE

1. PRICE

- (a) The price contained in the Contract is based upon rates and costs as at the Date of the Contract, or where the Contract arises from a quotation given by the Company, as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and costs.
- (b) The price of the Goods shall be increased by the amount of any increase in the cost of any such items or any other factors (including any change in exchange rates) affecting the cost of supply, production and/or delivery of the Goods due to circumstances beyond the control of the Company between the Date of the Contract and the date of delivery.
- (c) The price of the Goods shall be increased by the amount of the Company's standard packing charges in force at the date of delivery.

2. TAXES AND DUTIES

- (a) Unless expressly included in any quotation given by the Company, goods and services tax and other taxes and duties assessed or levied in connection with the supply of the Goods to the Buyer are not included in the price and shall be the responsibility of the Buyer or, where the payment of such taxes or duties is the responsibility of the Company at law, the price shall be increased by the amount of such taxes or duties.
- (b) Where goods and services tax or other taxes or duties are expressly included in any quotation given by the Company, any increase in the amount of such goods and services tax or other taxes and duties between the date of the quotation and the date of delivery of the Goods shall be the responsibility of the Buyer and the price shall be increased accordingly.

3. PAYMENT

- (a) Subject to any provision to the contrary in the Contract, payment shall be made upon delivery of the Goods in accordance with clause 5.
- (b) Any additional payments due by the Buyer pursuant to any of the provisions of the Contract shall be paid at the time provided in the Contract or, if no time is provided, within 7 days of payment being demanded in writing by the Company.
- (c) If the Company shall, at any time, deem the credit worthiness of the Buyer to be unsatisfactory, the Company may require security for payment and suspend performance of the Company's obligations under the Contract until the provision of sufficient security. All costs and expenses of, or incurred by, the Company as a result of such suspension and any recommencement shall be payable by the Buyer on demand.
- (d) The Buyer shall not be entitled to withhold payment or to make any deductions from the Contract Price without the prior written consent of the Company.
- (e) Receipt of a cheque, bill of exchange or other negotiable instrument by the Company shall not constitute payment and the Buyer shall remain liable for the Contract Price until such cheque, bill of exchange, or negotiable instrument is paid in full.
- (f) If the Buyer fails, for any reason, to take delivery of the quantity of Goods sold then, without limiting the other rights and remedies of the Company, the unit price charged for the Goods may be amended to take into account any variation in the total quantity purchased.
- (g) Credit facilities may be available to the Buyer and will be negotiated on a confidential basis. Credit terms will not automatically be granted.

4. INTEREST FOR LATE PAYMENT

Interest at a rate equal to 8% above the Company's bank's indicator lending rate from time to time calculated on a daily basis shall be payable on any moneys outstanding under the Contract from the date payment is due until the date of payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.

5. DELIVERY

- (a) Delivery shall be made at the place indicated in the Contract or, if no place is indicated in the Contract (and in the case of sales ex-works), delivery shall be made at the Company's premises.
- (b) If the Buyer fails or refuses, or indicates to the Company, that it will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them.
- (c) The Company reserves the right to deliver the Goods by instalments and each instalment shall be deemed to be a separate contract with the same provisions as the main Contract. Should the Company fail to deliver, or make defective delivery of one or more instalments, this shall not entitle the Buyer to repudiate the main Contract.
- (d) Without prejudice to any other rights and remedies which the Company may have, the Company may charge the Buyer storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to the Company that it will fail or refuse to take or accept delivery at the time specified in the Contract or at any other times that the Company is able to deliver the Goods.

6. RISK

- (a) Risk of any loss, damage or deterioration of, or to, the Goods shall be borne by the Buyer;
 - (i) where the Goods are to be delivered into the Buyers store in any city of New Zealand, from the date of delivery of the Goods;
 - (ii) where the Goods are to be delivered to the Buyer at any other location, from the date when the Goods are delivered to the forwarding carrier at the city in New Zealand closest to the location.
- (b) Until property in the Goods passes to the Buyer, the Buyer shall keep the Goods insured in the names of the Company and the Buyer for their respective rights and interests and will produce to the Company, upon demand, such evidence as the Company may require to confirm the existence of such insurance.
- (c) If the Buyer defaults in the performance of its obligations under clause 6(b) of these conditions, the Company shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Buyer to the Company upon demand.
- (d)
 - (i) If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Company shall be entitled, without prejudice to any of its other rights or remedies under the Contract or in law, to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such Goods has become payable under the Contract).
 - (ii) The production of this Contract by the Company shall be sufficient evidence of the Company's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with the Company.
- (e) Any such insurance proceeds referred to in clause 6 (d) shall be applied by the Company as follows:
 - (i) first, in payment of the purchase price of the Goods which are damaged or destroyed, if unpaid;
 - (ii) secondly, in payment of the outstanding purchase price of any other goods supplied to the Buyer by the Company, whether under the Contract or otherwise;
 - (iii) thirdly, in payment of any other sums payable to the Company by the Buyer whether under the Contract or otherwise;
 - (iv) thereafter any balance shall be paid to the Buyer.
- (f)
 - (i) If, for any reason, the Buyer fails to accept delivery of the Goods when they are delivered to but not accepted by the Buyer then the risk in the Goods shall, unless otherwise determined by the Company in writing, pass to the Buyer from the date of the failure to accept delivery by the Buyer.
 - (ii) In any event the Company shall be entitled to payment for the Goods as if they were delivered and accepted by the Buyer.
 - (iii) In addition to any of the rights and remedies (including its right to sell the Goods) the Company may arrange storage of the Goods at its warehouse, or some other place it considers reasonable, and all costs of, and incidental to, such storage shall be paid by the Buyer.

7. PROPERTY

- (a) Property in the Goods shall pass from the Company to the buyer when the Contract Price and all other moneys payable under the Contract have been paid in full.
- (b) Until the Contract Price and all other moneys payable by the Buyer to the Company under the Contract have been paid in full property in the Goods shall be retained by the Company until the Goods are resold by the Buyer pursuant to the authority granted by clause 7(c),
- (c) Notwithstanding that property in the Goods is retained by the Company, the Buyer is hereby authorised to sell the Goods, in the ordinary course of business, PROVIDED THAT:
 - (i) Such authority may be revoked by written notice from the Company at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under the contract or any other Contract between the Company and the Buyer; and/or
 - (ii) Shall be deemed automatically revoked if the Buyer dies or permits any judgment against the Buyer to remain unsatisfied for 7 days or any distress, execution or other legal process is levied upon the Buyer or if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with the Buyer's creditors or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or an application is filed for the winding up of the Buyer or a receiver is appointed in respect of all, or any, assets of the Buyer.
- (d) As security for payment of the purchase money due by the Buyer to the Company under each contract for the sale and purchase of Goods, the Buyer, for value received, grants the Company a security interest in those Goods.
- (e) The Company has the right to allocate purchase moneys paid by the Buyer to the Company for Goods against any invoice that is outstanding for the supply of Goods or to allocate any payment between several outstanding invoices.

8. DELAY

- (a) If any time for delivery of the Goods by the Company or completion of the Contract by the Company or any part hereof shall be stated in the Contract such time shall be approximate only and shall not be deemed to be of the essence to the Contract.

- (b) The Company shall not be liable for failure to deliver the Goods where such failure or delay is occasioned by strike, combination of workmen, lockout, difficulty in procuring components or materials, shortage of labour, lack of skilled labour, delays in transit, failure or delay by the Buyer in performing any of the Buyer's obligations hereunder; failure or delays by suppliers or subcontractors, failure, delay or inability to obtain any necessary import or export licence, foreign exchange control authorisation or similar authorisation, legislative governmental or other prohibitions or restrictions, fire, flood, hostile commotions, acts of terrorism, political disturbances, explosion, storm, tempest, epidemics, quarantines, accident (whether occasioned by the negligence of the Company or its servants or agents or otherwise howsoever) or other causes whatsoever (whether similar in nature or not to the foregoing) beyond the Company's reasonable control.
- (c)
 - (i) If the manufacture, supply or delivery of the Goods is delayed by reason, or as a result, of any act, omission, default or request by or on behalf of the Buyer, the Company may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the Contract Price as represents the extent to which the Company has performed the Contract or carried out work required by the Contract up to the date such payment is required, together with any additional expenses or additional costs incurred by the Company as a result of such delay.
 - (ii) In the event of such delay continuing beyond a reasonable time the Company may, without prejudice to its other remedies, terminate the Contract.

9. WARRANTY

- (a) The Company warrants that it will replace or credit (at its option) the Buyer with the price of any Goods in respect of which any defects in materials or workmanship are notified to the Company within 21 days of the date of delivery of the Goods. No claim shall be accepted under such warranty unless written notice of the claim is received by the Company as soon as reasonably possible after the defect is discovered and within such period. Nor shall any claim be accepted;
 - (i) where the defect in the Goods is notified to the Buyer by a customer of the Buyer, unless the Goods are inspected by the Buyer and a full report is submitted to the Company by the Buyer within 5 days after receipt by the Buyer of the complaint from its customer;
 - (ii) where the Goods have been sold by the Company as budget or merchandise lines or as close-outs, second quality, mill ends, unwarranted products or remnants on an "as is basis"
 - (iii) where samples have been used for decoration and display and an identical colour match is expected;
 - (iv) where the Goods have been cut or installed and the defects in the Goods were visible or apparent prior to cutting or installation;
 - (v) if any attempt to repair the Goods is made by any person or persons not authorised by the Company to effect such repairs;
 - (vi) if the Goods have been modified without the approval of the Company; or
 - (vii) if the Goods have not been stored or maintained in a proper manner.
- (b) The Company shall not be obliged to carry out any work nor be under any liability to the Buyer under or in relation to the warranty for so long as the Buyer is in default in relation to any payment or in the performance of any obligation under the Contract.
- (c) The Buyer shall indemnify the Company for any claims for breach of the warranty or for breach of any of the guarantees under the Consumer Guarantees Act 1993 where the breach is complained of by a Consumer and the breach alleged would not have occurred had the Buyer informed the Consumer fully of the Specifications.
- (d) Should the Company elect to repair any defective Goods, such repair shall be effected at such place as the Company shall specify and the Buyer shall be responsible for shipment of the defective Goods to and from the place, or places, so specified.
- (e) If the Goods or any component or components thereof are not manufactured by the Company, then the foregoing warranty shall not apply to such Goods, component or components as are not manufactured by the Company and no warranties are given by the Company in respect of such Goods, component or components. In the case where the manufacturer or supplier of any such Goods, component or components provides any warranty, then the Company (to the extent that it is able to do so) shall make such warranty available to the Buyer.
- (f) If the Company fails to perform its warranty obligations under clause 9(a), then, subject to clause 9(b), the Company's liability for such failure shall be limited to damages which, shall be subject to the limitation in clause 9(h)(vi) below.
- (g) The Company shall not be liable for any claim that any of the Goods have been delivered in a wet or damaged state unless the Company is notified of such claim within 5 days of delivery of such Goods and the Goods are held by the Buyer at the appointed place of delivery for inspection by the Company.
- (h) The Company shall not be liable for:
 - (i) any claim for short rolls unless the Company is notified of such claim within 10 days of delivery of the goods and the Goods are held by the Buyer at the point of delivery for inspection by the Company; or

- (ii) any claim for undelivered Goods, unless the Company is notified of non-delivery within 10 days of the intended delivery date; or
 - (iii) any damage to any of the Goods which results from any improper installation (including, but not by way of limitation, the use of inadequate or inferior underlay or associated installation material or the use of the Goods other than in accordance with the manufacturer's recommended use for such Goods) or improper cleaning of the Goods; or
 - (iv) any damage to any of the Goods which results from use of any of the Goods for purposes other than those specified by the Company (whether in brochures, upon labels or otherwise) as the intended use of such Goods; or
 - (v) any colour fading of any of the Goods where such Goods are exposed to direct sunlight for periods longer than the accepted industry standard; or
 - (vi) any loss of profits or consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of the Company's obligations arising under or in connection with the Contract or from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or Contractors nor shall the Company be liable for any loss, damage or injury caused to the Buyer's servants, agents, Contractors, customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. The Buyer shall indemnify the Company against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.
- (j) Notwithstanding anything contained in this clause or contained elsewhere in this Contract, the liability of the Company, whether in contract or pursuant to any cancellation of the Contract or in tort or otherwise howsoever, in respect of all claims for loss, damage or injury arising from breach of any of the Company's obligations arising under or in connection with the Contract, from any cancellations of the Contract, from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors, shall not, in aggregate, exceed the Contract Price.
- (k) Where any person or corporation has purchased the Goods from the Buyer and complains to the Buyer, the Commerce Commission, the Consumer's Institute, the Ministry of Consumer Affairs, or any other Government authority or department or any other consumer organisation or to the media, the Buyer shall inform the Company in writing, within 7 days of such complaint and forthwith the Buyer shall use its best endeavours to inspect the Goods and provide the Company with a report (containing such details as the Company reasonably requires as to the state and condition of the Goods) whether the complaint is justified in the opinion of the Buyer, and the reasons for the conclusion reached by the Buyer.

10. RETURNS

- (a) Returned Goods will not be accepted by the Company for credit unless prior authorisation for return has been given by all authorised officer of the Company who shall notify the Buyer of a permission to return ("PTR") number.
- (b) All authorised returns shall be forwarded by the Buyer at its expense to such location as the Company may specify for collection.
- (c) All Goods returned to the Company by the Buyer with the authority of the Company shall be carefully packed by the Buyer, at its cost, and have both the consignor's and the consignee's address clearly shown on the packaging, together with the relevant ("PTR") number.

11. DEFAULT AND INDEMNITY

- (a) If the Buyer defaults in the due payment of any moneys payable to the Company, whether under the Contract or otherwise, or if the Buyer is in default in the performance of its obligations under the Contract or any other contract between the Company and the Buyer, or if the Buyer dies or permits any judgment against it or him or herself to remain unsatisfied for 7 days or any distress, execution, or other legal process is levied upon the Buyer or if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or an application is filed for the winding up of the Buyer or a receiver is appointed in respect of all or any assets of the Buyer, the Company, may without prejudice to any other right it has at law or in equity, suspend or terminate the Contract, and payment for the Goods delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable.
- (b) Upon the occurrence of any of the events in clause 11 (a), the Company also reserves the right, as the agent of the Buyer, to enter upon the premises where the Goods are situated and take possession of and remove the same without being responsible for any damage caused and the Company may resell any or all of the Goods and apply the proceeds in or towards payment of the Contract Price and all other monies owing to the Company by the Buyer.
- (c) All costs and expenses of, and incurred by, the Company as a result of any such action outlined in clause 11 (b), together with transportation and storage charges shall be payable by the Buyer upon demand.
- (d) Any suspension of the Contract by the Company shall not prevent the Company from terminating the Contract during the period of suspension.

12. PATENTS AND COPYRIGHT

If any Goods are to be supplied to the Buyer's design the Buyer hereby warrants that the manufacture and supply of such Goods by the Company will not infringe any patent copyright, registered design or other rights of any person and the Buyer agrees to indemnify the Company against any liability incurred by the Company including any costs and expenses in the event of any claim being made that the manufacture or supply of such Goods by the Company infringes any patent, copyright, registered design or other rights of any person.

13. DIMENSIONS AND SPECIFICATIONS

Dimensions and specifications contained or referred to in the Contract or in any catalogues or other publications maintained or issued by the Company are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of the Contract that the Goods will correspond precisely with such dimensions, specifications and customary tolerances. In the absence of customary tolerances, reasonable tolerances shall be allowed

14. REPRESENTATIONS AND SPECIFICATIONS

- (a) The Company shall supply written Specifications for each product. The contents of the Specifications shall constitute the representations of the Company regarding the product.
- (b) The Buyer shall communicate only those representations to the Consumer which are contained in the Specifications, except insofar as clause 14(d) applies.
- (c) The Buyer shall indemnify the Company for all claims under the Consumer Guarantees Act 1993 or otherwise arising from representations made by the Buyer which are not in accordance with the Specifications,
- (d) The Buyer shall communicate all representations specific to a particular product such as limitations as to quality, price, availability, nature, defects and any other specific representations or limitations whatsoever which are made by the Company in writing whether as part of the Specifications or not.
- (e) Oral representations of any kind made by employees, agents or any other representatives are not representations of the Company unless endorsed in writing by the Company in the form of an addendum or amendment to the Specifications, and the terms of any such written endorsement by the Company shall not be altered by any previous or subsequent oral representation.
- (f) The Buyer shall communicate to the Consumer all limitations, qualifications and other written representations of the Company with regard to the availability of repairs, extra lengths of carpet supplied and any other similar matter.

15. COLOUR

- (a) Should the Company be obliged to match any shade or colour, a light and dark tolerance shall be allowed to such extent as shall be agreed upon by the Company and the Buyer and, in the absence of any agreement, a reasonable tolerance shall be allowed,
- (b) Shade variations may occur on dye lot to dye lot but will be within acceptable industry standards. The Company shall not be obliged to deliver all or any of the Goods from the same dye lot unless all orders and confirmation of orders placed by the Buyer are clearly marked "ALL SAME DYE LOT".

16. DESCRIPTION, SAMPLE OR DEMONSTRATION MODEL

- (a) Where the Goods are supplied to the Buyer by description made by the Consumer, the Buyer acknowledges that it is the Buyer's responsibility to ensure that the Goods correspond to the description, and that when the Buyer acknowledges receipt of the Goods, the Company is discharged from all liability to the Buyer regarding the description and the supply of the Goods to that description.
- (b) Where the goods are supplied by the Buyer to a Consumer by reference to sample or demonstration model, the Buyer shall advise the Consumer of the difficulty of matching colour, texture, fabric type or any other quality of the sample with the later supplied Goods.

17. MATERIALS AND SOURCES OF MATERIALS AND/OR GOODS

Reviews by the Company of materials, sources of materials, and/or goods may result in variations of the materials and the sources of materials and/or goods. The Buyer shall not have the right to receive details or information concerning the reviews or the implementation of those reviews and agrees to accept the Goods subject to the varied materials and/or source of materials and/or goods.

18. CONSUMER GUARANTEES ACT 1993

- (a) The provisions of the Consumer Guarantees Act 1993 shall not apply when the Buyer acquires the Goods or holds himself, herself or itself out as acquiring the Goods under the Contract for the purposes of a business.
- (b) The Buyer shall contract out of the Consumer Guarantees Act 1993 on behalf of the Company when the Consumer acquires the Goods or holds himself, herself, or itself out as acquiring the Goods from the Buyer for the purposes of a business.
- (c) The Buyer shall indemnify the Company in all cases where clause 18(b) is not complied with by the Buyer.

19. CONTRACT

- (a) Except as contained in these terms and conditions all conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are, to the maximum extent permissible by law, expressly excluded.
- (b) In the case of any conflict between an order submitted by the Buyer, the Company's confirmation of order or quotation and these terms and conditions, these terms and conditions shall prevail.
- (c) No agent or representative of the Company is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by the Company in writing and the Company is not in any way bound by any such unauthorised statements nor can any such statements be taken to form a contract or part of a contract with the Company collateral to the Contract.

20. WAIVER

All the original rights, powers, exemptions and remedies of the Company shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of the Company or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.

21. NO ASSIGNMENT

The Buyer may not assign all or any of its rights or obligations under the Contract without the prior written consent of the Company.

22. LAW AND JURISDICTION

The Contract shall in all respects be deemed to be a Contract made in New Zealand and the construction, validity and performance of the Contract shall be governed by New Zealand law. The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of the Contract is accepted and acknowledged by the Buyer provided however that the Company shall be entitled to commence any action arising out, of or in respect of the Contract, in any other court.

23. NOTICES

Notices to either the Company or the Buyer shall be in writing and may be served personally by being delivered to the party's address shown on the invoice or that party's known address or, if a company, to the registered office of the party, or by post by prepaid letter addressed to the party at that address. In the case of service by post, notice shall be deemed served on the business day following postage.

24. INTERPRETATION

- (a) These conditions of sale are entered into on behalf of, and are intended to bind, the Buyer and endure for the benefit of the Company and the Company's successors and assigns.
- (b) In these conditions:
 - "**Buyer**" means the person, firm, company or other entity buying the Goods from the Company and includes an agent of the Buyer;
 - "**Company**" means GODFREY HIRST NEW ZEALAND LIMITED;
 - "**Consumer**" means consumers as defined by the Consumers Guarantees Act 1993 who are not excluded by clause 18.
 - "**Contract**" means the contract between the Company and the Buyer for the purchase of the Goods which shall, in each instance, include these terms and conditions and the Contract Price and any other special terms agreed to in writing by the Company;
 - "**Contract Price**" means the price of the goods as agreed between the Company and the Buyer, subject to any variations in the accordance with clause 1 or 2.
 - "**Date of the Contract**" means;
 - (i) where the Contract arises from an order placed by the Buyer, the date of acceptance of the order by the Company; or
 - (ii) where the Contract arises from a quotation given by the Company, the date upon which written notification of acceptance of the quotation is received by the Company or, where no written notification of acceptance of the quotation is received by the Company the date of such other form of acceptance as the Company, in its discretion, determines to treat as a valid acceptance.
 - "**Goods**" means all carpet supplied by the Company to the Buyer under any brand name that may from time to time be used by the Company; and includes all accessories for such inventory.
 - "**Person**" includes a corporation, association firm, company, partnership or Individual.
 - "**Specifications**" means the written specifications for each product supplied by the Company.
- (c) Headings are used as a matter of convenience only and shall not affect the interpretation of these conditions.
- (d) Reference to clause and sub clause refers to clauses and sub clauses of this agreement.