

# TERMS AND CONDITIONS FOR SALE OF GOODS

## 1. DEFINITIONS AND INTERPRETATIONS

In the interpretation of these terms and conditions words importing the singular shall (where appropriate) be deemed to include the plural and vice versa; words importing any one gender shall (where appropriate) be deemed to include the feminine and neuter genders and vice versa; words importing natural persons shall (where appropriate) be deemed to include corporations, firms, government departments, statutory authorities and other entities recognised by law and vice versa; all references in these terms and conditions to any statutory enactment or law shall mean and be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any relevant jurisdiction; if more than one person is named and described as the Customer the obligations of those persons hereunder shall be joint and several.

## 2. PAYMENT FOR GOODS

Unless otherwise agreed to in writing, payment of the price specified on the invoice ("the quoted price") shall be made in full by the customer specified on the invoice ("the Customer") to Northstate Carpet Mills Pty Ltd ("the Company") within 45 days from date of invoice.

Unless expressly stipulated by the Company to be a firm price, the quoted price is subject to variation to take account of variances in wages, materials or other costs since the date of the order and, in event of such variation, the Company may adjust the quoted price, to the extent of such variation, and the revised price shall be payable as if it were the original quoted price.

All prices (whether quoted or revised) are exclusive of sales tax which will be charged at the prevailing rate at the date the Goods are delivered unless a sales tax exemption certificate is provided.

If the quoted or revised price is not paid in full pursuant to clause 2.1 the Customer shall pay the Company on demand interest computed on the unpaid amount of the price calculated from the date of delivery of the Goods to the date on which the quoted or revised price is paid in full at the rate of 1.25% per month.

## 3. DELIVERY OF GOODS

Subject to Clause 3.2, the Company shall use reasonable endeavours to deliver the Goods to the Customer on or before the delivery date specified on the order (if any) but otherwise as notified by the Company to the Customer ("the Delivery Date"). If the Company is unable by reason of any industrial dispute or by reason of shortages of material or labour, shipping delays, war, riot, act of God or any other cause whatsoever beyond the reasonable control of the Company, to deliver the Goods to the Customer on or before the Delivery Date, then the Company shall have the option:

- to deliver the Goods to the Customer after cessation of any such disabling cause or event and in this case these terms and conditions shall have full force and effect as though the Goods had been delivered on or before the Delivery Date; or
- without prejudice to its other rights, to rescind these terms and conditions and in this case the Customer shall have no recourse, claims or actions whatsoever against the Company except for a refund of any part of the price paid in respect of the Goods.
- The Customer acknowledges that the Company does not warrant or represent that the Goods will be delivered on the Delivery Date, and failure to deliver by the Delivery Date shall not avoid or give the Customer the right to avoid any contract or render the Company liable in any way for any direct or consequential loss arising from such failure and that the Company is at liberty to make deliveries within a reasonable period before or after the Delivery Date.

The Customer agrees that if it fails or refuses to take delivery of the Goods on or before the Delivery Date or within 24 hours thereafter, then all moneys paid to the Company shall be forfeited to the Company and the Company may (without prejudice to its other rights) terminate the contract and resell any goods the subject of the contract or store the Goods at the risk and expense of the Customer.

## 4. CARRIAGE

Where the order refers to a request to the Company to arrange for transportation of the Goods then, unless otherwise stated by the Company in writing, delivery of the Goods in the metropolitan area of the capital cities in each State shall be on an F.I.S. basis and delivered of the Goods outside these areas shall be on an F.O.B. basis.

Where the Company arranges transportation of the Goods by an independent carrier the Company shall have absolute discretion as to the appointment of the independent carrier.

Where the Goods are transported by the employees, servants or agents of or contractor engaged by or on behalf of the Company, the Goods shall be deemed to be delivered when they leave the premises of the Company and shall thereafter be at the risk of the Customer.

## 5. LIMITATION OF CLAIMS BY CUSTOMER

The Customer acknowledges that the Customer has not, in acquiring the Goods for any particular purpose, relied upon the skill, judgment or recommendation of the Company or any of its servants or agents.

The Customer agrees to inspect the Goods thoroughly within 2 days after the Goods are delivered by the Company to the Customer.

Any claims by the Customer in respect of the Goods must be notified in writing by the Customer to the company within 30 days after the Goods are delivered, and if not so notified, the Customer forever releases and discharges the Company from all action, suits, charges, claims and demands relating directly or indirectly to the purchase by the Customer from the Company of the Goods.

The Customer agrees that the Company shall not be liable for variations which may occur in the Goods as a result of different production runs, mergers, dyelots or batches and that the Customer shall accept Goods manufactured in accordance with the tolerance set out in S.A.A. DR72167 and that, where more than one dye series is involved, the Customer shall accept Goods with a

shade variation of plus or minus 5%.

Upon receipt of any complaint in respect of the Goods, the Customer shall examine the Goods and provide a report to the Company setting out the nature of the complaint and the Customer's assessment of the complaint before the Company inspects and examines the Goods.

The Customer shall make the consumer aware of the possibility of shading or watermarking of a cut pile product. The Customer shall not make any representation or warranty in respect of the Goods or the performance of the Goods which in the opinion of the Company is unreasonable.

In the case of the replacement of Goods more than 12 months old, a usage factor of 20% will be deducted.

If the Goods are classified by the Company as being older than new and/or first quality or as seconds or over makes or redundant goods than notwithstanding Clause 5.4, the Customer shall accept goods with any shade variation whatsoever.

## **6. RETURN OF GOODS**

Goods returned for credit will be accepted unless returned in accordance with written agreement between the Customer and the Company. Without limiting the foregoing, in no case will the Company accept the return of Goods which have been altered in any way (including by way of cutting).

No

## **7. SHORTAGES**

The roll and piece lengths details on the invoice are instrument measurements and the Customer must immediately report any alleged variation to the Company and if the Customer commences cutting the Goods before the Company has had an opportunity to assess any claimed shortage after the Customer has reported a shortage, the Company will not consider giving an allowance for a claimed shortage.

## **8. LIABILITY AND INDEMNITY**

The Company acknowledges that under applicable State, Territory and Commonwealth Laws including the Trade Practices Act (Cth.) 1974, certain conditions and warranties may be implied into this contract and rights may be conferred upon the Customer which cannot be excluded, restricted or modified. Nothing in this contract whether express or implied, shall be taken to exclude, restrict or modify any such non-excludable conditions, warranties or rights.

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Subject to Clause 8.1, the Customer acknowledges and expressly agrees with the Company:

- that the Customer is satisfied that the goods are fit for the purpose for which they were purchased; and
- that the implied warranty or condition whether statutory or otherwise and whether as to quality condition or fitness for any particular purpose is expressly excluded from these terms and conditions to the full extent permitted by law.

The Customer agrees and acknowledges that the Company to the full extent permitted by law accepts no liability or responsibility arising for any direct or consequential loss, damage or expense of any kind or nature and the Customer releases and forever discharges the Company from all such responsibilities and liabilities and any claims, demands or causes of action in respect thereof.

The Customer shall, to the full extent permitted by law, indemnify and keep indemnified the "Company against all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against the Company by any third party or by any of the Customer's employees, agents or contractors arising directly or indirectly out of or in respect of the use, custody or purchase and supply of the Goods.

If the Company accepts liability for a claim or is held liable by a court of competent jurisdiction for a breach of a condition or warranty implied by statute and not negated pursuant to these terms and conditions, any liability for such breach shall be limited at the Company's option to replacement of the Goods or the supply of equivalent Goods, and/or the repair or restoration of the Goods, and/or the payment of the value of the Goods or of replacing the Goods or of acquiring equivalent Goods, and/or the payment of the costs of having the Goods repaired or restored.

## **9. RETENTION OF OWNERSHIP**

Until the Customer has paid the quoted or revised price and any moneys outstanding pursuant to this contract or any other contract between the Company and the Customer in full, all goods supplied pursuant to this or any other contract between the Company and the Customer shall remain the property of the Company.

Notwithstanding Clause 9.1, the risk of loss or damage to the Goods shall pass to the Customer from the time of delivery to the Customer or its agent and the Customer shall keep the Goods properly insured for their insurable value until all moneys whatsoever owing by the Customer to the Company have been paid in full. All policies of insurance shall be affected in the joint names of the Customer and the Company for their respective rights in respect of loss or damage to the Goods and the policies of insurance shall apply equally to the Company and to the Customer as if each were separately insured under any such policy of insurance.

Until all moneys owing to the Company by the Customer have been paid in full for all goods supplied to the Customer under this or any other contract and until the Customer has satisfied any other debts owing to the Company, the Customer shall hold any goods delivered to it as fiduciary agent and bailee for the Company pending such payment, and shall ensure that all goods supplied to the Customer by the Company are stored separately from all other goods which may be in the Customer's possession, and that all goods supplied to the Customer by the Company under this or any other contract are clearly labelled as belonging to the Company. The Customer shall allow representatives of the Company to inspect all premises where any goods supplied to the Customer by the Company are stored and shall comply with all reasonable directions given on by the Company and/or its representatives to ensure

compliance with the requirements of this Clause.

Until all moneys due for all goods supplied to the Customer by the Company are paid, the Company authorises the Customer to sell the Goods to a third party as a fiduciary agent of the Company. The Customer shall, however, not represent to any third party that it is in any way acting for the Company and the Company will not be bound by and contract with third parties made by the Customer.

If the Customer sells the Goods to a third party and receives payment therefore before the Payment Date, the Customer shall account to the Company for the quoted or revised price of the Goods immediately after the goods are on-sold and the proceeds of sale received, even though the quoted or revised price may not be due and payable. To facilitate such payment, the proceeds shall be paid into a separate and identifiable bank account and the Customer shall account to the Company from this account for moneys due for the supply of the Goods.

If the Customer fails to pay for the Goods by the Payment Date or if the Customer commits an act of bankruptcy or has a receiver or a receiver and manager appointed over any of its assets or goes into liquidation (including provisional liquidation) or any similar event occurs, then without prejudice to any other rights of the Company, the Company shall be entitled to enter any premises where the Goods for which full payment has not been made are stored and to retake possession of such Goods. The Company shall thereupon be entitled to resell such Goods to a third party, and the Customer shall indemnify the Company from and against, and shall pay on demand to the Company, all loss, damage, costs or expenses which the Company may suffer incur in retaking possession of the Goods and arranging for the sale to a third party, any shortfall on sale of such Goods to a third person, all selling expenses and all other loss, damage, costs or expenses incurred by the Company respect of such repossession and resale of the Goods or any of them.

#### **10. SAMPLES**

Any samples, books or other materials supplied free of charge to the Customer by the Company remain the property of the Company and must be returned promptly to the Company at the Company's request.

#### **11. DAMAGE TO SUB-FLOOR**

The Company does not accept liability for any damage arising from the breakdown movement or fault of any kind whatsoever in the sub-floor from excessive moisture or from any other cause not directly resulting from the manufacture of the Goods.

#### **12. TECHNICAL IMPROVEMENTS**

The Company reserves the right to make technical and other improvements to the Goods without prior notice.

#### **13. SEVERANCE**

If any provision of these terms and conditions is or is found to be invalid or unenforceable, that invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of these terms and conditions and these other provisions shall remain in full force effect.

#### **14. WHOLE UNDERSTANDING**

These terms and conditions contain the entire agreement and understanding between the Company and the Customer and the contract arising here from shall not be amended, varied or waived unless such amendment, variation or waiver is in writing signed by the Customer and by a person authorised to sign such amendment, variation or waiver on behalf of the Company.

#### **15. GOVERNING LAW**

These terms and conditions shall be governed by and construed in accordance with the laws of Queensland and the Customer and the Company agree to submit to the jurisdiction of the Queensland Courts in respect of any dispute arising in connection with this contract.