

# Terms and Conditions of Sale

Australia and New Zealand  
v0823



## Terms apply to sales by Godfrey Hirst and Feltex in Australia and New Zealand

These terms and conditions apply to the supply of flooring products (**Products**) to wholesale customers and retailers (**Customer, you or your**) by members of the Mohawk Flooring Oceania group of companies, including Godfrey Hirst Australia Pty Ltd and Feltex Carpets Pty Ltd in Australia, and Godfrey Hirst NZ Limited in New Zealand.

### Agreement formed on acceptance of Order

An agreement is made between the relevant Mohawk Flooring Oceania selling entity (**Supplier, we or us**) and the Customer upon you placing an order (**Order**) with that entity for the supply of Products which we confirm that we accept (**Order Confirmation**).

### Entire agreement

These terms and conditions, together with those in an Order Confirmation, contain the entire agreement between you and us for the supply of the Products specified in the Order Confirmation. They supersede all prior discussions and replace in full any Customer terms and conditions contained or referred to in an Order.

### Price and payment

The Price shall be the total price, including delivery and other charges, specified in the Order Confirmation.

Where we have approved and agreed credit terms with you, those terms shall apply in relation to payment of the Price. Where no credit terms have been agreed, you must pay us the Price at or prior to delivery of the Products.

Payment shall be made by electronic funds transfer. We may accept other forms of payment including by credit card subject to you paying our additional costs of using such services.

Payment must be made without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

We will charge you interest on any late payments at a rate of 12% per annum, accruing daily.

### Delivery

Delivery shall be made to the place specified in the Order Confirmation, or if no place is specified the Products shall be made available for collection at our premises.

We will use reasonable endeavours to deliver the Products to you or have the Products available for collection at our premises by the delivery date (**Delivery Date**) (if any) specified on the Order Confirmation.

However, you acknowledge that Delivery Dates are an estimate only and may be impacted by circumstances outside of our reasonable control.

You shall accept delivery of the Products during normal business hours and shall provide, at your cost, all necessary and appropriate assistance and facilities for the safe and efficient off-loading of the Products. If you fail to accept delivery, seek to defer delivery or request delivery to a different place to that specified on the Order Confirmation, we may require that you pay an extra charge in respect of our additional costs including any storage and restocking costs.

You agree to inspect the Products on delivery or arrival to your premises (as applicable) and notify us as soon as possible if you consider that you may have a claim that (a) the Products do not conform with the terms of the Order or (b) the Products are defective.

### Ownership and risk

Risk in the Products passes on delivery to you or your designated carrier. After delivery, you are responsible for storing the Products prior to sale and installation and are liable for any loss or damage which occurs during such storage.

Ownership of the Products passes to you upon payment in full. Prior to payment in full, you hold the Products on our behalf and agree to store the Products in a manner such that they may be identified as our Products, and you agree that we have the right to enter upon any premises owned or occupied by you during business hours and repossess such Products.

### Order cancellation & returns

We may, but are not obliged to, allow you to cancel an Order or return Products after delivery without cause.

If we allow you to cancel an Order or make a return (other than in connection with an accepted warranty claim or a claim under Consumer Law) we may charge you a restocking fee.

All authorised returns shall be packaged in a manner which ensures that the Products are not damaged in transit and shall clearly be labelled with the addresses of the Customer and the Supplier and the relevant permission or return number provided by the Supplier. All Products shall, until collected by or delivered to the Supplier, remain at the Customer's risk.

### Statutory guarantees and additional warranties

All Products supplied in Australia come with statutory guarantees for the end consumer under Consumer Laws in Australia that cannot be excluded. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss

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or damage. You are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.

For supplies of Products in New Zealand, if you are acquiring the Products in trade and this agreement is not a 'standard form small trade contract' or 'standard form consumer contract' under the Fair Trading Act 1986, then as between you and us, to the extent permitted by law, we contract out of the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986.

We guarantee our Products against defects in materials and workmanship. We do not however guarantee against normal wear and tear, damage due to improper installation, failure to properly maintain the Products or damage caused by accident or abuse. Product installation and care, cleaning and maintenance guides are available for download at our website.

Our new Products come with warranties which can be established by checking the labels on the back of samples and can be downloaded from our website for Australia or New Zealand (as applicable). These warranties are in addition to rights under Consumer Laws, which may exceed the rights under these warranties. The amount recoverable under these warranties decreases over time.

You agree that you will not make any representations or warranties to any subsequent purchaser of the Products which are inconsistent with this clause and that if you do give such a representation or warranty that you are solely responsible for any liability to the subsequent purchaser.

Our local After Sales Service teams can be relied upon to respond to any consumer queries or concerns with our Products. Contact details can be found on our website.

## Limitation of liability

To the extent permitted by law, our liability to you under or in connection with this agreement is limited to the Price and in no circumstances shall we have liability for indirect or consequential losses including without limitation loss of profits (whether direct or indirect). This paragraph does not limit any liability we may have under Consumer Laws.

## Customer default

We may cancel an Order if you fail to make payment, suffer an insolvency event (including without limitation failing to pay your debts when due or where an administrator, receiver or liquidator is appointed) or commit a breach of a material term of this agreement.

## Privacy

We are committed to meeting the requirements of all applicable privacy laws. Our Privacy Policy can be found via the "Privacy" link in the footer of our website.

## Compliance with laws and business ethics

We are committed to conducting our business in compliance with all applicable laws and in an ethical and responsible manner. Our commitment in this respect is set out in the Mohawk Flooring Oceania Standards of Conduct and Business Ethics available via the "Legal" link in the footer of our website. We ask that you report any violations of this policy by our personnel to us.

The Customer represents and warrants that neither the Customer nor any director, officer, agent, employee or affiliate of the Customer has violated or is in violation of any anti-corruption law, and will not take or omit to take any action which may breach such laws in connection with this agreement.

The Customer represents and warrants that it is not designated on, owned by or associated with, any party designated on any U.S., E.U., Australia or New Zealand restricted parties or sanctions lists.

## General

You may not transfer or otherwise deal with your rights or obligations under this agreement without the prior written consent of the Supplier.

If any part of this agreement is void or unenforceable, that part shall be deleted and the remainder shall remain effective, provided such deletion does not materially alter the nature and effect of the agreement.

Where the Customer is a trustee of a trust (whether disclosed to the Supplier or not) the Customer warrants to the Supplier that the Customer enters into this agreement both in its capacity as trustee and in its personal capacity and the Customer has the right to be indemnified out of trust assets.

For supplies of Products in New Zealand, this agreement shall be governed by the laws in force in New Zealand and the parties submit to the exclusive jurisdiction of the Courts located there. For supplies of Products in Australia, this agreement shall be governed by the laws in force in the State of Victoria and the parties submit to the exclusive jurisdiction of the Courts located there.