



## Terms and Conditions of Trade

These terms and conditions of trade apply to all our Sale of Goods Contracts. Any order placed with Heritage Carpets New Zealand Limited ("Heritage Carpets") constitutes your agreement to be bound by these terms. Any additional or different terms you stipulate or state in any communication with Heritage Carpets (including an order) are hereby objected to and will not bind Heritage Carpets unless Heritage Carpets agree in writing. No sales person, representative or agent is authorised by Heritage Carpets to give any guarantee, warranty or representation in addition to, or contrary to these terms. In any event, receipt of goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these terms.

### 1 PRICE AND PRICE VARIATION

- 1.1 Prices quoted are excluding GST unless otherwise stated. Unless otherwise agreed in writing, the price of the goods will be the current price on the day of delivery of the goods. Prices do not include any delivery surcharges.
- 1.2 Heritage Carpets shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to Heritage Carpets of carrying out the whole or any part of the contract arising from any of the following:
- (a) Delays in delivery or installation of the goods or any of them as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfill the obligations under the contract or any action or inaction by the Customer or other circumstances beyond Heritage Carpets' control;
  - (b) Variation in the cost of Heritage Carpets acquiring the goods directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications or any variation in currency exchange rates;
  - (c) Variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or
  - (d) Any correction of errors or omissions on the part of Heritage Carpets or any of its representatives.
- 1.3 For orders less than NZD 1500, an administrative charge of NZD 50 will be applied.

### 2 GST

- 2.1 All goods and services sold are subject to Goods and Services Tax.

### 3 PAYMENT

- 3.1 Unless otherwise agreed, the purchase price shall be paid to Heritage Carpets at its address by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque or direct credit.
- 3.2 A deposit of 20% of the order value will be required at confirmation of orders for non-immediate delivery. This will ensure stock reservation and/or shipping of non stocked lines. The balance payable in accordance with clause 3.1.
- 3.3 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 3.1. Payment of the disputed portion may be withheld provided the matter is brought to Heritage Carpets' attention immediately it is discovered and a letter of explanation setting out the particulars of the dispute is sent to Heritage Carpets within seven days of the dispute arising.
- 3.4 Heritage Carpets reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered to by the Customer.
- 3.5 Interest may be charged on overdue accounts at such rate as may be charged by Heritage Carpets from time to time.
- 3.6 Any expenses, costs or disbursements incurred by Heritage Carpets in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the Customer.

### 4 NEW ACCOUNT

- 4.1 Use of this account shall constitute acceptance of these terms and conditions.
- 4.2 The Customer shall not be liable for any indebtedness arising from the fraudulent use of the account provided that the Customer must on discovering the fraudulent use of the account immediately notify Heritage Carpets of such fraudulent use. The burden of proving such use was fraudulent shall lie with the Customer.
- 4.3 The Customer shall endeavor to return all goods acquired by fraudulent use.

### 5 DELIVERY

- 5.1 Heritage Carpets shall at the cost of the customer deliver the goods to the address stated on the order or as agreed by Heritage Carpets in writing.
- 5.2 Heritage Carpets shall deliver the goods by such carrier and such form of transport Heritage Carpets consider to be appropriate.
- 5.3 Where you specify the carrier and the means of carriage, Heritage Carpets shall deliver the goods in the way specified, the cost of such carriage being an additional charge to the invoiced price of the goods.
- 5.4 Heritage Carpets will not be responsible for any part delivery or delay in delivery of the goods as a result of events occurring beyond Heritage Carpets control. Heritage Carpets shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.
- 5.5 The Customer agrees to inform Heritage Carpets' within 30 days of the date of invoice if proof of delivery is

required. After this period, no liability will lie with Heritage Carpets for proof of delivery.

### 6 PRIVACY ACT 1993

- 6.1 The Customer authorises Heritage Carpets to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes only:

(a) Assessing the Customer's creditworthiness.

(b) disclosing to a third party details of this application and any subsequent dealings it may have with Heritage Carpets for the purpose of recovering amounts payable by the Customer and providing credit references.

(c) Marketing goods and services provided by Heritage Carpets to the Customer.

- 6.2 The Customer, if an individual, has a right of access to information about the Customer held by Heritage Carpets. The Customer may request correction of that information and may require that the request be stored with that information. Heritage Carpets may charge reasonable costs for providing access to that information.

### 7 INTELLECTUAL PROPERTY

- 7.1 Where Heritage Carpets has followed a design or instruction furnished by or given by the Customer, the Customer shall indemnify Heritage Carpets against all damages, penalties, costs and expenses of Heritage Carpets or in respect of which Heritage Carpets may become liable through any work required to be done in accordance with these instructions involving an infringement of a patent, trademark, registered design or common law right.

7.2 Should Heritage Carpets be required to match any shade or colour, a light and dark tolerance shall be allowed to such an extent as shall be agreed by Heritage Carpets and the Customer at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed.

7.3 Where the Customer supplies a mould, die, tool, printing plate or any other item used in the manufacturing process the Customer shall reimburse Heritage Carpets for all maintenance expenses. Heritage Carpets shall not be liable for any loss or damage to moulds, dies, tools or materials supplied by the Customer to Heritage Carpets for the purposes of fulfilling any contract.

7.4 Printing plates, stereotypes, film, artwork and all other equipment for specified use in the manufacture of the goods (other than those supplied by the Customer) remain the property of Heritage Carpets unless the cost thereof (including all development and costs relating thereto) shall have been fully recovered by Heritage Carpets from the Customer in the costing of the goods already paid for by the Customer.

7.5 All information prepared by Heritage Carpets including, without limitation, customised pricing, proposals, electronic catalogues, details of improvements and cost reductions, is the intellectual property of Heritage Carpets and cannot be copied, altered or distributed without Heritage Carpet's prior written consent. Heritage Carpets will not be liable for any alterations made by you.

### 8 RETURN OF GOODS

- 8.1 Heritage Carpets will not accept the return of goods for credit or any other purpose unless Heritage Carpets agrees to accept the return of the goods and advise the Customer a return advice number prior to the return of goods. Return of goods will only be accepted for credit within 14 days of delivery, unless due to Heritage Carpets' error. Return freight will be at Heritage Carpets' cost only when there has been an error on Heritage Carpets part.

8.2 No returned goods shall be accepted by Heritage Carpets (even if Heritage Carpets agree to do so) if they have been tampered with by you or any other person, if they are goods expressly sold on a non-return basis, or if they are not accompanied by the return advice number referred to in clause 8.1. Where goods are returned to Heritage Carpets but not accepted as above, they shall be returned to you at your expense.

8.3 Receipt by Heritage Carpets or by any of our agents or representatives of any goods returned other than in accordance with clauses 8.1 and 8.2 shall not constitute nor be deemed to constitute Heritage Carpets' acceptance of the return of the goods for credit or any other purpose.

### 9 RISK

- 9.1 Risk in the goods shall pass to you at the time when our obligations under the contract are deemed under clause 5 to be completed.

### 10 PPSA SECURITY INTEREST

- 10.1 The Customer grants to Heritage Carpets a Security Interest in the goods and their Proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligations of the Customer to Heritage Carpets under this contract (together "the Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the indebtedness, the security interest shall also extend to all the Customers present and after acquired office equipment, supplies and stationery, of which the goods form part, to the extent required to secure the Indebtedness.

|           |  |   |
|-----------|--|---|
| 10.2      | As and when required by Heritage Carpets the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable Heritage Carpets to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce Heritage Carpets' Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 1999 ("PPSA").  | (ii) Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Heritage Carpets in writing; or<br>(iii) Any services forming part of the supply of the goods which have been performed by any third party; and the Customer agrees to indemnify Heritage Carpets against any such claim.  |
| 10.3      | The Customer shall not change its name without first notifying Heritage Carpets of the new name not less than 7 days before the change takes effect.   | (e) In any event, Heritage Carpet's liability under any claim shall not exceed the price of the goods.  |
| 10.4      | The Customer warrants that the goods are not purchased for use primarily for personal, domestic or household purposes.   | 11.3 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.  |
| 10.5      | Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by Heritage Carpets in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where Heritage Carpets applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.  | <b>12 CUSTOMER'S LIABILITY &amp; DEFAULT</b>  |
| 10.6      | Until the Customer has paid all money owing to Heritage Carpets the Customer shall at all times ensure that:<br>(a) the goods supplied by Heritage Carpets, while in the Customer's possession, can be readily identified and distinguished; and/or<br>(b) All Proceeds (in whatever form) that the Customer receives from the sale of any of the goods are readily Identifiable and Traceable.  | 12.1 If the Customer shall:<br>(a) Fail to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or<br>(b) Suffer execution under any judgment; or<br>(c) Commit an act of bankruptcy; or<br>(d) Make any composition or arrangement with any creditor; or<br>(e) Being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it, Heritage Carpets (in addition to any other remedies hereby or by statute conferred) may treat the contract as terminated and any part of the purchase price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right Heritage Carpets may otherwise possess. |
| 10.7      | Where the goods are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all money owing to Heritage Carpets, the Customer shall not sell or grant a Security Interest in the goods without Heritage Carpet's written consent.  | <b>13 VARIATIONS TO TERMS AND CONDITIONS OF TRADE</b>   |
| 10.8      | The parties agree to contract-out of the PPSA in accordance with Section 107 of the PPSA to the extent that Section 107 applies for the benefit of, and does not impose a burden on, Heritage Carpets. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of Heritage Carpets in respect of the Security Interest created by these terms and conditions of trade.  | 13.1 Heritage Carpets may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer PROVIDED THAT Heritage Carpets shall not make any variation to the nature or extent of the Security Interest granted by the Customer in clause 10.1 without the written agreement of the Customer. Heritage Carpets may notify the Customer by delivering to the Customer an invoice with a notice of amendment and receipt of the invoice by the Customer will be deemed to be acceptance by the Customer of the terms and conditions of trade.  |
| 10.9      | For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.  | <b>14 GOVERNING LAW</b>   |
| <b>11</b> | <b>GUARANTEES</b>  | 14.1 These terms of trade are governed by the laws of New Zealand.<br>14.2 Heritage Carpets and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.  |
| 11.1      | Where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees Act 1993 applies to this contract:<br>(a) if any of the goods fail to comply with any guarantee in the Consumer Guarantees Act, Heritage Carpets will repair or replace those goods;<br>(b) without excluding Heritage Carpets' obligations under the Consumer Guarantees Act 1993, the Customer acknowledges that Heritage Carpets does not provide any Express Guarantees (as defined in that Act) other than those expressly confirmed by Heritage Carpets in writing;<br>(c) if the goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply;<br>(d) if the Customer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract that the Consumer Guarantees Act 1993 does not apply in respect of the goods; and<br>(e) if the Customer supplies the goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the goods without Heritage Carpet's prior approval in writing, and the Customer must give the person buying the goods such product information relating to the goods as Heritage Carpets requires, and the Customer agrees to indemnify Heritage Carpets against any liability or cost incurred by Heritage Carpets under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of these obligations. |   |
| 11.2      | The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:<br>(a) Defective goods or goods which do not comply with the contract may at Heritage Carpets' discretion be repaired or replaced, or the price refunded.<br>(b) Any right which the Customer may have to reject non-conforming or defective goods will only be effective if:<br>(i) The Customer notifies Heritage Carpets in writing within fourteen days following delivery and Heritage Carpets is given the opportunity to inspect the goods; and (ii) the goods are returned unused, re-saleable and/or in the condition the Customer received them.<br>(c) Heritage Carpets will not repair or replace, or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.<br>(d) Heritage Carpets accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:<br>(i) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or  |   |