

## **DUTTON CARPETS LTD - Conditions of Sale**

### **1. Interpretation**

#### 1.1 In these conditions

"CUSTOMER" means the person, firm or company who accepts a quotation of the Company for the sale of the goods and/or the supply of services, or whose order for the goods and/or the supply of services is accepted by the Company. Where any quotation is accepted by or order is placed by one party on behalf of or for the benefit of another party, or where one party at the instigation of another party supplies goods to the Company for the Company to work upon or to store, then unless contrary to the context in which the word appears "Customer" shall mean any and all such parties. In particular, for the purposes of clause 2.7 hereof goods belonging to or supplied by or to be supplied to one such party shall be subject to the general lieu and/or power of sale in respect of all payments due from the other party to the Company. "GOODS" and "SERVICES" means the goods (including any installment of the goods or any parts for them) and/or the supply of services which the Company is to supply in accordance with these conditions and includes (without prejudice to the generality of the foregoing) yarn soft cloth and carpets and also includes goods of the Customer in the possession of the company from time to time "THE COMPANY" means Dutton Carpets Limited "CONDITIONS" means the standard conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company. "CONTRACT" means the contract for the purchase and sale of the goods and/or the supply of services. "WRITING" includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2. Basis of the Sale**

2.1 The Company shall sell and the Customer shall purchase the goods and/or services in accordance with any quotation of the Company which is accepted by the Customer or any order of the Customer which is accepted by the Company subject in either case to these Conditions which shall govern the contract to the exclusion of any other terms and conditions subject to which any quotation of the Company is accepted or purported to be accepted or any order of the Customer is made or purported to be made by the Customer.

2.2 If a quotation is accepted by or an order is placed by one party on behalf of or for the benefit of another party, or where one party at the instigation of another party supplies goods to the Company for the Company to work upon or to store, then the party accepting the quotation or placing the order or supplying the goods shall be deemed for all purposes to be the agent of the other and, in particular, for the purpose of having authority to agree with the Company that these Conditions shall apply to the resultant contract. Such other party wishing to take the benefit of the resultant contract, shall be stopped from denying that the first party had actual or ostensible authority to enter into the contract on its behalf and subject to these Conditions.

2.3 No variation of or addition to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company.

2.4 The Company's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.5 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

- 2.7 (a) The Company shall have a general lien on all Customers' goods for the time being in the Company's possession, not only for payments due or to fall due under the contract in respect of which such goods were received, but also for all other payments due from the Customer to the Company.
- (b) The Company's general lien shall extend to and/or the Company is expressly empowered to sell all goods including the Customer's goods for such part or parts as the Company may solely decide) in the event of the Customer's failure to make any payment on the due date in accordance with clause 5.2 hereof or to pay the Company's storage charges under clause 13 within 30 days of the date of the Company's invoice in respect of such storage charges. The Company shall sell the goods at the best price readily obtainable, provided that the Customer shall not be entitled to prevent such sale upon the contention that the proposed sale or method of sale will not produce such a price.
- (c) The Company shall be entitled to apply the proceeds of sale firstly in discharge of its costs of sale, secondly in discharge of all payments due from the Customer to the Company, thirdly in discharge of interest upon all such payments from the date of invoice to the date of sale, calculated at current Judgment Act rates from time to time and fourthly in discharge of all other sums which may be due from the Customer to the Company, whether under the terms of the contract or as damages for the breach thereof (which, if not ascertained, the Company shall be entitled to estimate and to deduct the amount so estimated pending ascertainment).
- (d) The balance, if any, of the proceeds of sale shall be paid out to the Customer, provided always that if more than one Customer shall claim to be entitled to or interested in the balance remaining, it shall be sufficient for the Company to pay the same into an interest-bearing account to abide the event of the dispute between the Customers.

### **3. Orders and Specifications**

- 3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the goods and/or services within a sufficient time to enable the Company to perform the contract in accordance with its terms.
- 3.2 The quantity, quality and description of and any specification for the goods and/or services, shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company).
- 3.3 If the goods are to be manufactured or any process is to be applied to the goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.
- 3.4 The Company reserves the right to make any changes in the specification of the goods and/or services which are required to conform with any applicable safety or other statutory requirements or, where the goods and/or services are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by the Company may be cancelled by the Customer, except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### **4. Price of the Goods**

- 4.1 Subject to the remaining provisions of this clause 4 the price of the goods shall be the Company's quoted price. All prices quoted are valid for thirty days only or until earlier acceptance by the Customer.
- 4.2 (a) The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the Company which is due to any factor beyond control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the goods and/or services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.



- 6.3 Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.
- 6.4 If the Company fails to deliver the goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the goods.
- 6.5 If the Customer fails to take delivery of the goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) the, without prejudice to any other right or remedy available to the Company, the Company may:
- (i) store the goods until actual delivery and charge the Customer for the reasonable costs (including insurance);
  - (ii) sell the goods at the best price readily obtaining and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract

## **7. Risk and Property**

- 7.1 Risk of damage to or loss of the goods shall pass to the Customer;
- (i) In the case of goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the goods are available for collection; or
  - (ii) In the case of goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the goods.
- 7.2 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to Customer for which payment is then due, together with any interest in any such case payable under this agreement.
- 7.3 Until such time as the property in the goods passes to the Customer, the Customer shall hold the goods as the Company's fiduciary agent and bailee and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time, the Customer shall be entitled to re-sell or use the goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the goods passes to the Customer (and provided the goods are still in existence and have not been re-sold) the Company shall be entitled at any time to require the Customer to deliver up the goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the goods are stored and re-possess the goods and the Customer hereby grants to the Company an irrevocable licence to enter the Customer's premises at any time for the purpose of recovering possession of the goods.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

## **8. Notice of Defects**

- (a) The Customer shall inspect the goods immediately upon delivery. Subject to condition 9 hereof, the Customer must give written notice to the Company within fourteen days of such delivery of any defect in the goods which ought to have been apparent upon inspection or (in the case of defects not so apparent) within fourteen days of such defect

becoming apparent. Should the Customer fail to notify the Company as aforesaid it shall be conclusively deemed for all purposes that the goods comply in all respects with the contract and are of merchantable quality and reasonably fit for the purpose for which the Customer required them and further the Customer shall not be entitled to make any claim to the contrary.

- (b) In the event of the Company supplying one installment of the goods and acceding to the Customer's request to store the balance, then the Customer's failure to notify the Company as aforesaid in respect of the first installment shall preclude it from giving any notice of defects or making any claims in respect of any further installments unless the Customer shall prove to the reasonable satisfaction of the Company that such defects were not also present in the first installment

## **9. Warranties and Liabilities**

9.1 Save as provided in these Conditions, all representations, warranties or conditions expressed or implied, statutory or otherwise, are hereby expressly excluded.

9.2 The Company will make good by repair or at its option by the supply of a replacement defects which under proper use appear in the goods within a period of twelve calendar months after the goods have been delivered and of which notification has been given to the Company in accordance with condition 8 hereof arising solely from faulty design, materials or workmanship.

9.3 Any goods not of the Company's manufacture supplied under this contract are sold with such warranty as the makers give to the Company (available upon request) and the Company is able without expense to enforce, but are not guaranteed by the Company in any other way.

9.4 The Company's responsibility under sub-condition (b) and (c) shall cease if any repair is made or attempted to be made or components not of the Company's manufacture or supply are installed otherwise than by the Company.

9.5 The Company will compensate the Customer or his personal representative for personal injury or death and will indemnify the Customer against any legal liability to others for personal injury or death to the extent that such personal injury or death is caused by the breach of contract of the Company, or the negligence of the Company, its servants or agents for whose negligence the Company is liable at law.

9.6 Save as hereinbefore provided the Company will not in any circumstances be liable for any loss or damage, whether direct or indirect or consequential, howsoever arising, including, but with prejudice to the foregoing caused by:

- (i) the unsuitability of the goods for any purpose to which they are put by the Customer;
- (ii) the negligence of the Company, its servants or agents or sub-contractors;
- (iii) the Company's breach of contract

9.7 For avoidance of doubt consequential damage includes, but is not limited to, loss of market, loss of profit, additional haulage or shipping costs or the cost of effecting any replacement of goods more extensive than that hereinbefore set out.

9.8 The Customer warrants that these Conditions are freely accepted on his part in the knowledge and on the basis that:

- (i) the contract price would be higher were the Company under any liability or potential liability other than set out in these Conditions;
- (ii) any liability or potential liability upon the Company other than as set out in these Conditions would be disproportionate in the contract price.

9.9 The Company shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the goods if the delay or failure was due directly or indirectly to any cause beyond the Company's reasonable control including, without prejudice to the generality of the foregoing, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party and whether official or unofficial), legislation or official regulation, wilful damage, the unavailability of transport, power or materials or to natural causes such as, but not limited to act of God, earthquake, flood

or tempest or to fire or accident or theft or any other event outside the Company's control. In any such case the Company may forthwith suspend or postpone its obligations or any of them under this contract until such delay or cause has ceased or determined this contract without prejudice to any right of action which may have accrued prior to such termination. Wherefore such reasons the availability of the goods to the Customer is delayed, the Customer shall take delivery of the goods when so requested by the Company.

## **10. Insolvency of Customer**

10.1 This clause applies if:

- (i) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession or a Receiver is appointed of any of the property or assets of the Customer or any distress or execution is levied on the Customer's property or assets; or
- (iii) the Customer ceases or threatens to cease to carry on business; or
- (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled at its option to cancel the contract or suspend any further deliveries under the contract without any liability to the Customer, and if the goods have been delivered but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary. On cancellation before completion of delivery of all the goods and without prejudice to any other rights the Company may possess the Company shall be entitled to payment for such goods as the Company shall have supplied.

10.3 For the avoidance of doubt, the provisions of clause 2.7 shall apply both before and after any of the events specified in clause 10.1 and, moreover, shall apply in the event of cancellation in accordance with clause 10.2 in respect of goods not so delivered or otherwise remaining in the possession of the Company as at the time of cancellation.

## **11. Export Terms**

11.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

11.2 Where the goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Customer and Company) apply notwithstanding any other provision of these Conditions.

11.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

11.4 Unless otherwise agreed in writing between the Customer and the Company, the goods shall be delivered on an "ex-works" basis and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

11.5 The Customer shall be responsible for arranging for testing and inspection of the goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

## **12. General**

- 12.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing, addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time, have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Company of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.4 The contract shall be governed by the laws of England. Moreover, the Courts of England and Wales shall deal with all disputes which shall, at the Company's exclusive option, be dealt with by and referred, if necessary, to the Blackburn District Registry of the High Court of Justice or the Blackburn County Court.

**13. Storage**

- 13.1 Where the Company arranges for storage of the goods, either at the Customer's request or under clause 6(5)(i) hereof, then the Customer shall pay for such storage, together with insurance costs in accordance with the Company's current rates for storage and insurance costs as published and levied from time to time.