

MOHAWK CARPET DISTRIBUTION, INC., DAL-TILE DISTRIBUTION, INC., AND UNILIN FLOORING NC, LLC
INCLUDING THEIR DIVISIONS, SUBSIDIARIES AND AFFILIATES
(INDIVIDUALLY AND COLLECTIVELY REFERRED TO HEREIN AS "SELLER")

TERMS AND CONDITIONS OF SALE

1. All sales of the goods covered hereunder (the "Goods") are F.O.B. Seller's shipping point, regardless of the means of delivery to Buyer, with title and risk of loss passing to Buyer at such time.
2. Except as expressly warranted by Seller in its written warranty applicable to the Goods, Seller makes NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Buyer agrees to assume all risks and liability for the Goods, whether used individually or in combination with other goods.
3. Buyer shall inspect the Goods immediately upon arrival and shall within ten (10) business days after arrival give written notice to Seller of any claim that (1) the Goods do not conform with the terms of the Buyer's purchase order (the "Order") or (2) that the Goods are defective, provided that a visual inspection should have revealed such defect. If Buyer shall fail to give such notice, the Goods shall be deemed to conform to the terms of the Order, and Buyer shall be deemed to have accepted and shall pay for the Goods in accordance with the terms of the Order and these Terms and Conditions of Sale (the "Agreement").
4. Buyer agrees to indemnify and hold Seller harmless from any and all claims, actions, liability, loss, damage or expense (including, without limitation, reasonable attorneys' fees) with respect to any suit, claim, demand or other proceeding arising out of or relating to the Goods, except to the extent relating to a breach of Seller's express written warranty made herein.
5. Seller's liability to Buyer, or person or entity purchasing from Buyer, shall be limited to the extent permitted by law, to the express warranties set forth in Seller's written warranty applicable to the Goods. Seller shall not be bound by any claim adjustment made by Buyer without prior written authorization by Seller's representative. Return of Goods will not be accepted unless a written authorization for return has been given by Seller. Any unauthorized returns are subject to refusal by Seller and may be returned to Buyer on a freight collect basis. SELLER SHALL HAVE NO LIABILITY TO BUYER (OR ANY PERSON OR ENTITY CLAIMING THROUGH BUYER) FOR LOST PROFITS, LOSS OF REVENUE, OR FOR INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES AND THESE ARE HEREBY WAIVED BY BUYER.
6. The terms of payment for the Goods shall be as stated on each invoice. Payment terms begin from the date of invoice. A finance charge of 1 1/2% per month or the maximum rate allowed by law, whichever is less, will be charged on each payment received after the due date. A seventy-five (\$75.00) dollar fee will be charged on each check returned due to insufficient funds. Checks will not be re-deposited. In the event a legal action is commenced by Seller to enforce any of the terms of this Agreement, Seller shall be entitled to recover its collection costs and reasonable attorney's fees incurred in connection with such legal action.
7. Credit arrangements are subject to written approval of Seller and are subject to change without notice. In the event Buyer fails to fulfill the terms of payment or in the event Seller shall have any doubt at any time as to Buyer's financial responsibility, Seller may decline to make further deliveries except upon receipt of cash or satisfactory security.
8. Buyer shall reimburse Seller for all taxes, excises or other charges that Seller may be required to collect for and/or pay to the government upon the sale or transportation of the Goods.
9. No liability shall result from delay in performance or nonperformance of this Agreement directly or indirectly caused by fire, explosion, accidents, flood, or other act of God, labor trouble or shortage, act of or authorized by any government, inability to obtain suitable material, equipment, fuel, power or transportation, or arising from contingencies, happenings or causes beyond the control of the party affected. Seller shall not be required to provide quantities of Goods so affected by any such circumstances, but this Agreement shall otherwise remain unaffected.
10. Orders are not assignable or transferable by Buyer in whole or in part, except with the prior written consent of Seller.
11. In the event of inability for any reason to supply the total demands for the Goods specified, Seller may allocate its available supply among any or all of customers on such basis as it may deem fair and practical, without liability for any failure of performance which may result there from.
12. This Agreement shall be construed and enforced in accordance with the laws of the state of Georgia. Buyer hereby agrees to (i) irrevocably and unconditionally submit to the exclusive jurisdiction of the state and federal courts located in Atlanta, Fulton County, Georgia to resolve any disputes relating to this Agreement and (ii) waive any right to move or dismiss or transfer any such action brought in such court on the basis of any objection to personal jurisdiction or venue. Any controversy or claim arising out of or relating to this Agreement shall, at the election of Seller, be settled by arbitration conducted in Atlanta, Georgia in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
13. No terms or conditions other than those stated in this Agreement shall be binding on Seller unless such modifications or additional terms are made in writing and executed by an officer of Seller. No terms or conditions contained herein shall be deemed affected by Buyer's documents containing other or different terms and conditions. The terms and conditions of this Agreement shall take precedence over any different or conflicting terms in Buyer's Order or other Buyer documents. Acceptance by Seller of the Order is expressly limited to the terms and conditions contained in this Agreement. In the event an Order shall be deemed an acceptance of Buyer's offer, the Order is expressly conditioned upon Buyer's assent of the terms and conditions contained in this Agreement.