

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS.** (a) "Masco" means Masco Fabrics, Inc.; (b) "Customer" means the person or company named as "Customer" on the reverse side of this Document or otherwise identified as the purchaser of goods on this Document, a purchase order acknowledgement, quotation, picking/packing list, invoice, credit application, or month-end statement; (c) "Goods" means the goods or products sold to or to be sold by Masco to Customer pursuant to this Document; (d) "Document" means the purchase order acknowledgment, quotation, picking/packing list, invoice, credit application, month-end statement, catalog, Masco's website, or other document of Masco that includes or otherwise references or incorporates these Terms and Conditions of Sale; and (e) "Terms" means these Terms and Conditions of Sale.

2. **ACCEPTANCE.** All sales by Masco are made subject to the following Terms. Masco expressly rejects any different or additional terms or conditions contained in any documents submitted by the Customer. No modification of these Terms shall be of any force or effect unless accepted expressly in a writing signed by an authorized representative of Masco. Masco's provision of credit, acceptance of any purchase order, and/or sale of any Goods is expressly made conditional on Customer's assent to these Terms. Submission to or acceptance by Masco of an order from Customer after Customer's receipt of these Terms shall constitute Customer's agreement to the same, and Customer's acceptance may be evidenced by a Document executed or delivered in multiple parts or counterparts, all of which together shall constitute one enforceable agreement, which may be delivered by facsimile transmission or electronic transmission. These Terms and the price, description, and other provisions on the face of the Document constitute the entire agreement between Masco and Customer relating to the purchase and sale of the Goods described thereon.

3. **CONSTRUCTION.** Except as may be expressly provided to the contrary in writing, the provisions of this Document are for the benefit of the parties hereto and not for any other person.

4. **SHIPPING TERMS.** Payment for all shipments sent by Masco shall be by C.O.D. money order unless credit and/or other payment terms have been previously approved. Shipments must be accepted by Customer upon delivery or within the shipping carrier's specified time. Customer shall be responsible for all shipping costs and shall be subject to return shipping and restocking fees as provided herein in Section 9.

All delivery dates are approximate. Masco shall not be liable for any damages, including special, incidental, or consequential, or for lost profits or opportunity, arising from any shipment of nonconforming goods, any delay in delivery, or any failure to deliver goods in quantities and at the time or times scheduled or predicted.

5. **SECURITY INTEREST.** Security title, lien on, and right of possession to the Goods shall remain in Masco until all payments hereunder have been made in full. Customer grants a security interest in the Goods to secure payment of the purchase price thereof and any and all additional amounts now or hereafter owed by Customer to Masco. Should Customer receive Goods on credit while insolvent, Masco shall be entitled to that right of reclamation set forth in ALA. CODE § 7-2-702. In the case of attachment, levy, assignment for creditors, bankruptcy,

liquidation, or receivership affecting the Goods, all amounts due and owing to Masco by Customer, whether current or past due, become immediately due and payable.

6. **CANCELLATION.** Except as agreed by Masco or permitted by any applicable manufacturer's return policy, orders for Goods ordered or cut to Customer's specification, including precut foam and non-stock items, may not be cancelled. Accepted orders cannot be cancelled, in whole or in part, by Customer without Masco's written consent. Unless otherwise agreed by Masco, cancelled orders shall be assessed a service fee of 20%, and Customer shall reimburse Masco for any shipping cost incurred.

7. **CLAIMS AND DELAYS.** Customer shall inspect all Goods included in any delivery before the carrier leaves Customer's premises. If Goods have been damaged in transit, Customer must note damage on carrier's form so that a claim may be submitted to carrier for damage in transit. Before cutting fabrics, please check the correctness of the pattern and color and the quantity. Check also for any defects not marked by Masco's cutters.

Claims for shortages, unmarked defects, or other errors in delivery must be made within seven days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance of all shipments and shall constitute conclusive acceptance of the Goods and waiver of all such claims by Customer. Customer agrees that any suit, action, or proceedings brought by Customer against Masco for any reason will be brought within one year of receipt of Goods by Customer, and that, prior to bringing any such action, Customer shall provide to Masco at least thirty (30) days written notice in which to cure or correct any problem with the Goods.

8. **END USE.** Customer has the sole responsibility to determine the suitability of the Goods for Customer's contemplated use and for compliance with any federal, state, or local codes, statutes, regulations, or laws that may apply to the use of the Goods. Customer assumes all risk in connection with the use of the Goods.

9. **RETURNS AND EXCHANGES.** Goods may not be returned without Masco's prior permission, and returned Goods will not be accepted without a Return Goods Authorization issued by Masco on the outside of the package. (To obtain a Return Goods Authorization, please call Masco.) No returns will be accepted after forty-five (45) days from invoice date. No returns will be accepted of Goods made or ordered to Customer's specification. Masco will not accept returns of fabric, vinyl, or carpet measuring less than three (3) yards. Masco will not accept any return for a color match if the color matches Masco's master sample. Returns must be uncut and in original condition. All returns are subject to a 20% restocking fee, and Customer is responsible for shipping cost unless otherwise agreed by Masco.

10. **LIMITED WARRANTY AND DISCLAIMER.** Masco warrants that, at the time of delivery to the carrier, the Goods are as described in this Document and are free from apparent defect in materials, workmanship, and title, but no other express warranty is made by Masco respecting the Goods. **EXCEPT AS PROVIDED IN THE PREVIOUS SENTENCE, MASCO DISCLAIMS AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO DESCRIPTION, QUALITY, PRODUCTIVENESS, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSES, OR ANY OTHER MATTER, RESPECTING THE GOODS, OR ANY INFORMATION PROVIDED BY MASCO OR MASCO'S**

PERSONNEL. THIS WARRANTY EXPRESSLY EXCLUDES ALL DAMAGES THAT RESULT FROM MISUSE OR ABUSE OR FROM ALTERATION OR MODIFICATION OF THE GOODS, WHICH SHALL BE DETERMINED AT MASCO'S SOLE DISCRETION.

11. LIMITATION OF CUSTOMER'S REMEDIES AND MASCO'S LIABILITY. In the event any Goods subject to Masco's limited warranty shall be shown to Masco's satisfaction to be defective, as CUSTOMER'S EXCLUSIVE REMEDY, Masco shall have the option at its sole discretion to either (a) replace the Goods with equivalent goods at the address on the original invoice, (b) facilitate for Customer the submission of a claim under any applicable manufacturer's warranty; or (c) rework or repair the Goods. IN NO EVENT WILL MASCO BE LIABLE FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR OCCURRING IN CONNECTION WITH THE SALE, DELIVERY, USE, OR PERFORMANCE OF THE GOODS, OR OTHERWISE, EVEN IF MASCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR SHALL MASCO BE LIABLE FOR LOST PROFITS OR DAMAGES FOR LOST OPPORTUNITY OR THE LIKE, OR FOR ANY CLAIM OR DEMAND AGAINST MASCO BY ANY OTHER PARTY. MASCO'S AGGREGATE LIABILITY FOR DAMAGES HEREUNDER, WHETHER ARISING FROM OR BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHER CAUSE OF ACTION, SHALL IN NO CASE EXCEED THE PURCHASE PRICE THAT CUSTOMER PAYS FOR THE PARTICULAR GOODS INVOLVED. **MASCO SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER, WHETHER BASED ON CONTRACT, TORT, OR OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO GOODS FURNISHED BY MASCO OR WITH RESPECT TO ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATED THERETO.** To the extent not covered by any applicable insurance policy, Customer shall indemnify and hold Masco, its officers, agents, employees, successors, and assigns harmless from and against any and all losses, damages, or expenses of whatever form or nature (including attorneys' fees and other costs of defending any action) which they or any of them may incur as a result of any claim by Customer or others arising out of or in connection with the Goods sold to Customer and not proven to have been caused solely by a breach by Masco of its limited express warranty above or caused solely by Masco's gross negligence.

12. PRICES. Prices shall be those prices as published by Masco in the most current catalog, price list, or quotation as of the date of the order. Masco reserves the right to change prices of items at any time without notice. No representative of Masco, other than an officer of Masco, has any authority whatsoever to waive, alter, vary, discount, add to, or in any fashion modify the current prices. Depending upon the specifics of the order, an advance payment may be required at the time the order is submitted to Masco as an advance upon customization or other specific work requested. It is expressly agreed to by Customer that such advances are not deposits for the purpose of securing an order but rather represent payment in advance for work to be performed by Masco at Customer's specific request.

13. TAXES. In addition to the purchase price for the Goods, Customer shall pay and is responsible for payment of any tax, duty, custom, or other fee that any federal, state, or local

government assesses on the transaction. Customer shall promptly reimburse Masco if Masco is required to prepay such monies.

14. **TERMS OF PAYMENT AND CREDIT.** All Goods made or ordered to Customer specification may require prepayment of a portion of or the full purchase price. All open account purchases are due within thirty (30) days after the invoice date and are considered overdue after the thirtieth (30th) day. Interest is charged at the lesser of the maximum lawful rate or two percent (2%) monthly on all overdue balances after the last business day of the month. Payments must be received before the start of business on the last business day of the month to avoid late payment penalties.

Masco can change a credit status to C.O.D. payment (including payment before shipment by credit or debit card on file) at any time and without notification. Masco can refuse to permit further purchases or may limit the amount of purchases at any time. Masco can require that an additional payment against an overdue balance be made with any purchase after credit has been revoked.

Customer gives Masco the right to periodically obtain updated information from Customer's creditors, consumer or commercial credit agencies, or bank references as may be required to perform credit checks. Customer certifies that all information supplied by Customer as a part of its credit application is correct. Customer consents to the disclosure to Masco by any person, firm, or entity with whom or which Customer may have financial, trade, or other relations of any information required for a credit check.

Customer agrees to pay all attorneys' fees and costs expended by Masco to collect from Customer, whether such amounts are incurred before or after the filing of any court action or the initiation of any arbitration or mediation or the retention of any collection agency.

15. **RETURNED CHECKS.** At Masco's sole discretion, Customer may be permitted to pay for Goods by check. If any check is returned due to insufficient funds or dishonored for any other reason, Customer expressly authorizes Masco to electronically debit Customer's bank account for the amount of the check plus a processing fee not to exceed the applicable maximum legal limit, plus any applicable sales tax. Upon receipt of a dishonored or returned check, Customer's account will be changed to money order or cash payment terms only. Customer may reapply for check acceptance only upon payment in full of the check and all associated fees.

16. **FORCE MAJEURE.** Masco shall not be liable for delays in shipping or for Masco's nonperformance if caused by circumstances beyond Masco's control, including, without limitation, fire, flood, hurricane, windstorm, lightning, tornado, war, riot, civil commotion, government action, theft, vandalism, accident, strike, labor trouble or shortage, energy shortage, shortage of Goods, inability to obtain materials, supplies, or equipment, or other acts of God.

17. **CHOICE OF LAW AND VENUE.** This Document and any other contract between Masco and Customer and matters connected with the performance thereof shall be construed, interpreted, applied, and governed in all respects by the laws of the State of Alabama without reference to conflicts of laws principles. Any dispute under or relating to this Document

or any other contract between Masco and Customer shall be resolved in the federal or state courts located in Birmingham, Alabama.

18. **COSTS AND ATTORNEYS' FEES.** In any action or litigation between the parties resulting from or arising out of or related to any party's performance under this Document or to any Goods sold by Masco in which Masco prevails, Masco shall be entitled to recover its costs and expenses, including without limitation, reasonable attorneys' fees, accountant fees, expert witness fees, all costs of investigation and proof of facts, court costs, other litigation expenses, and reasonable travel expenses.

19. **SEVERABILITY.** The provisions set forth herein are severable, and if any provision is invalid, void, or unenforceable in whole or in part for any reason whatsoever, the remaining provisions shall remain in full force and effect.

20. **NON-WAIVER.** Masco's failure or refusal to insist upon strict performance of any provisions set forth hereunder shall not be deemed a waiver of Masco's rights or remedies or a waiver by Masco of any subsequent default by Customer in the performance of or compliance with this Document.

21. **CAPTIONS.** The captions herein are included for convenience and general reference only and shall not be construed to describe, define, or limit the scope or intent of the provisions of this Document.