

General Terms and Conditions for the Sale of Flooring Products

All sales of flooring products (“Product”) by Mannington Mills, Inc., Mannington Commercial (a business unit of Mannington Mills, Inc.), Burke Industries, or Amtico USA LLC, as applicable (“Seller”) to buyer (“Buyer”) shall be subject to these General Terms and Conditions (“General Terms”), except to the extent such General Terms are inconsistent with any agreed upon Specific Terms and Conditions (“Specific Terms”) for sale of Product by Seller to Buyer as set forth on Seller’s invoice or in a separate agreement of sale. These General Terms are incorporated by reference into any such agreed upon Specific Terms for sale of Product by Seller to Buyer. The Specific Terms shall prevail in the event of any conflict between the Specific Terms and these General Terms, except as otherwise expressly provided herein. These General Terms and any Specific Terms shall together constitute the parties’ “Agreement.” All other terms and conditions are expressly rejected. Notwithstanding that the Specific Terms may pertain to sales by more than one Seller, each Seller shall be responsible only for its own performance under the Agreement, and no joint and several liability or performance obligation on the part of any other Seller shall be expressly or impliedly created.

1. **DELIVERY SCHEDULE.** Shipping and delivery dates are approximate and are provided by Seller in good faith, but are not guaranteed unless otherwise agreed to by the parties in writing. Buyer shall pay for all storage and other costs related to Buyer’s failure to accept delivery pursuant hereto. Seller shall not be obligated to ship Product for which Buyer has not given shipping instructions at least twenty (20) days prior to the date specified for shipment. Orders submitted to Seller are binding on Buyer and no order changes or product returns will be allowed except with Seller’s express prior approval. In the event Buyer (i) seeks to place a Product order under which Seller is to tender delivery to the carrier within seventy-two (72) hours or (ii) seeks to modify an existing order for Product within seventy-two (72) hours of Seller’s scheduled time of tendering delivery to the carrier (collectively, a “Rush Order”), and Seller accepts such Rush Order, and any expedited shipping charges shall be added to the invoice price.
2. **TITLE AND RISK OF LOSS.** Title and risk of loss to Product shall pass from Seller to Buyer as Product is loaded onto carrier’s equipment at the point of origin, either Seller’s plant or storage facility, as applicable.
3. **PRICE CHANGE.** Except where specified that all Product pricing is designated as “firm,” Seller may increase any price of the Agreement at any time by giving advance verbal or written notice of the change and its effective date to Buyer. Buyer’s failure to deliver written objection to such change to Seller prior to its effective date shall constitute Buyer’s acceptance of such change. Should Buyer so object, Seller may elect to continue to supply Buyer at the price, freight term and/or payment term in effect prior to the effective date of such change or at such new price, freight term and/or payment term to which the parties may agree, or to terminate the Agreement as to any Product to which such change applies as of the effective date of such change or effective any date thereafter by giving Buyer five (5) days’ advance written notice of such termination and without any further liability on the part of Seller.
4. **CREDIT TERMS.** Prior to delivery of any Product, and at any time thereafter upon Seller’s request, Buyer shall promptly provide Seller, and hereby authorizes Seller to obtain from Buyer or any third party, such credit information and documentation as Seller may reasonably require to determine Buyer’s creditworthiness. If at any time, in Seller’s sole opinion, Buyer’s financial responsibility is impaired or unsatisfactory, or Buyer fails to promptly provide such credit information and documentation, Seller may suspend deliveries or may place Buyer on a cash-in-advance status until arrangements are made for security satisfactory to Seller or, at Seller’s option, until all indebtedness is paid in full.

5. **INVOICES AND PAYMENT.** Invoices for Product purchased by Buyer shall be rendered promptly following shipment. Except as otherwise provided in the Agreement, full payment in cash, without set-off or deduction, shall be due within thirty (30) days after date of invoice. Buyer shall pay the full amount of each invoice in U.S. dollars, without discount, adjustment, or setoff, so that such payment is deposited into Seller's account within the agreed upon net payment days. If Buyer fails to comply with any of the stated payment terms, Seller, without limitation, may: (i) immediately terminate the Agreement and any other agreement between Buyer and Seller, (ii) suspend deliveries until all payments are made in full; (iii) reclaim delivered Product; (iv) place Buyer on a cash-in-advance status; (v) exercise rights of recoupment or setoff with respect to any sums due by Seller or its affiliates to Buyer or its affiliates; (vi) initiate legal action to recover sums due and owing; and/or (vii) enforce its security interests.
6. **TAXES.** Buyer shall pay, in addition to the price of Product, the amount of any tax (other than income tax), duty or other governmental charges now or hereafter (i) imposed on such Product or the raw material from which such Product is made or (ii) imposed on, or required to be paid or collected by, Seller by reason of the manufacture, transportation, sale or use of such Product.
7. **WARRANTIES AND DISCLAIMERS.** Seller warrants only that Product sold to Buyer shall conform to Seller's published specifications and warranty covering such Product at time of sale. Notwithstanding the foregoing, where Product is identified as developmental, sample, pilot, or test lot, or is sold after Seller has identified it as scrap, non-specification, off-specification, or the like, it is given or sold to the Buyer "as is," at Buyer's own risk, with no warranty whatsoever. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW, CONTRACT, STATUTE OR OTHER LEGAL THEORY OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY WITH RESPECT TO ANY PRODUCT OR AS TO QUALITY OR CORRESPONDENCE WITH ANY DESCRIPTION OR SAMPLE, ALL OF WHICH ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.**
8. **CLAIMS; LIMITATION OF DAMAGES.** Within thirty (30) days after any shipment of Product is received by Buyer (but in no event later than ninety (90) days after the date of the invoice for such shipment) and prior to Buyer's use or installation of the Product, Buyer shall examine and test the Product and shall immediately notify Seller in writing of any nonconformity discovered by Buyer. Upon receipt of such notice and after conducting any inspection deemed by Seller to be appropriate, Seller may, at its option, replace any quantity or refund the purchase price paid by Buyer for the quantity of Product that Seller determines to be nonconforming. Failure of Buyer to notify Seller of any nonconforming Product as required above in this Paragraph or use by Buyer of the Product, whether or not such notice has been given, shall constitute Buyer's acceptance of, and waiver of all pre-installation claims with respect to, the Product. After Product is used or has been installed, all alleged Product defect claims shall be subject to Seller's Claims Handling and Processing policies and procedures. **BUYER SHALL BE SOLELY RESPONSIBLE FOR DETERMINING THE SAFETY AND FITNESS OF PRODUCT FOR BUYER'S USE. BUYER ASSUMES ALL RISK AND LIABILITY WHATSOEVER RESULTING FROM THE USE OF PRODUCT SOLD HEREUNDER, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES, AND SHALL INDEMNIFY SELLER IN CONNECTION THEREWITH. BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM FOR LOSSES OR DAMAGES OF ANY KIND OR NATURE DUE TO FAILURE TO DELIVER ANY PORTION OF PRODUCT OR LOSSES OR DAMAGES OF ANY KIND RELATING TO OR ARISING OUT OF BUYER'S PURCHASE, HANDLING OR USE OF PRODUCT, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT (INCLUDING THAT OF SELLER), NEGLIGENCE (INCLUDING THAT OF SELLER), OR OTHER TORT, STRICT LIABILITY, PATENT INFRINGEMENT OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PORTION OF THE PRODUCT IN RESPECT OF WHICH SUCH CLAIM IS MADE AND PROVED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OR COSTS OF LITIGATION, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES AND COSTS, IN RESPECT OF ANY SUCH CLAIM.** Except as may be provided in the applicable Product warranty, any cause of action that Buyer may have against Seller under the Agreement shall be brought within one (1) year after the cause of action accrues, failing which Buyer shall be deemed to have waived its rights relating thereto.
9. **TECHNICAL ASSISTANCE.** Seller may furnish technical advice or assistance with regard to the use of any Product by Buyer. All such advice or assistance is rendered without compensation, and Seller assumes no obligation or liability with respect to such advice or assistance.

10. **INSTALLATION.** Buyer is solely responsible for evaluation, selection and retention of a qualified installer, unless installation services are provided by Seller as part of this Agreement.
11. **DRAWINGS, PATTERNS, ETC.:** All drawings, blueprints, tracings, patterns, samples, and the like related to the Product (“Work”), prepared by Buyer or furnished hereunder to Mannington by Buyer, or prepared by Mannington or furnished hereunder by Mannington shall at all times remain the exclusive property of Mannington, shall not be used by Buyer, except as necessary for Buyer’s performance under this Agreement, or except as authorized in writing by Mannington. Buyer expressly acknowledges that Mannington shall be the (i) sole and exclusive owner of any Work contributed by Buyer or Mannington hereunder and (ii) copyright proprietor of all rights and title in and to the results and proceeds of Buyer’s and Mannington’s Work hereunder in whatever stage of completion. Buyer hereby irrevocably transfers and assigns to Mannington all right, title and interest therein, including all copyrights, as well as all renewals and extensions in the Work provided by Buyer hereunder.
12. **EXCUSED PERFORMANCE, FORCE MAJEURE.** Neither party shall be liable for delay in performance or failure of performance hereunder (except for the payment of money) due to fires, floods, other acts of God, accidents, explosions, equipment or machinery breakdown; sabotage, strikes or other labor disturbances (regardless of reasonableness of the demands of labor), riots, invasions, terrorism, wars, requisitions, regulations or directions of government, voluntary or mandatory compliance with any request of any governmental authority; shortages of, or inability to obtain at reasonable costs, labor, fuel, power, supplies, feedstock or raw materials, inability to obtain or delays of transportation facilities, or any other cause (whether similar or dissimilar to the foregoing) beyond the reasonable control of the party relying upon this Paragraph (each a “Force Majeure Event”). If Seller at any time is unable to meet its total commitments for Product, whether as a result of a Force Majeure Event or for any other reason, Seller shall have the right to allocate such Product as Seller has available in a fair and reasonable manner among its customers with priority to sole-sourced customers and Seller’s own requirements (including, but not limited to, the requirements of divisions, affiliates and subsidiaries of Seller), without liability for any failure of performance which may result therefrom.
13. **TERMINATION/CANCELLATION OF PURCHASE ORDER; PRODUCT RETURNS.** Buyer shall have the right prior to shipment of the Product to make changes to or cancel a purchase order or any portion thereof in accordance with Seller’s Cancellation Policy. For Product which is manufactured to order (“Custom Made Product”), Buyer’s right to make changes to or cancel a purchase order or any portion thereof shall also be subject to Buyer’s obligation to pay for (i) finished Custom Made Products manufactured for Buyer prior to its notice of termination, (ii) raw materials and work in progress pursuant to Buyer’s instructions to produce such Products prior to its notice of termination; and (iii) any of Seller’s costs for raw material procured for or related to Custom Made Products. All Product returns are subject to Seller’s Courtesy Returns Policy, which shall include applicable restocking fees.
14. **DISCONTINUATION OF MANUFACTURE.** Seller may, at its discretion, discontinue the manufacture of any Product to be furnished hereunder. Seller shall give Buyer at least ninety (90) days’ written notice of discontinuance of the manufacture of any such Product and the Agreement shall terminate as to such Product at the end of such period.
15. **CHOICE OF LAW AND VENUE.** The Agreement shall be construed and enforced under the laws of the State of New Jersey, irrespective of any contrary conflicts of law principles. Buyer agrees to submit to the jurisdiction of the state and federal courts located in the State of New Jersey with regard to any action arising out of the Agreement.
16. **COMPLIANCE WITH LAWS.** Buyer agrees to comply fully with all applicable laws, ordinances and regulations, from whatever authority they may emanate, unless in conflict with U.S. federal, state or local laws, rules or regulations, including, but not limited to, export control, EPA, OSHA, and all hazardous materials transportation and hazardous communication standards for the safe labeling, handling and use of the Product.
17. **INTELLECTUAL PROPERTY.** Seller shall retain all legal rights, title and interest in all intellectual property related to the Products, including but not limited to any copyrights, trademarks and patterns (“Intellectual Property”). Buyer shall not use the Intellectual Property of Seller without Seller’s prior written approval. No license or right to use Seller’s Intellectual Property is implied or granted.
18. **GENERAL.**
 - (a) The Agreement, consisting of these General Terms and Conditions and (i) in the case of term contract sales, the Specific Terms and Conditions for each transaction, or (ii) in the case of all other sales, such terms and conditions, if any, as may be agreed by the parties in writing contains the entire agreement between Seller and Buyer with respect

to the purchase and sale of Product covered hereby and supersedes and replaces any prior agreement between the parties with respect thereto, except with respect to obligations already accrued at the time of execution of the Agreement. There are no oral representations, stipulations, warranties, agreements or understandings with respect to the subject matter hereof which are not fully expressed herein, and neither the Agreement nor its execution has been induced by any representation, stipulation, warranty, agreement or understanding of any kind other than those expressed in writing in the Agreement. Buyer's acceptance of Product sold hereunder shall be equivalent to an authentication of, and shall constitute Buyer's acceptance of and assent to the terms and conditions of, the Agreement. No amendment, addition to, alteration, modification, extension, release or waiver of all or any part of the Agreement, whether by acknowledgment or acceptance by Seller of purchase order forms or other documents stipulating additional, different, contrary or conflicting terms or conditions, or otherwise, shall be binding on Seller or of any force or effect unless agreement thereto is expressed in writing signed by an authorized representative of Seller and Buyer and specifically described as same. If the provisions of the Agreement and the provisions of any purchase order, order acknowledgment or other similar document written in connection with the Agreement conflict, then the provisions of the Agreement shall prevail. Nothing contained herein, nor any course of conduct or series of sales or transactions shall imply or be construed to impose any obligation on Buyer or Seller, or to constitute a contract between Buyer and Seller, for the purchase or sale of any additional quantities of Product other than those either expressly covered by the Agreement or elsewhere expressly agreed to in a writing signed by an authorized representative of both parties. Failure of either party to require performance of any provision of the Agreement shall not affect either party's right to require full performance thereof at any time thereafter, and the waiver by either party of a breach of any provision hereof shall not constitute a waiver of a similar breach in the future or of any other breach, or nullify the effectiveness of such provision.

(b) Buyer shall not assign the Agreement without the prior written consent of Seller, which shall not be unreasonably withheld.

(c) Each party shall (i) keep the existence and terms of the Agreement in strict confidence; (ii) protect the Agreement and its terms with the same degree of care as the party treats its own confidential information; and (iii) not, without the prior written consent of the other party, disclose or permit the Agreement or its terms to be disclosed to anyone other than such party's directors, officers, employees, agents, lenders and/or other financial institutions who have a legitimate need to know of the Agreement or its terms, except to the extent required by law, administrative process or any standards or rules of any stock exchange to which such party or any of its affiliates is subject, and except for information which is available to the public as of the date hereof, or thereafter becomes available to the public other than as a result of a breach of this Paragraph or obtained from another source not subject to a confidentiality obligation.

(d) If Seller delivers Product to Buyer and Buyer receives Product from Seller at any time, any such transactions will be governed by the terms and conditions hereof, the parties by their conduct agreeing to be so bound. The parties recognize and agree that neither shall be obligated by their course of conduct to perform any future transactions hereunder unless otherwise expressly provided in the Specific Terms as executed.

(e) Unless otherwise specified, all notices and other communications which are required or may be given pursuant to the terms of the Agreement shall be in writing and shall be delivered to the addresses set forth on the first page of the Specific Terms as follows: (i) by hand, (ii) by certified mail, postage prepaid, return receipt requested or (iii) by overnight courier. The effective date of any such notice or other communication shall be the date of receipt thereof.