

TERMS AND CONDITIONS

1. Definitions. When used herein, "Buyer" shall mean the original purchaser of the carpet manufactured by the Manufacturer, and "Manufacturer" shall mean Avant Contract, a division of The Dixie Group, Inc. Unless expressly excluded herein, "Manufacturing Defect" shall mean that the product has a defect in workmanship, material, or construction that does not meet specifications within industry standards.
2. Entire Agreement. The terms and conditions set forth in this document and in the AVANT BROADLOOM LIMITED 10 YEAR WARRANTY or the AVANT MODULAR LIMITED LIFETIME WARRANTY, if applicable, are the only ones upon which the Manufacturer will accept orders. These terms supersede all prior oral or written understandings, assurances, and offers, and there are no understandings, agreements, representations, or warranties, express or implied, not specified herein. Buyer acknowledges and agrees that Buyer has full knowledge of these terms and conditions. Buyer has read and understands the provisions herein concerning the Manufacturer's warranties, limitations on the Manufacturer's liability, the Buyer's obligations to subsequent purchasers, and indemnity. These terms and conditions shall become binding on both parties upon the first event to occur of the Buyer's assent to these terms and conditions, or the Buyer's acceptance of the first delivery of any of the Manufacturer's goods, or upon commencement of manufacturing operations.
3. Limited Warranties. The Manufacturer warrants the manufacturing of its carpets to be free from obvious Manufacturing Defects for 90 days from the date of delivery to the original purchaser. The Manufacturer warrants the manufacturing of its carpets to be free from hidden Manufacturing Defects for two (2) years from the date of delivery to the original purchaser.
4. Disclaimer of Warranties. The Manufacturer warrants solely the Manufacturing Defects set forth in paragraph three (3) above. EXCEPT AS EXPRESSLY STATED IN PARAGRAPH THREE (3) ABOVE, THE MANUFACTURER'S GOODS ARE SOLD WITHOUT WARRANTY. THE MANUFACTURER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
5. Claims. Claims for Manufacturing Defects or other complaints should be registered as soon as a problem is suspected. In no event will claims not registered within the time limit specified in paragraph three (3) above be considered. To register a complaint, notify either our Consumer Affairs Department, Phone (866) 873-2875, P.O. Box 11467, Mobile, AL 36771 or the assigned territory manager. All pertinent claim information, such as Account Number, Invoice Number, Date, Reason for Claim, etc., is necessary to register a complaint. Claims for merchandise lost or damaged in transit are not Manufacturer's responsibility when carpet is shipped FCA Manufacturers warehouse Incoterms 2000 (commonly called F.O.B. Mill). Title transfers to the Buyer when the shipment is accepted by the carrier, even if the freight is prepaid by the Manufacturer. It is the Buyer's responsibility to inspect the merchandise for concealed shipping damage and to make claims immediately to the delivering carrier. It is the responsibility of the Buyer to inspect the merchandise upon receipt and prior to acceptance. Should a claim arise after installation, it is the responsibility of the Buyer to investigate the complaint prior to registering the claim. Claims will not be considered for pile crush, shading, pooling, watermarking, and, unless otherwise stipulated, soiling, stains, ozone fade, fuzzing, shedding, or matting. These conditions are not considered Manufacturing Defects. Slight color variation from one dye lot to another is normal and is not considered a Manufacturing Defect or a basis for a claim. Once the carpet has been cut and installed, claims for incorrect color or Manufacturing Defects that are obvious or should have been discovered upon inspection will not be considered. Slight imperfections are purposely manufactured with certain textures and have been proven not to affect the wear of the carpet; therefore, these characteristics are not considered Manufacturing Defects. Any treatment of the carpet with anti-stats, soil retardants, pesticides, plastic sheeting, etc. is done at the user's risk and such application, without our written approval, will void any subsequent claim. Claims for labor, handling, storage, installation, etc. will not be considered. Claims arising from improper installation, improper maintenance or cleaning, excessive or abusive use will not be considered. Claims will not be considered on merchandise sold as mill trials, seconds, remnants, mill ends, drops, or irregulars.
6. Limitation of Liability. The Manufacturer's sole liability, and the exclusive remedy against the Manufacturer, is limited to the repair or replacement of any materials evidencing Manufacturing Defects. It shall be the manufacturer's sole discretion or determination as to whether any materials evidencing Manufacturing Defects should either be repaired or replaced. In no event shall the Manufacturer be responsible for any incidental or consequential damages, including costs of installation or inspection, nor for any claims of damages for bodily injury or property damage. In no event shall the Manufacturer's liability exceed the original purchase price of the carpeting in the area or room where such Manufacturing Defect in materials or workmanship is determined to exist. Buyer shall not have right of offset with regard to purchases made by Manufacturer.
7. Buyer's Obligations. In the event the Buyer sells or provides the Manufacturer's goods to any third-party, the Buyer represents, warrants, and agrees that the Buyer shall comply with all applicable federal, state, and local laws, including, without limitation, consumer protection laws, applicable to Buyer's transaction with such third-party involving the Manufacturer's goods. In addition, the Buyer represents, warrants, and agrees that the Buyer shall disclose to such third-party, these terms and conditions, including, without limitation, the Manufacturer's limited warranties, the Manufacturer's disclaimer of warranties, the Manufacturer's limitation of liability, and claims the Manufacturer will not consider.
8. Indemnity. In the event a third-party with whom the Buyer has entered into a transaction involving the sale or provision of the Manufacturer's goods asserts a claim against the Manufacturer as a result of the Buyer's failure to comply with any applicable federal, state, or local law, including, without limitation, any consumer protection law, applicable to the Buyer's transaction with such third-party involving the Manufacturer's goods, then the Buyer shall defend, indemnify, and hold the Manufacturer harmless from such claim, including without limitation any related losses or expenses such as attorneys' fees and court costs. In the event a third-party, with whom the Buyer has entered into a transaction involving the sale or provision of the Manufacturer's goods, asserts a claim for breach of an implied warranty or a warranty or claim expressly disclaimed herein and the Manufacturer is found liable for such claim because the third-party was not made aware prior to the transaction of the Manufacturer's disclaimer of any such warranty, express or implied, then the Buyer shall indemnify the Manufacturer.
9. Dispute Resolution. Buyer hereby consents that if legal action is undertaken by the Manufacturer, Dalton, GA, USA, is the proper place for venue of said action, and by purchasing our goods, Buyer voluntarily submits to jurisdiction in Dalton, GA, USA. If legal action is necessary to enforce the terms of this agreement, the court shall award the prevailing party its reasonable attorney's fees, in addition to any other relief to which that party may be entitled. Manufacturer shall have the right, at its sole discretion, to offset against any amounts, and withhold from any payment which it may owe to Buyer, pursuant to any invoice, purchase order, agreement, sale, or transaction for any claims, rebates, amounts, or other liabilities it may have arising pursuant to any invoice, purchase order, agreement, sale, or transaction.
10. The Manufacturer reserves the right to change material when such changes do not adversely affect the wearability or other performance characteristics of the carpet.
11. The Manufacturer recommends the use of a high-density, low-profile padding in all installations. When using urethane padding, a minimum density of 6 pounds per cubic foot and a maximum thickness of 7/16" is recommended. Installing Manufacturer's products without the use of a padding that conforms to the above description and/or specifications may void Manufacturer's warranties, such determination to be at the sole discretion of the Manufacturer.
12. Cut orders are not subject to cancellation. Will-Call orders will not be held for more than 10 working days.
13. All orders are subject to approval by our Credit Department, or its agent. These conditions may include deposits, pre-payments or other special conditions stipulated and solely in our discretion. A finance charge of 1 1/2% per month or the maximum rate allowed by law, whichever is less, may be charged on each payment received after due date. A non-refundable fee will be charged on each check returned due to insufficient funds.
14. Delivery dates are approximate and not guaranteed. The Manufacturer shall not be liable for any delay in or inability to complete delivery because of any of the following causes: Act of God; suspension or requisition of any kind; strikes or other stoppages of labor or shortage in the supply thereof; inability to obtain fuel, material or parts; fire, casualties or accidents; failure of shipping facilities; riots; or any cause, whether the same or different character, or any other condition beyond the seller's control. Further, the Manufacturer reserves the right to backorder goods and will process and ship backordered goods as soon as possible. The Manufacturer is not responsible for consequential or other losses or expenses related to the date or time of delivery. The Buyer bears the entire risk of late delivery.
15. Merchandise may only be returned with a Return Authorization. To insure proper credit, the packing slip copy of the Return Authorization must accompany the return merchandise. Credit will be determined by the actual yardage received subject to examination and acceptance.
17. Continuing guaranty under the Textile Fiber Products Identification Act filed with the Federal Trade Commission