



## NIBA Designs, Inc General Terms & Conditions

- 1. CONTRACT TERMS** - Unless otherwise expressly provided in a writing signed by NIBA DESIGNS, INC., (hereinafter the Seller), all sales are made in accordance with these General Terms and Conditions, which together with the executed Seller Proposal (the "Proposal") and any subsequent change orders executed by Seller and Buyer (hereinafter collectively referred to with the Proposal as the "Order"), constitute the entire agreement between the parties relating to the sale of the Goods described in the Order, (the "Goods"). Upon acceptance of initial payment by Seller the Order is binding on the parties. To the extent that this instrument or the delivery of Goods is an acceptance of the Buyer's purchase order, such acceptance is expressly conditioned on the Buyer's assent to these terms, which may be different from the terms contained in such Buyer's purchase order. The Seller hereby objects and rejects any and all additional or different terms proposed by the Buyer, whether contained in the Buyer's shipping documents, purchase order, release forms or elsewhere. The Seller's failure to specifically object to provisions contained in any communication from the Buyer shall not be deemed a waiver of these conditions to the Seller's acceptance of Buyer's purchase order. All proposals, negotiations, and representations, if any, made prior hereto, other than those in the Order, are superseded hereby and merged herein.
- 2. PRICES** - Quoted prices in a NIBA Proposal are in U.S. dollars, and are subject to change without notice unless a valid, executed Order is received by the Seller at its main office within thirty days after the Proposal date. Prices may be adjusted for changes in specifications, quantities, shipment arrangements or other terms and conditions which are not a part of the original price quotation in the NIBA Proposal. If required by the Order Documents the production of one Strike-Off (a 12" X 12" sample of the rug) is included. The production of the Strike-Off may be iterative and it will be completed to match the order requirements. Additional Strike-Offs are available at added cost. Completed Strike-Offs are to be reviewed by Buyer and Buyer is to advise NIBA of approval or need for revision within two weeks of receipt by Buyer. The Seller reserves the right to correct all typographical or clerical errors or omissions which may be present in its prices or specifications. The amount of any present or future sales tax, shipping and handling charges, value added tax, customs duties or other similar taxes or duties applicable to this transaction shall be the sole responsibility of the Buyer.
- 3. ACCEPTANCE** - Seller and Buyer acknowledge that the Proposal once executed and tendered to Seller along with Buyer's initial payment is considered accepted by Seller upon Seller issuing a "Sales Order Receipt". The sole criteria for the acceptance of the Goods prior to their shipment, is for the Goods to be in compliance with the specifications of the Order.
- 4. LIMITED WARRANTY:** The Seller warrants that the Goods hereunder as delivered to the client or client's shipper/installer will have the requisite characteristics identified in the Order, provided said characteristics are specifically described therein. This warranty shall not apply where problems are caused by improper handling, wear, use, transportation or other problems for which Seller is not responsible. This warranty applies to the original purchaser of the Goods and to third party beneficiaries of the original Buyer pursuant to Fla. Stat. section 672.318, only. This warranty is void (a) if the goods are used other than in the manner described in the Order, if any; (b) with respect to all damages, costs, or claims resulting from natural or normal deterioration or from accident, abuse, misuse or neglect of the goods or failure to maintain the goods which have been delivered to the Buyer for which Seller is not responsible; or (c) in the event that the Buyer has failed to provide proper training to its personnel about care of the Goods. **THE WARRANTY PROVIDED IN THIS PARAGRAPH IS IN LIEU OF ANY OTHER WARRANTY AND SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED; ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEED THE AFORESAID OBLIGATION, ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.**
- 5. LIMITATION OF LIABILITY** - Any Seller liability hereunder for direct damages shall be limited to the remanufacture of the Goods prepaid as long as the Goods are returned in "Like New" condition. The Seller will, under no circumstances, be liable to Buyer, its customers, or any third person for any direct, indirect, incidental special or consequential damages arising out of the use of the Goods not withstanding the fact that the Goods may, for any reason, fail to possess the exact characteristics described in the Order. The Buyer's sole and exclusive remedy, in the event the Seller, at its option cannot within a reasonable period of time (which includes the time required to remake the Goods) cure any claimed failure of Goods to satisfy the required characteristics, shall be the remanufacture of the product to meet the required characteristics as described in the Order. Buyer expressly waives any further claim for damages or delay resulting therefrom. In the event of breach or repudiation of the Proposal thereof by the Seller (except as otherwise limited herein) of any of the provisions of the Order, then Buyer, its customer, or any third person, shall not be entitled to recover direct, indirect, incidental, special or consequential damages, including, but not limited to, loss of use, profits, costs, expenses, damages to property, or liabilities of the Buyer to its customers or any third person, and any and all other direct, indirect, incidental, special or consequential damages, and whether or not resulting from or contributed to by the default of negligence of the Seller, its servants, agents, employees, or subcontractors, which might be claimed as the result of the use or failure of the Goods delivered pursuant to the Order. Nor shall the Buyer, its customers, or any third person be entitled to recover any costs for materials expended, used, or initiated at the request of the Buyer, its customers, or any third person. Under no circumstances shall the Seller be liable for direct, indirect, incidental, special or consequential damages based on alleged negligence, strict liability or any other theory arising out of the use or handling of the Goods delivered and Seller's sole liability on its warranty shall be as provided herein. The Seller will not be liable to the Buyer for the non-delivery of the Goods covered by the Order or for any kind of damage sustained

by the Buyer, its customers, or any third person by reason of such non-delivery if such non-delivery is due to the Buyer's failure to give reasonable assurances, information or evidence of performance; otherwise, the Buyer's sole remedy at law or equity for nondelivery of the Goods shall be the return of any funds paid in excess of the initial payment. The initial payment is defined as 50% of the total amount of the Order. Minor delays in delivery shall not be construed as non-delivery as such term is used hereunder. Under no circumstances shall the Seller be liable for any indirect consequential or incidental damages (including without limitation any liability (direct, indirect, consequential, incidental or otherwise) to any of the buyer's customers or any other third parties) for non-delivery, or other violations of the agreement between the parties.

6. **PAYMENT; COLLECTIONS** – An initial payment of fifty percent (50%) of the total order amount is required with the order documents to make the order binding. The final invoice for the remaining balance will be due and payable prior to the finished goods shipping from the factory. In the event that the Buyer fails to remit promptly the full and complete purchase price in accordance with the terms of the Order, the Buyer agrees to pay the Seller interest on the unpaid balance computed at the rate of one and one half (1-1/2) percent per month (effective annual interest rate of eighteen (18) percent) from the date the balance becomes past due, provided said agreement does not violate the laws of any State or Country having jurisdiction. Buyer agrees to pay seller \$150.00 per piece per month, or any portion thereof, for goods not shipped to buyer and stored in seller's warehouse (in excess of 30 calendar days) prior to shipment to buyer. In addition, the Buyer agrees that if it becomes necessary for the Seller to employ an attorney or agency in the collection of any monies due under the Order, the Buyer will pay all agency and/or attorney's fees and related costs and expenses in connection therewith, including but not limited to those incurred in an arbitration pursuant to clause 11(b). Payment is not deemed made until received by the Seller in freely available U.S. dollars in a U.S. office of a U.S. bank. If such payment is delayed by the imposition of exchange controls, then, pending payment, the Buyer shall deposit the local currency equivalent in a local bank account for the benefit of the Seller, and shall make additional deposits as required so that the official value of such account is always at least equal to (a) 125% of the U.S. dollar amount originally due, plus (b) interest computed as above. When the Buyer obtains exchange control approval, the funds shall be converted to U.S. dollars and shall be sent to the Seller. Buyer grants to the Seller a security interest in the Goods sold hereby (and the proceeds thereof) to secure the Buyer's performance of its obligations, and the right, without liability, to repossess the Goods, with or without notice, if Buyer breaches any such obligation. The Buyer will reasonably assist the Seller in perfecting such security interest, including, without limitation, the filing of the appropriate documents with the applicable governmental authorities and instrumentalities.

7. **INDEMNITY** - The Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, suits, investigations, claim, losses or expenses, or judgments arising out of or resulting in whole or in part, directly or indirectly, from (a) any modification, alteration other change made by the Buyer, its servant, agents, employees or independent contractors, to the Goods sold pursuant to the Order, without the express written consent of Seller; (b) any product of the Buyer made from the Goods or claim based upon such product; (c) for failure of the Buyer to properly train and supervise its personnel, in the handling of the Seller's Goods sold hereunder; or (d) any act or omission to act of the Buyer. An accepted order can be cancelled only if solely agreed to by the Seller and on terms that will indemnify Seller, its principals, officers, employees and/or agents, if any, against all losses or other damages.

8. **SHIPMENT** – If Buyer fails to designate a carrier for the shipment of the Goods described in the Order after notice that the Goods are ready for delivery to the Buyer F.O.B. origin of transit designated by Seller, then Seller is authorized to select and arrange with a carrier for the shipment of the Goods to the Buyer and to invoice the Buyer therefore. In such event, the risk of loss shall nevertheless pass to the Buyer on delivery of the Goods to the carrier selected by Seller. By so doing, the Seller will not thereby assume any liability in connection with shipment, nor shall the carrier in any way be constructed to be the Seller's agent. Goods shall be at the Buyer's entire risk after delivery by the Seller to the carrier, and all insurance and transportation charges will be paid by the Buyer. Additionally, the following inspection and shipment conditions apply:

(a) **Inspection** – NIBA or NIBA's agent will inspect the goods for compliance with the order prior to the goods shipping from the factory. Buyer or buyer's agent shall inspect the goods upon receipt providing NIBA any claim with respect to the goods compliance with the order documents within five business days of said receipt (by installer, warehouse or any other third party). Any claim must include clear and concise photographic documentation. Such inspections or waiver thereof shall thereafter preclude the Buyer from raising claims as to the conditions of the Goods as sold and shipped.

(b) **Estimates as to time required for shipment** are based on conditions prevailing at the time of quotation. All agreements as to delivery are subject to all the contingencies of force majeure and hardship, including but not limited to floods, fires, strikes, insurgency, terrorism, civil war, national and local holidays in the country of manufacture, accidents or other causes of delay beyond the Seller's control, failure of a supplier to provide the Goods as promised for distribution by Seller, all as more particularly stated concerning force majeure events and hardship in the International Chamber of Commerce Publication No. 421, which is incorporated herein by reference. Further goods shipping in excess of ten feet in length may experience additional delays in booking.

(c) **Shipping and Handling-**

**PACKING** – Rugs shipping from NIBA's warehouse are rolled onto a PVC pipe, with the padding (if purchased), brown paper, a layer of Tyvek and a 6 mil plastic sleaving wrapping the rug to protect it during shipment. Linens are shipped folded and wrapped in protective shipping materials.

**SHIPPING** – If included in the proposal goods ship from NIBA's Warehouse in Hollywood, FL by ground or LTL to the "Ship To" address noted above. Goods must ship to an installer/receiver for rugs weighing over 50

pounds or the address where the goods are to be delivered to the door, curb side or to a delivery dock. Goods are insured for the amount that it will cost NIBA to replace/repair the goods if damaged by the carrier.

9. BUYER'S RESPONSIBILITIES IN RECEIVING GOODS

- (a) Buyer accepts goods as received by buyer's receiver. Buyer is solely responsible for making any claims timely with the carrier delivering goods to buyer's receiver, installer, workroom or other entity receiving goods in buyer's behalf. Buyer acknowledges that NIBA has no obligation or responsibility to repair, replace, remove, or reinstall any goods damaged in transit from NIBA or it's factories.
- (b) NIBA Designs, Inc is not responsible for the filing of any claims for damages for rugs received by buyer or buyer's designated receiver. NIBA will assist buyer in filing any claims for damages provided buyer's receiver, installer or workroom identifies damages or hidden damages in a timely manner to allow for full claims to be made. NIBA will not be required to repair or replace any goods until carrier has paid claim in full to NIBA or until buyer's receiver, installer or workroom has fully reimbursed NIBA for damages or replacement costs.

10. Tolerances:

- (a) Strike Off - One strike off is included with your order. Strike-offs can be iterative to achieve the desired result. The initial strike-off will be re-made as needed to meet the order's requirements. Additional strike-offs can be provided at additional cost. Delivery will be 4 - 6 weeks from receipt of completed order documents and initial payment for a 1' X 1' size. Larger strike-offs will require more time. If a Strike off is not requested you must accept the rug "as is" upon delivery if waiving a Strike Off.
- (b) Rug Delivery: Expected Delivery will be the number of weeks as noted on the proposal/order from Waiver of Strike-Off or Approval of Strike Off whichever occurs latest. Delivery is estimated and may be affected by external factors (i.e. weather, labor issues, customs, Holidays and the Length of the goods being shipped, etc.). Goods over 12' in length may be delayed as the Air Freight companies shift items to later flights to make for most economical shipping. Order Documents include this proposal, the Rendering and NIBA's General Terms and Conditions all executed along with your Initial Payment (50% of Total Order Amount). Goods are shipped FOB: MIAMI, FL.
- (c) Rug Size, Color and texture:
  - a. A 2.0 - 3.5% variance may occur in length or width of the rug which is acceptable for all rugs due to dimensional variations that can occur in the weaving and washing stages of handmade rugs.
  - b. Color Match: Shades may differ from samples, poms, swatches, etc., that are used as controls due to variations in dye lots. "Match Sample" orders will have minor variances in color/texture as the natural materials used to make these goods are not consistent. Fine hand woven carpets will have certain variances in the surface texture. Minor differences in yarn size will also occur. Natural fibers such as Hemp, Jute, Sea Grass, and Allo will vary in texture and color due to different growing and harvesting conditions from time to time and location to location. The foregoing factors are not construed as defects they are inherent to the beauty of hand-woven carpets.

11. GOVERNING LAW – This Agreement is subject to applicable export and re-export controls (including, without limitation, under export control laws, regulations and orders of the United States of America and any agency, subdivision or instrumentality thereof). The Buyer will not directly or indirectly take any prohibited action or fail to take any required action so as to violate these controls. The Buyer represents that the Goods are purchased with the purpose of exportation to only that country set forth on the face of this sales contract, and the Buyer covenants that the Goods will be shipped to that destination and shall furnish, if required by the Seller, a landing certificate duly executed by the customs authority at the port of importation, certifying that the Goods have been landed and entered at that port. The Buyer will maintain complete records of its sales of Goods, including records of sales showing customer name, ultimate destination, Goods designation, and date of sale of all Buyer Goods, and will make these records available to the Seller upon request. The Buyer will have sole responsibility for obtaining any necessary foreign governmental approvals relating to this Agreement. (b) The law of the state of Florida, without resort to its choice of law principles, will govern all matters arising under or pertaining to this agreement. The United Nations Convention on the International Sale of Goods shall not apply to this transaction.

12. CONFIDENTIALITY - The Buyer acknowledges and agrees that the source of the Goods is proprietary information of the Seller. The Buyer agrees not to, nor to employ, cause, direct or assist any other person, to ascertain or to otherwise use such information for its own benefit or that of third parties, without the written consent of Seller on such terms as Seller may impose in its sole discretion.

13. MISCELLANEOUS

(a) Modifications - Any modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties.

(b) Arbitration - Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled finally by arbitration, in accordance with the applicable arbitration rules of the American Arbitration Association and provisions of the Federal Arbitration Act. The site of the arbitration shall be Miami, FL. There shall be a sole arbitrator, who shall be a attorney from the United States. The language in which the arbitration proceeding shall be conducted shall be English. A final award shall be rendered within one year of the notice of the arbitration. To the extent that litigation must be pursued in aid of or related to an arbitration under this paragraph, the Seller submits to the jurisdiction and venue of the courts of the State of Florida or the United States District Courts for the Districts of Florida, as well as the jurisdiction of all courts from which an appeal may be taken from the aforesaid courts for the purpose of any litigation, action or other proceeding arising hereunder, and expressly waives any and all objections that it may have to jurisdiction, convenience of the forum, and/or venue in such courts.

(c) Sovereign Immunity - The Buyer hereby irrevocably and unconditionally waives any right of immunity from legal proceedings, including without limitation prejudgment attachments, provisional measures, suits, judgment and execution, on grounds of sovereignty, which it or its property may hereafter enjoy.

14. TERMINATION/DEFAULT - Insistence by the Buyer on suspension of manufacturing of the Goods or of shipment of the Goods, if not acquiesced in by the Seller, may be treated by the Seller as a wrongful termination of the contract, and the Buyer shall thereupon be liable for all damages arising out of this contract. In the event of any default under this Order, Seller may accelerate all payments to be made under this contract and all such payments shall be due as one lump sum payable on the date of such default. If before the fulfillment of this contract, the Buyer shall suspend payment, commit an act of bankruptcy, notify any of its creditors that it is unable to meet its debts or that it has suspended payment or that it is about to suspend payment of its debts, convene, call or hold a meeting either of its creditors or to pass a resolution to go into liquidation (except for a voluntary winding up of a solvent company) or shall apply for an official moratorium, have a petition presented for winding up or shall have a receiver appointed, or become insolvent, it shall be deemed to be and shall be treated as being in default. The Seller, by giving notice in writing, notwithstanding the bankruptcy or liquidation, shall be entitled to terminate the contract against the Buyer as if Buyer were in default, by reselling or rebuying as the case may be, and seeking the difference, if any, in the resale costs so incurred pursuant to clause 11(b).

**End of General Terms and Conditions**