

# COMPLAINT EXHIBIT A FTC 182-3085

## ADDITIONAL TERMS AND CONDITIONS

**Buyer's Responsibilities:** If customer is removing existing carpeting, it must be removed at least one day prior to installation of the new carpet. Buyer is responsible for removing all breakable items from installation areas inside the home prior to installation and for inspecting all areas prior to installation. The rooms are to be empty of furniture. Buyer must arrange for the moving of furniture or extra-heavy furniture such as pianos, stoves, pool tables, etc. and must disconnect any electrical appliances in the installation area or which must be moved prior to time of installation. Any unused carpet should be saved by the customer in the event of future unforeseen damage – such as cigarette burns. All other waste will be left in area designated by the customer. Any furniture moved by NFD is at customer's sole risk and NFD is not responsible for any damages incurred.

**National's Responsibilities:** National will perform all work in a professional manner and in keeping with industry standards. If National is removing your carpet it will be done at the time your new flooring is installed. If carpeting is being removed, it will be rolled and discarded where you direct the installers to do so. Installers cannot dispose of carpet and pad by hauling it away in their truck. National is not responsible for structural defects, conditions beyond its control or for leaks caused by connecting or disconnecting refrigerators, icemakers, gas or water lines, toilets or plumbing. National is not responsible for resizing doors before or after installation or for any inadvertent damage to moldings, wiring, baseboards, walls or damage caused by the moving of heavy furniture. National is not responsible for the effects of disturbing asbestos materials. If the customer elects to have NFD remove and reinstall their existing wall base, on a hard surface installation, in lieu of purchasing new wall base, NFD is not responsible for breakage or any damage to old wall base, which will likely occur.

**Warranties/ Intended Use:** Your carpet and/or hard surface flooring are covered by a limited manufacturer's warranty. National Floors Direct Inc. also provides you with a limited installation warranty which will cover all labor and installation for the carpet or hard surface flooring for one hundred and twenty days. Both the limited manufacturer's warranty and the limited installation warranty will be provided to you upon installation of your carpet and/or hard surface flooring and apply to owner occupied residences only. National does not provide any further express or implied warranties other than those specifically set forth in writing and as referenced above.

**Delay/Unknown Conditions:** Events beyond the control of National, such as Acts of God, labor strikes, inclement weather, material shortages, Buyer's inability to qualify for or obtain financing, or other events resulting in delays in performance of this Agreement do not constitute abandonment and are not included in calculating time frames for performance by National. In the event National determines that this Agreement can not be performed as intended by the parties due, for example, to incorrect pricing, unforeseen structural defects or pre-existing conditions to the Buyer's property, National may cancel this Agreement within 60 days of its execution, notify the buyer of such cancellation in writing and return all monies paid by the buyer. National and the Buyer(s) have determined that a definite completion date is not of the essence to this Agreement.

**Restocking Fee:** All orders which change the installation date from the date on the front of the contract with less than 72 hours notice given to NFD shall be subject to a restocking fee to be no less than 15% of the entire dollar value of the purchase order. Installations that have been scheduled for installation greater than two times are also subject to the same restocking fee. The restocking fee must be paid in full prior to the installation. If you must change your date from the contract date we require greater than 72 hours notice to do so in order to avoid a restocking fee.

**Late Cancellation, Late Payment/Default:** If Buyer attempts to cancel this Agreement at any time subsequent to midnight of the third business day after the date of the Agreement as more fully described on the Notice of Right to cancel form, and National accepts such late cancellation, then buyer agrees that any deposit paid shall be forfeited and the Buyer shall only be entitled to a company credit to be used toward a future purchase which will be good for 180 days. Buyer agrees to pay a late fee of 1 1/2% per month on all amounts due and owing from the Buyer to National accruing from the date due and running to the date the payment is made. If at any time the buyer is in default of this Agreement, buyer agrees to pay all of National's attorney fees and costs incurred in enforcing its rights under this agreement. Buyer also agrees to pay any other costs or expenses of repossession, collection, or realization on its security.

**Deposit Refunds:** All refunds of refundable deposits shall be processed within 30 business days from date of receipt of deposit. Deposits of cash, check or money order shall be refunded by company check. All other deposits shall be refunded through the same medium that the deposit was tendered to National.

**No Set-Offs or Retentions:** Buyer shall pay all amounts due under this Agreement in accordance with its terms without any right of set-off or retention. If after making full payment, the buyer alleges that the work is defective in any respect National, without waiving any of its rights, shall cause an inspection of the premises and perform any remedial work to the extent the Buyer is entitled thereto under this Agreement or National's warranty.

**Performance by Seller during Cancellation Period:** If Seller commences performance during the three-day cancellation period, and if Buyer provides timely and valid notice of cancellation, Seller shall be required to refund any amounts paid under this agreement to Buyer. In such event, the Seller shall have the right to reclaim and the Buyer shall return or make available to the Seller any goods received by the Buyer under this agreement. All carpets must be uncut and all hard surface boxes must be unopened and inspected upon return otherwise this clause is void.

**Miscellaneous:** In construing this Agreement, the gender and number of words used may be changed to meet the context. Any part of this agreement contrary to the law of this State shall not invalidate other parts of this Agreement. This Agreement is to be governed by the laws of the State in which it is performed, except as may be preempted by federal law. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. Any modification of this Agreement shall not be effective unless in writing, signed by the Buyer(s) and a President or Vice President of National.

**Non Disparagement:** National Floors Direct takes customer service very seriously. We want all of our customers to be 100% satisfied. We also take our reputation very seriously. By signing this purchase order you are agreeing, under penalty of civil suit, for an amount not to exceed three times the monetary value of this order, plus attorney's fees for National Floors Direct, not to publicly disparage or defame National Floors Direct in any way or through any medium.

**Arbitration of Disputes:** National and Buyer(s) agree that any and all disputes, claims or controversies (hereafter referred to as a "Claim") arising under or relating to this Agreement and any related documents, loans, security instruments accounts or notes, including by way of example and not as a limitation: (i) the relationships resulting from this Agreement and the transactions arising as a result thereof; (ii) the terms of this Agreement; or (iii) the validity of this Agreement or the validity or enforceability of this arbitration agreement, shall be subject to binding Arbitration to be determined by one arbitrator, in accordance with and pursuant to the prevailing rules and procedures of the Commercial Rules of the American Arbitration Association, to be held and arbitrated in the state of Massachusetts. The Buyer(s) agree that they will not assert a Claim on behalf of, or as a member of, any group or class.

The findings of the Arbitrator shall be final and binding on all parties to this Agreement, and may include an award of costs and legal fees to National. Such fees and costs shall be awarded on any decision rendered in favor of National. This agreement to arbitrate, and any award, finding or verdict of or from the arbitration, will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of the demand for arbitration will be filed by the party asserting the claim with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the Claim in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. Any arbitration proceeding brought under this Agreement, and any award finding or verdict of or from such proceeding shall remain confidential between the parties and shall not be made public. Both Buyer(s) and National are hereby agreeing to choose arbitration, rather than litigation or some other means of dispute resolution to address their grievances or alleged grievances. The parties believe this will allow a faster and more cost-effective method of addressing a Claim. By entering into this Agreement and this arbitration provision, the Buyers are giving up their constitutional right to have any dispute decided in a court of law before a jury, and instead are accepting the use of arbitration, other than as set forth immediately below.

Notwithstanding anything herein to the contrary, National retains the option to use judicial or non-judicial relief to enforce any and all monetary obligations arising out of or in connection with this Agreement including legal fees and costs. Such judicial relief may take the form of a lawsuit. The institution and maintenance of such an action for judicial relief in a court to foreclosure upon any collateral or to enforce or collect upon a monetary debt or judgment shall not constitute a waiver of the right of National to compel arbitration of any Claim subject to Arbitration in this Agreement, including the filing of a counterclaim by Buyer(s) in a suit brought by National.

**Moisture:** Moisture in a home will damage any floor covering. During and prior to the installation NFD checks every home for signs of moisture. If, at the time of installation, moisture is found, we do not install the flooring until the issue has been resolved. After your installation, if there are problems with the flooring or installation thereof and the moisture level in the area of the home where installation took place is greater than seven percent, the customer's installation warranty is void for that area.

**On Berber carpets or carpets with a loop pile:** You cannot drag furniture or equipment or a pull will result. Such pulls are not manufacturing defects and should be trimmed with scissors so that the raised loop is snipped even with the rest of the carpet.

Any pulled or raised loop or any raised yard must be trimmed before vacuuming. Vacuuming a carpet with a high loop ("pulled") will result in the full row being pulled out. Such a row pull is not a manufacturing defect.

**On all carpet:** Moving chairs with wheels or casters require the use of a plastic chair mat or severe matting and pile breakdown will occur.

**Protect Your Investment:** Carpets require vacuuming with a vacuum cleaner that has a revolving brush and beater bar. A good recommendation is to vacuum the rug per week a number that is equal to the number of people in the household. i.e. if there are 3 people, vacuum 3 times a week.

**On wood and laminate floors:** NEVER USE WATER, soap and water, or detergent and water to clean your floor. You must use wood or laminate cleaner only. Use of water to clean or wipe down your wood or laminate floor will void your manufacturer and installation warranty and may cause the floors to buckle.

**PAYMENT IN FULL MUST BE MADE PRIOR TO INSTALLATION. NO PERSONAL CHECKS CAN BE ACCEPTED ON DELIVERY. WE RECOMMEND CASH, CERTIFIED CHECK OR MONEY ORDER. IT IS THE RESPONSIBILITY OF THE CUSTOMER TO OBTAIN A RECEIPT FOR CASH PAYMENTS. QUALIFYING FOR THIRD PARTY FINANCING IS THE SOLE RESPONSIBILITY OF THE CUSTOMER AND NO GUARANTEE OF QUALIFICATION FOR SUCH FINANCING IS MADE BY NATIONAL.**