



ACF GARDNER
UPDATED TERMS & CONDITIONS

*EFFECTIVE IMMEDIATELY



*REPLACING ALL PREVIOUS VERSIONS



2053 High Ridge Rd,
Boynton Beach, FL 33426
561.296.7467

125 Carolyn Blvd
Farmingdale, NY 11735
631.249.2525

12 Commerce Rd
Fairfield, NJ 07004
973.887.3700

www.acfgardner.com

Terms and Conditions of Sale

Effective January 30, 2024 (Replaces July 26, 2023)

Payments Terms:

1. Refer to ACF-ACF-GARDNER Published Price Lists for payment terms.

Return Check Charge:

1. Checks returned for non-payment (for any reason) will be assessed a **\$50.00 Return Check Charge**, plus a loss of all applicable discounts.

Finance Charges:

1. Past due accounts are subject to 1.5% finance charge per month.

Order/Pricing Policy:

1. **All orders must be picked up within 14 calendar days of availability.**
2. Orders that have not been shipped or picked up within 14 days may, at ACF-GARDNER's discretion, be cancelled and assessed a minimum of 30% restocking charge. (\$50.00 minimum)
3. **All non-stocking items and special orders are non-cancelable, non-returnable and a deposit may be required to place the order.**
4. Any cut orders less than 9 lineal feet are subject to a \$15.00 minimum cut charge, with the exception of our Woven Collections, which are subject to a \$25 minimum cut charge.
5. All prices are subject to change without prior notice.

Delivery Charge:

1. **In territories normally delivered by ACF-GARDNER trucks, delivery charge will be assessed for each shipment as follows:**
 - \$89 (FRT01):** NJ: Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex, Union Counties
NY: All areas West of Route 112 in Suffolk County & East of Cross Island Parkway
 - \$99 (FRT02):** NJ: All areas South & West of Somerset County to PA border (Atlantic, Burlington, Camden, Gloucester, Hunterdon, Mercer, Salem Counties)
All areas South of Route 70 in Ocean County to Camden, NJ
NY: All areas East of Route 112 in Suffolk County
All areas North of Orange & Putnam Counties.
CT: Lower Fairfield County
2. All deliveries outside ACF-GARDNER's trucking area will be shipped F.O.B. freight collect via carrier of dealer's choice.

Site Delivery:

Arrangements for site deliveries must be requested with ACF-GARDNER's Customer Service/Inside Sales Department and is subject to approval.

\$150 (FRT03):

NY: Manhattan deliveries **over** \$5000 in material value

NJ: \$200 minimum (add min \$50 surcharge for midtown and financial district)

\$200 (FRT04):

NY: Manhattan deliveries **under** \$5000 in material value

NJ: \$200 minimum (add min \$50 surcharge for midtown and financial district)

Delivery Dates:

Seller shall not be responsible for failure to fill any order or orders when such failure is due to fire, flood, riot, strikes, freight, embargoes or transportation delays, shortage of labor, inability to secure fuel,



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materials, supplies or power at current prices or account of shortage thereof: acts of God or of the public enemy, any existing or future laws or acts of the federal or of any state government (including specifically but not limited to any orders, rules or regulations issued by any official or agency of any such government) affecting the conduct of seller's business with which seller in its judgment and discretion deems it advisable to comply as legal or patriotic duty or to any cause beyond seller's reasonable control.

Refused/Re-Delivery Charge:

1. Deliveries that are refused due to customer's convenience will be assessed an **\$100 re-delivery charge**.

ACF-GARDNER Warehouse Return policy:

1. All returns are subject to approval by the management of ACF-GARDNER and must be authorized before being returned.
2. Merchandise to be returned must be clean, wrapped and in saleable condition. Any material shipped in cartons must be returned in its original factory sealed carton.
3. No returns on any powder products (Patch, Self-Leveling, etc) and adhesives
4. Returns will not be accepted 30 days past the invoice date.
5. The following items will not be accepted for return:
 - a- Cut orders less than 15 lineal feet.
 - b- Specially cut or bound material.
 - c- Tile: 5 cartons or less of one pattern or dye lot.
 - d- Special orders, drops and ACF-GARDNER non-stocking merchandise.
 - e- Less than full carton quantities of all products including moldings and trims.
6. All returns will be subject to a restocking fee of 30% to 50% depending on size/quantity. The minimum restocking fee is \$50.00

ACF-GARDNER Warehousing and Storage policy:

1. Products and Services: ACF-GARDNER will provide, *for approved customers only*, storage and warehousing services including related services, at its specified locations
2. Price and Payment: Customer will pay ACF-GARDNER on receipt of third party goods and based on pricing and payment terms assigned to your account.
*****COD Accounts MUST have ACH/Credit Card form on File for timely payments*****
3. Orders; Shipping and Packaging: Customer must notify ACF-GARDNER by email at least 24 hours before delivering Products. Customer is responsible for shipping costs and must provide products with proper packaging materials.
4. Indemnity and Liability: a. ACF-GARDNER indemnifies Customer for losses resulting from its breach. ACF-GARDNER's liability is limited to the manufactured cost of the relevant Products. b. Customer indemnifies ACF-GARDNER for losses resulting from its breach or actions. Customer bears recall costs not caused by ACF-GARDNER's negligence or breach. c. ACF-GARDNER is not responsible for inspecting Products. Third-party non-conformance is the third party's responsibility, not ACF-GARDNER's.

Claims/Defective Merchandise:

1. ACF-ACF-GARDNER is dedicated to promptly addressing and resolving all claims and complaints. **MATERIAL MUST BE INSPECTED BEFORE CUTTING AND INSTALLATION.** Claims will not be entertained on merchandise that has been cut and/or installed with visible defects or on the installation of incorrect material.
2. **If you receive defective merchandise, DO NOT COMPLETE THE INSTALLATION.** Contact ACF-GARDNER Claims Department immediately.



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3. Variations in dye, shade and texture from an original sample or from dye lot to dye lot are inherent characteristics of all floor covering products (*i.e. wood, vinyl, carpet, etc*). Such variations are not considered manufacturing defects and are not a basis for a claim.
4. It is the responsibility of the dealer/contractor to determine which adhesive is suitable for each installation. ACF-GARDNER (and /or their employees) assume no responsibility or liability for incorrect adhesive used with any product.
5. All claims for damage shipments with carrier other than ACF-GARDNER must be filed directly with that carrier, (*i.e. DHL, etc*).

Warranties:

1. **ACF-GARDNER does not offer warranties on products manufactured by other companies.**
2. **There is no warranty, express or implied on the goods covered by this agreement and all such Warranties including without limitation any implied warranty of merchantability or fitness for a particular purpose are hereby excluded. Seller neither assumes nor authorizes any other person to assume for it any other obligation or liability in connection with the goods.**

Taxes:

If it should at any time be determined that any sales tax is due on a sale, the payment of that tax is the obligation of the buyer and not of the seller. If the seller or its agent is required to pay such taxes of the buyer, the payer is entitled to reimbursement of any such tax, plus interest.

Limitation of Remedy:

Seller assumes no liability or responsibility for any loss or damage, whether direct, indirect, or consequential, arising from or alleged to have arisen from the use of or failure to deliver any of the goods. All goods are supplied by seller on the express terms that under no circumstances will seller be held liable for any injury to any person or persons which may be attributable or alleged to be attributable to the use of any goods which may have been manufactured, constructed, treated, sold, supplied, or distributed by seller. Limitation of remedy would be the repair, replacement or refund up to the cost of material. Buyer agrees to indemnify and hold seller harmless against any claims which may be raised against seller by the ultimate users of any of the goods and buyer hereby accepts and acknowledges responsibility for any loss or damage caused by the goods or any product into which the goods are incorporated.

Jurisdiction: The buyer hereby acknowledges doing business with ACF-GARDNER and hereby irrevocably consents and agrees that any legal actions, suit or proceeding arising out of or in any way connected with customer's transaction with the buyer may be instituted by ACF-GARDNER in the State or Federal courts having jurisdiction over Essex County, New Jersey as ACF-GARDNER in its sole option may elect. Buyer waives any objections to the forum selected by ACF-GARDNER and consents to the jurisdiction and venue thereof. The buyer further hereby acknowledges and agrees that any legal action, suit or other proceeding brought by buyer against ACF-GARDNER arising out of the sale of merchandise to buyer, in which buyer asserts any claim of any kind or nature may only be fulfilled in the courts of the State of New Jersey in the County of Essex, or the United States District Court for the Essex County District of New Jersey, unless ACF-GARDNER waives its right to object and consents to another forum.

These Terms and Conditions are confirmed as accepted by the buyer upon placing an order.



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Release of Liability, Waiver of Claims, and Indemnity Agreement

This Release of Liability, Waiver of Claims, and Indemnity Agreement (hereinafter referred to as the "Agreement") is entered into by and between ACF Gardner (hereinafter referred to as the "Company"), and the undersigned customer (hereinafter referred to as the "Customer"), effective as of the date of execution below.

1. Acknowledgment of Risks: The Customer acknowledges and understands that the loading of materials into vehicles at the Company's locations involves inherent risks and dangers, including but not limited to, damage to the Customer's vehicle, personal injury, and property loss. The Customer acknowledges that these risks may arise from the actions, omissions, or negligence of the Company, its employees, agents, or from other customers.

2. Waiver and Release of Liability: The Customer hereby voluntarily releases, forever discharges, and agrees not to sue the Company, its officers, directors, employees, agents, and successors for any claims, demands, liabilities, costs, expenses, or damages (including but not limited to damages to the Customer's vehicle or personal injury to the Customer) that may arise from or in connection with the loading of materials into the Customer's vehicle at any of the Company's locations. This release covers all bodily injuries, property damage, or losses that the Customer may sustain, regardless of whether they are known or unknown, foreseen or unforeseen, present or future.

3. Indemnification: The Customer agrees to indemnify, defend, and hold harmless the Company, its officers, directors, employees, agents, and successors from and against any and all claims, demands, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to the Customer's participation in the loading of materials, including but not limited to any claims for personal injury, death, or damage to property.

4. Assumption of Risk: The Customer expressly acknowledges and agrees that he/she assumes full responsibility for any and all risks of bodily injury, death, or property damage, whether those risks are known or unknown, foreseen or unforeseen, which may arise from or in connection with the loading of materials into the Customer's vehicle by the Company or its agents.

5. Applicability and Enforceability: This Agreement shall be effective and binding upon the Customer, the Customer's heirs, estate, assigns, and personal representatives. This Agreement shall be construed broadly to provide a release and waiver to the maximum extent permissible under applicable law. If any portion of this Agreement is held to be invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

6. Jurisdiction and Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the state where the Company's location is situated, without regard to its conflict of law principles. Any disputes arising under or related to this Agreement shall be resolved in the state or federal courts located in said state.

7. Acknowledgment: By signing this Agreement, the Customer acknowledges and agrees that he/she has read this Agreement, understands its terms and conditions, and agrees to be bound by them. The Customer further acknowledges that this Agreement is intended to be as broad and inclusive as permitted by the laws of the state in which the Company's locations are situated and that if any portion of this Agreement is held invalid, the balance shall continue in full force and effect.

This Agreement shall remain in force and apply to all of the Customer's current and future visits and transactions at any of the Company's locations.



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Customer's Name (Print):

Customer's Signature:

Date:

For ACF Gardner:

Authorized Representative's Name (Print):

Authorized Representative's Signature: Date:

These Terms and Conditions are confirmed as accepted by the buyer upon placing an order.