

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 The following terms and conditions of sale "Godfrey Hirst NZ Limited" means Godfrey Hirst NZ Limited, the "customer" means the person or corporation acquiring the goods, "goods sold" shall mean the goods the customer is acquiring from Godfrey Hirst NZ Limited, the "terms" means the following terms and conditions of sale or any one or more of them and "consumer legislation" means Trade Practices Act 1974 or any other federal or state act or any regulations thereunder relating to the sale or supply of goods.

1.2 In the interpretation of these terms, words importing the singular include the plural (and vice versa) and words denoting a given gender shall include all other genders; a reference to a person, individual, corporation, trust, partnership, joint venture, statutory or other authority, association (incorporated or unincorporated), state or government includes any of the foregoing; a reference to any legislation or a provision thereof or schedule thereto includes any statutory modification or re-enactment or any legislative provision substituted therefor and all ordinances, by-laws, regulations and other statutory instruments issued thereunder; and if more than one person is named and described as the customer the obligations of those persons under these terms will be joint and several.

2. SALE AND PURCHASE OF GOODS

2.1 Upon the acceptance of the customer's order by Godfrey Hirst NZ Limited, Godfrey Hirst NZ Limited agrees to supply and the customer agrees to purchase the goods sold on the terms.

2.2 The terms contain the entire agreement and understanding of the customer and Godfrey Hirst NZ Limited in respect to the sale and purchase of the goods sold and supersedes all prior discussions and replaces in total any terms and conditions contained or referred in the customer's order. The terms can only be amended, varied or waived in writing signed by the customer and by a person authorised to sign such amendment, variation or waiver on behalf of Godfrey Hirst NZ Limited. The only other terms and conditions which are incorporated in this agreement are those terms and conditions which are incorporated by law in an agreement of this nature under any consumer legislation and which cannot be excluded. Nothing in this agreement whether express or implied, will be taken to exclude, restrict or modify any such non-excludable conditions, warranties or rights. Insofar as any incorporated terms and conditions may be excluded they are hereby excluded and negatived.

2.3 If any quotation is made by Godfrey Hirst NZ Limited it is agreed that the quotation is merely an invitation to treat and will not be construed as an offer to sell by Godfrey Hirst NZ Limited, Godfrey Hirst NZ Limited reserves the right in its absolute discretion to accept or reject any offer made on the basis of any quotation or otherwise, without providing any reason.

3. PAYMENT FOR GOODS

3.1 Unless otherwise agreed, payment for goods sold and any other costs and expenses payable by the customer under the terms will be paid to Godfrey Hirst NZ Limited at or prior to delivery of the goods sold to the customer. Other terms of trading may be negotiated on a customer by customer basis.

3.2 Credit facilities are available and will be negotiated on a confidential basis. Credit terms will not automatically be granted.

3.3 Unless expressly stipulated by Godfrey Hirst NZ Limited to be a firm price, the prices charged by and payable to Godfrey Hirst NZ Limited for the purchase of goods sold shall be those prices charged by Godfrey Hirst NZ Limited at the date upon which the goods sold are delivered to the customer.

3.4 Prices, service fees (including, without limitation, cancellation, return, cut length, packing and storage fees) and terms of sale are subject to alteration without notice, however, prior notice will be given where possible.

3.5 It is agreed that should the customer fail for any reason to acquire the quantity of goods sold then without limiting the other rights and remedies of Godfrey Hirst NZ Limited the unit price charged for the goods sold may be amended to take into account any variation in the total quantity purchased.

3.6 The customer shall pay to Godfrey Hirst NZ Limited in addition to the purchase price any tax, including GST, excise or other government charges imposed upon the importation, production, sale or transportation of any goods sold which Godfrey Hirst NZ Limited may be required to pay other than any tax payable under Income tax Assessment Act 1936.

4. INFORMATION OF THE GOODS SOLD

4.1 The customer acknowledges that:

(a) The description of the goods sold shall be as set out in the Godfrey Hirst NZ Limited order confirmation. All drawings, descriptive matter, specifications and advertising issued by Godfrey Hirst NZ Limited and any descriptions or illustrations contained in Godfrey Hirst NZ Limited catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods sold described in them. They will not form part of this agreement.

(b) Variations consequent upon review of specifications, materials and/or source of goods may occur from time to time and the customer waives any right to receive details or information concerning the reviews or the implementation of those reviews or both and agrees to accept the goods sold subject to the varied specifications, material and/or source of goods sold; and

(c) The customer has not, in acquiring the goods sold for any particular purpose, relied upon the skill, judgment or recommendation of Godfrey Hirst NZ Limited or any of its employees or agents

4.2 The customer further acknowledges that to the extent the goods sold are carpet:

(a) Roll sizes as stated on price lists and other information are average sizes only and variations will occur from time to time

(b) Shade or pattern variations may occur between samples chosen by the customer and the goods sold and from dye lot to dye lot but will be within recognised textile industry standards. A dye variation may occur in a single production run from beginning to end and no claim will be considered should carpet not be laid in strict accordance with sequential roll numbers (if relevant)

(c) All carpets are subject to some degree of bowing and/or skewing. Bowing of up to 40 mm over any single width of carpet is acceptable, and, unless otherwise specifically provided, no guarantee or warranty is provided that bowing or skewing will be less than 40 mm over any single width of carpet

(d) Tracking/shading/pile reversal or crushing is an inherent feature of cut pile products where it may appear from certain angles, that particular areas are lighter or darker than others. This is due to the pressure on the pile during use causing pile to lay in different directions resulting in light refraction and, unless otherwise specifically provided, is not a manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst NZ Limited.

(e) Construction of some carpets may involve the occurrence of shift lines across the width of the carpet. Certain light sources shining across the carpet may accentuate these lines in the form of shadowing. This effect is not a manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst NZ Limited.

(f) Where carpet design includes the random use of contrasting colours, at times these colours can coincide in production, causing an effect known as phasing. Similarly in loop pile carpets, shading effects of colour patterning can appear as panning down the length of the carpet. Both phasing and panning are an accepted part of the design and in no way affect the carpet's performance.

(g) Carpet may fade or change character due to ozone damage where it has been exposed to direct sunlight. Dramatic colour change can also occur as the result of ozone, emissions from heating fuels and airconditioners, pesticides, cleaning agents, benzol peroxide, and other household items. The occurrence, known as ozone damage, is largely unexplained, but appears to be more prevalent in coastal areas with a high ultra-violet content. This is not a manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst NZ Limited

(h) All carpets are subject to some degree of matting and flattening, particularly in areas of high traffic (eg in front of seating areas, doorways, etc.). This is not due to any manufacturing defect and does not give rise to any liability on the part of Godfrey Hirst NZ Limited

(i) Certain patterned products may contain minor irregularities or may be products in respect of which perfect pattern matching cannot be guaranteed, full details of which are set out on samples and/or in merchandising information supplied to the customer

(j) Unless the customer specifically requests more than one roll from the same dye lot, both at the time of ordering and at the time when the order is confirmed, and marks their requirement as "all same dye lot", Godfrey Hirst NZ Limited will use reasonable endeavours to accommodate the customer request but Godfrey Hirst NZ Limited is under no obligations to ensure that the goods sold are from the same dye lot and shall not be liable to the customer where it does not secure this

(k) All products sold as budget items or as seconds quality, specials, mill ends, unwarranted products, remnants or "as is" or invoiced as Budget or Merchandise, are sold without warranty and all defects (if any) in such products shall, by the customer, be brought to the attention of any third party purchasers of such goods

(l) All carpet must be laid in accordance with Australian Standards Association Carpet Installation Recommendations AS2455-1995 and otherwise in accordance with the Godfrey Hirst NZ Limited Recommended Tufted Carpet Installation Procedure (copies of which are included in all rolls of carpets)

(m) The customer will bring to the attention of and seek acknowledgement from any third party purchaser of the goods sold, to the extent it may be relevant, of the issues raised in clauses 4.2(a) to (l) (inclusive).

5. DELIVERY

5.1 Godfrey Hirst NZ Limited will use reasonable endeavours to deliver the goods sold to the customer on or before the delivery date specified on the order (if any), but otherwise as notified by Godfrey Hirst NZ Limited to the customer (the "Delivery Date"). However, any Delivery Dates are an estimate only and time for delivery shall not be of the essence. The customer acknowledges Godfrey Hirst NZ Limited will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss) costs, damages, charges or expenses caused directly or indirectly by any failure to deliver on the delivery date the goods sold (even if caused by Godfrey Hirst NZ Limited negligence). Late delivery of the goods sold will not entitle the customer to rescind or repudiate any agreement.

5.2 Where the customer seeks the goods sold to be delivered or available for delivery on a specified date, the customer must both at the time of ordering and on the customer's confirmation order clearly specify the proposed date. Godfrey Hirst NZ Limited shall where possible try to meet such dates but shall not be obliged to do so.

5.3 Godfrey Hirst NZ Limited, may at its option unless otherwise specifically agreed to the contrary, deliver the goods sold by instalments. If the goods sold are delivered by instalments then:

(a) Each delivery shall constitute a separate agreement and failure by Godfrey Hirst NZ Limited to deliver one or more of the instalments in accordance with this agreement or any claim by the customer that in respect of any one or more instalments shall not entitle the customer to treat this agreement as a whole as repudiated; and

(b) Godfrey Hirst NZ Limited is entitled to complete delivery of the goods sold by instalment despite any delay or failure by Godfrey Hirst NZ Limited to deliver any instalment.

5.4 The customer agrees to accept delivery of the goods sold at any time during normal business hours.

5.5 Should:

(a) The customer fail to accept delivery of the goods sold as provided in this clause;

(b) Godfrey Hirst NZ Limited defers delivery either when specifically requested by the customer or due to the failure of the customer to comply with the terms (including where the customer fails to accept the goods sold for any reason on or after the due date of delivery); or

(c) The customer requests delivery of the goods sold be at a specified time or upon a time to be advised being after the date of invoice The goods sold will be deemed to have been delivered on the date so notified and without prejudice to all other rights and remedies which Godfrey Hirst NZ Limited has under this agreement or at law or in equity, Godfrey Hirst NZ Limited may arrange storage of the goods sold at its warehouse or some other place it considers reasonable. The customer will be liable for all extra charges, losses or expenses incurred by Godfrey Hirst NZ Limited. If the goods sold are stored at Godfrey Hirst NZ Limited warehouse, Godfrey Hirst NZ Limited will be entitled to storage charges at the rate then prevailing in the Godfrey Hirst NZ Limited price lists.

5.6 Unless otherwise specified in writing, the goods sold will be delivered free into the customer's store in Sydney, Canberra, Melbourne, Geelong and such other areas as Godfrey Hirst NZ Limited may designate from time to time. A packing fee will be payable by the customer. The customer or customer's agent must provide all necessary assistance and facilities for off loading at its own cost, using only certified materials handling equipment and work practices within occupational health and safety guidelines.

5.7 Deliveries outside the designated area:

(a) Will be despatched to the customer from the abovementioned locations at the customer's expense; and

(b) Where Godfrey Hirst NZ Limited arranges transportation of the goods sold by an independent carrier, Godfrey Hirst NZ Limited will have absolute discretion as to the appointment of the independent carrier provided that Godfrey Hirst NZ Limited will in no way be responsible whatsoever for any negligence (wilful or otherwise) or any action or inaction on the part of that carrier.

6. PASSING OF TITLE AND RISK

6.1 The goods sold shall be at the customer's risk (including for loss or damage caused by Godfrey Hirst NZ Limited negligence) at the earlier of:

(a) delivery to the customer or the customer's agent; or

(b) where the goods are being delivered outside the designated areas then upon delivery to the carrier who or which are to deliver the goods; or

(c) should the customer or the customer's agent fail to accept delivery of the goods sold when they are delivered to the customer or the customer's agent, unless otherwise determined by Godfrey Hirst NZ Limited, upon the failure to accept delivery by the customer or the customer's agent (as the case may be), in such event Godfrey Hirst NZ Limited shall be entitled to payment for the goods sold as if they were delivered and Godfrey Hirst NZ Limited may at its discretion store the goods at the risk and cost of the customer and all costs of storage and insurance shall be fully recoverable from the customer.

6.2 Upon the passing of the risk in the goods sold, the customer will keep the goods sold properly insured for their full reinstatement value in the joint names of Godfrey Hirst NZ Limited for their respective rights until title in the goods passes to the customer under clause 6.3.

6.3 Despite sub-clause 6.1, until:

(a) the goods sold have been delivered to the customer, the customer's agent or where the goods are being delivered outside the designated area, to the carrier who is to deliver the goods sold and full payment has been made for all amounts owing by the customer to Godfrey Hirst NZ Limited so that the customer's total indebtedness to Godfrey Hirst NZ Limited under any contract or agreement whatsoever is discharged; or

(b) the customer has disposed of the goods to their customers in the ordinary course of business. Then:

(c) title and property in the goods sold remains with Godfrey Hirst NZ Limited and Godfrey Hirst NZ Limited reserves the right to dispose of the goods sold; and

(d) the customer will store the goods sold in a way which clearly manifests Godfrey Hirst NZ Limited title to the goods sold and shall exercise all reasonable care in doing so.

6.4 If the customer fails to pay any amount of the customer's total indebtedness to Godfrey Hirst NZ Limited pursuant to the terms when due or upon the occurrence of an event specified in clause 7.1 (a) to (d) hereof, Godfrey Hirst NZ Limited may without prejudice to any of its other rights and remedies:

(a) require the customer to deliver up the goods sold to Godfrey Hirst NZ Limited

(b) with or without notice enter upon any premises of the customer or any third party where the goods sold are stored and repossess the goods sold and in this regard, the customer grants Godfrey Hirst NZ Limited, its agents and employees an irrevocable licence at any time to enter any premises where the goods sold are sold or stored; and/or

(c) without notice re-sell the goods sold to a third party.

The customer will indemnify Godfrey Hirst NZ Limited from and against, and will pay on demand to Godfrey Hirst NZ Limited all loss, damage, costs or expenses incurred by Godfrey Hirst NZ Limited in respect of any repossession and/or resale of the goods sold or any of them.

6.5 The customer acknowledges that until the total indebtedness of the customer under these terms is discharged, the customer holds the goods sold as bailee of Godfrey Hirst NZ Limited and a fiduciary relationship exists between Godfrey Hirst NZ Limited and the customer. The customer may resell the goods sold before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the customer's business at full market value and the customer shall hold such part of the proceeds of sale as represent the amount owed by the customer to Godfrey Hirst NZ Limited on behalf of Godfrey Hirst NZ Limited and the customer shall account to Godfrey Hirst NZ Limited accordingly; and

(b) any such sale shall be a sale of Godfrey Hirst NZ Limited' property on the customer's own behalf and Godfrey Hirst NZ Limited shall deal as principal when making such a sale.

1. 6.6 The customer agrees it will not enter into a forward sale contract with any third party in respect of the goods sold or will not assign or factor any claim against a customer held as a fiduciary for Godfrey Hirst NZ Limited under clause 6.5.
2. 6.7 To the extent that this clause creates a charge registrable by Godfrey Hirst NZ Limited over the goods sold, the customer appoints Godfrey Hirst NZ Limited as its agent to register that charge on behalf of Godfrey Hirst NZ Limited at any time and to do all acts necessary (which may include without limitation making application to the court) to procure an extension of the relevant period for such registration pursuant to section 263(1) of the Corporations Act 2001.
3. 6.8 Any samples, books or other materials supplied free of charge to the customer by Godfrey Hirst NZ Limited remain the property of Godfrey Hirst NZ Limited and must, upon request by Godfrey Hirst NZ Limited, be returned promptly.
4. 6.9 The provisions of this clause apply despite any provision of credit to the customer by Godfrey Hirst NZ Limited.
5. **7. TERMINATION OR BREACH OF TERMS**
6. 7.1 Without prejudice to any of its other rights and remedies if the customer, or any company related to the customer (as defined under the Corporations Act):

- (a) commits any breach of this or any other agreement with Godfrey Hirst NZ Limited including and without limitation, failing to pay any moneys when due; or
- (b) being a natural person, dies or has a receiver appointed over their assets or enters into bankruptcy; or
- (c) being a company, calls a meeting of its creditors or has an administrator, official, a receiver or manager of all or any part of its assets appointed or enters into liquidation or becomes subject to a winding up order of the court; or
- (d) negotiates with or enters into any composition with their or its creditors or permits any judgement against it to remain unsatisfied for seven days; or have any distress, execution or other legal process levied upon it then Godfrey Hirst NZ Limited may, without prejudice to its other rights and remedies, elect to do any one or more of the following:
 - (e) terminate the agreement immediately
 - (f) declare all moneys owing by the customer to Godfrey Hirst NZ Limited to be payable immediately
 - (g) require immediate return of any goods for which Godfrey Hirst NZ Limited has not been paid; and/or
 - (h) suspend or defer delivery of the goods sold or any other goods.

1. 7.2 Without prejudice to any other rights, Godfrey Hirst NZ Limited may charge interest on any overdue payment. Interest shall accrue daily from the due date for payment at the Westpac indicator rate plus 1% per annum until receipt of payment whether or not judgement is obtained.
2. 7.3 Time is of the essence in the performance of the customer'

1. 7.4 The customer shall make all payments due to Godfrey Hirst NZ Limited under this agreement without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise unless the customer has a valid court order requiring an amount equal to such deduction to be paid by Godfrey Hirst NZ Limited to the customer.
2. **8. RETURNS**
3. 8.1 Unless Godfrey Hirst NZ Limited has previously agreed in writing by issue of a permission to return and the goods are returned in good and marketable condition in the same condition as despatched from Godfrey Hirst NZ Limited (eg not cut), Godfrey Hirst NZ Limited will not accept any return of the goods sold by it. Consequently no credit or other notes will be issued for any goods returned without such agreement.
4. 8.2 Should any permission to return be issued on a representation by the customer as to any fault in the goods sold or error by Godfrey Hirst NZ Limited and upon inspection by Godfrey Hirst NZ Limited upon the return of the goods sold such representation is not substantiated, the customer will pay and Godfrey Hirst NZ Limited will be entitled to fees as if the order were a cancelled order together with the inspection costs and transportation expenses associated with the return of the goods sold to the Godfrey Hirst NZ Limited warehouse and redelivery of the goods sold and/or delivery of any replacement goods sold.
5. 8.3 It is agreed that within the designated areas any authorised returns shall be collected by Godfrey Hirst NZ Limited and outside the designated area Godfrey Hirst NZ Limited may choose the method by which the goods are to be transported to Godfrey Hirst NZ Limited and the expense of transportation shall be determined by agreement.
6. 8.4 All authorised returns shall be packaged in a manner which will ensure that the goods sold are not damaged in transit and shall clearly be labelled with the addresses of the customer and Godfrey Hirst NZ Limited and the relevant permission or return number provided by Godfrey Hirst NZ Limited. All goods sold shall until collected by Godfrey Hirst NZ Limited be at the customer's risk.
7. **9. CANCELLATION OF ORDERS**
8. 9.1 Godfrey Hirst NZ Limited reserves the right to cancel any customer's order wholly or partially and Godfrey Hirst NZ Limited shall not be responsible for any loss or damage thereby suffered by the customer.
9. 9.2 The customer acknowledges that:

- (a) any request by the customer for a cancellation of order for goods sold is in the sole discretion of Godfrey Hirst NZ Limited and Godfrey Hirst NZ Limited may decline to accept the cancellation for any reason whatsoever and without assigning the reasons therefore.
- (b) should Godfrey Hirst NZ Limited accept any cancellation, the customer will pay and Godfrey Hirst NZ Limited will be entitled to the cancellation fees at the rate then prevailing in the Godfrey Hirst NZ Limited price lists; and
- (c) cancellation of roll cut length or sample order will generally not be accepted after goods have been manufactured, cut or assembled provided that Godfrey Hirst NZ Limited may as a condition of acceptance of such cancellation, require payment in addition to cancellation fees, of such extra charges, losses or expenses incurred by Godfrey Hirst NZ Limited in association with the cancellation of such order.

1. **10. WARRANTIES**
2. 10.1 Godfrey Hirst NZ Limited is licensed under the Australia Carpet Classification Scheme (License No 1012) and Godfrey Hirst NZ Limited warrants that its carpets which display the Australian carpet mark will be appropriate for use for the purposes described on the label. The customer agrees that it will make no representation whatsoever or give any warranty to any subsequent customer of the goods sold that the goods may be used for any purpose other than that stated on the label.
3. 10.2 To the fullest extent permitted by law, liability for breach of any condition or warranty implied by any consumer legislation (other than a condition implied by section 69 of the Trade Practices Act) is limited to any one of the following as determined by Godfrey Hirst NZ Limited:
 - (a) the replacement of the goods sold or the supply of equivalent goods, or
 - (b) the repair or restoration of the goods sold, or
 - (c) the payment of up to the value of the goods sold or of replacing or repairing or restoring the goods sold or of acquiring the equivalent goods
 - (d) Godfrey Hirst NZ Limited will not, unless otherwise required by consumer legislation, be liable or otherwise responsible for the cost of furniture and fittings removal.

- 10.3 Subject to clause 10.1, the customer acknowledges and agrees with Godfrey Hirst NZ Limited that:
- (a) the customer is satisfied the goods sold are fit for the purpose for which they were purchased; and
 - (b) any implied warranty or condition, whether statutory or otherwise, and whether as to quality, capability, condition or fitness for any particular purpose is expressly excluded from the terms to the fullest extent permitted by law.

1. 10.4 The customer agrees and acknowledges that Godfrey Hirst NZ Limited, to the full extent permitted by law, accepts no liability or responsibility for any special, incidental or consequential damages or expenses of any kind, whether resulting from Godfrey Hirst NZ Limited's willful negligence or not and even if Godfrey Hirst NZ Limited has been advised of the possibility of such potential loss or damage and forever releases and discharges Godfrey Hirst NZ Limited from all such responsibilities and liabilities and any claims, demands or causes of action in respect thereof.
2. 10.5 The customer will, to the full extent permitted by law, indemnify and keep indemnified Godfrey Hirst NZ Limited against all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against Godfrey Hirst NZ Limited by any third party or by any of the customer's employees, agents or contractors arising directly or indirectly out of or in respect of the use, custody or purchase and supply of the goods sold.
3. **11. FORCE MAJEURE**
4. 11.1 To the fullest extent permissible at law, Godfrey Hirst NZ Limited will not accept any liability whatsoever in respect to delay or damage to goods sold by reason wholly or in part of industrial dispute, shortages of materials or labour, shipping delays, accident (whether occasioned by the negligence of Godfrey Hirst NZ Limited or its servants or agents or otherwise howsoever), war, riot, act of terrorism, fire, explosion, any Act of God or any other cause whatsoever beyond the reasonable control of Godfrey Hirst NZ Limited or which by the exercise of reasonable diligence it is unable to prevent. In any such case, Godfrey Hirst NZ Limited shall be entitled to suspend either totally or in part delivery of the goods sold, and the operation of this agreement, so far as necessary, shall be suspended without liability for damage against Godfrey Hirst NZ Limited.
5. **12. GENERAL**
6. 12.1 Clerical and typographical errors in computation, typing or otherwise in the documents of Godfrey Hirst NZ Limited including catalogues, advertising material, publications, price lists, drawings, delivery dockets, invoices, statement or credit notes shall be subject to correction by Godfrey Hirst NZ Limited by means of re-issue or adjusting of the relevant document and save for any error of a substantial nature shall not entitle the customer to cancel this agreement or seek or obtain a reduction or variation in the purchase price of the goods sold.
7. 12.2 It is agreed that Godfrey Hirst NZ Limited may assign or transfer any part of this agreement to any other person or corporation and Godfrey Hirst NZ Limited may subcontract the manufacture and/or supply for any part of the goods sold or any material services to be supplied.
8. 12.3 No failure by Godfrey Hirst NZ Limited to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, remedy, power or privilege under this agreement shall operate as a waiver and shall not in any way preclude any further exercise or enforcement of this agreement or the exercise or enforcement of any other right, remedy, power or privilege under this agreement or provided by law.
9. 12.4 The terms and conditions of any agreement between Godfrey Hirst NZ Limited and the customer under this agreement shall be governed by and construed in accordance with the laws of the State of Victoria and the customer hereby submits to the non-exclusive jurisdiction of the courts of the state and any appellate courts therefrom.
10. 12.5 The customer agrees to indemnify and keep indemnified Godfrey Hirst NZ Limited against all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against Godfrey Hirst NZ Limited in respect to Godfrey Hirst NZ Limited's policies on handling personal information of its customers, being individuals is set out on its web page www.GodfreyHirst.com, or can be obtained by contacting our head office on (03) 5225 0222
11. **13. MERCHANDISE/CLAIMS PROCEDURE**

Unless otherwise inconsistent with the terms, the customer agrees, should it be alleged by the customer that the goods sold are defective or fail for any reason to be in accordance with this agreement or if there are any complaints raised by any person concerning the goods sold, to follow and comply with the merchandise/claim procedures adopted from time to time by Godfrey Hirst NZ Limited (which procedures it is specifically agreed that Godfrey Hirst NZ Limited may change from time to time without notice to the customer) and otherwise as follows:

- 13.1 Inspection
 - (a) The customer agrees to thoroughly inspect the goods sold within five working days of delivery and provide notice of any claim or intention to make a claim as provided in clause 13.2.
 - (b) If the customer fails to give such notice of claim then to the extent permitted by law the goods sold shall be deemed to have been delivered to the customer in accordance with the agreement and the customer waives any rights which the customer may have but for the existence of this clause would have had against Godfrey Hirst NZ Limited in relation to the goods sold.
- 13.2 Claims
 - (a) Except where any claim is made by the customer under any consumer legislation and the time period in which claims can be made cannot be excluded (in which case the limitation under those acts shall apply), the customer will forward all claims in writing together with full particulars thereof in respect of any matter arising out of this agreement to Godfrey Hirst NZ Limited either at its head office or the state office of the state from which the goods sold were purchased within the following periods:
 - (i) in respect of a claim that the price invoiced was incorrect – within 7 days of the date of issue of invoice
 - (ii) in respect of any claim goods sold are lost, damaged prior to the risk in the goods sold passing to the customer, short delivery, delivery of the wrong goods or that the length of rolls are not in accordance with the order made by the customer and accepted by Godfrey Hirst NZ Limited - prior to any material being cut from the rolls and in any event within 30 days from the date of the invoice; or
 - (iii) otherwise, within 30 days from the date of invoice.
 - and if not so notified, other than as provided to the contrary by law, the customer forever releases and discharges Godfrey Hirst NZ Limited from all actions, suits, charges, claims demands or any liability whatsoever in any way arising out of or in connection with the goods sold.
 - (b) In the case of any claim, Godfrey Hirst NZ Limited representatives and/or agents are to be granted full access to any site where goods sold subject to the claim maybe laid and/or, if required, be provided with the goods sold and/or materials subject to the claim, equipment or installation technique for consideration and review.
 - (c) Subject to any obligations or rights under consumer legislation, the customer acknowledges that the customer will not be entitled to make any claim, nor shall Godfrey Hirst NZ Limited be held in anyway responsible in respect to:
 - (i) goods sold which have been cut or installed where the defect was visible prior to cutting or installation (as the case may be), including without limitation, defects in colour, pattern, dyestol, quality or length
 - (ii) any damage resulting from improper installation or cleaning or application of any chemicals or unfair abuse or snagging (ie severance of loops by sharp edges, animal claws, etc)
 - (iii) shrinkage, bubbling or rucking of any goods sold which have not been power stretched during installation and secured firmly to the floor or any carpet installed in an area subject to excessive moisture (ie bathrooms, kitchens and toilets)
 - (iv) goods sold which were manufactured in accordance with any sample which had previously been used for decoration or displays, as in that case, a colour match cannot be guaranteed
 - (v) missing tufts (other than on the basis of reinserting such missing tufts)
 - (vi) bowing/skewing, pile crushing, shading and watermarking, fading, tracking, matting and flattening and pattern irregularities or pattern matching problems as exempted from warranty or otherwise acknowledged as acceptable by the customer under clause 4.2 (c) -(i)
 - (vii) products exempted from warranty under clause 4.2(i)
 - (viii) claim concerning goods sold, where Godfrey Hirst NZ Limited representative's and/or agent's are refused access to any site to inspect the goods sold subject to the claim and/or are refused access to the goods sold and/or materials, equipment or installation technique for review
 - (d) In the case of replacement of goods sold more than 12 months old, a usage factor of 20% per annum will be deducted.
- 13.3 Processing of Claims Where a third party has purchased the goods sold from the customer and complains to the customer, Godfrey Hirst NZ Limited or the Trade Practices Commission or any other any government or consumer affairs bureau, authority or department, media or any other similar organisation, the customer shall:
 - (a) within 7 days inform Godfrey Hirst NZ Limited in writing of such complaint;
 - (b) use its best endeavours to inspect the goods sold and provide to Godfrey Hirst NZ Limited a report (containing such details as Godfrey Hirst NZ Limited reasonably requires) as to the state and condition of the goods sold, whether the complaint is in the opinion of the customer justified and the reasons for the conclusion reached by the customer.