

CONFIDENTIAL

NEWFURN FLOOR COVERINGS LIMITED

Application for Membership/Credit
Terms and Conditions of Trade

5-9 Hobbs Court, Rowville Vic 3178
Telephone: +61 3 9850 9311

Newfurn Floor Coverings Limited
ABN 63 004 650 668
www.newfurn.com.au

How to Complete these Forms

Please read all documents carefully

Part 1: Credit Application

Part 2: Terms and Conditions of Trade

IMPORTANT: *If you do not understand any part, you should seek legal advice.*

Part 1. Credit Application

- Complete the applicable sections in Part 1;
- If you are applying for yourself, complete section 5;
- If you are applying for your company, as a partnership or as a trustee (corporate or individual), complete 6;
- If you are applying as a trustee (corporate or individual), complete section 7;
- Read sections 18, 19 and 20 carefully; and
- Sign as indicated below in section 20:
 - If you are a sole trader, you must sign;
 - If you are applying as a partnership, all partners must sign;
 - If you are applying for your company, all directors must sign;
 - If you are applying as a trust with individual trustees, all individual trustees must sign; or
 - If you are applying as a trust with company trustee, all directors of that company trustee must sign.

IMPORTANT: *By signing, you are agreeing to be bound by the Terms and Conditions of Trade.*

Part 2. Terms and Conditions of Trade

- Read carefully and if you do not understand any part, you should seek legal advice.

IMPORTANT: *All parties who sign the guarantee may become personally responsible, instead of, or as well as, the Applicant to pay all amounts which the Applicant owes Newfurn as well as Newfurn's costs and expenses in enforcing the guarantee and interest.*

If the Applicant does not pay you must pay. This could mean you lose everything you own. Before signing, each guarantor should:

- *obtain independent legal advice;*
- *consider obtaining independent financial advice;*
- *make his or her own enquires about the credit worthiness, financial position and honesty of the Applicant.*

When finished

- When all parts have been signed, please return all parts to the person who sent them to you.
- For any queries relating to this Application, please contact Mr Tim Drew at the numbers shown below.

Mr Tim Drew
Newfurn Floor Coverings Limited
5-9 Hobbs Court
Rowville Vic 3178

PH: +61 3 9850 9311
ABN 63 004 650 668
tdrew@choicesflooring.com.au
www.newfurn.com.au

NEWFURN FLOOR COVERINGS LIMITED

PART 1: MEMBERSHIP/CREDIT APPLICATION

1. The Applicant

Applicant Corporate/Trading Name:
ACN: ABN:
Date Business Commenced:.....
Principal Business Address:.....
Suburb:..... State:..... Postcode:.....
Delivery Address (if different from Principal business address):
Suburb:..... State:..... Postcode:.....
Contact Name:
Position: Email:
Telephone: Facsimile:

2. Application for Shares

The Applicant(s) applies to become a member of Newfurn Floor Coverings Limited (Newfurn) and, at the discretion of the Board of Directors of Newfurn:

- 1. To be allotted 4,000 ordinary fully paid shares of \$1.00 each in Newfurn, or;
2. For the Board to authorise the transfer of 4,000 ordinary fully paid shares in Newfurn to me at \$1.00 per share.

3. Agreements

The Applicant agrees to be bound by the Memorandum and Articles of Association of Newfurn (The Articles), the membership agreement, code of conduct and these Terms and Conditions of Trade. Copies of each are freely available from Newfurn upon request.

4. Operating Structure

tick appropriate box

- [] Pty Ltd [] Sole Trader [] Corporation as Trustee
[] Public Company [] Partnership [] Individual(s) as Trustee

If an individual / sole trader, please complete section 5

5. Individual / Sole Trade Details

Full Name:
Date of Birth:..... Drivers Licence Number:
[] Copy of Drivers Licence Attached

If a company or partnership, please complete section 6

6. Directors, Partner and Individual Trustee Details

provide details of all directors (for company or corporate trustee), partners or individual trustees

Name:.....
Address:
Name:.....
Address:

Name:.....

Address:

If more than three, please attach details

If a trustee, please complete section 7

7. Trust Details

Name of Trust: ABN:

tick appropriate box

Type of Trust: Family / Discretionary Unit Other (Details:.....)

If a unit trust, provide details of all unitholders

Name:..... Address:

Name:..... Address:

Name:..... Address:

If more than three, please attach details

8. Applicant's Financial Details

Estimated Monthly Purchases: \$

Monthly Credit required: \$

Bank: Branch:

Contact:..... Telephone:

Business Premises: Owned Leased

If leased, from whom:

Details of security (eg. General Security Agreements)

Type of security:..... provided to:.....

Type of security:..... provided to:.....

9. Business History

For all directors, partners, trustees or sole trader

Have any been declared bankrupt? Yes No If, yes, details:

Have any been involved in a business that has failed or been liquidated? Yes No

If yes, details:

Names of related or subsidiary companies or partnerships:

10. Years Established

How long has the business been established?..... Years

How long have the present owners run the business?..... Years

11. Group Membership

Are you currently a member of another buying group or franchise?

Yes No How many years.....

If yes, which group or franchise

How much do you currently owe to the group? \$ (total owing)

Is your account currently up to date? Yes No

12. Store Size (Non-Choices Flooring Group Store)

If you are currently a member of another buying group or franchise, please complete the table below:

Sales Area	Office Area	Storage	Total Area

The premises are: Leased Owned

13. Turnover of Past 3 Years (Non-Choices Flooring Group Store)

If you are currently a member of another buying group or franchise, please complete the table below:

Year	Floorcoverings \$	Other \$	Total \$

14. Attachments to this Application

Please attach the following items to this Application:

1. Financial statements for the previous two financial years and financial information for the current financial year, if available;
2. Details of current borrowings – lender, amount owing, repayment terms and security;
3. A statement of personal assets and liabilities;
4. Business insurance cover details;
5. Suggested trading name: (please provide three alternatives); and
6. Written proof of ability to provide security to support Newfurn's credit limit.

15. Supplier Trading History

Please detail your purchases from each supplier below, for the 12 months prior to this Application as well as the balance owing at time of this Application. This will help to identify the appropriate level of credit facility for you. The quickest method of obtaining these figures is to tally up the invoices (less credits) on the supplier statements. Please ensure you do this for 12 months only.

Suppliers	Purchases listed are the for period / / to / / \$	Current Balance as at / / \$
Airstep		
Allied		
Armstrong		
Beaulieu		
Brintons		
Cavalier Bremworth		
Dunlop		
Edwardstown		
Embelton		

Feltex		
George Low (Forbo)		
Gerflor		
Godfrey Hirst		
Karndean Australia		
MJS Floorcoverings		
Ontera		
Pegulan		
Polyflor		
Premium Floors		
Quest		
Signature		
Tarkett		
Tuftmaster		
Victoria Carpets		
TOTAL		

16. Disputes/Claims Against Suppliers

Does your business have any outstanding disputes/claims against any suppliers? Yes No

If yes please list nature of dispute/claim and amount (if applicable).....

17. Other business Interests

If you have any outside business interests other than the one listed above, whether it be as a director and/or shareholder please list details below:

This business is a (please select):

- Pty Ltd
- Sole Trader
- Corporation as Trustee
- Public Company
- Partnership
- Individual(s) as Trustee

Company Name:

Trust Name:

Trading Name:

ACN/ABN

Name of Directors and level of ownership:

- Name:%
- Name:%
- Name:%
- Name:%

Description of Business:

.....

18. Terms of Credit

Credit will not be provided until Newfurn accepts this Application and has provided written confirmation to the Applicant.

If Newfurn accepts this Application, the provision of goods and services and credit facilities to the Applicant are subject to the Terms and Conditions of Trade, attached.

19. Privacy Statement

The personal information submitted about the Applicant and about any guarantor/s will be used for purposes associated with assessing the Applicant’s commercial credit Application and administering the commercial credit account.

Newfurn’s Privacy Policy details why Newfurn collects this personal information, who Newfurn may disclose it to, and the main consequences (if any) if Newfurn does not collect it. Newfurn’s Privacy Policy also contains information about how affected persons may seek access to, or correction of, the personal information held about them, and Newfurn’s complaint resolution procedures.

Newfurn’s Privacy Policy is available on our website: www.choicesflooring.com.au/privacy/

20. Execution

By signing this Application for credit, the Applicant:

- acknowledges having been provided with Terms and Conditions of Trade and having read and understood them;
- acknowledges that it has been advised to seek legal and financial advice prior to signing this Application;
- agrees that the Terms and Conditions of Trade apply to the provision of goods and services to it by Newfurn and that it agrees to be bound by the Terms and Conditions of Trade;
- agrees that Newfurn may obtain any credit report or information from any credit agency or firm regarding the Applicant and may use and disclose personal and credit information about the Applicant (including information provided in this Application) in accordance with Newfurn’s Privacy Policy;
- acknowledges that credit facilities may be withdrawn by Newfurn (in part or in full) at any time without prior notice;
- warrants and represents that the information provided by or on behalf of the Applicant in this Application is true and correct, and that if there are any changes, the Applicant will immediately notify Newfurn of those changes.

If company or corporate trustee - sign for and on behalf of the Applicant

Name of authorised person:Position:

Signature:Date:.....

If sole trader, partnership or individual(s) as trustee

If partnership or individual(s) as trustee - all partners and individuals must sign

Name:.....Signature:Date:.....

Name:.....Signature:Date:.....

Name:.....Signature:Date:.....

If more than three directors or individuals, please have additional directors or individuals sign a copy of this page

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

Agreement means any agreement for the provision of goods or services by the Supplier to the Customer;

Business Day means Monday to Friday, excluding public holidays;

consumer is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

Customer means the person, jointly and severally if more than one, acquiring goods or services from the Supplier;

goods means goods supplied by the Supplier to the Customer;

GST means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

PPSA means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

services means services supplied by the Supplier to the Customer;

Supplier means Newfurn Floor Coverings Limited ABN 63 004 650 668; and

Terms means these Terms and Conditions of Trade.

2. Basis of Agreement

- 2.1. Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).
- 2.2. Any quotation provided by the Supplier to the Customer for the proposed supply of goods or services is:
 - (a) an invitation to treat only; and
 - (b) only valid if in writing.
- 2.3. Any quotation is open for acceptance within the period stated in the quotation or within 3 days if no period is stated.
- 2.4. The Terms may include additional terms in the Supplier's quotation, which are not inconsistent with the Terms.
- 2.5. An Agreement is accepted by the Supplier when the Supplier accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services.
- 2.6. Until the Supplier accepts in writing an order submitted by the Customer, the Supplier will not be obliged to supply the goods or services ordered by the Customer.
- 2.7. The Supplier may refuse to accept any offer or order.
- 2.8. The Customer must provide the Supplier with its specific requirements, if any, in relation to the goods and services.
- 2.9. The Supplier may, where reasonably necessary, vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to quotes or orders placed after the notice date.
- 2.10. If the Customer is a company, the Customer must immediately advise the Supplier in writing in the event of any significant expansion, contraction or sale or restructure to its business.

3. Pricing

- 3.1. Prices quoted for the supply of goods and services include GST and any other taxes or duties imposed on or in relation to the goods and services.
- 3.2. If the Customer requests any variation to the Agreement, the Supplier may increase the price to account for the variation.
- 3.3. Where there is any change in the costs incurred by the Supplier in relation to goods or services, the Supplier may vary its price to take account of any such change, by notifying the Customer.

4. Payment

- 4.1. Unless otherwise agreed in writing:
 - (a) Subject to 4.1(b), full payment for the goods or services must be made within 30 days of the date of the Supplier's statement.
 - (b) The Supplier reserves the right to require payment in full on delivery of the goods or completion of the services.
- 4.2. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 4.3. The Supplier may, where reasonably necessary, revoke or amend the payment terms upon giving the Customer written notice.
- 4.4. The time for payment is of the essence.
- 4.5. If the Customer expects that it will not be able to make full payment by the due date, the Customer must immediately notify the Supplier.
- 4.6. If the Customer provides notice to the Supplier in accordance with clause 4.5, then the Supplier may, but will be under no obligation to, permit the Customer to make payment by an alternative date stipulated by the Supplier.
- 4.7. The Customer must provide the Supplier with remittance advice documentation on the 25th day of the month following the Customer's payment of any invoice issued by the Supplier.
- 4.8. If the Customer does not provide the Supplier with remittance advice documentation in compliance with clause 4.7, the Supplier may suspend the Customer's credit account with the Supplier.

5. Payment Default

- 5.1. If the Customer defaults in payment by the due date of any amount payable to the Supplier, then the Supplier may in its absolute discretion:
 - (a) suspend the Customer's credit account with the Supplier; or
 - (b) grant the Customer an extension of time for payment in accordance with clause 5.2 if the Customer provides the Supplier with written notice of:
 - (i) the total amount payable to the Supplier, less any applicable deductions;
 - (ii) the total amount of any proposed short payments;
 - (iii) the date on which the balance of the total amount payable will be paid by the Customer;
 - (iv) the reasons for the failure to make payment by the due date; and
 - (v) all steps that the Customer has taken or proposes to take in order to ensure that full payment will be made to the Supplier.

- 5.2. If the Customer has failed to make full payment by the due date and the Customer has provided the Supplier with written notice of the information set out in clause 5.1(b), the Supplier may, but will be under no obligation to, grant the Customer with a one month extension within 21 days of receiving the following information from the Customer:
- (a) true copies of the Customer's profit / loss statement and balance sheet for the previous financial year;
 - (b) true copies of the Customer's current and up-to-date profit / loss statement and balance sheet;
 - (c) the Customer's cash flow forecast for the next 6 months;
 - (d) a current and up-to-date statement of the Customer's business assets and liabilities (including stock, debtors and all creditors);
 - (e) the Customer's written approval for the Supplier and its appointed officers to conduct audits on the Customer's business.

5.3. Subject to the terms of any extension of time granted by the Supplier in accordance with clauses 5.1(b) and 5.2, if the Customer defaults in payment by the due date of any amount payable by the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 4% for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify the Supplier from, all costs and expenses (including without limitation all legal costs, debt collection fee and commission and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
- (c) cease or suspend supply of any further goods or services to the Customer;
- (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.

5.4. Clauses 5.3(c) and 5.3(d) may also be relied upon, at the Supplier's option:

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Passing of Property

6.1. Until the Supplier receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:

- (a) title and property in all goods remain vested in the Supplier and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;
- (c) the Customer must keep the goods separate from its goods and maintain the Supplier's labelling and packaging;
- (d) the Customer must hold the proceeds of sale of the goods on trust for the Supplier in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;
- (e) in addition to its rights under the PPSA, the Supplier may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

6.2. The Customer provides its consent to the Supplier to enter the Customer's premises for the purpose of examining or recovering any goods.

6.3. If the Customer uses the goods as part of any manufacturing or construction process, then the Customer must hold in trust for the Supplier such part of the proceeds of such manufacturing or construction process as relates to the goods.

7. Personal Property Securities Act

7.1. Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

7.2. For the purposes of the PPSA:

- (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and the Supplier has a Purchase Money Security Interest in all present and future goods supplied by the Supplier to the Customer and the proceeds of the goods;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by the Supplier on the Personal Property Securities Register.

7.3. The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from the Supplier's premises and not at any later time.

7.4. Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

7.5. The Supplier and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

7.6. To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the

extent that they are mandatory or the Supplier agrees to their Application in writing; and

- (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

7.7. The Customer must immediately upon the Supplier's request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.

7.8. The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Supplier.

7.9. For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods or services, except as otherwise required by law or that is already in the public domain.

8. Risk and Insurance

8.1. The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from the Supplier's premises.

8.2. The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

8.3. The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

9. Performance of Agreement

9.1. Any period or date for delivery of goods or provision of services stated by the Supplier is an estimate only and not a contractual commitment.

9.2. The Supplier will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

9.3. If the Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.

10. Delivery

10.1. Subject to clause 10.6, the Supplier will arrange for the delivery of the goods to the Customer.

10.2. The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

10.3. The Supplier may make part delivery of goods or provision of services and the Supplier may invoice the Customer for the goods or services provided.

10.4. The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the

Customer is a consumer and the Supplier has not used due care and skill.

10.5. If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.

10.6. If agreed that the Customer will collect the goods:

- (a) the Customer must collect the goods within seven days of being advised they are ready;
- (b) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

11. Liability

11.1. Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

11.2. If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.

11.3. If the Customer on-supplies the goods to a consumer and:

- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

11.4. If clause 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

11.5. The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

11.6. The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or services or their use or application.
- (b) it has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.

- 11.7. Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the Application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 12. Cancellation**
- 12.1. If the Supplier is unable to deliver the goods or provide the services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- 12.2. No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier once the order has been accepted and the Supplier has ordered goods or arranged manufacture.
- 13. Shortages and Exchanges**
- 13.1. Subject to clause 13.2 and 13.3, the Supplier will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies the Supplier with full details and description within 10 days of delivery otherwise the Customer is deemed to have accepted the goods.
- 13.2. When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by the Supplier, the Supplier may, at its option, replace the goods, or refund the price of the goods.
- (a) subject to clause 13.3, the Supplier will not under any circumstances accept goods for return that:
- (b) have been specifically produced, imported or acquired to fulfil the Agreement;
- (c) are discontinued goods or no longer stocked by the Supplier;
- (d) have been altered in any way;
- (e) have been used; or
- (f) are not in their original condition and packaging.
- 13.3. If the Customer is a consumer, nothing in this clause 13 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 14. Force Majeure**
- 14.1. The Supplier is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, the Supplier may suspend or terminate the Agreement by written notice to the Customer.
- 15. Miscellaneous**
- 15.1. The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 15.2. The Supplier's failure to enforce any of these Terms shall not be construed as a waiver of any of the Supplier's rights.
- 15.3. If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 15.4. A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 15.5. The Customer must comply with the Australian Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.