

# TERMS & CONDITIONS

## 1. OUTLINE

- 1.1 **Currency:** These Terms and Conditions (Terms) apply to the supply of all Goods by us to you from the date that you accept these Terms.
- 1.2 **Acceptance:** You accept these Terms when:
  - 1.2.1 you make an application for credit;
  - 1.2.2 you submit an Order;
  - 1.2.3 you accept delivery of, or any part of, the Goods pursuant to an Order; or
  - 1.2.4 you make you make Payment, or partial Payment, for any Goods supplied by us, whichever occurs first.
- 1.3 **Amendment:**
  - 1.3.1 The Company may amend these Terms at any time and from time to time without prior notice to you, by publishing the Terms of the Company's website [www.gulfrubber.com.au](http://www.gulfrubber.com.au)
- 1.4 You will be taken to have accepted any revised Terms by performing any of the actions identified at clause 1.2 after the date upon which they are published by us on our website.
- 1.5 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless agreed to by the Company in writing.
- 1.6 **No representations/warranties/promises:** You acknowledge that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the Goods sold other than as contained in these Terms.
- 1.7 **Entire Agreement:** The terms of contract between the Company and the Customer are wholly contained in these Terms and any other writing signed by both parties.
- 1.8 **Priority:** These Terms override the Customer's terms and conditions. To the extent of any discrepancy between these Terms and any third party (including the Customers) terms and conditions, these Terms prevail. We will not be bound by, any conditions (express or implied) added or provided by you, whether in an Order or otherwise.

## 2. QUOTES & ORDERS

- 2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods
- 2.2 **Providing a Quote:** We may provide to you a Quote relating to the potential supply of Goods, which may include the price and quantity of the Goods proposed to be supplied by us and other relevant details as necessary.
- 2.3 **Validity of Quote:** A Quote is valid for 30 days only. We reserve the right to withdraw a Quote at any time before you place an Order.
- 2.4 **Placing an Order/Contract Acceptance:** If our Quote is acceptable to you, you may place an Order for each supply of Goods. An Order is not binding until we have provided you with written acceptance or confirmation of the Order, which we may withhold in our absolute discretion. The contract is deemed to have been made on acceptance by us of your Order, on these Terms, at the Company's place of business in Sydney and must be construed and performed in accordance with the laws of New South Wales.
- 2.5 **Tests:** All Goods manufactured by us are carefully inspected during manufacture and, where applicable, submitted to standard tests prior to dispatch. If you specify in your Order that certain tests be conducted in your presence, such tests (unless otherwise agreed) shall:
  - 2.5.1 be conducted at our works upon the provision to you of 7 days' notice of the material or equipment being made available for testing;
  - 2.5.2 be the subject of a special charge specified by us; and
  - 2.5.3 if you fail to attend such tests, be conducted on the date as notified to you and be deemed to have been conducted in your presence.

- 2.6 In the absence of manifest error, our written records in relation to a delivery of Goods will be conclusive evidence of the type and quantity of Goods delivered and of the date and time of delivery.
- 2.7 In the absence of manifest error, certification from our authorised representative will be conclusive evidence of the amount owed for the Goods

## 3. PRICE

- 3.1 **Price:** Unless otherwise agreed to in writing by us or by our authorised representative, subject to clause 3.2, the price charged and payable for the Goods:
  - 3.1.1 shall be the price in Australian dollars at the date we provide the Quote;
  - 3.1.2 3.1.2 the price or prices are quoted strictly ex the Company's premises; and
  - 3.1.3 3.1.3 the price or prices are expressed as exclusive of GST, costs for packaging, delivery, freight, customs, duties, levies, insurance or any other Charges
- 3.2 **Variation of price:** Prices contained in any Quote for the supply of Goods are based on the costs prevailing and the specification supplied at the time of the Quote. Subject to your rights under law including the ACL, we reserve the right to vary the price if between the time of the Quote and the time of your Order:
  - 3.2.1 there is any movement in the input cost of supplying the Goods specified in your Order, including without limitation any change in Charges, transportation, freight, import and insurance costs;
  - 3.2.2 the Goods specified in your Order are varied from the Goods specified in our Quote; or
  - 3.2.3 otherwise provided in these Terms, and we provide you reasonable notice of any such variation of price
- 3.3 **Quantity tolerances:** Subject to clause 11 (Statutory Rights), where we have agreed to produce Goods which are other than our standard range of Goods, due to the difficulty in producing exact quantities, we reserve the right to:
  - 3.3.1 vary the final quantity of Goods delivered to you by a margin of up to 10% in excess of the quantity specified in your Order; and
  - 3.3.2 charge you the price for any excess quantity of Goods on a pro-rata basis.

## 4. PAYMENT

- 4.1 **Invoice on delivery:** Unless otherwise agreed in writing, we will issue you an Invoice upon delivery of the Goods specified in your Order.
- 4.2 **Payment terms:** All Payments shall be made in full by the date of Delivery of the Goods to you. If you have a credit account with us, Payment shall be made in full by the 30th day of the month following the date of the Invoice, unless separate agreement been made by writing.
- 4.3 **Payment method:** All Payments are to be made to us by EFT to the bank account nominated by us or by direct credit or credit card.
- 4.4 **Payment in instalments:** We may at our discretion as agreed in writing accept Payments in instalments upon such terms as we see fit.
- 4.5 **International purchases:** Unless you have a credit account with us or as otherwise agreed by us in writing:
  - 4.5.1 charge you the price for any excess quantity of Goods on a pro-rata basis.
  - 4.5.2 if we deliver Goods to your local depot, payment must be made in full upon our notification that the Goods are ready for dispatch

## 5. PAYMENT DEFAULT

- 5.1 **Default Interest:** In addition to our rights under these Terms, we may at our discretion in the event of your failure to make a Payment in accordance with clause 4 (Payment) charge Default Interest on all amounts you owe us at the rate of 1.8% per calendar month. October 2020
- 5.2 **Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall be:
- 5.2.1 payable on demand; and
- 5.2.2 calculated daily from the date Payment was due to the actual date that the Payment is made in full
- 5.3 **Costs of enforcement:** We may recover from you any costs or expenses we incur or are likely to incur in the collection of Payment of any Invoice, including without limitation, the costs of any collection agent we engage, and legal costs (on a solicitor-client basis);
- 5.4 **Set off:** You may not set off against any Payment, at law or in equity, any claims which you may have against us. If an amount is payable by you or your related entity to us, we are entitled to set-off that amount against any amount payable by us to you or your related entity.
- 5.5 **Default Interest amount credited first:** Any Payment you make to us shall first be applied as reimbursement in accordance with this clause for a ny collection costs and expenses we incur, then credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment, then in satisfaction or part satisfaction of the oldest portion of your account.
- 5.6 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you, for any reason whatsoever, including but not limited to your failure to make any Payment when due.
- 5.7 Time is of the essence in respect of your obligation to make payment for Goods sold by us to you

## 6. CUSTOM TOOLING

- 6.1 **Creation of Tools:** If we agree to produce Goods which are other than standard items of our production or are of your own design or configuration which require us to create new dies, tools, moulds, cutters or jigs (Tools), you may be responsible for a portion of the total cost of such Tools and the amount of this portion shall be specified by us in our Quote.
- 6.2 **Possession of Tools:** Unless we otherwise agree in writing, all Tools we manufacture or supply shall remain in our possession upon the completion or determination of your Order. We may in our absolute discretion produce for you further articles from such Tools at prices to be quoted by us from time to time and subject to these Terms.
- 6.3 **Maintenance of Tools:** We shall be responsible for maintaining at our own expense all Tools we manufacture on your behalf in reasonable order and condition during their economic production life. Where the condition of such Tools ultimately renders it beyond economic or practical repair or where additional Tools are required to cater for increased demand, then part of the cost of creating new Tools will be charged to you. We will advise you of the cost.
- 6.4 **Tools supplied by you:** If Tools are supplied by you, reasonable care will be taken to ensure that they remain in the condition as supplied but we accept no responsibility for any loss or damage to such Tools or for insuring such Tools. Any cost to modify or adapt such Tools to suit our plant or production process and to maintain and repair such Tools required under normal usage will be charged to you.
- 6.5 **Obsolete Tools:** All Tools will be considered obsolete if no further Orders have been placed with us for production within 3 years of the date of the last supply to you. We accept no responsibility for the continued existence or usability of the Tools after that 3 year period.

## 7. DELIVERY, RISK & INSURANCE

- 7.1 **Delivery:** Delivery of the Goods (Delivery) shall take place:

- 7.1.1 if the Goods are delivered within Australia, at the time that the Goods are delivered by us to you or any agent, carrier or person who takes delivery of the Goods for the transmission of them to you as agreed by the parties; or
- 7.1.2 if the Goods are delivered outside Australia, at the time that the Goods pass the ship's rail at the port of shipment as agreed by the parties
- 7.2 **Forwarding instructions:** If not already provided in your Order, you shall provide to us any forwarding instructions at least 7 days before the date set for Delivery of the Goods. Extras will be invoiced separately. Any special delivery instructions must be received by the us in a timely manner to enable us to comply with such instructions. Any failure by us to comply by reason of non-receipt of special delivery instructions will not entitle you to terminate an order or these Terms.
- 7.3 **Risk passes on delivery:** The risk of any loss, damage to or deterioration of the Goods shall pass to you from the time of Delivery of the Goods.
- 7.4 **Cost of Delivery:**
- 7.4.1 if the Goods are delivered within Australia, Goods are delivered CPT. We may charge you the cost of unloading the Goods at your designated delivery location; or
- 7.4.2 if the Goods are delivered outside Australia, Goods are delivered CIF. We may charge you the cost of any Charges of any kind.
- 7.5 **Costs after Delivery:** Any further transportation costs incurred after the Delivery of the Goods will be paid by you.
- 7.6 **Instalments:** We reserve the right to allocate our supplies and stocks at our absolute discretion. We reserve the right to make deliveries in instalments as well as to deliver prior to the date for delivery and in such event you must not refuse to accept delivery of the Goods and these Terms shall be severable as to such instalments, in which case Payment for each instalment is a condition precedent to the delivery of subsequent instalments. Any failure on our part to deliver instalments within any specified time does not entitle you to terminate the Order or these Terms with regard to the balance remaining undelivered.
- 7.7 **Storage and Insurance over Goods:** You must ensure that the Goods are properly stored and protected and you shall from Delivery until we have received Payment for all Goods in full, have sufficient insurance in respect of the Goods to protect us against any and all loss or damage by fire, theft or any other cause whatsoever and provide to us upon our request evidence of such insurance.
- 7.8 **No liability for delay:** We will use reasonable efforts to deliver the Goods to you by the date and to the place specified by you. Without limiting clause 10 (Exclusions and Limitations), if the Delivery of the Goods is delayed:
- 7.8.1 we shall not be liable for late delivery or delay in delivery;
- 7.8.2 the delay does not give you the right to cancel an Order or terminate these Terms or relieve you of any obligation to accept or pay for Goods; and
- 7.8.3 we will not be liable for any loss or damage howsoever arising as a result or consequence of any delay in delivery or any failure to deliver.
- 7.9 **Goods provided by you:** If we process or use goods or materials supplied by you, the responsibility for delivery and insurance of those goods or materials to us shall be borne by you.

## 8. SUSPENSION & CANCELLATION

- 8.1 **Suspension of Order:** If as a consequence of an instruction from you, we delay or suspend (but not cancel) an Order or any part of an Order for a period of 60 days or more, we may:
- 8.1.1 request the payment in full for all work in progress relating to the relevant Order at the time of suspension; and/or
- 8.1.2 vary the price for the uncompleted portion of the relevant Order

- 8.2 **Cancellation by you:** You may not cancel an Order, or any part of it, unless:
- 8.2.1 we give our written consent; and
  - 8.2.2 you pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us in relation to the cancelled Order or the cancelled part of the Order to the date of cancellation, which may include by way of deduction from any advance payment you have made to us.
- 8.3 **Cancellation by us:** We may in writing cancel an Order or delivery of an Order without liability to you (save as required by relevant laws) if:
- 8.3.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency;
  - 8.3.2 you fail to pay any amount for the Goods on the due date; or
  - 8.3.3 we reasonably form the opinion that supplying Goods to you may have a negative impact upon our business or commercial reputation or image.
- 8.4 **Consequence of cancellation:** Subject to your rights at law, if we cancel an order pursuant to clause 8.3, we may at our option:
- 8.4.1 sell or otherwise dispose of the Goods for our own benefit; and/or
  - 8.4.2 claim damages from you and retain on account of such damages any payments that we may have received from you.

## 9. DEFECTS & RETURN OF GOODS

- 9.1 This clause 9 is subject to clause 10 (Exclusions and Limitations), clause 11 (Statutory Rights) and any other statutory or legal right whether under these Terms or otherwise. It is your responsibility to ensure that the Goods conform to your requirements and are fit for your purposes. You must notify us in writing (including sufficient particulars) within 48 hours of delivery if you claim that the Goods were defective, short delivered or otherwise not the Goods specified in the Order. If you fail to notify us as set out in this clause, then to the fullest extent permitted by law, the Goods must be treated as having been accepted by you, and you must pay for the Goods and, to the fullest extent permitted by law, we will be discharged from any liability in respect of the Goods being wrong or defective or short delivered.
- 9.2 **Returns:** You should inspect the Goods immediately upon delivery and may only return the Goods if:
- 9.2.1 they do not materially comply with the Order; or
  - 9.2.2 if permitted by law, including the ACL.
- 9.3 **Notification:** If you wish to return any Goods delivered to you, you must give to us
- they do not materially comply with the Order; or
  - 9.3.1 notice within a reasonable time of your receipt of the Goods; and
  - 9.3.2 the original Invoice details.
- 9.4 **Replacement or credit:** If we accept the return of Goods from you, we will at our option either:
- 9.4.1 replace the returned Goods; or
  - 9.4.2 give a credit or a refund for such Goods
- 9.5 **Costs to return Goods:** You shall bear any expense of transportation of Goods returned to us, unless you have a statutory or other legal right that permits otherwise.
- 9.6 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a claim for a defect.
- 9.7 **Non-payment of account:** We will not accept notifications under clause 9.4 in the event of your non-payment of an account.
- 9.8 **Goods damaged in transit:** If the Goods are damaged in the course of being delivered to you:
- 9.8.1 you must notify us of any claim for Goods damaged in transit within a reasonable time of delivery; and
  - 9.8.2 subject to our acceptance of your claim under this clause 9, we will replace the relevant Goods.
- 9.9 **Recalls:** In the event of a product recall over Goods you have

acquired from us, you shall give us such assistance as is reasonably required in relation to that recall.

## 10. EXCLUSIONS & LIMITATIONS

- 10.1 **ACL exception:** The exclusions and limitations in this clause 10 are subject to clause 11 (Statutory Rights).
- 10.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.
- 10.3 **Limitation of liability:** Any liability arising in relation to Goods the subject of your Order or that we supply to you, however arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby excluded to the fullest extent permitted by law.
- 10.4 **Limitations:** No warranty is given and we will not be liable for:
- 10.4.1 alterations to Goods for which we are not responsible;
  - 10.4.2 defects or depreciation caused by wear and tear, accidents, corrosion, dampness or other abnormal conditions or effects;
  - 10.4.3 damage or failure caused by unusual or non- recommended use, misuse or application of the Goods;
  - 10.4.4 loss or damage to goods occurring during transit or loading/unloading from carrier; or
  - 10.4.5 loss caused by any factors beyond our control.
- 10.5 **Indirect Loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non- observance of the terms of an Order or agreement which incorporates these Terms).
- 10.6 **Total liability:** Our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:
- 10.6.1 the replacement of the Goods or the supply of equivalent goods;
  - 10.6.2 the repair or rectification of the Goods;
  - 10.6.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - 10.6.4 the payment of the cost of the repair or rectification of the Goods.
- 10.7 **No reliance:** You acknowledge and agree that:
- 10.7.1 you have and will make your own assessment of the fitness for purpose and suitability of any Goods supplied to you;
  - 10.7.2 you do not and will not rely on our skill or judgment nor that of any person by whom any prior negotiations or arrangements in relation to the acquisition of any Goods were conducted or have been or will be made; and
  - 10.7.3 you have not made nor will make known to us or a manufacturer of goods (directly or via any person and whether expressly or impliedly) the particular purpose for which you acquire Goods.
- 10.8 **Performance figures:** You acknowledge and agree that all figures and data supplied by us relating to the performance of the Goods are reasonable estimates of performance within specific tolerances which can be expected of the Goods under normal circumstances. Except where performance figures are specifically guaranteed in writing by us, all conditions, warranties and representations as to the performance of the Goods are excluded and we shall not be liable for any liability however arising to the fullest extent permitted by law.
- 10.9 **Third party work:** If we obtain goods or services from a third party in order to carry out your instructions or complete an Order:
- 10.9.1 we will not be liable for any breach of these Terms if that breach is as a result of or is connected with the supply by a third party of such goods or services;
  - 10.9.2 we acquire such goods or services as agent for you not as

principal and will have no liability to you in relation to the supply of these goods or services;

- 10.9.3 any claim by you in relation to the supply of such goods or services must be made directly against that third party; and
- 10.9.4 you must pay for such goods or services from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified or not). You do not require us to account to you for any commissions or benefits we may receive from such a third party supplier in connection with the supply of such goods or services to you and authorise us to contract on your behalf as we think fit.

- 10.10 We give no warranty in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an Order. Any warranties, statutory guarantees or other rights will be governed by the terms of supply by that provider to you and relevant laws.

## 11. STATUTORY RIGHTS

- 11.1 **Statutory rights:** In circumstances where you are acquiring Goods from us as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL or as a 'buyer' for the purposes of the SGA, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws October 2020 but subject to these Terms as applicable and where permitted by relevant laws.
- 11.2 **No restriction:** Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL, the SGA and any relevant State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.
- 11.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

## 12. SECURITY INTEREST

- 12.1 **Subject to the PPSA:** The provisions of this clause 12 are subject to the provisions of the PPSA and clause 13 (Security Interest).
- 12.2 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as our fiduciary agent and bailee of the Goods only.
- 12.3 **Title:** We will retain absolute title over the Goods until:
  - 12.3.1 we have received Payment in full in respect of the Goods and for all sums owing on all of your other accounts with us or under any contract made with us; or
  - 12.3.2 the Goods are disposed of in the manner prescribed under clause 13.12.
- 12.4 **Identification:** Until full title in the Goods has passed to you, you will ensure that:
  - 12.4.1 any identifying plate, mark or packaging number on any of the Goods is not removed, defaced or obliterated; and
  - 12.4.2 the Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods

## 13. INTELLECTUAL PROPERTY

- 13.1 **Security Agreement:** This clause 13 sets out the Security Agreement between you (**Grantor**) and us (**Secured Party**).
- 13.2 **Creation of Security Interest:** The Grantor grants to the Secured Party a Security Interest in the Goods supplied by us to you, including all related proceeds (Collateral), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest (PMSI) in the Collateral.
- 13.3 **Ranking:** Subject to the priority rules set out in the PPSA, this

Security Interest ranks in priority ahead of all other security interests in the Collateral.

- 13.4 **Continuing obligation:** This Security Interest is a continuing security and the Grantor's obligations under this Security Agreement continue until it has been terminated in accordance with this Security Agreement.
- 13.5 **Attachment:** The Security Interest attaches to the Collateral by virtue of the Grantor's possession of the Goods as fiduciary agent and bailee under clause 12.2.
- 13.6 **Perfection:** The Grantor irrevocably gives authority to the Secured Party to register a financing statement with respect to the Security Interest on the PPSR. Despite this provision, the Secured Party may perfect this Security Interest by any other means in accordance with the PPSA.
- 13.7 **Information:** The Grantor shall provide the Secured Party with any information required for the Secured Party to register a financing statement or a financing change statement with respect to this Security Interest on the PPSR.
- 13.8 **Identification:** Until this Security Interest in the Collateral has been extinguished, the Grantor will ensure that, as far as is reasonably practicable:
  - 13.8.1 any identifying plate, mark or packaging number on any of the Collateral (including Goods) is not removed, defaced or obliterated; and
  - 13.8.2 the Collateral is identifiable and distinguishable from any other goods or products that may be in the Grantor's possession and as to each particular invoice of Goods comprising the Collateral
- 13.9 **Accessions:** The Grantor acknowledges that this Security Interest continues to apply to Collateral that becomes an accession to other goods.
- 13.10 **Remedies:** Until this Security Interest in the Collateral has been extinguished, if:
  - 13.10.1 a Default Event occurs in respect of the Grantor; or
  - 13.10.2 the Grantor is in breach of these Terms,
 the Secured Party may as it sees fit and without notice to the Grantor, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 13.11.
- 13.11 **Right of entry:** In addition to any rights given to the Secured Party under Chapter 4 of the PPSA, the Grantor irrevocably
  - 13.11.1 grants the Secured Party the right to:
    - a. demand the immediate return of the Goods to the Secured Party;
    - b. enter the Grantor's premises to search for and seize the Goods without notice or liability to the Grantor; and
    - c. retain, sell or otherwise dispose of those Goods in any manner it sees fit;
  - 13.11.2 indemnifies, and keeps indemnified, the Secured Party against any claim (including in negligence) in respect of any damage to the property of, or the premises occupied by, the Grantor or any consequential loss caused by another party arising relating to searching for and seizing any Goods in accordance with this clause 13.11.
- 13.12 **Permitted use and sale:** The Grantor may only sell or deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if:
  - 13.12.1 the Secured Party has not exercised a remedy under clause 13.10;
  - 13.12.2 the proposed transaction is a bona fide transaction to a third party at market value conducted in the ordinary course of business of the Grantor;
  - 13.12.3 the proposed transaction does not create a security interest in the Collateral that ranks above this Security Interest;
  - 13.12.4 all proceeds of the proposed transaction is:

- a. immediately paid to the Secured Party; or
- b. held on trust for the Secured Party in a separate account, payable to the Secured Party on demand; and
- 13.12.5 unless otherwise obligated by law, the Grantor does not disclose to a third party that the proposed transaction is subject to this Security Agreement or that the proceeds will be immediately paid to the Secured Party or held on trust for the Secured Party.
- 13.13 **Costs:** The Grantor shall pay all costs incurred by the Secured Party (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs in relation to:
  - 13.13.1 seizure, redemption or any other remedy exercised pursuant to clause 13.10; and
  - 13.13.2 the enforcement of its rights under this Security Agreement (including matters incidental to it).
- 13.14 **Extinguishment:** The Security Interest is extinguished only if:
  - 13.14.1 one of the following applies:
    - a. all amounts payable in relation to the Collateral have been paid in full;
    - b. the Collateral has been dealt with by the Grantor pursuant to clause 13.12; or
    - c. a third party has taken free of this Security Interest as provided by the PPSA;
  - 13.14.2 the parties agree that no further Goods shall be supplied by the Secured Party to the Grantor pursuant to these Terms which shall become the subject of this Security Interest; and
  - 13.14.3 all obligations under this Security Agreement have been satisfied by the Grantor, including the obligation to pay costs as set out in clause 13.13.
- 13.15 **Removal:** The Secured Party acknowledges its obligation to lodge a financing change statement to remove this Security Interest from the PPSR upon the extinguishment of this Security Interest in accordance with clause 13.14.
- 13.16 **Waiver:** Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on the Secured Party.
- 13.17 **Waiver of receipt of statements:** The Grantor irrevocably waives its right to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.
- 13.18 **Change of name:** The Grantor shall immediately notify the Secured Party in writing of any change of name of the Grantor.
- 13.19 **Acknowledgement:** The Grantor acknowledges due notice of this Security Agreement with acceptance of these Terms.

#### 14. INTELLECTUAL PROPERTY

- 14.1 **Your intellectual property:** If you provide us with Material to be used in the supply of the Goods:
  - 14.1.1 you warrant and represent to us that any Goods supplied to you based on the Material you provide to us will not infringe the Intellectual Property Rights of any third party; and
  - 14.1.2 you indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or in connection with the representation or warranty in clause 14.1.1 being untrue or breached.
- 14.2 **License over Materials:** You grant to us a non-exclusive royalty-free license throughout the universe to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production of the Goods and the matters contemplated in relation to the delivery of the relevant Goods.
- 14.3 **Our intellectual property:** All of our Intellectual Property Rights in and relating to the production, development and supply of the Goods including but not limited to drawing, illustrations, specifications, and other literature (excluding Materials licensed to us pursuant

to clause 14.2) remains our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent. You may only use our Intellectual Property Rights in the Goods for the purposes specified at the time the Goods are supplied to you.

- 14.4 **Confidentiality:** You shall keep confidential and shall not use any confidential information communicated by us to you without our prior written consent.

#### 15. GST

- 15.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.
- 15.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods.
- 15.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.
- 15.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

#### 16. GENERAL

- 16.1 **Indemnity:** To the fullest extent permitted by law, you indemnify us and agrees to keep us indemnified, against:
  - 16.1.1 all losses we incur;
  - 16.1.2 all liabilities we incur; and
  - 16.1.3 all costs actually payable by us to our own legal representatives (whether or not under a costs agreement) and other expenses we incur in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of or in connection with the supply of Goods by us to you, except to the extent that we incur such losses, liabilities and/or costs as a result of us breaching a condition or warranty which cannot lawfully be excluded; or unless we incur such losses, liabilities and/or costs due to wilful misconduct on the part of us or any of our employees or agents acting within the scope of their employment/agency; and
  - 16.1.4 You must pay to us all liabilities, costs and other expenses referred to in this clause, whether or not we have paid or satisfied them.
- 16.2 **Termination:** If a Default Event occurs:
  - 16.2.1 we may, without limiting any other right we have under these Terms, terminate or suspend delivery of any outstanding Order and terminate any contract for the supply of Goods to you;
  - 16.2.2 all Payments and any other money under these Terms become immediately payable, whether or not the payment of which would otherwise not have been then due and payable; and
  - 16.2.3 will not be obliged to notify you before exercising our rights as outlined above and these rights will be in addition to any other rights that we may have at law or in equity.
- 16.3 **Lawful purpose:** You shall ensure that the Goods are used only for lawful purposes and in accordance with any applicable laws.
- 16.4 **Binding:** These Terms shall bind our successors, administrators and permitted assigns and your executors and permitted assigns, or, being a company, its successors, administrators and permitted assigns.
- 16.5 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms without our prior written consent.
- 16.6 **Time of the essence:** Time shall be of the essence in relation to any date or period under these Terms.
- 16.7 **Force Majeure:** If a Force Majeure Event occurs, we may
  - 16.7.1 totally or partially suspend any Order, any part of an Order or any



deliveries relating to an Order during any period in which we may be prevented or hindered from delivering by our normal means of supply or delivery due to that Force Majeure Event; and

16.7.2 elect to extend at our discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances

16.8 **Severability:** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

16.9 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

16.10 **Governing law:** These Terms shall be governed by the laws of the State of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

16.11 **Corporation:** If you, the Customer, is a corporation, you warrant that the Company's director(s) and/or company secretary will sign these Terms pursuant to the requirements in section 1.5.7 of the Corporations Act 2001 (Cth) for signing documents on behalf of the Company. You warrant that all of the Company's directors will provide personal guarantees and indemnities to us in relation to the Company's obligations under these Terms.

16.12 **Trustee Capacity:** If you, the Customer are acting as the trustee of any trust (whether disclosed or not), then you:

16.12.1 declare that you are entering into these Terms both in your own capacity and as trustee of the trust with the ability to bind, and the intention of binding, both;

16.12.2 you, the Customer, have the right to be indemnified out of trust assets;

16.12.3 you, the Customer, have the power under the trust agreement to sign these Terms;

16.12.4 you, the Customer, will not retire as trustee of the trust or appoint any new or additional trustee without advising us in writing; and

16.12.5 you must give us a copy of the trust agreement upon the Supplier's request.

16.13 **Partnership:** If you, the Customer, are a partnership, you warrant that all of your partners agree to and have signed these Terms and that all of your partners will provide personal guarantees and indemnities to us in relation to your obligations under these Terms.

16.14 **Privacy:** You, the Customer, agree to the terms of the Privacy Policy and the Privacy Statement made pursuant to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012 contained in these Terms.

## 17. INTERPRETATION & DEFINITIONS

17.1 **Personal pronouns:** Except where the context otherwise provides or requires:

17.2 **Defined terms:** In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

**ACL** means the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth) as amended.

**Charges** means any sales tax, excise duties, customs duty, transfer duty, GST or any other taxes, duties or charges applicable in respect of the provision of the Goods.

**CIF** has the meaning given to it in Incoterms 2010 issued by the International Chamber of Commerce.

**Collateral** means property that is subject of a security interest.

**Company** means Gulf Rubber Australia Pty Limited (ABN 13 118 010 263) CPT has the meaning given to it in Incoterms 2010 issued by the International Chamber of Commerce.

**CPT** (or CFR) has the meaning given to it in Incoterms 2010 issued by the International Chamber of Commerce.

**Customer** means any person or entity that places an Order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.

**Default Event** means any one of the following events:

- you fail to make any payment when due, whether for the Goods or otherwise;
- Winding Up commences against you;
- a receiver is appointed to you;
- you become insolvent, bankrupt or commit an act of bankruptcy;
- proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (e) above; or
- a mortgagee or their agent enters into possession of your assets.

**Default Interest** means as defined in clause 5.

**Delivery** means the delivery of the Goods in accordance with clause **Force Majeure Event** means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

**Goods** means goods sold by the Company from time to time.

**Grantor** means the person who has the interest in property to which a security interest is attached.

**GST, GST Law and Taxable Supply** have the meaning set out in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trademarks, domain names, trade secrets, know-how, confidential information and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and/or are recognised in the future.

**Invoice** unless otherwise agreed means the invoice issued upon the delivery of the Goods specified in your Order.

**Material** means any material in which you have Intellectual Property Rights provided by you for use by us in the production, development and supply of the Goods to you.

**Order** means an order for Goods received by us in writing.

**Payment** means payment of any amount relating to Goods in accordance with these Terms.

**PMSI** means a purchase money security interest as defined by section 14 of the PPSA.

**PPSA** means the Personal Property Securities Act 2009 (Cth) as amended, including any regulations made pursuant to it.

**PPSR** means the Personal Property Securities Register. Quote means a quotation by us for the supply of particular Goods containing details as specified in clause 2.2.

**Secured Party** means a person who holds the benefit of a security interest.

**Security Agreement** means the security agreement set out in clause 13 (Security Interest).

**Security Interest** means the security interest created in clause 13 (Security Interest).

**SGA** means the Sale of Goods Act 1923 (NSW) as amended.

**Tools** has the meaning given to it in clause 6.1.

**Winding Up** means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.

# PRIVACY STATEMENT

GULF RUBBER AUSTRALIA PTY LTD (ABN 13 118 010 263)

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the Privacy Act 1988 (as amended by the Privacy Amended (Enhancing Privacy Protection) Act 2012) ("Act").
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, these Terms or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. We may collect personal information about you, the Customer, Guarantor(s) identified in your credit application (Guarantor(s)) for our primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit terms, assessing credit worthiness, collecting overdue payments, marketing, sales and business development purposes and direct marketing.
5. You the Customer or and/or Guarantor(s) consent to us collecting, using and disclosing personal information (including sensitive information) for both our primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
6. We may collect, and may already have collected, information from you and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purpose of our functions and activities including, but not limited to, credit, sales, marketing and administration. If the information was not collected by us it may restrict or impede upon us trading with, extending credit to, continuing to extend credit to or extending further credit to you, the Customer and/or Guarantor(s) or your related bodies corporate.
7. You, the Customer and/or Guarantor(s) consent to us obtaining and making disclosure of information about you and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. We confirm and notify you and/or Guarantor(s) that we may use and/or disclose credit eligibility information under section 21G of the Act.
8. We may provide personal information about you, and/or Guarantor(s) to any of all of the credit reporting bodies nominated below. We intend to disclose default information to any or all of the credit reporting bodies listed below. You and/or Guarantor(s) consent to such disclosure. Our credit reporting policy contains a statement of notifiable matters in accordance with s 21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what we may disclose and what you and/or Guarantor(s)' right to request limitations to the use of their information.  
  
Veda Advantage  
Creditor Watch  
Dun & Bradstreet  
Experian
9. We may disclose information to, and about them and you the Customer and/or credit application Applicant and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to our employees, subsidiaries, employees, agents and related bodies corporate, past present or prospective credit providers of you, the Customer and/or credit application Applicant and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link.
10. By reason of you, the Customer and/or credit application Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to our dealings with your and/or Guarantor(s)' Information.
11. You, the Customer and/or credit application Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to us within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with us after receipt of this Statement or, if you and/or the credit application Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with us after receipt of this statement.

# PRIVACY STATEMENT

GULF RUBBER AUSTRALIA PTY LTD (ABN 13 118 010 263)

1. **We respect your privacy**
  - 1.1 The Company respects your right to privacy and is committed to safeguarding the privacy of our customers and website visitors. We adhere to the Australian Privacy Principles contained in the Privacy Act 1988 (Cth). This policy sets out how we collect and treat your personal information.
  - 1.2 "Personal information" is information we hold which is identifiable as being about you.
2. **Collection of personal information**
  - 2.1 The Company will, from time to time, receive and store personal information you enter onto our website, provided to us directly or given to us in other forms.
  - 2.2 You may provide basic information such as your name, phone number, address and email address to enable us to send information, provide updates and process your product or service order. We may collect additional information at other times, including but not limited to, when you provide feedback, when you provide information about your personal or business affairs, change your content or email preference, respond to surveys and/or promotions, provide financial or credit card information, or communicate with our customer support.
  - 2.3 Additionally, we may also collect any other information you provide while interacting with us.
3. **How we collect your personal information**
  - 3.1 The Company collects personal information from you in a variety of ways, including when you interact with us electronically or in person, when you access our website and when we provide our services to you. We may receive personal information from third parties. If we do, we will protect it as set out in this Privacy Policy.
4. **Use of your personal information**
  - 4.1 The Company may use personal information collected from you to provide you with information, updates and our services. We may also make you aware of new and additional products, services and opportunities available to you. We may use your personal information to improve our products and services and better understand your needs.
  - 4.2 The Company may contact you by a variety of measures including, but not limited to telephone, email, sms or mail.
5. **Disclosure of your personal information**
  - 5.1 We may disclose your personal information to any of our employees, officers, insurers, professional advisers, agents, suppliers or subcontractors insofar as reasonably necessary for the purposes set out in this Policy. Personal information is only supplied to a third party when it is required for the delivery of our services.
  - 5.2 We may from time to time need to disclose personal information to comply with a legal requirement, such as a law, regulation, court order, subpoena, warrant, in the course of a legal proceeding or in response to a law enforcement agency request.
  - 5.3 We may also use your personal information to protect the copyright, trademarks, legal rights, property or safety of the Company, www.gulfrubber.com.au, its customers or third parties.
  - 5.4 Information that we collect may from time to time be stored, processed in or transferred between parties located in countries outside of Australia. These may include, but are not limited to USA, England, Australia.
  - 5.5 If there is a change of control in our business or a sale or transfer of business assets, we reserve the right to transfer to the extent permissible at law our user databases, together with any personal information and non-personal information contained in those databases. This information may be disclosed to a potential purchaser under an agreement to maintain confidentiality. We would seek to only disclose information in good faith and where required by any of the above circumstances.
  - 5.6 By providing us with personal information, you consent to the terms of this Privacy Policy and the types of disclosure covered by this Policy. Where we disclose your personal information to third parties, we will request that the third party follow this Policy regarding handling your personal information.
6. **Security of your personal information**
  - 6.1 The Company is committed to ensuring that the information you provide to us is secure. In order to prevent unauthorised access or disclosure, we have put in place suitable physical, electronic and managerial procedures to safeguard and secure information and protect it from misuse, interference, loss and unauthorised access, modification and disclosure.
  - 6.2 The transmission and exchange of information is carried out at your own risk. We cannot guarantee the security of any information that you transmit to us, or receive from us. Although we take measures to safeguard against unauthorised disclosures of information, we cannot assure you that personal information that we collect will not be disclosed in a manner that is inconsistent with this Privacy Policy.
7. **Access to your personal information**
  - 7.1 You may request details of personal information that we hold about you in accordance with the provisions of the Privacy Act 1988 (Cth). A small administrative fee may be payable for the provision of information. If you would like a copy of the information, which we hold about you or believe that any information we hold on you is inaccurate, out of date, incomplete, irrelevant or misleading, please email us at [accounts\\_au@gulfrubber.com](mailto:accounts_au@gulfrubber.com)
  - 7.2 We reserve the right to refuse to provide you with information that we hold about you, in certain circumstances set out in the Privacy Act.
8. **Complaints about privacy**
  - 8.1 If you have any complaints about our privacy practices, please feel free to send in details of your complaints to PO Box 84, Revesby North, NSW 2212. We take complaints very seriously and will respond shortly after receiving written notice of your complaint.



**9. Changes to Privacy Policy**

- 9.1 Please be aware that we may change this Privacy Policy in the future. We may modify this Policy at any time, in our sole discretion and all modifications will be effective immediately upon our posting of the modifications on our website or notice board. Please check back from time to time to review our Privacy Policy.

**10. Website**

- 10.1 When you visit our website
- 10.2 When you come to our website [www.gulfrubber.com.au](http://www.gulfrubber.com.au) we may collect certain information such as browser type, operating system, website visited immediately before coming to our site, etc. This information is used in an aggregated manner to analyse how people use our site, such that we can improve our service.

**11. Cookies**

- 11.1 We may from time to time use cookies on our website. Cookies are very small files which a website uses to identify you when you come back to the site and to store details about your use of the site. Cookies are not malicious programs that access or damage your computer. Most web browsers automatically accept cookies but you can choose to reject cookies by changing your browser settings. However, this may prevent you from taking full advantage of our website. Our website may from time to time use cookies to analyse website traffic and help us provide a better website visitor experience. In addition, cookies may be used to serve relevant ads to website visitors through third party services such as Google AdWords. These ads may appear on this website or other websites you visit

**12. Third party sites**

- 12.1 Our site may from time to time have links to other websites not owned or controlled by us. These links are meant for your convenience only. Links to third party websites do not constitute sponsorship or endorsement or approval of these websites. Please be aware that the Company is not responsible for the privacy practices of other such websites. We encourage our users to be aware, when they leave our website, to read the privacy statements of each and every website that collects personal identifiable information.