

TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale shall apply to the sale of goods or services ('goods') by the Supplier to the Customer. These terms and conditions of sale replace any previous terms and conditions of sale.

1. INTERPRETATION

In these Terms and Conditions and the following section of this document entitled "Agreement" and any other associated or collateral documents (unless a contrary intention is stated):

- a) "Customer" means a person whose order for the purchase of goods is accepted by the Supplier;
- b) "Supplier" means Aquarius Rubber (Aust) Pty Ltd ACN 79 502 567 531 or any of its subsidiary or associated companies or their respective assigns;
- c) The headings used do not form part of these terms and conditions and are for convenience only.
- d) Where the context admits or requires words importing, the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.

2. GENERAL

- a) Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions are expressly rejected by the Supplier as are any variations to these terms and conditions not expressly agreed to in writing by the Supplier.
- b) A quotation shall not constitute an offer to sell goods to the Customer. No contract for the supply of goods shall exist between the Supplier and the Customer until a Customer's order for goods has been accepted by the Supplier (such acceptance of Customer's orders may be made and communicated by the Supplier in writing or by overt act of acceptance). The Supplier may accept or refuse any order for goods in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- c) The Supplier may vary these terms and conditions by notice in writing to the Customer. The Customer agrees that the purchase of any goods after the date of a notice of variation will be deemed to be an acceptance of such varied terms and conditions.
- d) Should there be any variation to any of the information supplied by the Customer to the Supplier or in the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Customer shall forthwith notify the Supplier in writing.
- e) These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of the Supplier's successors and assigns.

3. PRICING/PAYMENT

- a) Notwithstanding any prior acknowledgment by the Supplier of the price of goods, the prices specified for goods may at the Supplier's option be subject to alteration to reflect the Supplier's prices and charges in effect at the time of delivery.
- b) Any variations in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imposts shall be to the Customer's account.
- c) The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever. However the Customer shall not set off any amounts allegedly owing by the Supplier to it against any amount due by it to the Supplier;
- d) Unless otherwise agreed to by the Supplier, the only accepted means of paying accounts will be by cash, bank cheque, COD or electronic funds transfer, all without any deduction;
- e) Abnormal payments: where payments are made that are not made in accordance with clause 3 (d), the Customer will also pay the Supplier an administration fee of 3% of the amount so paid. That fee is agreed to be the liquidated cost of processing that abnormal payment. That fee is payable at the same time as the account to which it relates is due.

4. ACCOUNT TERMS

- a) Unless otherwise agreed in writing by the Supplier, the Customer shall pay for all goods delivered in any calendar month on or before the last trading day in the following month.
- b) Credit extended to the Customer for all goods sold will be made in accordance with the terms of credit as agreed by the Supplier at the time the Customer's account was established or as subsequently altered by the Supplier.
In all other respects these terms and conditions will apply.
- c) If the Customer does not pay the Supplier by the due date, the Customer may be liable to pay interest on monies due, charged on a daily basis at 16% pa from the due date for payment until the actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such other times it chooses for such interest.
- d) The Customer shall pay any legal costs (on a full indemnity basis), stamp duties, any bank charges or merchant fees or like charges levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying the Supplier any amounts on any account and any other expenses payable of and incidental to the performance or enforcement of or any litigation on these terms and conditions or any credit application or any security documents signed by the Customer or any guarantor together with any other collection costs and dishonoured cheque fees.
- e) Despite any other clause in these terms and conditions, the Supplier may withdraw the Customer's credit facilities at any time without notice or at its discretion alter the Customer's credit limit for any reason (including to meet the Customer's then buying needs). The Supplier will notify the Customer of any alteration in the credit limit by notice to that effect in the following monthly account statement. Any credit approval limit noted in this form, any monthly statement or otherwise is for the Supplier's convenience only.

5. DEFAULT

If;

- a) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer; or
- b) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer; or
- c) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
- d) the Customer goes into bankruptcy or is wound up; or
- e) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due, or
- f) there is a breach by the Customer of any of these terms and conditions; then
- g) all monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding the due date for payment shall not have expired; and

h) the Supplier may without prejudice to any other rights it may have, do any or all of the following:

- (i) withdraw any credit facilities which may have been extended to the Customer;
- (ii) withhold any further deliveries of goods;
- (iii) in respect of goods already delivered enter onto the Customer's premises to recover and resell the goods for its own benefit; and
- (iv) recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries;

6. DELIVERY

- a) Goods will be delivered or deemed to be delivered, when they are delivered to the Customer's delivery address. If no such address is nominated, then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- b) The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.
- c) The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.
- d) The Customer authorises the Supplier to deliver products to the Customer's delivery address and to leave the products at such place whether any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- e) The Supplier shall not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the goods delivered.
- f) Any times quoted for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier,
- g) The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
- h) The Supplier reserves the right to deliver goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment, or deliver any instalment on time shall not entitle the Customer to repudiate the contract in whole or in part.

7. PROPERTY AND RISK

- a) The goods shall be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises.
- b) Property in and title to the goods will not pass to the Customer until those goods and all other amounts owed to the Supplier by the Customer have been paid for in full and until then:
 - (i) the Customer will hold the goods as fiduciary and bailee for the Supplier;
 - (ii) the goods must be stored separately and in a manner enabling them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;
 - (iii) the Customer may sell the goods in the ordinary course of its business as bailee for the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and
 - (iv) the Supplier may require the Customer to return the goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the goods.
- c) The Customer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer whichever occurs first and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the goods or fails to supply details of its insurance policy, the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the goods supplied to the Customer.

8. SPECIAL ORDERS AND SPECIFICATIONS IN GENERAL

The Customer warrants to the Supplier that all drawings and specifications and other design information provided to the Supplier for the manufacture of special orders or tooling are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party.

9. RETURN OF GOODS

- a) Subject to clauses 6 (d) and 10, the Supplier will only accept the return of goods on the conditions set out in this clause 9;
- b) The Customer must not return goods to the Supplier without the Supplier's prior consent;
- c) The Supplier will accept the return of goods and provide a credit against such returns to the Customer to the extent that the goods do not comply with the quantity or description of the Customer's purchase order provided that:
 - (i) the Customer has inspected the goods promptly upon their delivery; and
 - (ii) within seven (7) business days of the delivery of such goods to it the Customer then gives written notice to the Supplier of a request for a credit which details all alleged non-compliances. This request must also specify the original invoice number in respect of the goods as proof of their purchase; and the Customer must obtain a Return Authorisation Number (RAN) from the Supplier and must quote the RAN on subsequent documentation and on the goods returned, and
 - (iii) the Supplier is then satisfied as to the accuracy of the claim in that notice;
- d) The Supplier will accept the return of goods and provide the Customer with a credit for them where the reason for their return is Customer error in:
 - (i) ordering the type/style/model of the goods; or
 - (ii) selection of the goods for their suitability to applications; or
 - (iii) the quantity of the goods ordered, provided that the goods are returned to the Supplier by the Customer within 30 days of the delivery date; and
 - (v) the request for return of the goods specifies the original invoice number in respect of those goods; and
 - (vi) a restocking fee for the goods to be returned may be applied at the Suppliers discretion;
- e) The Customer is not entitled to return any goods pursuant to this clause 9 which have been custom made, custom cut, custom processed or custom acquired for the Customer or where the goods are not in brand new or unused condition with undamaged packaging as at the date of their proposed return or where the goods have been damaged due to installation contrary to manufacturer's instructions;
- f) The Supplier will accept the return of defective goods and arrange for the repair or replacement of such goods in accordance with the manufacturer's conditions of warranty.

10. CLAIMS UPON SUPPLIER

- a) Subject to clause 6(d), all claims for the Supplier's failure to comply with the Customer's order whether due to shortfall, incorrect delivery or otherwise must be made by giving written notice to the Supplier within seven (7) days from freight forwarder date of arrival. If the Customer fails to provide such notice then the Customer shall be deemed to have accepted the goods.
- b) These conditions shall not exclude, or limit the application of any provision of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Competition and Consumer Act 2010), or cause any part of this clause 10 to be void. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.
- c) Unless the goods supplied by the Supplier are of a kind ordinarily acquired for domestic household or personal use or consumption, the Supplier's liability under clause 10 (b) for breach of a non-excludable condition or warranty is limited, at the Supplier's option, to any one of the following:
- o the replacement of the goods or the supply of equivalent goods;
 - o the repair of the goods;
 - o the payment of the cost of providing replacement goods or of acquiring equivalent goods; or
 - o the payment of the cost of having the goods repaired.
- d) Subject to clause 10(b) the Supplier shall not be liable for any direct or indirect loss whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

11. FITNESS FOR PURPOSE

The Customer agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

12. GST

- a) Any expression used in this clause and which is defined in the "A New Tax System, (Goods and Service Tax) Act 1999" has the same meaning in this clause 12.
- b) With the exception of any amount payable under this clause 12, unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST
- c) If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

13. TRUST AND TRUSTEES

Where the Customer is a trustee:

- a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier.
- a) The Customer warrants that it has full power and authority to enter into these terms and conditions and the following section of this document titled "Agreement" on behalf of the trust and that it (and the trust and all the trust's real and personal property) shall be bound by these terms and conditions and that it enters into this Agreement both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into this or any other credit agreement with the Supplier.

14. LAWS TO GOVERN PROVISIONS OF AGREEMENT

- a) Unless varied by notice in writing by the Supplier these terms and conditions shall be governed by and construed in accordance with the laws of the state or territory of the place in which the Supplier's credit office having the day to day management of the Customer's credit trading account is situated (regardless of where the goods are delivered). The parties submit to the exclusive jurisdiction of the courts in the capital city in that State or Territory (and, if there is more than one such court in the capital city, at such court as the Supplier in its absolute discretion selects).
- b) The parties agree that proceedings may be commenced in any such Court of such State or Territory and consent to that Court having jurisdiction by virtue of clause 14(a) notwithstanding that that Court would not have such jurisdiction without this consent.

15. NOTICE

Notices to be given by the Customer to the Supplier may be delivered personally or sent to the Supplier's address at 46 Rushdale Street, Knoxfield, VIC 3180, and unless the contrary is proved, notice shall be taken as delivered when received by the Supplier at that address. Notices to be given to the Customer by the Supplier may be delivered personally or sent to the Customer's last known address and, unless the contrary is proved, shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

16. SEVERANCE

In the event that the whole or any part or parts of any provisions in this agreement should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.

17. SUB-CONTRACTING

The Supplier reserves the right to sub-contract the manufacture and/or supply of the goods or any part thereof to a third party.

18. CERTIFICATE

A statement in writing signed by the Supplier's Credit Manager stating the monies payable by the Customer to the Supplier shall be prima facie evidence of the amounts so payable.