

TERMS AND CONDITIONS OF SALE

In these Terms and Conditions, unless the context otherwise requires:

“Loss” means any delay, inconvenience, loss, liability, damage, expense or cost whatsoever and includes (without limitation) direct or consequential loss or damage.

“Delivery” means the time at which the Goods leave BPT’s premises;

“Goods” means goods supplied or to be supplied by BPT to the Purchaser from time to time;

“Order” means any order for Goods placed by the Purchaser with BPT;

“The Purchaser” means the person to whom Goods are supplied by BPT and includes the Purchaser’s executors, administrators, successors and permitted assigns;

“Sales Tax” means any governmental, quasi governmental, federal or state taxes, duties, fees, levies, imposts or like charges which arise in relation to the sale or supply of Goods;

“Terms and Conditions” means the terms and conditions set out below the singular includes the plural and vice versa, and “person” includes a company, partnership or trust;

“BPT” means Boss Rubber Technologies Pty Ltd, registered office, 28 Miles Street, Mulgrave Vic, 3170.

“Receiver” includes an agent of a mortgagee or chargee.

Formation of Contract

1.1 The Purchaser acknowledges that:

- a) Unless the board of management of BPT agree otherwise in writing, these are the sole Terms and Conditions upon which BPT are prepared to trade with the Purchaser and any Order placed by the Purchaser constitutes an offer by it to acquire Goods described in the Order form from BPT upon and subject to these Terms and Conditions to the exclusion of all other Terms and Conditions whatsoever including but not limited to any Term and Condition contained in any of the Purchaser’s documents which may purport to vary these Terms and Conditions.
- b) These Terms and Conditions supersede all previous Terms and Conditions and representations by BPT and its agents and officers and may only be varied with the written consent of the Board of Management of BPT. No employee or agent of BPT has authority to vary these Terms and Conditions unless authorised in writing by the Board of Management.

Delivery and Risk

2.1 Any terms as to quantity of Goods to be delivered or time of delivery are not terms of the essence.

2.2 BPT may make partial deliveries against an Order and to invoice each partial delivery separately. The Purchaser cannot reject Goods on the basis of partial or late delivery.

2.3 The risk of loss or damage will pass to the Purchaser from the time of despatch.

Prices and Payment

3.1 All price lists and prices quoted in respect of Goods are subject to Requote/increase at any time with written notice and Goods will be invoiced at the price ruling at Delivery.

3.2 Unless otherwise agreed by BPT in writing, all prices quoted are exclusive of GST which must be paid by the Purchaser.

3.3

- a) Payment for all Goods must be made in cash by the Purchaser to BPT within thirty (30) day of the end of the month of Delivery.

- b) Notwithstanding paragraph 3.3(a), BPT reserves the right to require immediate payment for all Goods supplied. Payment of Goods Delivered will be due immediately upon receipt by the Purchaser of a notice from BPT that it requires immediate payment.
 - c) Punctual payment is of the essence.
- 3.4 BPT may charge interest on all amounts overdue at the highest rate of interest by lending banks from the day upon which default is made until the day on which payment is received by BPT.

Title

The Purchaser shall not remove any markings, tags or labels from the Goods which may indicate that the Goods are and remain the property of BPT. To the extent that the goods may be used in connection with the business conducted by the Purchaser, the Purchaser shall advise in writing any potential customer, purchaser or other third party that the Goods are the property of BPT.

- 4.1 Ownership (both legal and beneficial) in Goods supplied by BPT to the Purchaser remain with BPT and does not pass to the Purchaser until payment is made by the Purchaser of all amounts owing by it to BPT. The Goods are merely entrusted to the Purchaser as fiduciary and BPT remains the legal and beneficial owner of the Goods with full power to resell and regain possession thereof in the event of the Purchaser's default in payment of such amounts.

Until payment in full of the purchase price, the Purchaser shall store the Goods in a separate section of its premises, in such a way as to indicate that the Goods are not the property of the Purchaser, but remain the property of BPT, unless authorised otherwise under clause 4.4 herein.

- 4.2 Subject only to clause 4.3, the Purchaser must not deal with BPT goods until title passes.

- 4.3 In BPT's sole discretion and upon the request of the Purchaser, BPT may grant to the Purchaser a licence to act as BPT's fiduciary to deal with BPT's Goods by:

- a) selling BPT's Goods provided that the sale is in the ordinary course of the Purchaser's business in which case the purchaser must account to BPT for proceeds of sale.
- b) using BPT's Goods in the Purchaser's manufacturing or production process on the basis that BPT will own the product of that manufacturing or production process as a tenant in common at law, and
- c) selling goods in which BPT has an interest as a tenant in common provided that sale is in the ordinary course of the Purchaser's business in which case the Purchaser must account to BPT for the proceeds of sale.

In the event of sale, if the Purchaser receives any proceeds from the sale of the Goods from any other party, the Purchaser receives those proceeds as fiduciary on trust BPT to be applied in payment of the purchase price for the Goods, and such proceeds shall be kept separate and dealt with separately by the Purchaser at all times until the proceeds have been duly paid to BPT.

- 4.4 The Purchaser's licences to deal referred to in clause 4.3 terminates immediately on:

- a) BPT giving notice to the Purchaser that BPT, in its sole opinion, has formed the view that the Purchaser is in financial difficulties or that the financial circumstances of the Purchaser so warrant,
- b) The Purchaser failing for any reason whatsoever to pay punctually any moneys due and payable to BPT or otherwise defaulting in the performance or observance of any of its obligations to BPT and BPT giving notice to the Purchaser of that default, or
- c) If any distress or execution is levied upon the Purchaser, its property of its assets, or if the Purchaser makes or offers any arrangement or composition with creditors or commits any act of bankruptcy or any petition in bankruptcy is presented or made against it or if (where the Purchaser is a company) any resolution or petition to wind up the company is passed or presented or if a Receiver of the Purchaser's undertaking, property or assets (or any part thereof) is appointed.

- 4.5 Upon termination under sub-clause 4.4 of the Purchaser's licences to deal:

- a) BPT or its agents may enter the Purchaser's premises and remove and take into its possession the Goods and Purchaser hereby consents to such entry and to BPT taking any action necessary to take possession of the Goods, and
- b) any agreement or arrangement whatsoever whereby BPT has provided or agreed to provide credit to the Purchaser terminates immediately and all moneys owing by the Purchaser to BPT for Goods supplied become immediately due and payable.

4.6 It is not intended by BPT or by the Purchaser that by dealing with the Goods upon the terms and conditions specified to create a charge over any goods or over any proceeds of their sale.

4.7 This clause applies notwithstanding any agreement or arrangement between the parties pursuant to which BPT grants or agrees to grant the Purchaser credit.

All costs, including but not limited to transportation costs, storage costs and costs or resales incurred by BPT as a result of it exercising any of its rights hereunder in the event of default in payment by the Purchaser, shall be borne by the Purchaser.

Returns

5.1 Goods returned will only be accepted for credit subject to the prior written consent of BPT. The credit allowed in the event BPT accepts Goods returned shall be in the sole discretion of BPT.

The Purchaser shall inspect the Goods immediately on delivery and shall give immediate notice to BPT of any defect of allegation that the Goods are not in accordance with the contract. If the Purchaser fails to give such notice, the Goods shall be deemed to be in all respects in accordance with the contract and the Purchaser shall be bound to accept and pay for the same accordingly.

Contract not a Sale by description and goods not supplied by reference to sample

6.1 Any description of Goods contained in, or samples supplied pursuant to, these Terms and Conditions, or in any price lists, pamphlets, or other documents of BPT is given by way of identification only, and the use of such description will not constitute any sale under these Terms and Conditions a sale by description and Goods supplied are not supplied by reference to sample.

Purchaser's rights and remedies in respect of Goods

7.1 Unless otherwise expressly provided in these Terms and Conditions:

- a) all warranties, undertakings, or representations whether express, implied, or otherwise relating in any way to Goods supplied or services provided or to these Terms and Conditions are excluded or limited to the fullest extent permissible by law; and
- b) BPT will not be liable to the Purchaser in contract, tort or otherwise, for any Loss howsoever caused which may be suffered or incurred, or which may arise directly or indirectly, in respect of Goods or the provision or services (including without limitation any delay in delivery, failure, malfunction, breakdown, defect or deterioration of the Goods, the services or any of them)

7.2 The Purchaser warrants and acknowledges that it has not relied on any representation made by BPT not stated expressly in these Terms and Conditions or upon any descriptions or illustrations or specifications contained in any documents, including any catalogue, list, brochure, web site publication or publicity material, produced by BPT or supplied to the Purchaser.

7.3 Subject to any BPT Warranty, to the extent permitted by law the liability of BPT in respect of all conditions and warranties whatsoever implied in favour of a Purchaser of goods or services (including but not limited to all conditions and warranties implied by Division 2 of Part V of the Trade Practices Act 1974 as amended) shall be limited to:

- a) In the case of Goods, the replacement or repair to such Goods or the cost of having such Goods replaced or repaired.

7.4 To the extent that the United Nations Convention on Contracts for the International Sale of Goods would otherwise apply to any Goods it is agreed that of such Convention does not apply.

In the event that this contract constitutes a supply of goods to the Purchaser as defined in the Trade Practices Act 1974, as amended, or relevant State or Territory legislation ("The Acts"), nothing contained in this contract excludes, restricts or modifies any condition, warranty or other obligation in relation to this contract and the Goods to be supplied hereunder which pursuant to the Acts, or any of them, is applicable or is conferred on the Customer where to do so is unlawful, in which event BPT's sole liability for any breach of such condition, warranty or other obligation, including any consequential loss which the Purchaser may sustain or incur, shall be limited (except to the extent specially set forth herein) to:

The replacement of the Goods or the supply of equivalent goods or payment of the cost of replacing the Goods or acquiring equivalent goods, or

The repair of the Goods or payment of the cost of having the Goods repaired,

As in each case BPT may select

Entire Agreement

8.1 The Terms and Conditions constitute the entire terms and conditions between BPT and the Purchaser.

Assignment

9.1 The Purchaser cannot assign, transfer or otherwise dispose of any of the benefits or the burdens of this or any other contract with BPT without the prior written consent of BPT.

Force Majeure

10.1 BPT will not be liable for any Loss incurred or suffered by the Purchaser as a result of a failure to observe any of these Terms and Conditions or as a result of any delay in performance of any obligations due to any cause or circumstances beyond BPT's control including but not limited to any failure or delay in performance caused by any strikes, lock-outs, labour disputes, fires, acts of God or public enemy, delays in transport, breakdowns in machinery, restrictions or prohibitions by any government or semi-government authorities, embargoes or any other events beyond BPT's control wherever occurring.

Notices

11.1 Any notice given under these Terms and Conditions will be deemed to have been received by the person to whom it was sent:

- a) in the case of hand delivery, upon delivery;
- b) In the case of pre-paid post, three days after the date of dispatch; and
- c) In the case of facsimile, upon completion of transmission.

Governing Law

These Terms and Conditions are governed by and must be construed in accordance with the laws of Victoria and of the Commonwealth of Australia and the Purchaser agrees to submit the exclusive jurisdiction of the Courts of the State of Victoria in the event of any dispute between it and BPT, concerning the Goods or these Terms and Conditions.