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## Sunway Totalrubber Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Sunway Totalrubber” means Sunway Totalrubber Ltd, its successors and assigns or any person acting on behalf of and with the authority of Sunway Totalrubber Ltd.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting Sunway Totalrubber to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and  
(b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and  
(c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by Sunway Totalrubber to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between Sunway Totalrubber and the Customer in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and Sunway Totalrubber.
- 2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Sunway Totalrubber and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Sunway Totalrubber reserves the right to refuse delivery.
- 2.5 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Sunway Totalrubber reserves the right to vary the Price with alternative Goods as per clause 5.2.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Sunway Totalrubber shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):  
(a) resulting from an inadvertent mistake made by Sunway Totalrubber in the formation and/or administration of this contract; and/or  
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Sunway Totalrubber in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Sunway Totalrubber; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Customer shall give Sunway Totalrubber not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Sunway Totalrubber as a result of the Customer’s failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Sunway Totalrubber’s sole discretion, the Price shall be either:  
(a) as indicated on any invoice provided by Sunway Totalrubber to the Customer; or  
(b) the Price as at the date of delivery of the Goods according to Sunway Totalrubber’s current price list; or  
(c) Sunway Totalrubber’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Sunway Totalrubber reserves the right to change the Price if a variation to Sunway Totalrubber’s quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Sunway Totalrubber in the cost of taxes, levies, materials and labour) will be charged for on the basis of Sunway Totalrubber’s quotation and will be detailed in writing, and shown as variations on Sunway Totalrubber’s invoice. The Customer shall be required to respond to any variation submitted by Sunway Totalrubber within ten (10) working days. Failure to do so will entitle Sunway Totalrubber to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At Sunway Totalrubber’s sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Sunway Totalrubber, which may be:  
(a) on delivery of the Goods;  
(b) the date specified on any invoice or other form as being the date for payment; or  
(c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Sunway Totalrubber.
- 5.5 Payment may be made by bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Sunway Totalrubber.
- 5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Sunway Totalrubber nor to withhold payment of any invoice because part of that invoice is in dispute.

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5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Sunway Totalrubber an amount equal to any GST Sunway Totalrubber must pay for any supply by Sunway Totalrubber under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 6. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at Sunway Totalrubber's address.
- 6.2 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of Sunway Totalrubber for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
- 6.3 The costs of carriage and any insurance which the Customer reasonably directs Sunway Totalrubber to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent.
- 6.4 Where there is no agreement that Sunway Totalrubber shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.
- 6.5 Sunway Totalrubber may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 6.6 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.7 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
- (a) such discrepancy in quantity shall not exceed 10%, and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.8 The failure of Sunway Totalrubber to deliver shall not entitle either party to treat this contract as repudiated.
- 6.9 Sunway Totalrubber shall not be liable for any loss or damage whatever due to failure by Sunway Totalrubber to deliver the Goods (or any of them) promptly or at all.

### 7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Sunway Totalrubber is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Sunway Totalrubber is sufficient evidence of Sunway Totalrubber's rights to receive the insurance proceeds without the need for any person dealing with Sunway Totalrubber to make further enquiries.
- 7.3 If the Customer requests Sunway Totalrubber to leave Goods outside Sunway Totalrubber's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 7.4 The Customer acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Sunway Totalrubber will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 7.5 The Customer acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 7.6 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

### 8. Access

- 8.1 The Customer shall ensure that Sunway Totalrubber has clear and free access to the delivery site at all times to enable them to provide Goods. Sunway Totalrubber shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Sunway Totalrubber.

### 9. Title

- 9.1 Sunway Totalrubber and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Sunway Totalrubber all amounts owing to Sunway Totalrubber; and
  - (b) the Customer has met all of its other obligations to Sunway Totalrubber.
- 9.2 Receipt by Sunway Totalrubber of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Sunway Totalrubber on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Sunway Totalrubber and must pay to Sunway Totalrubber the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Sunway Totalrubber and must pay or deliver the proceeds to Sunway Totalrubber on demand.

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- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Sunway Totalrubber and must sell, dispose of or return the resulting product to Sunway Totalrubber as it so directs.
- (e) the Customer irrevocably authorises Sunway Totalrubber to enter any premises where Sunway Totalrubber believes the Goods are kept and recover possession of the Goods.
- (f) Sunway Totalrubber may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Sunway Totalrubber.
- (h) Sunway Totalrubber may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 10. Personal Property Securities Act 2009 (“PPSA”)

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Sunway Totalrubber for Services – that have previously been supplied and that will be supplied in the future by Sunway Totalrubber to the Customer.
- 10.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Sunway Totalrubber may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Sunway Totalrubber for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Sunway Totalrubber;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Sunway Totalrubber;
  - (e) immediately advise Sunway Totalrubber of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 Sunway Totalrubber and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Sunway Totalrubber, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Sunway Totalrubber under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 11. Security and Charge

- 11.1 In consideration of Sunway Totalrubber agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Sunway Totalrubber from and against all Sunway Totalrubber's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Sunway Totalrubber's rights under this clause.
- 11.3 The Customer irrevocably appoints Sunway Totalrubber and each director of Sunway Totalrubber as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

### 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Sunway Totalrubber in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Sunway Totalrubber to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 Sunway Totalrubber acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Sunway Totalrubber makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Sunway Totalrubber's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Sunway Totalrubber's liability is limited to the extent permitted by section 64A of Schedule 2.

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- 12.6 If Sunway Totalrubber is required to replace the Goods under this clause or the CCA, but is unable to do so, Sunway Totalrubber may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Sunway Totalrubber's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Sunway Totalrubber at Sunway Totalrubber's sole discretion;
  - (b) limited to any warranty to which Sunway Totalrubber is entitled, if Sunway Totalrubber did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
  - (b) Sunway Totalrubber has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Sunway Totalrubber shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by Sunway Totalrubber;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Sunway Totalrubber may in its absolute discretion accept non-defective Goods for return in which case Sunway Totalrubber may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if Sunway Totalrubber is required by a law to accept a return then Sunway Totalrubber will only accept a return on the conditions imposed by that law.

### 13. Intellectual Property

- 13.1 Where Sunway Totalrubber has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Sunway Totalrubber. Under no circumstances may such designs, drawings and documents be used without the express written approval of Sunway Totalrubber.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Sunway Totalrubber will not cause Sunway Totalrubber to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Sunway Totalrubber against any action taken by a third party against Sunway Totalrubber in respect of any such infringement.
- 13.3 The Customer agrees that Sunway Totalrubber may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Sunway Totalrubber has created for the Customer.

### 14. Default and Consequences of Default

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Sunway Totalrubber's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Sunway Totalrubber any money the Customer shall indemnify Sunway Totalrubber from and against all costs and disbursements incurred by Sunway Totalrubber in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Sunway Totalrubber's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Sunway Totalrubber may have under this contract, if a Customer has made payment to Sunway Totalrubber, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Sunway Totalrubber under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 14.4 Without prejudice to Sunway Totalrubber's other remedies at law Sunway Totalrubber shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Sunway Totalrubber shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Sunway Totalrubber becomes overdue, or in Sunway Totalrubber's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by Sunway Totalrubber;
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 15. Cancellation

- 15.1 Without prejudice to any other remedies Sunway Totalrubber may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Sunway Totalrubber may suspend or terminate the supply of Goods to the Customer. Sunway Totalrubber will not be liable to the Customer for any loss or damage the Customer suffers because Sunway Totalrubber has exercised its rights under this clause.
- 15.2 Sunway Totalrubber may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. Sunway Totalrubber shall not be liable for any loss or damage whatsoever arising from such cancellation.

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- 15.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Sunway Totalrubber as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 16. Privacy Act 1988

- 16.1 The Customer agrees for Sunway Totalrubber to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Sunway Totalrubber.
- 16.2 The Customer agrees that Sunway Totalrubber may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.3 The Customer consents to Sunway Totalrubber being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Customer agrees that personal credit information provided may be used and retained by Sunway Totalrubber for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.5 Sunway Totalrubber may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
  - (b) name of the credit provider and that Sunway Totalrubber is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Sunway Totalrubber has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Sunway Totalrubber, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Customer shall have the right to request (by e-mail) from Sunway Totalrubber:
- (a) a copy of the information about the Customer retained by Sunway Totalrubber and the right to request that Sunway Totalrubber correct any incorrect information; and
  - (b) that Sunway Totalrubber does not disclose any personal information about the Customer for the purpose of direct marketing.
- 16.8 Sunway Totalrubber will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Customer can make a privacy complaint by contacting Sunway Totalrubber via e-mail. Sunway Totalrubber will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 17. Unpaid Seller's Rights

- 17.1 Where the Customer has left any item with Sunway Totalrubber for repair, modification, exchange or for Sunway Totalrubber to perform any other service in relation to the item and Sunway Totalrubber has not received or been tendered the whole of any monies owing to it by the Customer, Sunway Totalrubber shall have, until all monies owing to Sunway Totalrubber are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of Sunway Totalrubber shall continue despite the commencement of proceedings, or judgment for any monies owing to Sunway Totalrubber having been obtained against the Customer.

### 18. Service of Notices

- 18.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;

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- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 19. Trusts

- 19.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Sunway Totalrubber may have notice of the Trust, the Customer covenants with Sunway Totalrubber as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Customer will not without consent in writing of Sunway Totalrubber (Sunway Totalrubber will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

### 20. Dispute Resolution

- 20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Sunway Totalrubber has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 21.3 Subject to clause 12 Sunway Totalrubber shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Sunway Totalrubber of these terms and conditions (alternatively Sunway Totalrubber's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 Sunway Totalrubber may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of Sunway Totalrubber.
- 21.6 Sunway Totalrubber may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Sunway Totalrubber's sub-contractors without the authority of Sunway Totalrubber.
- 21.7 The Customer agrees that Sunway Totalrubber may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Sunway Totalrubber to provide Goods to the Customer.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.