

Terms and Conditions of Sale

"TOTALRUBBER" in these Terms and Conditions of Sale is Total Rubber Services (Aust) Pty Ltd ACN 006 156 878/
TOTALRUBBER LTD ACN 11 103212353 trading as "TOTALRUBBER" of 6-8 Siddons Way, Hallam, Victoria.
TOTALRUBBER LTD as agent for Total Rubber Services Franchising Pty Ltd.

ORDERS

The Buyer, by ordering the goods from TOTALRUBBER, acknowledges and agrees:

- that it is expressly contracting with Total Rubber on these Terms and Conditions of Sale; and
- to be bound by these Terms and Conditions of Sale, unless otherwise expressly agreed to in writing by Total Rubber and:
 - these Terms and Conditions of Sale are current as at the date on which they are delivered to the Buyer;
 - TOTALRUBBER may revise these Terms and Conditions of Sale and provide updated Terms and Conditions of Sale to the Buyer; and
 - the Buyer must comply with the revised Terms and Conditions of Sale within 30 days of them being delivered to the Buyer.

TOTALRUBBER will not be bound to supply any goods to the Buyer until TOTALRUBBER raises an invoice in respect of any quote to supply goods.

The minimum order for the Buyer, if located within Australia is \$30.00 net value per order or, if located outside Australia, the minimum order is \$200.00 net value per order.

PRICING AND PAYMENT

Unless otherwise agreed in writing, all sales are made at TOTALRUBBER's price at the time of delivery, including goods placed on back order which may be subject to price variations between order and delivery.

The price of goods quoted by TOTALRUBBER or on TOTALRUBBER's price list is exclusive of GST. In addition to the price payable for the goods, the Buyer must pay to TOTALRUBBER, on demand, the GST payable in respect of the supply of those goods. For the purposes of these Terms and Conditions of Sale, "GST" has the same meaning as that word is given in the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Unless otherwise agreed in writing all prices are strictly net and the Buyer must pay the full purchase price of the goods as set out on TOTALRUBBER's invoice within 30 days after the month of delivery.

Payment by the Buyer, if located within Australia, may be made by Visa, Mastercard or Bankcard. Payment by the Buyer, if located outside Australia, is to be by one of the following methods – irrevocable letter of credit, telegraphic transfer bank to bank, Visa or Mastercard. Open accounts may be opened by arrangement.

DELIVERY

All shipments are FOB unless special arrangements have been agreed. Consult TOTALRUBBER for details.

Where a delivery date is specified, TOTALRUBBER will use its best endeavours to deliver the goods on the due date. TOTALRUBBER may unilaterally delay or suspend any delivery for any period or cancel any agreement for sale without any liability whatsoever.

The Buyer must notify TOTALRUBBER of any shortages in orders within 3 days of delivery, otherwise the Buyer will be deemed to have accepted the order.

SPECIFICATION CHANGES

TOTALRUBBER reserves the right to alter designs and specifications when conditions warrant without notice.
For critical applications technical advice should be requested before ordering.

RETURNS AND WARRANTY

A 10% handling fee will be levied for goods returned which are incorrectly ordered or surplus to requirement.

No goods will be accepted for return without prior notice.

No claims or return of goods will be accepted after 7 days from the date of delivery of the goods.

All claims, requests for credit, or return of goods must quote the delivery docket number or invoice number that goods were supplied against.

No returns will be accepted of cut lengths of hose or goods manufactured specifically for any customer.

Freight must be prepaid on all returns.

TOTALRUBBER warrants its products to be free from defects in material and workmanship but, to the extent permitted by law, limits its obligations to replacing goods, which after examination by TOTALRUBBER are deemed to be defective. **The Buyer must notify TOTALRUBBER of any defects in goods within 90 days of shipment.**

PROPERTY AND RISK

Property in the goods will remain with TOTALRUBBER until TOTALRUBBER has been paid in full for the goods under all individual contracts for the supply of the goods between TOTALRUBBER and the Buyer. While the goods remain the property of TOTALRUBBER, the Buyer agrees with TOTALRUBBER that:

- the Buyer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debtor obligation TOTALRUBBER owes to the Buyer;
- the Buyer cannot claim any lien over the goods;
- the Buyer will not create any absolute or defeasible interest in the goods in relation to any third party, except with TOTALRUBBER's prior written consent;
- the Buyer is a bailee of the goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the goods until the price of the goods has been paid in full;
- pending payment in full for the goods, the Buyer:
 - must not supply any of the goods to any person outside its ordinary or usual course of business;
 - must not allow any person to have or acquire any security interest in the goods;
 - must insure the goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;
 - must not remove, deface or obliterate any identifying mark or number on any of the goods.

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Despite any other provision of these Terms and Conditions, if the Buyer supplies any of the goods to any person before all the money payable by the Buyer has been paid to TOTALRUBBER (and has not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:

- it holds the proceeds of re-supply of the goods on trust for and as agent for TOTALRUBBER immediately when they are receivable or are received;
- it must either pay the amount of the proceeds of re-supply to TOTALRUBBER immediately when they are received or pay those proceeds into a bank account as trustee for TOTALRUBBER;
- if the Buyer fails to pay for the goods within the period of credit extended by TOTALRUBBER to the Buyer, TOTALRUBBER may recover possession of the goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that TOTALRUBBER has an irrevocable licence to do so without incurring any liability to the Buyer or any person claiming through the Buyer.
- if required, it will assign to TOTALRUBBER any rights to any outstanding money relating to the re-supply of the goods. The Buyer irrevocably appoints TOTALRUBBER or its nominee as its attorney to sign all documents and do all things necessary to assign the debts to TOTALRUBBER under this clause, where the Buyer has failed to do so within 7 days of receiving written notice to do so, and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of debts.

For the purpose of determining which goods have not been paid for, the Buyer will be deemed to have re-supplied the goods on a FIFO basis.

The risk in the goods will transfer to the Buyer on delivery to the Buyer.

LIABILITY

TOTALRUBBER will not be liable for any claim, loss or expense whatsoever or howsoever arising which is made after the expiration of 3 days from the date of delivery or the date of the invoice (whichever is later).

TOTALRUBBER will not, to the extent permitted by law, be subject to any liability which exceeds the replacement value of the subject goods. TOTALRUBBER will not be liable for any contingent, consequential or punitive damages arising in any way whatsoever. The Buyer acknowledges this express limitation of liability and agrees to limit any claim accordingly.

TOTALRUBBER will not be liable for any claim, loss or expense sustained or incurred by any person arising in any way as a result of the unavailability of goods, any delay in delivery of the goods or any failure to deliver goods.

Any advice, recommendation, information or representation provided by TOTALRUBBER as to the quality or performance of the goods or their suitability for a particular purpose or otherwise in relation to the goods is given in good faith but without any liability or responsibility on the part of TOTALRUBBER. The Buyer acknowledges that it has not relied upon or been induced by any representation of TOTALRUBBER.

DEFAULT

If the Buyer:

- fails to make any payment in accordance with these Terms and Conditions of Sale;
- fails to comply with any of these Terms and Conditions of Sale;
- being an individual commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation;
- enters into any composition or arrangement with creditors or if a receiver including a provisional receiver, or receiver and manager, trustee or administrator is appointed for any property or assets;
- has execution levied against it; or
- becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, then the Buyer will be in default under these Terms and Conditions of Sale and TOTALRUBBER may at its option and without prejudice to any of its rights under these Terms and Conditions of Sale or in law or equity, do one or more of the following:
- suspend or terminate any contract;
- require the payment of cash before or on delivery of any further goods;
- charge default interest on all overdue payments, at the rate of 12% per annum, calculated daily, from the due date for payment until paid in full;
- suspend any further deliveries and immediately recover possession of any goods not paid for in full and sell them;
- require that all money owing by the Buyer, regardless of the due date, be due and payable; and/or
- sue the Buyer for breach of contract.

GENERAL

No agent, employee or representative of TOTALRUBBER will have any authority whatsoever to bind TOTALRUBBER to any affirmation, representation, warranty or condition concerning the goods sold under these Terms and Conditions of Sale unless such affirmation, representation, warranty or condition is specifically included in writing within these Terms and Conditions of Sale.

The Buyer agrees that all contracts made with TOTALRUBBER will be deemed to be made in the State of Victoria and the Buyer agrees to submit to the jurisdiction of appropriate court in the State of Victoria.

The provisions of these Terms and Conditions of Sale will be separate and severable from each other to the extent that if any provision or provisions are considered to be inoperative then the remaining provision or provisions will be binding on and enforceable by the parties.

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

- "Buyer" means and includes the Buyer and any servant, agent, partner, contractor or employee of that person;
- "TOTALRUBBER" includes all TOTALRUBBER's employees and agents;
- a reference to "including" means "including without limitation";
- any agreement, warranty, representation or obligation which binds or benefits 2 or more persons, binds or benefits those persons jointly and severally; and
- "\$" or "dollars" is a reference to the lawful currency of Australia.