Baron Rubber Pty. Ltd. – General Terms and Conditions of Sale

1.0 Definitions

In these Terms, the following definitions apply;

"Agreement" means any agreement entered into for the provision of goods, products and services by Baron to the customer.

"Application" means the application by the Customer to Baron for commercial credit.

"Terms" means these Terms and Conditions of Trade.

"Customer" means a person, firm or corporation jointly or severally if there is more than one, acquiring goods and/or services from Baron.

"Goods" means any goods, products, services or materials to be supplied by Baron.

"Intellectual Property" means all copyright, patents, trademarks, designs, formulae, specifications, know-how, confidential information, manufacturing processes, and all modifications, improvements and derivations thereof, whether registered or registrable or not.

"Baron" means Baron Rubber Pty Ltd (ABN 94 005 178 549). For the avoidance of doubt, the Agreement is entered into solely with Baron and no related body corporate, parent, subsidiary or affiliate of Baron is bound by, or shall have any obligation or liability under, the Agreement. Where any obligation is, by operation of law, attributable to any such affiliate, the liability of Baron and any such affiliate shall be several and not joint or joint and several.

2.0 Basis of the Agreement

2.1 Unless otherwise agreed in writing by Baron, the Terms apply exclusively to each and every contract for the sale of Goods by Baron to the Customer and cannot be varied or supplanted by any other condition, including the Customer's terms and conditions of purchase (if any).

2.2 The Agreement is accepted by Baron when Baron confirms its acceptance of an offer from the Customer in writing (including by electronic means) or provides the Customer with the Goods.

2.3 The Terms may include additional terms in Baron's quotation which are not inconsistent with the Terms.

2.4 Baron in its absolute discretion may accept or refuse any offer.

2.5 It is the Customer's responsibility to provide Baron with its specific requirements in relation to the Goods and/or services.

2.6 Baron may vary or amend these Terms by notice in writing to the Customer at any time. Any variation or amendment will apply to orders placed by the Customer after the date of the notice.

3.0 Pricing

3.1 Unless otherwise expressly agreed, all pricing quoted is ex-works.

3.2 If the Customer requests any variation to the Goods, services and/or the Agreement, Baron may adjust the price to incorporate any such variation.

3.3 Prices and charges quoted for the supply of Goods will include the Goods and Services Tax and any other charges, duties and taxes imposed on or in relation to the Goods and services.

4.0 Payment

4.1 Payment for Goods is due and payable no later than 30 days of the end of the month in which Baron's invoice is raised.

4.2 Payment is not deemed to have been made until clear funds are available in the nominated Baron account.

4.3 Payment terms may be amended, varied or rescinded at the discretion of Baron immediately upon giving written notice to the Customer.

5.0 Retention of Title

5.1 It is expressly agreed that title in the Goods supplied shall not pass to the Customer until full payment has been received and clear funds are available to Baron.

5.2 Prior to the transfer of title in the Goods from Baron to the Customer, the Customer shall be bailee of the Goods for Baron only and the Customer expressly acknowledges that it owes a fiduciary duty to Baron not to deal with the Goods contrary to Baron's Trading Terms and Conditions.

5.3 The Goods or any part thereof delivered shall nevertheless be at the Customer's risk from the time of delivery to its premises and the Customer shall indemnify Baron against all loss or damage to the Goods from whatsoever cause after such time.

6.0 Risk & Insurance

6.1 All risk relating to theft, damage or otherwise in respect of the Goods will pass to the Customer immediately the Goods have been delivered.

6.2 All Goods are sold to the Customer on the basis that the Customer has obtained all necessary licences and permits under all relevant laws and regulations for the Goods.

6.3 The Customer assumes all risks and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the Goods sold by Baron, whether the Goods are used singularly~~,~~ or in combination with other substances or processes.

7.0 Warranty

7.1 If it deems it necessary, Baron at its discretion will repair, replace or resupply any Goods or services that do not meet the standard specified in the product description provided that the Goods may have acceptable variance and subject to clauses 7.2 to 7.6.

7.2 Provision of the Warranty is subject to the Customer trading within the terms as stated in clause 4.1 and to written notice from the Customer within 30 days of delivery of any Goods or services that do not meet the specifications or that are defective. No claim under this clause 7 will be accepted after that 30 day period.

7.3 The Warranty excludes damage or alteration to the Goods or services arising from circumstances outside the control of Baron, including without limitation where the Goods or services are not used for their intended purpose, or where the Goods or any part of them have been treated, processed or changed in any manner. Without limitation, the Warranty also excludes any defect, damage or non-conformance arising from or contributed to by: (a) failure to follow Baron's or the manufacturer's instructions, recommendations, drawings or specifications; (b) negligence, accident, misuse, mishandling, abuse or improper storage, installation, operation or maintenance; (c) normal wear and tear, fair use deterioration or exposure to environmental conditions for which the Goods are not designed; (d) unauthorised modification, alteration, repair, disassembly or attempts to remedy a defect by the Customer or any third party; or (e) combination, processing or use of the Goods with other materials, substances, equipment or processes not approved by Baron in writing.

7.4 Any repair, replacement or resupply provided under this clause 7 shall not restart, extend or otherwise alter the original warranty period, and the choice of remedy (repair, replacement or resupply) is at Baron's sole option. To the fullest extent permitted by law, the remedies set out in this clause 7 are the Customer's sole and exclusive remedies in respect of any defect, non-conformance or breach of warranty in relation to the Goods or services, and are in lieu of all other warranties, conditions, terms, undertakings or representations of any kind, express or implied, statutory or otherwise.

7.5 Unless Baron expressly agrees otherwise in writing, the costs of removal, dismantling, reinstallation, transport, freight, travel, labour and any related expenses incurred in connection with any warranty claim shall be borne solely by the Customer.

8.0 Credit

8.1 Baron may grant the Customer credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by Baron.

8.2 The granting of credit does not oblige Baron to extend any particular amount of credit to the Customer.

8.3 Baron may at its discretion request that a satisfactory form of security be placed and held as a means of warranty against future payment.

9.0 Law & Jurisdiction

9.1 The Terms shall be governed by and construed in accordance with the law of the State of Victoria, Australia and the parties agree to submit to the exclusive jurisdiction of the Courts of that jurisdiction, to the exclusion of the Courts of any other jurisdiction which may otherwise be available.

10.0 Cancellations

10.1 Purchase Orders may not be cancelled nor Goods returned without Baron's prior written consent and on terms satisfactory to Baron including, without limitation, that the Customer indemnify Baron against all loss suffered by Baron in cancelling the order or returning the Goods (as the case may be).

11.0 Default

11.1 If an insolvency event occurs in relation to the Customer or any other event occurs which gives Baron reasonable grounds for doubting the credit of the Customer, Baron may by notice, at its option and without prejudice to any other right it may have, suspend or terminate a contract or require payment before or on delivery of the Goods.

12.0 Force Majeure

12.1 Neither party will be liable to the other if performance of its obligations to the other party is delayed, impeded or prevented by any act or event beyond the reasonable control of that party, whether foreseen or not including without limitation acts of God, natural disasters, epidemics or pandemics, war, terrorism, civil unrest, fire, flood, strikes, lock-outs or other industrial disputes, embargoes, sanctions, governmental or regulatory action, transport disruption or failure of utilities or supply chains (a **Force Majeure** event).

12.2 The party affected by a Force Majeure event shall give prompt written notice to the other party of the occurrence, the obligations affected and, so far as is reasonably ascertainable, the expected duration of the event. The affected party shall use commercially reasonable endeavours to mitigate the effects of the Force Majeure event and to resume performance as soon as reasonably practicable.

12.3 The performance of the affected party's obligations will be suspended for the duration of the Force Majeure event, and the affected party will not be liable for any delay or failure to perform during that period. The affected party shall notify the other party in writing as soon as it is able to resume performance.

12.4 If a Force Majeure event continues for a period of more than ninety (90) days from the date on which it commences, either party may terminate the affected Agreement by written notice to the other party, without liability except for obligations accrued prior to the date of termination.

13.0 Limitation of Liability

13.1 To the fullest extent permitted by applicable law, in no event shall Baron be liable to the Customer for any loss of profit, loss of use, loss of goodwill, loss of reputation, loss of revenue, loss of anticipated savings, loss of business, loss of contract, loss of data or loss of opportunity, or for any incidental, special, indirect or consequential loss or damage, or any punitive, exemplary or non-compensatory damages, incurred or sustained by the Customer arising out of or in connection with Baron's performance or non-performance of the Agreement, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, and whether or not Baron has been advised of the possibility of such loss or damage.

13.2 To the fullest extent permitted by applicable law, the total and aggregate liability of Baron under or in connection with the Agreement, whether arising in contract, tort (including without limitation negligence), breach of statutory duty

or otherwise, shall not exceed the price paid by the Customer to Baron for the Goods or services giving rise to the claim, or, where greater clarity is required, the aggregate amount paid by the Customer to Baron under the relevant order or purchase in the twelve (12) months immediately preceding the event giving rise to the claim. This limitation of liability shall apply notwithstanding anything to the contrary set forth elsewhere in the Agreement and irrespective of how any liability arises or is claimed.

13.3 No liquidated damages, delay damages or similar pre-agreed compensation are payable by Baron unless expressly agreed in writing between the parties. Where any such damages are expressly agreed in writing, they shall be capped at ten per cent (10%) of the price of the delayed Goods or services and shall be the Customer's sole and exclusive remedy for delay.

13.4 For the avoidance of doubt, Baron's product liability arising under or in connection with the Agreement shall be limited to that imposed by mandatory applicable law in the relevant jurisdiction. Nothing in the Agreement is intended to exclude, restrict or modify any right or remedy of the Customer that cannot lawfully be excluded, restricted or modified, including under the Australian Consumer Law; however, where Baron's liability for breach of any such right or remedy can lawfully be limited, Baron's liability is limited, at Baron's option, to the repair, replacement or resupply of the Goods or services or payment of the cost of doing so.

14.0 Intellectual Property

14.1 Except as expressly set forth in the Agreement, as between the parties, each party is and shall remain the owner of all Intellectual Property that it owns or controls as at the date of the Agreement, or that it independently develops during the term of the Agreement. Nothing in the Agreement transfers, assigns or licenses any Intellectual Property of one party to the other party, save as expressly set out in writing.

14.2 Without limiting clause 14.1, Baron shall retain ownership of all Intellectual Property owned or developed by Baron prior to or during the course of the Agreement, including without limitation all formulae, specifications, designs, drawings, manufacturing processes, know-how and improvements relating to the Goods. The supply of the Goods does not transfer or grant any right, title or interest in such Intellectual Property to the Customer.

14.~~1~~3 If the Customer gives instructions to Baron with respect to the manufacture, packaging, sale or supply of the Goods, the Customer warrants to Baron that adherence by Baron to such instructions will not infringe the Intellectual Property rights of any other person. The Customer shall indemnify and hold Baron harmless against all claims, losses, damages, costs and expenses (including legal costs on a full indemnity basis) arising out of or in connection with any breach of that warranty or any actual or alleged infringement of third party Intellectual Property rights resulting from Baron's adherence to the Customer's instructions.

15.0 Export Control, Sanctions and Trade Compliance

15.1 The Customer shall comply with all applicable export control, customs, sanctions, embargo and anti-boycott laws and regulations of the United Nations, the European Union, the United States of America, the United Kingdom, the Commonwealth of Australia and any other relevant jurisdiction, including those of the country of destination and any country of transit (Trade Control Laws).

15.2 The Customer shall not, and shall procure that its affiliates and customers shall not, directly or indirectly export, re-export, resell, supply, transfer, divert or otherwise make available any Goods (or any products incorporating the Goods) to or for the benefit of: (a) any person, entity, vessel or destination that is the subject of any Trade Control Laws; (b) any sanctioned or restricted party; or (c) any prohibited military, nuclear, chemical, biological or weapons-related end use or end user.

15.3 The Goods are supplied for civil end use only. The Customer shall include obligations equivalent to this clause 15 in its contracts with its own customers and shall, on request, provide Baron with such information and documentation as Baron reasonably requires to verify compliance with this clause 15.

15.4 The Customer shall indemnify Baron against all costs, losses, fines, penalties, damages and expenses (including legal costs) suffered or incurred by Baron arising out of or in connection with any breach of this clause 15 by the Customer or its affiliates or customers.

15.5 Notwithstanding any other provision of the Agreement, Baron may suspend or terminate the Agreement, or any order or delivery under it, immediately by written notice and without liability or penalty if, in Baron's reasonable opinion, the Customer is in breach of this clause 15 or if continued performance would expose Baron to any actual or potential liability, sanction, restriction or reputational risk under any Trade Control Laws.

16.0 Product Recall

16.1 The Customer shall not initiate, conduct or require any recall, field action, customer notice, retrofit or similar campaign in respect of the Goods (a Recall Action) without Baron's prior written consent, unless and to the extent such Recall Action is required by mandatory applicable law. The Customer shall notify Baron promptly in writing of any matter that may give rise to a Recall Action and shall consult with Baron in good faith before taking any such action.

16.2 Any liability of Baron in respect of a Recall Action is subject to clause 13 (Limitation of Liability) and shall be reduced to the extent that the matter giving rise to the Recall Action is caused or contributed to by the act, omission, negligence or breach of the Customer or any third party.

17.0 Severability

17.1 Any provision of these Terms which is invalid in any jurisdiction is invalid in that jurisdiction to that extent only, without invalidating or affecting the remaining provisions of these Terms or the validity of that provision in any other jurisdiction.