

TOYO'S TERMS & CONDITIONS OF SALE

FFIN026 Version 1 Sept 2013 (attachment to Toyo credit application FFIN007/C v4)

TERMS

1. This Commercial Credit Account commences on its signing by you.
2. This Commercial Credit Account ends upon its termination under clause 27.

ORDERING PRODUCTS

3.
 - (a) If you require any Products, you may give Toyo Australia a request that includes details of the Products required.
 - (b) Toyo Australia may provide a quotation and delivery timeframe for the provisions of the Products at a quoted price (the **Proposal**).
 - (c) Toyo Australia will give the Proposal in writing.
 - (d) You may accept the Proposal provided by giving Toyo Australia a Purchase Order in a form as agreed by Toyo Australia from time to time for the Products priced at the amount or rates quoted in the Proposal.
 - (e) If you give a Purchase Order to Toyo Australia, a contract between you and Toyo Australia for the provision of the Products detailed in the Purchase Order is formed on the terms and conditions contained herein and the Proposal.
 - (f) No obligation in respect of particular Products to be provided will arise between the Parties unless and until a Purchase Order has been given by you to Toyo Australia for those Products in accordance with clause 3(d).
4. You acknowledge and agree that Toyo Australia does not make any representation or warranty, and is no way obliged, to provide a Proposal or supply Products.

PRODUCTS, SERVICES AND DOCUMENTATION

5. Toyo Australia will, for the price according to each Purchase Order and upon these Terms and Conditions of Sale:
 - (a) supply the Products;
 - (b) perform the Services;
 - (c) supply the Documentation; and
 - (d) comply with its obligations under these Terms and Conditions of Sale.

6. In supplying the Products, Toyo will:

- (e) comply with any reasonable directions from you;
- (f) liaise with you as and when you require about the performance of its obligations;
- (g) perform its obligations in a timely and businesslike manner;
- (h) in relation to the Products and Documentation provided by Toyo, they:
 - (i) will substantially comply with the specifications set out in the Purchase Order;
 - (ii) be new and comply with the highest relevant commercially acceptable standards;
- (i) in relation to the Services they will be provided by Toyo using a high degree of professional standards and all due skill, care and diligence; and
- (j) in relation to the Documentation it will:
 - (i) be written in English and be complete and accurate; and
 - (ii) be fit for purpose.

7. You acknowledge and agree that Toyo may, from time to time, having notified and obtained your approval substitute ingredients used in manufacture at its discretion, providing that the Products comply with clause 6.

PAYMENT FOR THE PRODUCTS

8. Subject to clause 9 you will pay the price for each Purchase Order within thirty (**30**) days of the end of the month of receipt of a Tax Invoice.

9. You acknowledge that Toyo is under no obligation to provide credit to you except as provided in any Purchase Order and may in its discretion require you to pay the price in full and in cleared funds prior to importing or delivering the Products.

PRICES

10.

- (a) The prices charged and payable will be Toyo's prices at the date the Products are delivered to you as agreed on the Purchase order.
- (b) Toyo is entitled without notice to you to adjust the selling price of the Products whether before or after acceptance of the Products, in the event of and to take account of any increase in the cost including any of the following items:
 - (a) the manufacturer's price to Toyo;
 - (b) freight, including cost of over-carriage;
 - (c) insurance;
 - (d) exchange rates;
 - (e) raw material cost increase;
 - (f) manufacturing cost increases;
 - (g) quarantine, customs or port charges, demurrages, and
 - (h) duty, charge or levy in respect of the import of Products or charges in the classification or value of Products for customs purposes.
- (c) In the case of export sales on a Free on Board, Contract, Insurance and Freight or Contract and Freight basis customs duty, excise duty and governmental imposts are not included in prices quoted and will appear in your account.

TITLE AND RISK

11.

Unless otherwise agreed in writing, risk in the Products will pass to you upon the sooner of the happening of:

- (a) the loading of the Products on an outside carrier vehicle or your carrier; or
- (b) delivery to you, his carrier or agent.

Property and ownership in the property supplied by Toyo to you will not pass to you until all Products supplied on these Terms and Conditions or on similar terms by Toyo to you ("Current Account Products") have been paid for in full.

Until property and ownership in the Current Account Products passes from Toyo to you:

- (a) you will keep them separately identified and stored in such manner as to show clearly that they are the property of Toyo;

- (b) you will, at its expense, insure the Products for their full value; and
- (c) You as a fiduciary for Toyo may sell them in the ordinary course of its business.

If you default in payment of the purchase price in accordance with these Terms and Conditions the Commercial Credit Account terminates in accordance with these Terms and Conditions for any reason, Toyo and its employees or agents will have the right to enter upon your premises or any other premises where the Products are known to be stored to repossess the Products and for this purpose you will grant all reasonable access rights. Upon repossession of the Products by Toyo, but not until then, the risk in the Products must revert to Toyo.

GST

12. The price set out in the Proposal excludes GST for taxable supplies, as defined in the GST Law. You agree, as part of the price, to pay GST for taxable supplies made under the Terms and Conditions or the relevant Purchase Order.

DELIVERY

13. Toyo will deliver the Products which comply with clause 6 at the times and places specified in the Purchase Order.

14. If the Products include installation or integration of the Products, Toyo must install and integrate the Products at the time of times specified in the Proposal and Purchase Order.

15. Toyo must supply the Documentation no later than the time required for the delivery of the Products or performance of the Services to which it relates.

16. Toyo will arrange delivery to you at your address set out in the details. Such delivery will be through a company that Toyo considers reputable.

RETURNING PRODUCTS

17. You may return the Products to Toyo in writing within 21 days of delivery if the Products do not meet specifications and the Products are in the same condition as they were when delivered. Toyo in its absolute discretion will decide if it will accept the return of the Products. You acknowledge that you must pay all expenses associated with this transaction, including freight and insurance costs. If Toyo accepts the Products, a credit will be provided to you to an amount agreed between the parties.

DISPUTE RESOLUTION

18. If a dispute arises out of or in relation to these Terms and Conditions or a Purchase Order no party will start arbitration or court proceedings (except proceedings seeking interlocutory relief) unless it has complied with clauses 19 to 24.

19. The parties agree to work cooperatively to resolve disputes wherever possible by direct negotiation.

20. Where a dispute arises a party will give the other party a notice setting out the details of the dispute and their proposed method of resolution (**Dispute Notice**).

21. Within five (**5**) working days of receipt of a Dispute Notice, the parties must respond in writing setting out their position and any option to resolve the dispute amicably (**Dispute Reply**).

22. The parties' representatives must meet within five (**5**) working days of the date of the Dispute Reply to attempt to resolve the dispute.

23. Where there is no resolution of the dispute within 20 business days of the meeting held under clause 22, the dispute will be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules. The parties will bear the cost of such mediation equally.

24. The parties agree that these Terms and Conditions and any Dispute are subject to the jurisdiction of the Courts of New South Wales.

LIMITATION OF LIABILITY

25.

(a) Neither party shall be liable to the other for any loss to the extent it is for indirect or consequential loss arising from or related in any way to the Products or these Terms and Conditions (including negligence and breach of contract), provided, however, that this exclusion does not operate exclude liability for loss which would be fairly and reasonably considered as arising naturally from a breach of these Terms and Conditions.

(b) Subject to paragraph (c), the total liability of either party to the other arising from or related in any way to these Terms and Conditions (including negligence and breach of contract) is limited to \$10 million.

- (c) The limitation in paragraph (b) does not apply in respect of any liability for fraud, willful misconduct or willful breach or for any liability arising under any law which cannot be excluded.

INTELLECTUAL PROPERTY

26.1 Ownership of rubber compound formula.

If the Products relate to rubber products:

- i. Toyo owns compounds it develops for you or provides to you; and
- ii. you own compounds you provide to Toyo for manufacture or processing.

26.2 You indemnify and hold Toyo free from any claim, loss or damage that may arise from the possession and use of any compound or feedstock for Products which is provided by you to Toyo.

26.3 You warrant that any compound or feedstock provided by you to Toyo is owned by you and fit for the purpose for which you have provided it to Toyo.

26.4 Toyo and you hereby agree that any information regarding the Products which is not in the public domain is confidential and must not be disclosed to any third party without the consent of the other party, such confidential information includes but is not limited to: product specifications, manufacturing processes and proprietary formulas.

TERMINATION

27.1 Toyo may terminate the Commercial Credit Account, If you:

- (a) fail to make any payment due under this contract or commits any other breach of any of your obligations under this contract;
- (b) are unable or deemed to be unable to pay its debts as and when they fall due;
- (c) suffers execution against it, or a Mortgagee or agent of a Mortgagee enters into possession of all or any part of the Property of the Buyer;
- (d) commit an act of bankruptcy or insolvency;
- (e) make any composition or arrangements with creditors; or
- (f) being a company, passes a resolution for winding up or has a receiver, manager, or administrator appointed over any of its property or has a winding up petition presented against it.

27.2 Toyo (in addition to any other remedies hereby or by any statute conferred) may at its option withhold further deliveries and treat the contract as terminated and any part of the

purchase price then unpaid whether or not payable under the Commercial Credit Account will immediately become due and payable and such termination will be without prejudice to any claim or rights Toyo may possess.

27.3 For avoidance of doubt your rights, in the ordinary course of its business in a fiduciary capacity for the Seller, to sell the Products ceased automatically upon the termination of the contract.

27.4 Subject to any restriction imposed by law, Toyo will be deemed for the purposes of the Corporations Act to have entered possession, assumed control or exercised a power in relation to Products supplied under the Commercial Credit Account.

- (a) In the event that Toyo repossesses the Products, your liability to Toyo will be reduced according to the value of the Products which are repossessed but such reduction cannot be utilised by you until the value of the repossessed Products is established in accordance with the following paragraphs (b) and (c) and until the value is established you will be liable to Toyo without reduction in respect of the repossessed Products.
- (b) In the three month period following repossession of the Products, Toyo will exercise reasonable endeavours to sell all or part of the Products for a reasonable price in all of the circumstances.
- (c) The value of the repossessed Products will be calculated by reference to the price paid for all or part of the Products sold at any sale achieved within the three months of the date of repossession of those Products by Toyo, but if any of the Products repossessed remain unsold after that three month period then there will be no reduction in your liability as a consequence of the repossession of those Products.

DICTIONARY

28 Further Definitions.

The following definitions apply in these Terms and Conditions:

Dispute Notice is defined in clause 20.

Dispute Reply is defined in clause 21.

Documentation means all documentation, including supplier instructions, user manuals, manufacturer or supplier warranties and guarantees needed to fully and properly use Products, including the material described in the Specifications.

GST Law means any laws in effect in Australia imposing a tax on the supply of Products and services.

Insolvent means being insolvent, under administration or having a controller appointed (each as defined in the Corporations Act), or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

Price means the total price payable for the Products and is the amount quoted in a Proposal and payable under a Purchase Order.

Products are the products purchased under a Purchase Order pursuant to the Commercial Credit Account and include the Products, Services and Documentation as applicable.

Proposal is defined in clause 3 (b).

Purchase Order means an order for Products given in accordance with clause 3 (d).

Services means services purchased under the Commercial Credit Account.

Specifications are the specifications for the Products as set out in any Proposal or Purchase Order.

Tax Invoice means an invoice that complies with the obligations under this Contract and the GST Law.