

FEMV PROGRAM - USER TERMS AND CONDITIONS

By clicking the accept button or submitting a Request, You agree that You have read, understood and will be bound by these Terms.

1 Dictionary

In these Terms, the words below have the following meanings:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria, Australia.

Claim means a claim, action, proceeding, judgment or demand made or brought by or against a party, however arising and whether present, unascertained, future or contingent.

Confidential Information means all information and other content disclosed by TSA or Intertek to You and includes these Terms and the Verification Status of an End User but excludes information that:

- (a) You can prove by contemporaneous written documentation was in Your lawful possession before TSA or Intertek had any dealings with You or was independently generated by You or on Your behalf;
- (b) is in the public domain otherwise than as a result of a breach of these Terms or any other obligation of confidentiality owed to TSA or Intertek; or
- (c) was legally and properly obtained by You from any other source without restriction on further disclosure.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

DCCEEW means the Department of Climate Change, Energy, the Environment and Water.

End User means the person nominated as the 'End User' in the Request and who meets the requirements in clause 4.1.

Fees means any fees charged by TSA for facilitating and undertaking the Verification and providing the Services, being:

- (a) the fees charged by Intertek to TSA as set out in the User Manual; and
- (b) the expenses incurred by Intertek relating to the provision of the Services, provided they are approved in advance by You.

Force Majeure Event means any:

- (a) event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party; and
- (b) boycotts, strikes, lockout and other industrial disturbance, non-performance by third party suppliers or subcontractors, disruption to any part of the supply chain (including any illness in animals), any breakage, failure or malfunction of, or accident involving, any plant, equipment, machinery or other facility.

Governmental Agency means a government or a governmental, semi-governmental or judicial entity or authority including any Commonwealth or State government and any municipal authority or a self-regulatory organisation established under statute and includes DCCEEW.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world including but not

limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and right to protect trade secrets and know how, throughout the world for the full period of the rights and renewals and extensions.

Intertek means Intertek Testing Services (Australia) Pty Ltd (ABN 56 001 722 854).

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

PDH Services means services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Program means the Foreign End Market Verification program developed and operated by TSA which undertakes social assurance for entities participating in the global end-of-life tyre market.

Request means the order or other request submitted by You to TSA to undertake the Verification of the Site and Site Operations.

Services means the services to be provided, or procured, by TSA in facilitating and/or undertaking a Verification, including assessment activities to determine the Verification Status of the relevant End User.

Site means the site nominated as the 'Site' in the Request and which meets the requirements in clause 4.2.

Site Operations means the business and operations conducted at the Site, including the End User's operation of the Site.

Terms means these terms and conditions.

TSA means Tyre Stewardship Australia Limited (ABN 44 164 971 939).

TSA IP means Intellectual Property Rights in:

- (a) the documents and information provided to You by TSA or Intertek; and
- (b) any material created in connection with the Verification or these Terms (including any report).

User Manual means the user manual published by TSA in relation to the Program which will be accessible from [TSA's website](#).

You or Your means the person who accepted these Terms and submitted the Request.

Verification means verifying whether the Site and Site Operations meet the requirements to be verified under the Program.

Verification Status means whether the Site and Site Operations have been verified under the Program.

2 Requests

2.1 You acknowledge and agree that by submitting the Request You have made, subject to clause 2.3, an irrevocable offer to TSA for TSA to engage Intertek to undertake a Verification of the Site and Site Operations and to supply the Services on the terms of these Terms and the Request.

2.2 After receipt of Your Request, TSA will notify You if any Fees will be payable by You for the Verification (**Fee Notification**).

2.3 You must notify TSA within 30 days of receipt of the Fee Notification if You agree to pay the Fees and continue with Your Request and, if You do not provide such notification, You will be deemed to have revoked Your Request.

2.4 The Request becomes binding and a contract will be formed between You and TSA in respect of the Request upon the earlier of TSA:

- (a) notifying You that it accepts the Request;
- (b) accepting, in full or part, payment of any Fees from You for the Services the subject of the Request; or
- (c) providing the Services.

2.5 TSA is not bound to accept any Request and may decide not to accept any Request for any reason in its sole discretion, including without limitation if:

- (a) the End User does not meet the requirements of clause 4.1;
- (b) the Site does not meet the requirements of clause 4.2;

- (c) the End User is not willing to participate in the Program or provide TSA or Intertek with sufficient information to undertake the Verification;
- (d) the Site has already been Verified or is currently undergoing Verification;
- (e) the End User does not agree to the supplier terms and conditions of the Program; or
- (f) You do not have a business relationship with the End User.

2.6 A contract formed under clause 2.42-2 will comprise these Terms and the Request.

3 Requestor obligations

3.1 If You are not the End User, You must:

- (a) provide the End User with preliminary information about the Program to allow the End User to make an informed decision about their willingness to participate in the Program;
- (b) provide TSA with sufficient information about the End User to allow TSA to contact the End User and add them to the Program;
- (c) provide TSA with any assistance reasonably required by TSA to contact the End User; and
- (d) confirm with TSA that You have a business relationship with the End User and provide evidence of this if requested.

3.2 You must (regardless of whether or not You are the End User):

- (a) comply with the User Manual; and
- (b) not provide TSA or Intertek with any information which is unclear, erroneous, incomplete, misleading or false.

4 Verification

4.1 You acknowledge and agree that the End User must be a person or body corporate which is either:

- (a) a tyre retreading facility;
- (b) a facility which recycles or processes waste tyres or tyre derived material such as waste tyre shred or pieces; or
- (c) a user of waste tyre derived material (such as tyre derived fuel for the purpose of cement manufacture).

4.2 You acknowledge and agree that the Site must be a single operating facility owned and operated by the End User at a unique address that processes imported tyres or tyre-derived materials.

4.3 You acknowledge and agree that:

- (a) TSA and/or Intertek may contact the End User to provide the End User with information about the Program and to seek the End User's agreement to participate in the Program and Verification (including agreeing to the supplier terms and conditions of the Program) before including them in the Program;
- (b) TSA cannot compel the End User to participate in the Program or undertake Verification;
- (c) any Verification relates only to the Site and Site Operations and not:
 - (i) any other site which may be owned and / or operated by the End User; or
 - (ii) the End User or the End User's business;
- (d) any Verification may be revoked if the Site is no longer owned and operated by the End User;
- (e) TSA may make decisions about:
 - (i) the End User's and the Site's progress through the Program; and
 - (ii) whether or not the Site and Site Operations are verified under the Program and the period that any Verification Status is valid for;
- (f) TSA does not provide any guarantees:
 - (i) that the Site and Site Operations will achieve (or retain) verification under the Program; and
 - (ii) when the Verification will be completed or how quickly the End User and the Site may progress through the Verification;
- (g) upon Your request, TSA may (but is not obliged to) provide You with progress reports and updates regarding the Verification of the Site and Site Operations and You must treat any such information as confidential; and

- (h) failure by You or the End User to co-operate with TSA or Intertek or to provide TSA or Intertek with access to the Site or responses, information, material or other documentation may result in the non-completion or delay in the Verification of the Site and Site Operations.

4.4 If You are not the End User, You acknowledge and agree that:

- (a) TSA cannot provide details of assessment outcomes without permission from the End User (other than the Verification Status and a limited summary of the findings from the Verification); and
- (b) You can request more detailed information on the assessment outcomes of the Verification directly from the End User but You must treat any information provided by the End User as confidential.

4.5 Once the Verification has been completed, TSA will notify You of the Verification Status of the Site and Site Operations.

4.6 If You are not the End User, You must not disclose the Verification Status of the Site and Site Operations without the written approval of TSA.

4.7 You acknowledge and agree that:

- (a) TSA may disclose (including to the End User and Governmental Agencies) the End User's and the Site's level of progress through the Verification process (including which stage or activity they have completed, how long they have been at a particular stage or activity, and the End User's level of engagement with the particular stage or activity);
- (b) TSA may disclose (including to the End User and Governmental Agencies) the End User's participation in the Program and the Verification Status of the Site and Site Operations; and
- (c) the End User may disclose its Verification Status.

4.8 You acknowledge and agree that TSA may disclose to, or otherwise provide to, the Commonwealth Government of Australia and any Governmental Agency, any information which is provided to TSA, or is otherwise collected or generated as part of the Verification (in addition to progress of the Verification and Verification Status), as required for the purpose of assisting the Commonwealth Government or a Governmental Agency in the administration and regulation of the export of waste tyres for retreading to overseas tyre retreading facilities under the Recycling and Waste Reduction Act 2020 and the Recycling and Waste Reduction (Export – Waste Tyres) Rules 2021 (and any replacement legislation or rules).

4.9 You must not use any information provided by TSA or Intertek in a misleading manner.

5 Fees and payment

5.1 If TSA provides You with a Fee Notification, You must pay to TSA the Fees for the Verification.

5.2 Subject to clause 10, all fees are stated exclusive of any tax, levy, duty, charge, impost, fee, deduction, compulsory loan or withholding (**Taxes**) and You are solely responsible for the payment of all Taxes assessed, levied, imposed or collected in respect of the Services and must immediately upon request by TSA provide TSA with evidence of payment of any Taxes.

5.3 Unless otherwise agreed in writing by TSA, if TSA provides You with a Fee Notification You must pay the Fees for the Services in advance and by the earlier of:

- (a) the date the Services are provided; and
- (b) 30 days of receipt of the invoice,

(**Due Date**).

5.4 You acknowledge and agree that TSA authorises Intertek to invoice and collect any Fees directly from You and TSA directs You to pay any Fees to Intertek.

5.5 You acknowledge and agree that You have no right to any refund of any Fees if the End User does not attend any pre-arranged audit or meeting or if the End User fails to complete an activity, stage or requirement of the Verification within the allocated time for that activity, stage or requirement.

5.6 If You fail to make any payment by the Due Date, then, without prejudice to any other right or remedy available to TSA and to the extent permitted by law, TSA may, in its sole discretion, elect to do any one or more of the following:

- (a) cancel or suspend any Request in respect of any Verification not yet commenced or completed (which may

- result in the non-completion or delay in the Verification of the Site and Site Operations and provision of the Services);
- (b) exercise any right to terminate these Terms in accordance with clause 12.1; and
- (c) charge You interest (both before and after any judgement) on the unpaid amount, calculated from the Due Date to the date of receipt of the amount in full at a rate equivalent to 3% per cent per annum above the base rate from time to time of HSBC Bank.

6 Subcontractors

TSA may subcontract any of its obligations under these Terms at any time and You acknowledge that TSA has engaged Intertek to undertake certain parts of the Verification and certain Services on behalf of TSA.

7 Liability

- 7.1 If You are a Consumer (as defined in section 3 of the Australian Consumer Law) (**Consumer**) and TSA supplies PDH Services to You, TSA acknowledges that You may have certain rights under the Australian Consumer Law in respect of the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**) as they apply to the PDH Services supplied by TSA and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.
- 7.2 If You are a Consumer and any services supplied by TSA to You are non PDH Services, TSA's liability to You in connection with any breach of the Consumer Guarantees in respect of those non PDH Services is limited (at TSA's discretion) to:
 - (a) supplying the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
- 7.3 If You make a Claim against TSA which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the Claim, or part of the Claim, does not relate to a Consumer Guarantee and to the extent permitted by law, TSA's maximum aggregate liability to You in respect of all such claims shall not exceed an amount equal to the greater of any Fees paid by You under these Terms and \$1,000.
- 7.4 Subject to any rights You may have under the Australian Consumer Law, TSA will not be liable to You under or in connection with these Terms for any Consequential Loss.
- 7.5 Subject to clause 7.1 and 7.2, neither Intertek nor TSA nor any of their officers, employees, agents or subcontractors shall be liable to You for any actions taken or not taken on the basis of any information provided to you as part of the Verification nor for any incorrect Verification results arising from unclear, erroneous, incomplete, misleading or false information provided by You or the End User.

8 Intellectual Property

- 8.1 The parties acknowledge and agree that as between TSA and You all Intellectual Property Rights in the TSA IP vests in and exclusively belongs to and are irrevocably assigned to TSA and You agree that You must not infringe or use the Intellectual Property Rights in the TSA IP other than as expressly permitted under these Terms or with the prior written consent of TSA.
- 8.2 TSA agrees to disclose to You the Verification Status of the End User, but nothing requires TSA to disclose to You any other information in relation to the End User or the Verification (including any report).

9 Confidentiality

- 9.1 You must:
 - (a) maintain the confidential nature of the Confidential Information;
 - (b) not disclose or otherwise provide any Confidential Information to any person except under clauses 9.1, 9.2 and 9.3 or with the prior written consent of TSA; and
 - (c) not copy or duplicate or allow the copying or duplication of any Confidential Information.
- 9.2 You may disclose Confidential Information to Your employees, officers and professional advisors (**Authorised Person**) provided that:
 - (a) the Authorised Person has a need to know and then only to the extent that the Authorised Person has a need to know; and

- (b) before disclosure, You have made the Authorised Person fully aware of the confidential nature of the Confidential Information and the terms of this clause 9 and if requested by TSA, You ensure that the Authorised Person signs a confidentiality deed in a form approved by TSA.

- 9.3 The obligations of confidence do not apply where You are required by law to disclose specific Confidential Information, provided that You must to the extent practicable in the circumstances give TSA reasonable prior notice of any proposed disclosure of Confidential Information including the form and content of the disclosure to be made and must only disclose that part of the Confidential Information which its legal advisers reasonably believe is necessary to disclose.

10 Tax

Unless otherwise expressly stated in writing in these Terms, all amounts payable by You in connection with these Terms do not include an amount for GST, VAT or any equivalent sales, service or value added tax (**Transaction Tax**). If any Transaction Tax is payable on any supply made by TSA under these Terms, You must pay to TSA, in addition to and at the same time as the payment for the supply, an amount equal to the amount of the Transaction Tax on the supply. Where You are required by these Terms to reimburse or indemnify TSA for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that TSA will be entitled to claim for the Loss or amount incurred and increased by the amount of any Transaction Tax payable by TSA in respect of the reimbursement or payment. This clause does not merge on completion or termination of these Terms.

11 Force Majeure

- 11.1 TSA will not be liable for any failure to perform or delay in performing its obligations under these Terms if that failure or delay is due to a Force Majeure Event.
- 11.2 If a Force Majeure Event under clause 11.1 exceeds 60 days, TSA may immediately terminate these Terms by giving You not less than 10 days' written notice.
- 11.3 If TSA terminates these Terms under clause 11.2 then TSA will refund to You an amount equal to any Fees which have been paid by You for Services which have not been provided less any costs incurred by TSA in connection with these Terms.

12 Termination

- 12.1 Without limiting a party's other rights under these Terms and to the extent permitted by law, a party may terminate these Terms with immediate effect by written notice to the other party:
 - (a) if the other party has breached any material term of these Terms or materially breached any term of these Terms which is not capable of remedy;
 - (b) if the other party has breached any term of these Terms which is capable of remedy and has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied; or
 - (c) in accordance with clause 11.2.
- 12.2 TSA may terminate these Terms if its agreement with Intertek terminates or expires.
- 12.3 On termination or expiry of these Terms:
 - (a) all money owed by You to TSA will become immediately due and payable; and
 - (b) each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

13 Miscellaneous

- 13.1 In these Terms:
 - (a) the singular includes the plural and vice versa;
 - (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
 - (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
 - (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;

- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
 - (f) headings are inserted for convenience and do not affect the interpretation of these Terms; and
 - (g) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.
- 13.2 You must not assign or otherwise deal with any of Your rights or obligations under these Terms without TSA's prior written consent. TSA may, to the extent permitted by law, assign or deal with any of its rights or obligations under these Terms at any time in circumstances where the assignment or dealing will not adversely affect Your rights.
- 13.3 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.
- 13.4 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.
- 13.5 The termination or expiry of these Terms does not operate to terminate any rights or obligations under these Terms that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 4.3(d), 4.3(g), 4.4(b), 4.6, 5.2, 5.6, 6, 7, 8, 9, 10, 12, and 13.
- 13.6 Each party must:
- (a) do all acts necessary or desirable to give full effect to these Terms; and
 - (b) refrain from doing anything which might prevent full effect being given to these Terms.
- 13.7 The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or (except as expressly provided for) gives rise to any other form of fiduciary relationship between the parties.
- 13.8 This Agreement is governed by the laws in force in Victoria, Australia, and You and TSA submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.