

FILE No:

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TRADE PRACTICES ACT 1974
UNDERTAKING TO THE
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN FOR THE PURPOSES OF SECTION 87B

BY

TRIMAS CORPORATION PTY LTD
(ACN 004 546 543)

PERSON GIVING THE UNDERTAKING

- (1) This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by TriMas Corporation Pty Ltd, ACN 004 546 543 (**TriMas**) of 20-50 Waterview Close, Dandenong, Melbourne in the State of Victoria, pursuant to section 87B of the *Trade Practices Act (1974)* (**the Act**).

BACKGROUND

TriMas / Cequent

- (2) TriMas is incorporated under the Corporations Law and is registered in the State of Victoria.
- (3) TriMas manufactures, and distributes through its divisions, tow-bars and roof-racks.
- (4) Cequent, a business name division of TriMas and located at 47 – 49 Wedgewood Road, Hallam, Melbourne in the State of Victoria (**Cequent**), imports and distributes luggage straps and various camping and securing products.
- (5) TriMas, through its division Cequent, is the sole importer in Australia of *Highland EPDM Rubber Tarp Straps*.
- (6) TriMas, through its division Cequent, supplies nationally, through distributors, the *Highland EPDM Rubber Tarp Straps* in four sizes, 15 inch, 21 inch, 31 inch and 41 inch (**the Tarp Straps**).

The Product

- (7) Each Tarp Straps package contains two black rubber Tarp Straps of the respective size. Steel hooks supplied with the Tarp Straps attach to both ends of the respective sized Tarp Strap allowing it to be secured over items. The rubber nature of the Tarp Straps allows the product to stretch.

Attached as **Annexure A** to this Undertaking is a photograph of the packaged Tarp Straps in their respective sizes and a photograph of one 15" EPDM Tarp Strap with hooks attached.

- (8) The Tarp Strap packaging describes the Tarp Straps to be “*FOR USE WITH: Autos • Trucks • Vans • Motorcycles • ATV’s • Campers • Boats • Household.*”

Australian Standard for Elastic Luggage Straps

- (9) Section 65C of the *Trade Practices Act 1974 (the Act)* prohibits a company from supplying consumer goods that do not comply with mandatory consumer product safety standards.
- (10) The *Trade Practices (Consumer Product Safety Standards) Amendment Regulations 2004 (No.1)* 1 December 2004 is the prescribed Australian mandatory consumer product safety standard for elastic luggage straps (**the Standard**).
- (11) The Standard defines *elastic luggage straps* to mean:
- a. An elastic strap or cord, or 2 or more elastic straps or cords, permanently joined and:
 - i. having a hook, buckle or other fastening device at each extremity and
 - ii. designed to be used for the purpose of securing luggage or other objects.
- (12) Products subject to the Standard are required to have a warning label in the form prescribed by the Standard permanently attached to the product. The prescribed form is words of a certain size and in black, on a yellow background, that states:
- “WARNING. Avoid eye injury. DO NOT overstretch. ALWAYS keep face and body out of recoil path. DO NOT use when strap has visible signs of wear or damage.”*

Conduct

- (13) TriMas, through its division Cequent, as the sole importer of the Tarp Straps nationally in Australia supplied goods which did not comply with the Standard.
- (14) The warning label inscribed in black on the black rubber Tarp Straps states:
- “CAUTION: MAX SAFE STRETCH LENGTH 23”. DO NOT USE IF CUT, CRACKED OR ABRADED. ALWAYS WEAR SAFETY GLASSES DURING TIE DOWN OR DISCONNECT. WARNING: SUDDEN DISCONNECT OR BREAKAGE WHILE STRETCHED MAY CAUSE BODILY INJURY”*
- and as such may have contravened section 65C of the Act in so far as:
- a. the specific wording of the warning was not in the form prescribed by the Standard
 - b. specific words in the warning were not in accordance with the font size prescribed by the Standard and
 - c. the warning was not on a yellow background as prescribed by the Standard.

- (15) TriMas, through its division Cequent, supplied 1,229 Tarp Straps nationally through 35 distributors.
- (16) Upon becoming aware of the ACCC's concerns, Cequent, on behalf of TriMas, took immediate steps to notify all its distributors of the non-compliant product directing all stock to be removed from sale and formally putting in place a voluntary product recall procedure.
- (17) Cequent, on behalf of TriMas, advised the ACCC the product recall resulted in more than 600 units of the Tarp Straps having been returned, with all those returned to be re-worked with warning labels compliant with the Standard accordingly attached. Cequent further advised the ACCC of planned procedural changes to its operating procedures were to be undertaken.
- (18) TriMas admits supplying Tarp Straps without the correct warning label prescribed under the Standard.
- (19) In response to the ACCC's concerns regarding the conduct, TriMas has offered this Undertaking to the ACCC.

COMMENCEMENT OF UNDERTAKING

- (20) This Undertaking comes into effect when:
 - a. the Undertaking is executed by TriMas and
 - b. the ACCC accepts the Undertaking so executed.

UNDERTAKINGS

- (21) TriMas hereby undertakes, for the purposes of section 87B of the Act:

Refrain from conduct

- a. not to offer to supply, supply, or enter into an agreement to supply goods subject to a consumer product safety standard or information standard prescribed for the purposes of the Act, where any such goods are non-compliant with the relevant prescribed standard

Trade Practices Compliance Program

- b. to establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure B** for the employees or other persons involved in TriMas' business and any of TriMas' business divisions and/or subsidiaries, being a program designed to minimise TriMas' risk of future breaches of Part V of the Act, in particular sections 65C and 65D of the Act and to ensure awareness of its responsibilities and obligations in relation to the requirements of Part V of the Act, within 3 months of the date of this Undertaking coming into effect

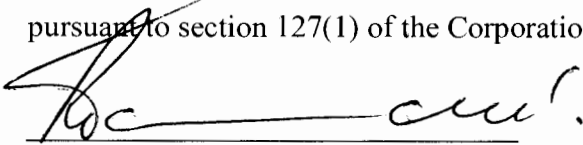
- c. to maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date of this Undertaking coming into effect and
- d. to provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure B.

ACKNOWLEDGEMENT

- (22) TriMas acknowledges the ACCC will make this Undertaking available for public inspection, including by placing it on a register, publishing it and allowing third parties to publish it.
- (23) TriMas further acknowledges the ACCC may issue a media release about this undertaking and will, from time to time, publicly refer to this Undertaking.
- (24) TriMas further acknowledges this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- (25) TriMas further acknowledges a summary of the ACCC Compliance Program Review reports referred to in Annexure B of the Undertaking may be held with this Undertaking on the public register.

EXECUTED BY:

TriMas Corporation Pty Ltd (ACN 004 546 543),
pursuant to section 127(1) of the Corporations Act 2001.



Signature of Director



Signature of Director/Secretary

ROBERT E. SANDERS

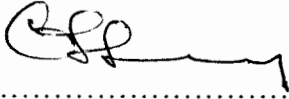
(Print) Name of Director

MALCOLM L. FETTES

(Print) Name of Director/Secretary

This 22 day of DECEMBER 2005

**THE UNDERTAKING BY TRIMAS CORPORATION PTY LTD IS
ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE
PRACTICES ACT 1974.**



.....
Graeme Julian Samuel
Chairman

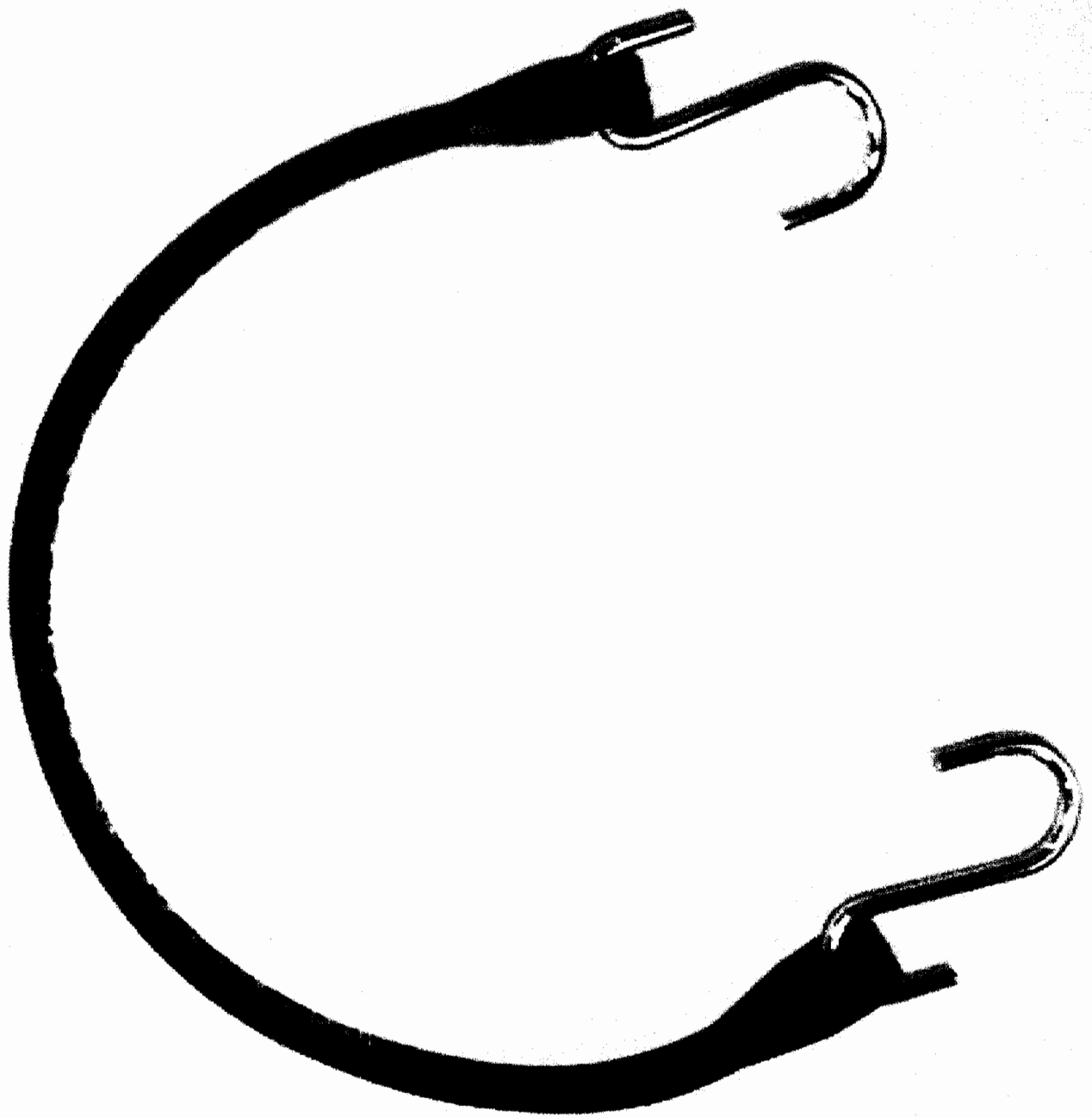
This 11th day of January 2006

Annexure A

These are images of the packaged *Highland Rubber Tarp Straps* and one image of the 15inch unpackaged Tarp Strap.



90215 15" Rubber Tarp Strap two pack
90221 21" Rubber Tarp Strap two pack
90231 31" Rubber Tarp Strap two pack
90241 41" Rubber Tarp Strap two pack



Annexure B

Annexure B

TRADE PRACTICES COMPLIANCE PROGRAM

1. Appointments

- 1.1. Within one month of the date of the Undertaking coming into effect TriMas Corporation Pty Ltd (**TriMas**) will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the compliance program (**the Compliance Officer**).

2. Compliance Officer Training

- 2.1. TriMas will ensure, within 2 months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on Part V of the *Trade Practices Act 1974* (**the Act**), in particular sections 65C and 65D of the Act.
- 2.2. TriMas shall ensure the training is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law (**the Trade Practices Professional**).
- 2.3. TriMas, within 14 days of completion of training, will provide the ACCC with a written statement from the Trade Practices Professional confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

3. Staff Training

- 3.1. TriMas will cause all employees of TriMas whose duties could result in them being concerned with conduct that may contravene Part V of the Act to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or the Trade Practices Professional that focuses on Part V of the Act, in particular sections 65C and 65D of the Act.

4. Complaints handling

TriMas will:

- 4.1. develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect and
- 4.2. provide the ACCC with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.

5. **Product Safety**

TriMas will:

- 5.1. maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products TriMas supplies.
- 5.2. ensure that the products supplied that are subject to a prescribed safety and/or information standard under the Act, comply with the relevant standard.
- 5.3. design, implement and maintain recall procedures that enable products supplied by TriMas that do not comply with prescribed safety and/or information standards under the Act to be efficiently and effectively withdrawn from the market and returned to TriMas.

6. **Internal reporting**

- 6.1. TriMas will ensure the Compliance Officer reports to their director(s) or governing body every 6 months on the continuing effectiveness of the Compliance Program.

7. **Review**

- 7.1. TriMas shall, at its own expense, cause an annual audit of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:
 - (a) Scope of the Review - TriMas shall ensure the Review is broad and rigorous enough to:
 - i. provide the ACCC with a supportable verification that TriMas has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of TriMas
 - ii. provide the Review Report and opinions detailed at point 8 below and
 - iii. provide the ACCC with a supportable verification that TriMas has in place a product safety compliance program that complies with the requirements of the Undertaking and is suitable for the size and structure of TriMas.
 - (b) Independence of Reviewer - TriMas shall ensure the Review is carried out by a suitably qualified, independent compliance professional with

expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

- i. is not a present or past staff member or director of TriMas
 - ii. has not acted or does not act for TriMas in any other capacity other than Compliance Program Reviewer or Advisor
 - iii. is not retained by TriMas in any capacity other than Compliance Program Reviewer or Advisor, either currently or in the past
 - iv. has not and does not act for or consult to TriMas or provide other services on trade practices related matters other than Compliance Program reviewing and
 - v. has no other interests in TriMas.
- (c) Evidence - TriMas shall use its best endeavors to ensure the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in TriMas' possession or control, including without limitation:
- i. enquiries of any employees, representatives, agents and stakeholders of TriMas
 - ii. documents created by TriMas' consultants, legal practitioners and accountants for use in TriMas' Compliance Program and
 - iii. all documents required to assess TriMas' compliance with the relevant product safety/information standards under the Act.
- (d) TriMas shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

8. Reporting

8.1. TriMas shall use its best endeavors to ensure the Reviewer sets out the findings of the Review in a Trade Practices Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:

- (a) details of the evidence gathered and examined during the Review

- (b) the name and relevant experience of the person appointed as TriMas Compliance Officer
- (c) the Reviewer's opinion on whether TriMas has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking and
- (d) actions recommended by the Reviewer to ensure the continuing effectiveness of TriMas' Compliance Program.

8.2. TriMas will cause the Trade Practices Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.

8.3. TriMas shall implement promptly and with due diligence any recommendations made by the Reviewer and required by the ACCC that are reasonably necessary to ensure that TriMas maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.

8.4. TriMas shall ensure each Review Report is completed and provided to the ACCC within one month of completion of the Review.

9. Requests by ACCC

9.1. If requested by the ACCC TriMas shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.

9.2. In the event the ACCC has sufficient reason to suspect the Compliance Program is not being implemented effectively, TriMas shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the ACCC.