

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER ACCC GIVEN FOR THE PURPOSE OF SECTION 87B

BY

TOOLTECHNIC SYSTEMS (AUST) PTY LTD (ACN 090 458 576)

BACKGROUND

1. Tooltechnic Systems (Aust) Pty Ltd (ACN 090 458 576) (**Tooltechnic**) is a company carrying on business within Australia as a wholesale supplier of power tools and/or power tool systems known by the brand “Festool” or “Festo” (**Festool Products**) to hardware and power tool retailers throughout Australia (**Festool Retailers**).
2. In 2002 and 2003 the Australian Competition and Consumer Commission (**ACCC**) received complaints from certain consumers and Festool Retailers alleging that Tooltechnic had attempted to induce Festool Retailers not to sell Festool Products at a price less than the “recommended trade price” (**Recommended Trade Price**) for each Festool Product specified from time to time in an annual price list (**Annual Price List**) supplied by Tooltechnic to Festool Retailers (**Specified Prices**).
3. Following an investigation, the ACCC has reached the view that Tooltechnic contravened the *Trade Practices Act 1974* (Cth) (**TPA**) by two (now former) Tooltechnic Area Managers, separately, on a total of three occasions, attempting to induce two Festool Retailers not to sell Festool Products at less than Specified Prices by, among other things, saying words to the effect:
 - (a) all Festool Retailers must sell Festool Products to consumers at Specified Prices;
 - (b) “you know you’re not allowed to discount”; and
 - (c) it was possible that a certain Festool Retailer’s wholesale discount structure may have to be altered so as to induce them to increase their prices back up in line with other dealers.
4. The ACCC proposes to institute proceedings against Tooltechnic in the Federal Court in respect of alleged contraventions of section 48 of the TPA, by reference to section 96(3)(b) of the TPA, in relation to the conduct set out in paragraph 3 above.

5. As part of the resolution of the ACCC's concerns, Tooltechnic has offered and the ACCC has accepted this undertaking in accordance with section 87B of the TPA.

COMPLIANCE PROGRAM

6. Tooltechnic undertakes that it will:
 - (a) within 3 months of the date of this Undertaking coming into effect, establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in "Annexure A" for employees or other persons involved in Tooltechnic's business, being a program designed to minimise Tooltechnic's risk of future breaches of section 48 of the TPA and to ensure awareness of its responsibilities and obligations in relation to the requirements of section 48 of the TPA;
 - (b) maintain and continue to implement the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect; and
 - (c) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure A.

COMMENCEMENT OF UNDERTAKING

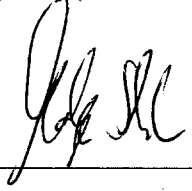
7. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Tooltechnic; and
 - (b) the Undertaking so executed is accepted by the ACCC.

ACKNOWLEDGMENTS

8. Tooltechnic acknowledges that the ACCC will make this Undertaking available for public inspection.
9. Tooltechnic further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
10. Tooltechnic further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

11. Tooltechnic further acknowledges that a summary of the ACCC Compliance Program Review reports referred to in Annexure A of the Undertaking may be held with this undertaking on the public register.

IN WITNESS of this Undertaking and agreement executed by Tooltechnic Systems (Aust) Pty Ltd (ACN 090 458 576) by:

Signed: 

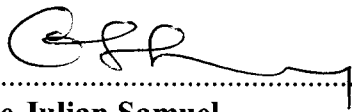
Signed: 

Name: Holger Schulz
Director

Name: DENNIS BOYER
Director

This 18 day of December 2006

ACCEPTED by the Australian Competition and Consumer pursuant to section 87B of the Trade Practices Act 1974.


.....
Graeme Julian Samuel
Chairman

This 17 day of January 2007

Annexure A**TRADE PRACTICES COMPLIANCE PROGRAM**

Tooltechnic will establish and implement a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

1. Appointments

Within one month of the establishment and implementation of the Compliance Program Tooltechnic will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**Compliance Officer**).

2. Compliance Officer Training

- (a) If the Compliance Officer has not previously attended practical trade practices training focusing on section 48 of the *Trade Practices Act 1974 (Cth) (TPA) (Compliance Officer Training)*, Tooltechnic will ensure that, within 2 months of the establishment and implementation of the Compliance Program, the Compliance Officer will attend Compliance Officer Training.
- (b) Tooltechnic will ensure that the Compliance Officer Training was or is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- (c) If the Compliance Officer has not previously attended Compliance Officer Training, Tooltechnic will provide the ACCC, within 1 month of the Compliance Officer completing the Compliance Officer Training, with a written statement from the compliance professional or legal practitioner administering the Compliance Officer Training confirming such completion.
- (d) If the Compliance Officer has previously attended Compliance Officer Training, Tooltechnic will provide the ACCC, within 1 month of the establishment and implementation of the Compliance Program with a written statement providing details of such training including:
 - (i) the name and qualification(s) of the person administering such training;
 - (ii) the dates and times of attendance at such training by the Compliance Officer; and
 - (iii) a description of the content of such training.

3. Complaints Handling System

Tooltechnic will ensure the Compliance Program includes a complaints handling system that is capable of:

- (a) identifying whether an internal or external complaint may raise implications under section 48 of the TPA (**Complaint**);
- (b) recording the existence of a Complaint;
- (c) referring a Complaint to the Compliance Officer; and
- (d) recording actions taken by Tooltechnic in regard to a Complaint.

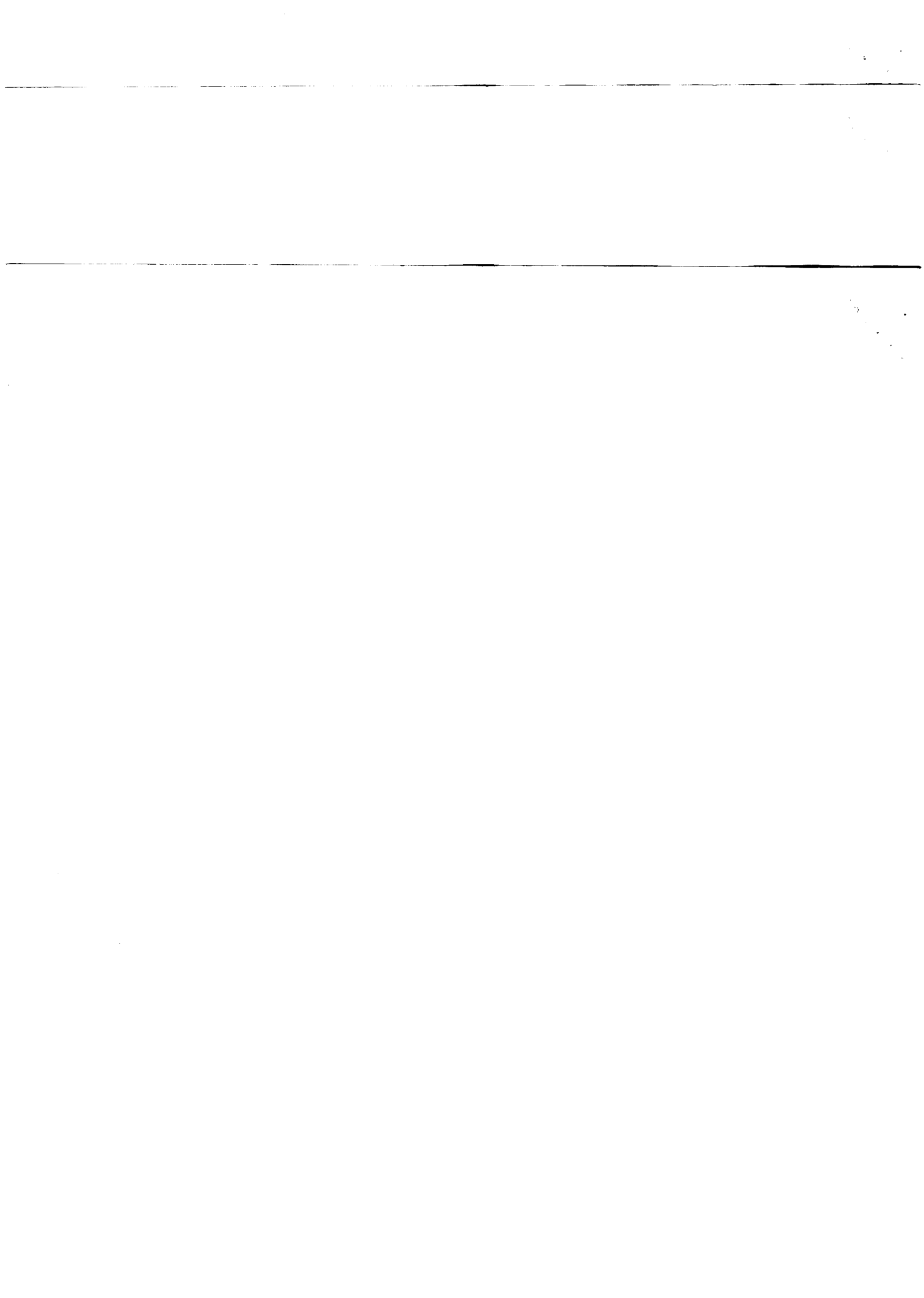
4. Staff Training

Tooltechnic will cause all employees of Tooltechnic whose duties could result in them being concerned with conduct that may contravene section 48 of the TPA to receive, at least once a year, practical training administered by a qualified compliance professional or legal practitioner with expertise in trade practices law that focuses on section 48 of the TPA.

5. Review

Tooltechnic will, at its own expense, cause an annual review of the Compliance Program elements detailed at points 2, 3 and 4 of this Annexure A (**Review**) to be carried out in accordance with each of the following requirements:

- (a) Tooltechnic will use its best endeavours to ensure that the Review is broad and rigorous enough to:
 - (i) provide the ACCC with a Trade Practices Compliance Program Review Report (**Report**) that complies with the requirements at point 6 of this Annexure A; and
 - (ii) enable the ACCC to reliably conclude that Tooltechnic has in place a Compliance Program that complies with the requirements of this undertaking under section 87B of the TPA and is suitable for the size and structure of Tooltechnic.
- (b) Tooltechnic will ensure that the Review is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**Compliance Program Reviewer**). The Compliance Program Reviewer will qualify as independent on the basis that he or she:
 - (i) is not a present or past staff member or director of Tooltechnic;
 - (ii) has not acted or does not act for Tooltechnic in any other capacity other than Compliance Program Reviewer; and
 - (iii) has no other significant interests in Tooltechnic.



- (c) Tooltechnic will use its best endeavors to ensure the Compliance Program Reviewer has access to all relevant sources of information in Tooltechnic's possession or control, including without limitation:
 - (i) any employees, representatives, agents and stakeholders of Tooltechnic for the purpose of making enquiries in furtherance of the Review; and
 - (ii) documents created by Tooltechnic's consultants, legal practitioners and accountants for use in the establishment and implementation of the Compliance Program.
- (d) Tooltechnic will use its best endeavours to ensure that the initial Review is completed within one year and one month of the establishment and implementation of the Compliance Program and that each subsequent Review is completed within one year thereafter.

6. Reporting

- (a) Tooltechnic will use its best endeavours to ensure that the Compliance Program Reviewer sets out the findings of each annual Review in a Report, which will provide particular and specific information regarding the scope of the Review undertaken and the effectiveness of the Compliance Program including:
 - (i) details of the evidence gathered and examined during the Review;
 - (ii) the Compliance Program Reviewer's opinion on whether Tooltechnic has in place effective staff training and complaints handling programs that comply with the requirements of this undertaking under section 87B of the TPA; and
 - (iii) actions recommended by the Compliance Program Reviewer to ensure the continuing effectiveness of the Compliance Program.
- (b) Tooltechnic will use its best endeavours to ensure that each Report is completed and provided by the Compliance Program Reviewer to Tooltechnic within one month of completion of each annual Review.
- (c) Tooltechnic will cause the Report to be provided to the ACCC within 14 days of its receipt from the Compliance Program Reviewer.
- (d) Tooltechnic will implement promptly and with due diligence any recommendations made by the Compliance Program Reviewer or the ACCC that are reasonably necessary to ensure that Tooltechnic maintains and continues to develop the Compliance Program elements in accordance with the requirements of this undertaking under section 87B of the TPA.

- 7. If requested by the ACCC, Tooltechnic will, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.

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