

**ENFORCEABLE UNDERTAKING UNDER  
THE AUSTRALIAN CONSUMER LAW**

BETWEEN

**HIGH PERFORMANCE CORPORATION PTY LTD (ACN 083 091 838)**

AND

**MOTORONE GROUP PTY LTD (ACN 097 188 219)**

AND

**COMMISSIONER FOR CONSUMER PROTECTION**

**RECITALS**

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WHEREAS:

**High Performance Corporation**

- A. **HIGH PERFORMANCE CORPORATION PTY LTD ('HPC')** is a distributor of Defense Pak Computerised Electronic Corrosion Inhibitor units ('**CECI Units**'). HPC supplied the CECI Units to retailers in Western Australia. The CECI Units are intended to be fitted to a motor vehicle.
- B. The CECI Units were advertised for sale to consumers in Western Australia on the following website:
- [www.defensepak.com.au](http://www.defensepak.com.au) ('**Defense Pak Website**').

- C. The Defense Pak Website stated that when fitted to a motor vehicle the CECI unit had the effect of *“drastically reducing the rate at which rust forms”*.
- D. That statement was removed from the Defense Pak Website on or around 12 November 2013.

**MotorOne**

- E. **MOTORONE GROUP PTY LTD** (**MotorOne**) is a distributor of CECI Units. MotorOne supplied the CECI Units to retailers in Western Australia.
- F. MotorOne operates the website [www.motoronefleet.com](http://www.motoronefleet.com) (**MotorOne Website**).
- G. The MotorOne Website stated that *‘laboratory tests demonstrate a reduction in the corrosion process by as much as 80% effectively doubling your vehicle’s life span against rust and corrosion.’*
- H. That statement was removed from the MotorOne Website on or around 12 November 2013.

**Australian Consumer Law**

- I. The Commissioner for Consumer Protection (**‘Commissioner’**) believes that there was no basis to represent that when fitted to a motor vehicle the CECI Units:
  - i) drastically reduce the rate at which rust forms on that vehicle;
  - ii) reduce the corrosion process in that vehicle by as much as 80%; or
  - iii) increase the life span of the vehicle in respect of rust and corrosion.
- J. The Commissioner believes that the statements identified at Recitals C and G are false or misleading, contrary to section 29(1)(g) of the *Australian Consumer Law*.
- K. For the purposes of this Enforceable Undertaking ‘consumer’ has the same meaning as it does under the *Fair Trading Act 2010 (WA)*.
- L. HPC and MotorOne have offered to provide this Enforceable Undertaking to address the Commissioner’s concerns that the statements had the potential to mislead consumers.
- M. This Enforceable Undertaking is accepted by the Commissioner under section 218 of the *Australian Consumer Law*.

- N. A breach of this Enforceable Undertaking is enforceable by a court under section 218 of the *Australian Consumer Law*.
- O. This Enforceable Undertaking does not prevent the Commissioner from taking any action in respect of the matters the subject of this Enforceable Undertaking.
- P. The rights of consumers are not affected by this Enforceable Undertaking.
- Q. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

## UNDERTAKINGS

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**HIGH PERFORMANCE CORPORATION PTY LTD and MOTORONE GROUP PTY LTD**, upon this Enforceable Undertaking being accepted by the **Commissioner**, **UNDERTAKES**, pursuant to section 218 of the *Australian Consumer Law*, that:

### **Ceasing to supply, advertise or promote CECI Units**

1. HPC and MotorOne will cease to supply, advertise or promote in any way the CECI Units, or any substantially similar device, in Australia by 31 December 2015.

### **Publication of corrective notice and refunds**

2. Within 10 business days of this Enforceable Undertaking being accepted by the Commissioner, HPC and MotorOne (as applicable) will cause a notice to be published on:
  - 2.1. the Defense Pak Website, which will be accessible for a period of 6 months via a hyperlink at the top of the front page of the Defense Pak Website containing the information set out in Annexure A.
  - 2.2. the MotorOne Website, which will be accessible for a period of 6 months via a hyperlink at the top of the front page of the MotorOne Website containing the information set out in Annexure A.
3. The hyperlink on the front page of each of the Defense Pak Website and the MotorOne Website referred to in clause 2 above will be in the following form:

<p style="text-align: center;"><b>AUSTRALIAN CONSUMER LAW</b> <b>IMPORTANT NOTICE FOR CONSUMERS</b></p>
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4. Within 10 business days of the Commissioner accepting the Enforceable Undertaking, HPC and MotorOne will write to each of its retailer customers that it supplied the CECI Units to between 1 January 2011 and 31 December 2013 ('**Refund Period**') advising them that refunds will be available to consumers who purchased a CECI Unit (supplied by HPC or MotorOne as applicable) from that retailer within the Refund Period for any amount paid by the consumer for the

supply and installation of a CECI Unit ('Refund') by that consumer provided the consumer delivers to HPC or MotorOne (as applicable) (i) proof of the consumer's purchase of the CECI Unit and (ii) the consumer's bank details for the Refund.

5. Within 21 days of receipt of the consumer's proof of purchase by HPC or MotorOne (as applicable), HPC or MotorOne (as applicable) will provide the Refund to the consumer.
6. HPC and MotorOne will also ask the retailers identified in paragraph 4 that, as part of any regular servicing of vehicles, they check whether a CECI Unit supplied by HPC or MotorOne, as applicable, is fitted to the vehicle and, if so, to advise the consumer (if they fall within the Refund Period) that they are entitled to a Refund.
7. If a consumer purchased a CECI Unit within the Refund Period, the consumer may seek a Refund from HPC or MotorOne (as applicable) within a period of 12 months from the date of the posting of the corrective notices on the Defense Pak Website and the MotorOne Website set out in clause 2 of this undertaking.

**Information to be provided to the Commissioner**

8. Within 10 business days of the date stated in clause 1 of this Enforceable Undertaking HPC and MotorOne will provide to the Commissioner confirmation by statutory declaration that they have each:
  - 8.1. ceased to supply CECI Units, or any substantially similar device, in each of the states or territories set out in those paragraphs in accordance with clause 1; and
  - 8.2. written to the retailers identified in paragraph 4 regarding the Refund and the servicing checks identified in paragraph 6.

Signed for and on behalf of:

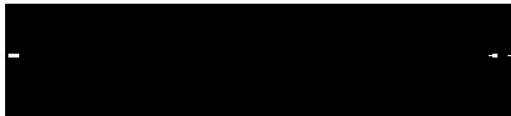
A. **HIGH PERFORMANCE CORPORATION PTY LTD**

ACN 083 091 838

in accordance with section 127 of the  
*Corporations Act 2001 (Cth)*

**JOHN WILLIAM WEEKLEY**

Director



Signature

**DAVINA EVELYN ALIOTTA**

Secretary



Signature

B. **MOTOR ONE GROUP PTY LTD**

ACN 097 188 219

in accordance with section 127 of the  
*Corporations Act 2001 (Cth)*

**JOHN WILLIAM WEEKLEY**

Director



Signature

**DAVINA EVELYN ALIOTTA**

Secretary



Signature

C. **GARY NEWCOMBE**

**A/COMMISSIONER FOR  
CONSUMER PROTECTION**

A handwritten signature in blue ink, appearing to read 'G. Newcombe', written over a horizontal line.

Signature

**DATE UNDERTAKING ACCEPTED**

28/10/15

## ANNEXURE A – CLAUSE 2 CORRECTIVE NOTICE

### **AUSTRALIAN CONSUMER LAW**

#### **IMPORTANT NOTICE FOR CONSUMERS**

HIGH PERFORMANCE CORPORATION PTY LTD (HPC) and MOTOR ONE GROUP PTY LTD (MotorOne) supplied the **Defense Pak Computerised Electronic Corrosion Inhibitor units (CECI Units)** to consumers through various retailers in Australia.

In supplying the CECI Units, HPC represented that the CECI Units could drastically reduce the rate at which rust forms and MotorOne represented that by using the CECI Units the rate at which rust forms could be reduced by as much as 80%, effectively doubling a vehicle's life span of the vehicle against rust.

The Commissioner for Consumer Protection (WA) (**Commissioner**) considers that there was no reasonable basis for these representations and that HPC and MotorOne have contravened the *Australian Consumer Law*.

The Commissioner has accepted an undertaking from HPC and MotorOne under which HPC and MotorOne will cease advertising and supplying the CECI Units in Australia. Additionally, HPC and MotorOne are offering consumers who have purchased a CECI Unit between 1 January 2011 and 31 December 2013 a refund of the purchase and installation costs.

If you have purchased a CECI Unit, you can obtain a refund by providing proof of your purchase to HPC or MotorOne:

1. by post: 275 Canterbury Road, Canterbury, Victoria 3126; or
  2. by email: [refund@motorone.com](mailto:refund@motorone.com), or
- by telephoning the MotorOne hotline on 1300 801 917.

You can obtain further information by telephoning HPC or MotorOne on 1300 801 917 or Consumer Protection on 1300 30 40 54.