

BRIDGESTONE EARTHMOVER TYRES PTY LTD

(ABN 74 000 069 714)

CONDITIONS OF SALE

ORDERS ARE ACCEPTED ONLY ON THE FOLLOWING TERMS AND CONDITIONS UNLESS OTHERWISE AGREED IN WRITING:

1. DEFINITIONS

Unless the context otherwise requires, in these Conditions of Sale:

"Customer" means the person, corporation, firm or body whose name appears as such in the Contract.

"Supplier" means Bridgestone Earthmover Tyres Pty Ltd (ABN 74 000 069 714)

"Conditions" means these Conditions of Sale and any further or other Conditions of Sales amending or adding to these Conditions and forming part of the Contract.

"Contract" means the agreement formed by the offer (if any) constituted by the order placed by the Customer and acceptance constituted by the sales order acknowledgment or invoice from the Supplier, including these Conditions.

"Document" includes email, telex, telegram, facsimile or other means deemed appropriate by the Company.

"Goods" includes the Tyres, Tubes and other products or merchandise agreed to be sold and purchased, and any services agreed to be provided pursuant to the Contract.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"Register" means the Personal Property Securities Register established by the PPSA.

"Tyre" means a tyre manufactured or imported by the Supplier, or a tyre manufactured or imported by a person other than the Supplier which is purchased or otherwise acquired by the Supplier from that person or its agent or representatives.

"Tube" means a tube manufactured or imported by the Supplier or a tube manufactured or imported by a body other than the Supplier which is purchased or otherwise acquired by the Supplier from that person or its agent or representatives.

2. DELIVERY

2.1 All prices contained in any price list, sales acknowledgment form or invoice supplied by the Supplier do not include transport or cartage costs and any and all such charges and costs shall be to this Customer's account.

2.2 Delivery of the Goods shall be deemed to be completed and the Goods delivered to the Customer and at his risk when the Goods are loaded onto the delivery vehicle at the Supplier's premises. The Customer, or his representative or agent, shall sign the delivery advice presented to him on behalf of the Supplier. Such delivery advice shall be conclusive evidence of the delivery at the time and place shown in the delivery advice, notwithstanding any lack of authority on the part of any person who signs the delivery advice.

2.3 Notwithstanding the provisions of Clause 3, the Customer shall insure the Goods on and from the time of its assumption of risk in accordance with sub-clause 2.2 and shall indemnify and keep indemnified the Supplier in respect of any loss suffered by the Supplier in relation to any failure to so insure any Goods or any failure on the part of any insurer make good loss of or damage to the Goods pursuant to any insurance taken out by the Customer, until title to the particular Goods has passed to the Customer pursuant to Clause 3.

3. TITLE TO GOODS

3.1 Title in the Goods shall not pass to the Customer until the Customer has paid to the Supplier in clear funds all sums owing to the Supplier whether under this or any other Contract.

3.2 Where the Supplier has not been paid in the manner specified in Clause 3.1, the Supplier has the right to call for and recover its Goods at its option and the Customer is obliged to deliver up the Goods if directed by the Supplier.

3.3 Where the Goods have not been paid for in the manner specified in

Clause 3.1 and the Supplier delivers the Goods to the Customer, then until disposed of by the Customer in accordance with the provisions of the clause, the Customer agrees to keep the Goods as a fiduciary for the supplier and to store the Goods in a manner that clearly shows the ownership of the Supplier.

3.4 Notwithstanding the provisions of sub-clauses 3.1 to 3.3 (inclusive), the Customer may sell the Goods to a third party in the course of business and deliver the Goods to that party provided that:

a) where the Customer is paid by that party, the Customer holds the whole of the proceeds of sale on trust for the Supplier; and

b) where the Customer is not paid by that party, the Customer agrees at the option of the Supplier to assign, his claim against that party to the Supplier upon the Supplier giving the Customer notice in writing to that effect.

3.5 The purpose of giving effect to and perfecting the agreement specified in sub-clause 3.4(b), the Customer irrevocably appoints the Supplier as its attorney.

3.6 The provisions of this clause 3 apply notwithstanding an agreement, whether subsequent to the Contract or not between the parties under which the Supplier gives the Customer credit.

3.7 The Customer hereby irrevocably grants to the Supplier its agents and employees an unrestricted right and licence, without notice, to enter premises occupied by the Customer to identify and remove any of the Goods which are or which are deemed pursuant to the Contract to be the property of this Supplier, without in any manner being liable to the Customer or any party or person claiming through the Customer. The Supplier shall have the right to sell or dispose of any Goods so removed as the Supplier may on its sole discretion decide and the Supplier shall not be responsible for any loss thereby.

4. PERSONAL PROPERTY SECURITIES ACT 2009

4.1 The Customer acknowledges and agrees that this Contract constitutes a security agreement for the purposes of the PPSA and that to secure payment of all amounts owing by the Customer, the Supplier takes a security interest over the Goods and the proceeds of sale of the Goods.

4.2 The Customer agrees to:

a) promptly sign any further documents and/or to provide any further information, such information to be complete, accurate and up-to-date in all respects, or do any other thing reasonably required by the Supplier to perfect and maintain the perfection of the security interest of the Supplier which shall include the registration of a financing statement or financing change statement on the Register;

b) provide written notification to the Supplier if it has knowledge of any competing security interest, and to do and perform any act that may be necessary to ensure that the Supplier's security interest is granted priority; and

c) not register a financing change statement or a change demand without the Supplier's prior written consent.

4.3 To give effect to the provisions of clauses 4.1 and 4.2, the Customer agrees to do and perform any act that may be necessary to perfect and/or preserve the security interest granted by the Customer over the Goods and the proceeds of sale of the Goods.

4.4 The parties agree, to the extent permissible, to contract out of the PPSA in accordance with section 115 of the PPSA to the extent that section 115 applies for the benefit of, and does not impose a burden on the Supplier. The Customer waives its right to receive a verification statement under part 5.3D of the PPSA in respect of any financing statement or financing change statement registered by or on behalf of the Supplier in respect of the security interest created by this Contract.

5. CONDITIONS

- 5.1 Each invoice from the Supplier shall be prima facie evidence of the classification, numbers and measurements of Goods delivered.
- 5.2 This Contract is subject to such limits as to minimum quantity or minimum cash value of order as the Supplier may fix from time to time.
- 5.3 Any retail or other price list supplied by Supplier to the Customer cancels and is in substitution for all previous retail or other price lists, as the case may be, and is subject to change without notice by the Supplier. The supply by Supplier to Customer of any price list does not constitute an offer to sell or supply any goods specified in such price list.
- 5.4 The responsibility is with the Customer to check the validity of any previously quoted oral written or printed prices.

6. TYRE DISPOSAL

- 6.1 The disposal of Tyres and Tubes (except those that have been returned to the Supplier and the Customer has been paid an allowance for under Clause 9) is the sole responsibility of the Customer. Any Tyres or Tubes left at the Supplier's premises will be disposed of by the Supplier and the full cost of disposal charged to the Customer.

7. TAXES

- 7.1 Goods & Services tax, sales taxes, customs and excise duties and there taxes and duties on, or in respect of, the Goods imposed by the law of any place within and outside the country of origin of the Goods shall be payable by the Customer and if those taxes or duties are, or become, payable by the Supplier, the prices of the Goods shall be increased by the amount necessary to ensure that the net amount actually received by the Supplier is as if those taxes or duties were not payable.

8. PAYMENT

- 8.1 The Customer shall pay for the Goods in the manner and within the time stated on the Contract. Unless otherwise agreed in writing and subject always to Clause 3 and the terms and conditions of any credit account which Customer has with Supplier, all payments pursuant to the Contract shall be paid in Australian dollars by the last day of month following the date of invoice from the Supplier.
- 8.2 If the Customer makes default in any payment due to Supplier or commits an act of bankruptcy, or a resolution is passed or proposed or an application is presented for the winding up of the Customer, or a receiver and/or manager is appointed for the property or any part of the property of the Customer, or the Customers makes or proposes to make any arrangement with its creditors or execution is levied upon the assets or any part of the assets of the Customer, or any person, whether or not such person is a receiver, receiver and manager, official manager, trustee or liquidator, is appointed by a creditor whether secured or unsecured (or by the Customer at the request of a creditor of the Customer) to the Customer or to the property or part of the property of the Customer for the purpose of protecting or dealing with any asset of such creditor in a manner which the Supplier considers in its absolute discretion may be contrary or detrimental to its rights pursuant to these Conditions, then the Supplier may, at its option, do any or all of the following without prejudice to any other rights it has hereunder and without notice to the Customer.
- withhold any delivery of Goods whether or not in transit and whether or not agreed to be delivered under the Contract.
 - vary the credit terms specified in Clause 8.1 or in any credit account granted to the Customer by the Supplier so that all moneys outstanding hereunder or under any other Contract between the Supplier and the Customer or held by the Customer upon trust for the Supplier, become immediately due and payable on demand.
 - immediately recover possession of any Goods and/or resell any Goods, title which is retained pursuant to Clause 3.
 - Terminate forthwith (or upon the giving of such notice as the Supplier may in its absolute discretion decide)

the Contract and any other Contract between the Supplier and the Customer.

9. OFF ROAD TYRE WARRANTY POLICY

This warranty specifically covers tyres sold by Bridgestone Earthmover Tyres Pty Ltd or are imported as original fitment on new equipment.

9.1 WARRANTY

Every Off The Road Tyre and Tube of Bridgestone Manufacture bearing the Bridgestone name and serial number is guaranteed to be free from defects in workmanship and manufacture for the entire original tread depth, for a period of four (4) years from the date of sale or five (5) years from the date of manufacture (whichever is first attained).

9.2 COMPENSATION

If a tyre or tube fails and if, after examination by Bridgestone Engineers, such tyre or tube failure be judged as resulting from defects in workmanship and materials within the warranty period, then Bridgestone, at its option, will repair the damage at no charge, or credit an amount equal to the pro rata value of tread remaining (established by multiplying the tyres original purchase price by the percentage of original tread depth not used), or deduct the proportion of the unused value of the failed tyre from the value of a replacement tyre.

9.3 EXCLUSIONS AND LIMITATIONS

Damage as a result of the following conditions are specifically excluded from this warranty.

- Road hazard including cut, cut separation, penetration, impact burst, etc.
- Damage by fire, oil, grease or corrosive material.
- Damage by mishandling, loader bucket damage.
- Improper mounting or dismounting on rims or non standard rim selection.
- Mechanical damage due to misalignment, ineffective suspension units or other mechanical defects.
- Tyres fitted with chains.
- Warranty will only apply to the initial purchaser of the goods not subsequent purchasers.
- Tyres operated beyond specifications, as regularly published or recommended in respect of load and inflation and tonne kilometre per hour limitations.
- Bridgestone accepts no liability for incidental or consequential damages including loss of time, loss of use of vehicle, damage to vehicle.
- Servicing, fitting and unfitting or any other connected costs incurred are the responsibility of the owner or the operator.
- Tyres supplied under specific, special guarantees are excluded.

The final arbiter of any claim shall be the Engineering Director of Bridgestone Earthmover Tyres Pty Ltd. no other officer or representatives of the company has the authority to amend or waive these conditions.

REFERENCE

BSEM Recommendations/Data Book. Tyre and Rim Association standards. E.T.R.T.O. Standards.

10. SAMPLES

- 10.1 The Contract shall not be construed as a sale by sample even if any Tyres or Tubes are exhibited or inspected by the Customer.

11. CANCELLATION

- 11.1 If the Customer repudiates the Contract other than pursuant to Clause 11.4 or refuses to accept all or any of the Goods other than in circumstances permitted by the Contract or if the Supplier

- terminates the Contract pursuant to Clause 8.2, the Customer shall be liable for any damage or loss thereby suffered by the Supplier.
- 11.2 If any Goods delivered by the Supplier do not conform to the warranty set out in Clause 9. 1, the Customer may return the Goods to the Supplier, if the Supplier consents to it doing so, whereupon after receipt of the Goods and subject always to the legislation referred to in Clause 11.5, the Supplier may elect either to repair them, or to replace, or to refund the purchase price.
- 11.3 Any claim which the Customer may have against the Supplier shall be deemed to have been waived unless written notice thereof is given to the Supplier within seven (7) days after delivery of the Goods and unless the Supplier is given a reasonable opportunity to investigate the claim before any Goods are returned to it.
- 11.4 If the Supplier fails to deliver the Goods to the Customer within the time provided by the Contract, the Customer shall not be entitled to repudiate the Contract unless the Customer has delivered a written notice to the Supplier requiring delivery of the Goods and the Supplier fails to deliver them within seven days of receipt of such notice.
- 11.5 The provisions of the Contract must be read having regard to provisions in certain legislation which may have the effect of giving the Customer certain rights against the Supplier which cannot be excluded restricted or modified by agreement between the Customer and the Supplier. Nothing in the Contract shall have the effect of excluding, restricting or modifying such rights except to the extent that they can lawfully be so excluded, restricted or modified and to this extent to which any provision of this Contract purports to do otherwise it shall be of no effect.
- 11.6 Except as expressly provided for herein and to the fullest extent permitted by law, the Supplier shall be under no liability to the Customer at law or in equity or pursuant to the provisions of any statute, rule or regulation or otherwise for any claims, demands, losses, damages, costs or expenses arising out of or in connection with the performance or non-performance of the Contract or any part thereof including, without limiting the foregoing, and act or omission of the Supplier, its officers, employees, agents, Contractors or other representatives.
- 11.7 The Customer hereby indemnifies the Suppliers, its officers, employees, agents, Contractors or other representatives from and against all claims, demands, losses, damages, costs or expenses of any third party arising out of or connected with the performance or non-performance of the Contract or any part thereof including, without limiting the foregoing, any act or omission of the Supplier, its officers, employees, agents, Contractors or other representatives.
- 11.8 If any condition warranty or obligation is implied in the Contract or imposed on the Supplier by virtue of the legislation referred to in Clause 11.5, then to the extent to which the liability of the Supplier in respect of any such condition, warranty or obligation cannot be or is not otherwise excluded, restricted or modified by the Contract the liability of the Supplier in respect of any such breach shall to the fullest extent permitted by law be limited to an amount equal to the price referred to in the Contract and to:
- a) in the case of supply by the Supplier of Goods, to any one or more of the following, as the Supplier may in its discretion decide:
 - i) the replacement of the Goods or the Supply of equivalent Goods;
 - ii) the repair of the Goods;
 - iii) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
 - iv) the payment of the cost of having the Goods repaired; or
 - b) in the case of the supply by the Supplier of services, to either of the following, as the Supplier may in its discretion decide:
 - i) the supplying of the services again; or
 - ii) the payment of the costs of having the services supplied again.
- 11.9 Without limiting the application of Clause 12 and notwithstanding anything contained in the Contract, the Supplier shall not be liable for any failure to perform any of its obligations under the Contract
- where such failure arises from any cause not within its reasonable control.
- 12. CONSIGNMENT STOCK**
- Where tyres are supplied under a consignment stock arrangement, the customer acknowledges and accepts the following conditions:
- Maximum period of consignment = 150 days
- Stock levels will be mutually agreed by customer and supplier
- Freight remains the responsibility of the customer in all cases
- Notification of usage is required by the 25th of the month in which tyres are used
- Unless otherwise agreed, consignment tyres will be automatically replaced on notification of usage
- 13. FORCE MAJEURE**
- 13.1 The Supplier shall not be liable for any failure to perform or comply with any term or condition of the Contract if that failure arises from any circumstances beyond the control of the Supplier or, without limiting the foregoing, from lockouts, strikes and other labour disturbances (the settlement of which shall be at the discretion of the Supplier if it is a party thereto), acts of God or the public enemy, piracy, war, riots, civil commotion's, acts or omissions of government agencies, earthquakes, storm, fire, lightning, epidemics and non-delivery of materials from the Supplier's usual sources of supply.
- 14. MISCELLANEOUS**
- 14.1 Any Tyre or Tube returned to the Supplier for any reason other than incorrect supply shall be subject to a surcharge or handling fee, to be determined by the Supplier, which shall be deducted from the credit due and owing to the Customer.
- 14.2 Where the Supplier rejects any claim, unless the Customer who has made that claim informs the Supplier in writing within thirty(30) days of such rejection of the required method of disposal of delivery of the said Tyre or Tube, the Supplier may destroy or otherwise dispose of the said Tyre or Tube. Any disposal or re-delivery made in accordance with a request from the Customer shall be at its expense.
- 14.3 No employee, agent or representative of the Supplier has any authority to vary these Conditions or any of them and without limiting the generality of the foregoing, no warranty, representation, promises, agreement, term or condition, whether express or implied made by an employee, agent or representative of the Supplier shall be deemed to be included in or form part of these Conditions or operate in any way collateral to these Conditions other than those warranties, representations, promises, agreements, terms or conditions which expressly appear in these Conditions.
- 14.4 The waiver by the Supplier of any provision or breach by the Customer of any provision of the Contract shall not be construed as a waiver of any other provision or breach of any other provision, or of any other subsequent breach of the same or any other provision of the Contract.
- 14.5 Errors in the Contract or in the invoice shall be corrected and requisite adjustments made between the parties.
- 14.6 Notwithstanding any terms and conditions contained in the Customer's order, these Conditions shall be deemed to constitute the sole terms of the Contract between the Customer and the Supplier.
- 14.7 Supplier may alter its retail price list at any time without being required to give the Customer prior notice of the proposed alterations.
- 14.8 Should any provision of these Conditions become unenforceable or be held void in any jurisdiction either in whole or in part for any reason then that provision shall be deemed to be deleted in respect of that jurisdiction without in any way affecting the validity or enforceability of any other provision or that provision in any other jurisdiction.
- 14.9 Where any obligation is imposed upon more than one person, that obligation shall bind all such persons severally and any two or more of the jointly.