

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. CONDITIONS OF SALE

- 1.1 The provisions, terms and conditions set out in these Conditions of Sale (the **Conditions**) and shall be deemed to apply to all supplies made by the Supplier to the Customer as the sole terms of the Contract.
- 1.2 By ordering Products and/or requesting a Service a Customer is taken to have agreed to the Conditions set out in this document. Any terms and conditions supplied or communicated by the Customer are expressly rejected including any attempt by the Customer to vary in any degree any of the terms of these Conditions, or any proposal by the Customer for additional or different terms.
- 1.3 Notwithstanding any written Special Conditions signed by the parties, in the event of any inconsistency between the Order, any Schedule to an Order or to these Conditions which form the whole of the agreement (the **Contract**) between the Supplier and Customer, these Conditions shall take precedence.
- 1.4 The Supplier agrees to supply Products and/or Services in accordance with the Contract upon accepting an Order from the Customer.
- 1.5 The Customer agrees to pay the Supplier for all Products and Services in the manner and within the time specified in an Order.
- 1.6 If the parties to this Contract have previously entered into a separate written agreement providing for the purchase and sale of Products or Services that remains in effect, this Contract or any Order submitted by the Customer is subject to the terms and conditions set forth in that agreement. In the event of any conflict between this Contract, the Customer's Order and the terms and conditions of that agreement, the terms and conditions of that agreement shall prevail.

### 2. CONDITIONS OF SUPPLY

- 2.1 The Supplier has no obligation to supply Products and/or Services to the Customer until the Supplier accepts an Order in writing.
- 2.2 In the absence of manifest error, each invoice from the Supplier is conclusive evidence of the classification, numbers and measurements of Products delivered.
- 2.3 The Supplier may set limits as to minimum quantity or minimum cash value of an Order from time to time.
- 2.4 All quotations and price lists provided by the Supplier to the Customer or published in a public forum are valid for the lesser period of 30 days from the date of publication of the quotation or price list, or such date or period specified in the quotation or price list. All price lists are subject to change or withdrawal without prior notice by the Supplier. The supply by the Supplier to the Customer of any price list does not constitute an offer to sell or supply any Product or Services in the price list.
- 2.5 All Products manufactured or provided by the Supplier for the attachment to another Product, any plant or machinery, Third Party Product, vehicle, assembly or similar must be used in accordance with the Supplier's instructions. The Customer agrees to indemnify and hold the Supplier harmless for all Claims and Loss arising in connection with a breach of this clause 2.5.

### 3. INTELLECTUAL PROPERTY

- 3.1 The Supplier is the owner of all Intellectual Property in and relating to the Products, including the specifications, designs and methods of manufacture. If the Customer is the owner of Intellectual Property relating to an Order, for example a design, specification for manufacture or the specifications of plant and equipment for which a Product will be supplied. The Customer

represents and warrants to the Supplier that it is the beneficial owner of, or holder of a transferable licence in, such Intellectual Property and the Customer irrevocably, grants a worldwide, royalty free licence to that Intellectual Property to the Supplier for the purposes of fulfilling an Order. The parties acknowledge and agree that the Supplier's Intellectual Property remains the sole and exclusive property of the Supplier, and the Customer shall not have or acquire any right, claim, title or interest in or to any of the Supplier's Intellectual Property unless otherwise agreed between the parties.

### 4. DELIVERY

- 4.1 All prices contained in any price list, sales acknowledgment form or invoice supplied by the Supplier do not include transport or cartage costs and the Customer agrees to pay all such charges and costs.
- 4.2 Delivery of the Products shall be deemed to be completed, and all risk in the Products passes to the Customer, when the Products are loaded onto the delivery vehicle at the Supplier's premises (**Delivery**).
- 4.3 As a condition of taking Delivery, the Customer, or its representative or agent, must sign the delivery advice provided by the Supplier, however failure to sign the delivery advice does not affect the time of Delivery. Such delivery advice shall be conclusive evidence of Delivery at the time and place shown in the delivery advice, despite any lack of authority on the part of any person who signs the delivery advice.
- 4.4 Despite the provisions of Clause 6, the Customer warrants that the Products are insured under a policy of insurance taken out by the Customer on and from the time of Delivery. The Customer agrees to indemnify and keep indemnified the Supplier in respect of all Loss suffered by the Supplier for a breach by the Customer of this clause or any failure on the part of its insurer to make good loss of or damage to the Products pursuant to any insurance taken out by the Customer, until title to the Products has passed to the Customer pursuant to Clause 6.

### 5. PAYMENT

- 5.1 If the Customer has a credit account with the Supplier and has completed the Credit Application, the payment terms are governed by the Credit Application.
- 5.2 The Credit Application forms part of these Conditions.
- 5.3 If the Customer does not have a credit account with the Supplier and has not completed a Credit Application, the Customer shall pay for the Products and/or Services in the manner and within the time stated on a Supplier invoice.
- 5.4 Subject to the terms of the Credit Application, all payments pursuant to the Conditions are payable in Australian dollars by the last day of the month following the date of invoice from the Supplier.
- 5.5 If the Customer defaults in any payment due to the Supplier or is subject to an Insolvency Event, then the Supplier may, at its option, do any or all of the following without prejudice to any other rights it has under this Contract and without notice to the Customer:
  - (a) withhold delivery of Products whether or not in transit and whether or not agreed to be delivered under the Contract.
  - (b) vary the credit terms specified in clause 5.2 or clause 5.3 so that all monies outstanding under the Conditions, an Order or under any other agreement between the Supplier and the Customer or held by the Customer upon trust for the Supplier, become immediately due and payable on demand.

- (c) immediately recover possession of any Products and/or resell any Products, title which is retained pursuant to clause 7.
- (d) immediately (or upon the giving of such notice as the Supplier may in its absolute discretion decide) terminate all Orders and any other contract between the Supplier and the Customer.

## 6. TITLE TO PRODUCTS

- 6.1 Title in the Products pass to the Customer upon the Supplier receiving in clear funds all amounts payable to the Supplier by the Customer pursuant to all Orders and any other contracts entered into between the Customer and the Supplier.
- 6.2 Where the Supplier has not been paid in accordance with an Order, the Supplier has the right to recover its Products (at its option and in addition to other rights) and the Customer is obliged to deliver up possession of all Products if directed by the Supplier.
- 6.3 Until such time as the Supplier has received full payment for the Products, on and from Delivery the Customer holds the Products subject to and under a trust to the sole benefit of the Supplier. Until either the Supplier has received full payment for the Products or retaken possession of the Products the Customer must at all times retain possession and control of the Products indicating clearly at all times that the Products are owned by the Supplier.
- 6.4 Despite the provisions of sub-clauses 6.1 to 6.3 (inclusive), the Customer may sell the Products to a third party in the ordinary course of business and deliver the Products 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 assigns its claim against that party to the Supplier upon the Supplier giving the Customer notice in writing to that effect.
- 6.5 The provisions of this clause 6 apply despite any other agreement under which the Supplier offers to the Customer credit.
- 6.6 The Customer irrevocably grants to the Supplier its agents and employees an unrestricted right and licence, on reasonable written notice, to enter premises occupied by the Customer to identify and remove all Products. The Supplier has the right to sell or dispose of any Products so removed as the Supplier may in its sole discretion decide and the Supplier shall not be liable to the Customer for any resulting loss. The Customer agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the Products pursuant to these Conditions including any claims brought by third parties.

## 7. PERSONAL PROPERTIES SECURITIES ACT ('PPSA')

- 7.1 The Customer agrees that these Conditions create a Purchase Money Security Interest (PMSI) (pursuant to the PPSA) in all Products (and proceeds on the Products) supplied by the Supplier to the Customer.
- 7.2 The Customer agrees to do all things necessary and execute all documents reasonably required by the Supplier to register the PMSI granted by the Customer under these Conditions and to ensure that the Supplier acquires a perfected security interest in the Products under the PPSA.
- 7.3 The Customer will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with:
  - (a) the registration of the PMSI or any other security interest and all other costs associated with protection and enforcement of the PMSI or any other security interest created by these Conditions;

- (b) by undertaking an audit under the provisions of the PPSA, or the repossession of the Products the subject of these Conditions; or
  - (c) the exercise, enforcement or preservation of any right or interest under these Conditions or any Order.
- 7.4 This PMSI does not lose its priority as a result of the renewal, refinancing, consolidation or restructure of the subject matter of these Conditions and any purchase money obligations.
  - 7.5 Until title to of the Product passes to the Customer, the Customer waives their rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
    - (a) receive a notice of intention of removal of an accession (s.95);
    - (b) receive a notice that the Supplier has determined to enforce its security interest in accordance with land law (s118);
    - (c) seize collateral (s123);
    - (d) dispose of or retain collateral (s125);
    - (e) receive a notice of enforcement action against liquid assets;
    - (f) receive a notice of disposal of product by the Supplier purchasing the product (s129);
    - (g) receive a notice to dispose of the product (s130);
    - (h) receive a statement of account following disposal of the product (s132(2));
    - (i) receive a statement of account if no disposal of the product, six monthly (s132(4));
    - (j) receive notice of any proposal by the Supplier to retain the product (s135(2));
    - (k) object to any proposal by the Supplier to either retain and dispose of the product (s137(3));
    - (l) redeem the product (s142);
    - (m) reinstate the security agreement (a143); and
    - (n) receive a notice of any verification statement (s157(1) and 157(3)).
  - 7.6 To the extent permitted by the PPSA, these Conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer rights on the Customer.
  - 7.7 The Customer further agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
  - 7.8 The Customer's right to possession of products still owned by the Supplier under these Conditions immediately ceases without the need to give written notice if:
    - (a) the Customer is subject to an Insolvency Event;
    - (b) the Supplier does not receive payment for the Products in accordance with these Conditions;
    - (c) any form of payment the Customer provides to the Supplier is dishonoured for payment;
    - (d) the Customer fails to pay for the Products in accordance with any demand for payment issued by the Supplier; or
    - (e) the Customer breaches any of these Conditions and/or is in default of any other agreement between the Customer and the Supplier.
  - 7.9 The Customer agrees that repossession and retention of the Products pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Customer as is equivalent to the Supplier's estimation of the market value of the Products as it is at the date of repossession and the repossession and retention will immediately extinguish any rights or interest the Customer has in the Product.
  - 7.10 Until title to the Products passes to the Customer in accordance with clause 6, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the Register a financing change statement under the PPSA.
  - 7.11 The Customer agrees not to change its name or undertake any changes to any documents that the Supplier has registered,

require to be registered or is capable of being registered without the Supplier's prior written consent.

## 8. DISPOSAL

8.1 The disposal of Products (except those that have been returned to the Supplier and accepted as defective by the Supplier) is the sole responsibility of the Customer. Any Products left at the Supplier's premises will be disposed of by the Supplier and the full cost of disposal charged to the Customer.

## 9. TAXES

9.1 Usually every supply is exclusive of GST.

9.2 Where a party (Supplier) makes a taxable supply to another party (Customer) under or in connection with these Conditions or an Order, the Customer must pay to the Supplier an additional amount equal to the GST payable on the Supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Customer at the later of the following:

- (a) the date when any consideration for the taxable supply is first paid or provided.
- (b) the date when the Supplier issues a tax invoice to the Customer.
- (c) If, under or in connection with these Conditions or an Order, the Supplier has an adjustment for a Supply under the GST law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Customer to take account of the varied GST amount. The Supplier must issue an adjustment note to the Customer within 28 days of becoming aware of the adjustment.
- (d) If a party is entitled to be reimbursed or indemnified under these Conditions or an Order, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit associated with the reimbursement or indemnity. The reduction is to be made before any increase under clause 9.2.

9.3 All other taxes, sales taxes, value added taxes, customs and excise duties and the taxes and duties on, or in respect of the Products or Services imposed by the law of any place within and outside the country of origin of the Products and or Services shall be payable by the Customer and if those taxes or duties are or become, payable by the Supplier, the Order 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.

## 10. WARRANTY POLICY

10.1 Subject to clause 14, the Products or Services under these Conditions and any Order are supplied only with the warranties specified in the applicable 'Bridgestone Earthmover Tyres Warranty Policy' provided with these Conditions or available at <http://www.bridgestone-earthmover.com.au/> as amended from time to time.

## 11. SAMPLES

11.1 Orders must not be construed as a sale by sample even if any Products are exhibited or inspected by the Customer.

## 12. SERVICES

12.1 The Supplier and the Customer acknowledge that from time to time the Supplier may be required to provide Services to the Customer in relation to Products and Third Party Goods. In the event that the Supplier provides such Services to the Customer, the parties agree that those Services are provided under these Conditions.

12.2 If the Supplier provides the Customer with Services in relation to Third Party Products or provides the Customer with a Product specifically manufactured for the attachment to another Product, Third Party Product or assembly, the parties

agree that the Supplier does not accept liability for nor will it indemnify the Customer in circumstances where the Customer:

- (a) has not provided the Supplier with the relevant manufacturer's instructions for undertaking such Services prior to such Services being undertaken; or,
- (b) has misused or operated the Product contrary to the Supplier's instruction.

12.3 The Customer releases the Supplier from, and accepts liability for, all Claim and Loss caused or contributed to by the Supplier in the circumstances described in clause 12.2.

## 13. CANCELLATION

13.1 If the Customer repudiates an Order other than pursuant to clause 14.4 or refuses to accept all or any of the Products other than in circumstances permitted by the Conditions or if the Supplier terminates the Order pursuant to clause 5.5, the Customer shall be liable for all Claims and Loss suffered by the Supplier.

## 14. SUPPLIER'S LIABILITY

14.1 Subject to clause 14.2, the Supplier expressly excludes any implied warranty or statutory guarantee.

14.2 If an implied warranty or statutory guarantee may not be excluded, then to the extent permitted by law, the Supplier's liability to the Customer is limited to the Supplier (at its election) either repairing or replacing or refunding the purchase price of any Product and or Service supplied.

14.3 Any claim which the Customer may have against the Supplier shall be deemed to have been waived unless written notice is given to the Supplier within seven (7) days after delivery of the Products and or Services, and unless the Supplier is given a reasonable opportunity to investigate the claim before any Products are returned to it.

14.4 If the Supplier fails to deliver the Products or Services to the Customer within the time stipulated in the Order, the Customer shall not be entitled to repudiate the Order unless the Customer has delivered a written notice to the Supplier requiring delivery of the Products within a reasonable time and the Supplier fails to deliver them within a reasonable time after receipt of such notice.

14.5 Except as expressly provided for in these Conditions and to the fullest extent permitted by law, the Supplier shall be under no liability to the Customer for any Claim or Loss (including Consequential Loss) arising out of or in connection with the performance or non-performance of these Conditions and or Order, or any part thereof including, without limiting the foregoing, an act or omission of the Supplier, its officers' employees, agents, Contractors or other representatives.

14.6 The Customer hereby indemnifies the Supplier, its officers, employees, agents, Contractors or other representatives from and against all Claims and Loss arising out of or connected with the performance or non-performance of these Conditions or an Order or any part thereof including, without limitation, any act or omission of the Supplier, its officers, employees, agents, Contractors or other representatives.

14.7 Despite anything contained in these Conditions or an Order, 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.

## 15. FORCE MAJEURE

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 a Force Majeure Event.

## 16. PERSONAL INFORMATION

16.1 Any Personal Information, including personal financial information, that is collected, used or disclosed by the Supplier for the purposes of fulfilling the Order is treated as confidential and will only be collected, used or disclosed in the following manner:

- (a) for the purposes of meeting obligations under these Conditions;
- (b) to respond to any queries that the Customer may have;
- (c) to recover any money owing to the Supplier;
- (d) in accordance with the Supplier's Privacy Policy as updated from time to time; and
- (e) in compliance with the requirements of the Privacy Act.

16.2 The Supplier's Privacy Policy is available on our website and forms part of these terms and conditions.

## 17. MISCELLANEOUS

- 17.1 Any non-bespoke Product returned to the Supplier for any reason other than incorrect supply shall be subject to a surcharge or handling fee, to be reasonably determined by the Supplier, and which shall be deducted from the credit due and owing (if any) to the Customer.
- 17.2 If the Customer makes a defect claim on the Supplier and the Supplier rejects that claim, the Supplier may destroy or otherwise dispose of the claimed defective Product as it sees fit unless the Customer informs the Supplier in writing within thirty (30) days of such rejection of the required method of disposal or delivery of the said Product. Any disposal or re-delivery made in accordance with a request from the Customer shall be at the Customer's expense.
- 17.3 No employee, agent or representative of the Supplier has any authority to vary these Conditions.
- 17.4 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.
- 17.5 The waiver by the Supplier of any breach by the Customer of any provision of these Conditions shall not be construed as a waiver of breach of any other provision, or of any other subsequent breach of the same or any other provision of these Conditions.
- 17.6 Notwithstanding any terms and conditions contained in an Order, these Conditions shall be deemed to constitute the sole terms of the agreement between the Customer and the Supplier, and in the case of any inconsistency these Conditions shall take precedence.
- 17.7 These Conditions are governed in accordance with the laws of New South Wales where each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 17.8 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.
- 17.9 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.
- 17.10 In these Conditions:
- (a) Words importing the singular meaning include the plural and vice versa, any reference to a "person" includes a corporation and words importing one gender import all others.
  - (b) References to any legislation or to any provision of any legislation shall include any modification or re-enactment, or any legislation or legislative provision substituted for or corresponding or similar to, and all legislative and statutory instruments issued under such legislation or such provision.
  - (c) A reference to a clause, paragraph, item or schedule is a reference to a clause, paragraph, item or schedule of these Conditions.

- (d) A reference to a party to a document includes that party's legal personal representatives, heirs, executors, administrators, beneficiaries, successors and permitted assigns.
- (e) A reference to "\$" or "dollars" is to Australian currency.
- (f) Headings are for convenience only and do not affect the interpretation of these Conditions.
- (g) Where an expression is defined it has the same meaning throughout these Conditions.
- (h) "Including" and other similar words are not words of limitation.
- (i) General words following words describing a particular class or category are not restricted to that class or category.

## 18. DEFINITIONS

Unless the context otherwise requires, in these Conditions:

- (a) **Claims** means actions, suits, causes of action, arbitrations, debts, dues, costs, claims, demands, verdicts, orders and judgments either at law or in equity or arising under a statute.
- (b) **Conditions** means each of the provisions, terms or conditions contained in this document.
- (c) **Consequential Loss** includes any indirect, special, economic, incidental, loss of opportunity, loss of time, loss of use, loss of use of vehicle and equipment or damage to vehicle and equipment or Loss arising consequentially.
- (d) **Contract** means the agreement formed by the offer (if any) constituted by the Order placed by the Customer and acceptance constituted by the Order acknowledgment or invoice from the Supplier, including these Conditions.
- (e) **Corporations Act** means the Corporations Act 2001 (Cth).
- (f) **Credit Application** means the application for a credit account made by the Customer to the Supplier.
- (g) **Customer** means the person, corporation, firm or body named in an Order or who has requested the supply of Products and/or Services from the Supplier.
- (h) **Force Majeure Event** means, including but not limited to:
  - (i) an act of nature;
  - (ii) a strike, lockout or other industrial disturbance;
  - (iii) enemy action, war, blockade, insurrection, riot, civil disturbance, explosion or epidemic; or
  - (iv) any other act, event or matter beyond the control of, or incapable of being avoided or overcome by a party to these Conditions.
- (i) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999.
- (j) **GST law** has the same meaning as in the GST Act.
- (k) **Insolvency Event** includes:
  - (i) in relation to a natural person, becoming bankrupt, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing his/her own affairs or being able to pay his/her debts when due;
  - (ii) in relation to a corporation, becoming subject to external administration, having a controller (as that term is defined in the Corporations Act) appointed to manage its affairs, is taken (under s. 459F(1) of the Corporations Act ) to have failed to comply with a statutory demand, entering into a compromise or arrangement with its creditors or unable to pay its debts when due or something having substantially similar effect to the previous under the law of any jurisdiction.
- (l) **Intellectual Property** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist

in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade-marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

- (m) **Loss** means, in relation to any person, any damage, loss, cost expense or liability incurred by the person or any claim, action, proceeding or investigation made against the person however arising and whether present or future, fixed or unascertained, actual or contingent.
- (n) **Order** means the written order provided by the Customer to the Supplier requesting the supply of Products and/or Services.
- (o) **Personal Information** has the same meaning given to the term in the Privacy Act.
- (p) **Products** means a Bridgestone or Firestone product which may bear the Bridgestone or Firestone name and/or generated serial number that is supplied, manufactured or imported by the Supplier (or its related entities) including industrial goods as: belts, hoses, marine fenders, tyres, tubes and includes other various products or bespoke products agreed to be provided pursuant an Order.
- (q) **Privacy Act** means the *Privacy Act 1988 (Cth)*.
- (r) **PPSA** means the *Personal Property Securities Act 2009 (Cth)*.
- (s) **Register** means the Personal Property Securities Register established by the PPSA.
- (t) **Service(s)** means (but is not limited to) the installation, removal, fitting, repair, replacement, rotation, maintenance and warehousing of any Product or Third Party Product in relation to the application of a Product to a Customer's property, plant and/or equipment.
- (u) **Supplier** means Bridgestone Earthmover Tyres Pty Ltd (ABN 74 000 069 714).
- (v) **Third Party Products** means a product which is not manufactured by Bridgestone or Firestone or does not bear the Bridgestone or Firestone name and/or generated serial number.