

# 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:
- (a) **Customer** means the person, corporation, firm or body whose name appears as such in the Contract.
  - (b) **Supplier** means Bridgestone Earthmover Tyres Pty Ltd (ABN 74 000 069 714).
  - (c) **Conditions** means this document and any further or terms or conditions agreed by the Supplier in writing that amend or add to these Conditions.
  - (d) **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.
  - (e) **Credit Application** means the application for a credit account made to the Supplier by the Customer in a form prescribed by the Supplier from time to time.
  - (f) **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.
  - (g) **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, failing to comply with a statutory demand, becoming subject to receivership, winding up proceedings, having a controller or analogous person appointed to its affairs, entering into a compromise or arrangement with its creditors or unable to pay its debts when due.
  - (h) **Personal Information** has the same meaning given to the term in the Privacy Act.
  - (i) **Privacy Act** means the *Privacy Act 1988 (Cth)*.
  - (j) **PPSA** means the *Personal Property Securities Act 2009 (Cth)*.
  - (k) **Register** means the Personal Property Securities Register established by the PPSA.
  - (l) **Services** means tyre, rim and tube services in relation to vehicles including (but not limited to) removal, fitting, repair, replacement, rotation, maintenance and warehousing.
  - (m) **Third Party Goods** means tyres, rims, tyre repair products wheels, rubber products and tyre service implements that are not Bridgestone Tyres or Tubes supplied by the Supplier.
  - (n) **Tyre** means a tyre bearing the Bridgestone name and serial number 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.
  - (o) **Tube** means a tube bearing the Bridgestone name and serial number 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 its risk when the Goods are loaded onto the delivery vehicle at the Supplier's premises. The Customer, or its representative or agent, shall sign the delivery advice presented to it 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 Despite the provisions of Clause 3, the Customer shall insure the Goods on and from the time of its assumption of risk in accordance with 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 With respect to each order, until payment for all Goods in accordance with each order has been received in full by the Supplier from the Customer in accordance with these Conditions, full and absolute ownership of and title in the Goods remains with the Supplier.
4. **PERSONAL PROPERTIES SECURITIES ACT**
- 4.1 The Customer agrees that these Conditions create a PMSI (pursuant to PPSA) in the product (and its proceeds) supplied presently and in the future by the Supplier to the Customer.
- 4.2 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 Goods under the PPSA.
- 4.3 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 Goods the subject of these Conditions; or
  - (c) the exercise, enforcement or preservation of any right or interest under these Conditions or the Contract.
- 4.4 This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these Conditions and any purchase money obligations.
- 4.5 Until ownership 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 (s152(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 (s143); and
  - (n) receive a notice of any verification statement (s157(1) and 157(3)).
- 4.6 To the extent permitted by the PPSA, these Conditions exclude any provisions of the PPSA which may be excluded in our discretion and which would otherwise confer rights on the Customer.
- 4.7 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.
- 4.8 The Customer's right to possession of products still owned by the Supplier under these Conditions shall cease if:
- (a) the Customer is subject to an Insolvency Event;
  - (b) the Supplier does not receive payment for the Goods in accordance with these Conditions;

- (c) any cheque the Customer provides to the Supplier is dishonoured for payment;
- (d) the Customer fails to pay for the Goods with any demand for payment issued by the Supplier; or
- (e) the Customer breaches any of these Conditions contained and/or is in default of any other agreement between the Customer and the Supplier.

4.9 The Customer agrees that until title to the product passes to the Customer, the Supplier is entitled to enter any premises where the Goods are located, repossess and sell such Goods. 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 Goods pursuant to these Conditions including any claims brought by third parties.

4.10 The Customer agrees that repossession and retention of the Goods 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 Goods 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.

4.11 Until ownership of the Goods passes to the Customer, 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.

4.12 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.

## 5. CONDITIONS

5.1 Each invoice from the Supplier shall, in the absence of manifest error, be conclusive 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 If the Customer has a credit account with the Supplier and has completed the Credit Application, the payment terms are in accordance with the payment terms agreed by the parties in writing from time to time under the Credit Application.

8.2 The Credit Application forms part of these Conditions.

8.3 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 Goods in the manner and within the time stated on the invoice.

8.4 Unless specified otherwise in the Credit Application, 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.

8.5 If the Customer makes default in any payment due to 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 hereunder and without notice to the Customer.

- (a) withhold any delivery of Goods whether or not in transit and whether or not agreed to be delivered under the Contract.

(b) 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.

(c) immediately recover possession of any Goods and/or resell any Goods, title which is retained pursuant to clause 4

(d) terminate immediately (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 only Tubes and Tyres as defined.

### Warranty

Every Bridgestone Tube and Tire (as defined) supplied by or through the Supplier is guaranteed to be free from defects in workmanship and manufacture for the entire original tread depth, for a period of five (5) years from the date of manufacture.

### 9.1

#### Repair

If a Tube or Tyre fails and if, after examination by Bridgestone Engineers, such Tube or Tyre failure is judged as resulting from defects in workmanship and materials within the warranty period, then the Supplier, 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 Tyre's 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.

### 9.2

#### Exclusions And Limitations

(a) Damage as a result of the following conditions are specifically excluded from this warranty:

- (i) road hazard including cut, cut separation, penetration, impact burst, and like events;
- (ii) damage by fire, oil, grease or corrosive material;
- (iii) damage by mishandling, loader bucket damage;
- (iv) improper mounting or dismounting on rims or non standard rim selection;
- (v) mechanical damage due to misalignment, ineffective suspension units or other mechanical defects
- (vi) Tyres or Tubes operated beyond specifications, as regularly published or recommended in respect of load and inflation and tonne kilometre per hour limitations;

(b) This warranty will apply only to the initial purchaser of the goods not a subsequent purchaser.

(c) The Supplier accepts no liability for incidental or consequential damages or claims for loss of time, loss of use of vehicle, or damage to vehicle.

(d) Servicing, fitting and unfitting or any other connected costs incurred are the responsibility of the owner or the operator.

(e) Tyres supplied under specific, special guarantees are excluded from the warranty in this clause.

(f) The final arbiter of any claim shall be the Supplier's Head Office Engineering Manager. 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.TR.TO. Standards.

### 9.3

#### Services

(a) 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 Tyres, Tubes 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.

(b) If the Supplier provides the Customer with Services in relation to Third Party Goods, the parties agree that:

- (i) the Supplier does not accept liability for, or indemnify the Customer from, any loss of or damage to property caused or contributed to by the Supplier in circumstances where the Customer has not provided the Supplier with the relevant manufacturer's instructions for undertaking such Services prior to such Services being undertaken; and

<p>(ii) the Customer releases the Supplier from, and accepts liability for, any loss or damage caused or contributed to by the Supplier in the circumstances described in clause 9.3(b)(i).</p>	<p>(ii) the payment of the costs of having the services supplied again.</p>
<p><b>10. SAMPLES</b></p> <p>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.</p>	<p>11.9 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.</p>
<p><b>11. CANCELLATION</b></p> <p>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 8.5, the Customer shall be liable for any damage or loss thereby suffered by the Supplier.</p> <p>11.2 If any Goods delivered by the Supplier do not conform to the warranty set out in clause 9, 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.</p> <p>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.</p> <p>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.</p> <p>11.5 The provisions of the Contract must be read having regard to provisions in 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.</p> <p>11.6 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 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, an act or omission of the Supplier, its officers employees, agents, Contractors or other representatives.</p> <p>11.7 The Customer hereby indemnifies the Supplier, 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.</p> <p>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:</p> <p>(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:</p> <p>(i) the replacement of the Goods or the Supply of equivalent Goods;</p> <p>(ii) the repair of the Goods;</p> <p>(iii) the payment of the cost of replacing the Goods or acquiring equivalent Goods;</p> <p>(iv) the payment of the cost of having the Goods repaired; or</p> <p>(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:</p> <p>(i) the supplying of the services again; or</p>	<p><b>12. FORCE MAJEURE</b></p> <p>12.1 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.</p> <p><b>13. PERSONAL INFORMATION</b></p> <p>13.1 Any Personal Information, including personal financial information, that is collected, used or disclosed by the Supplier for the purposes of the sale or supply of Goods to the Customer is treated as confidential and will only be collected, used or disclosed in the following manner:</p> <p>(a) for the purposes of meeting obligations under these Conditions;</p> <p>(b) to respond to any queries that the Customer may have;</p> <p>(c) to recover any money owing to the Supplier;</p> <p>(d) in accordance with the Supplier's Privacy Policy applicable from time to time; and</p> <p>(e) in compliance with the requirements of the Privacy Act.</p> <p>13.2 The Supplier's Privacy Policy is available on our website and forms part of these terms and conditions.</p> <p><b>14. MISCELLANEOUS</b></p> <p>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 reasonably determined by the Supplier, and which shall be deducted from the credit due and owing (if any) to the Customer.</p> <p>14.2 If the customer makes a claim on the supplier and the Supplier rejects that claim, the Supplier may destroy or otherwise dispose of the said Tyre or Tube 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 Tyre or Tube. Any disposal or re-delivery made in accordance with a request from the Customer shall be at the Customer's expense.</p> <p>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.</p> <p>14.4 The waiver by the Supplier of any 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.</p> <p>14.5 Errors in the Contract or in the invoice shall be corrected and requisite adjustments made between the parties.</p> <p>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, and in the case of any inconsistency these Conditions shall take precedence.</p> <p>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.</p> <p>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.</p> <p>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.</p>