



/// EVERYTHING FOR TYRES AND WHEELS

Standard Terms and Conditions of Sale

1. **DEFINITIONS**
 - 1.1 "Additional Charges" includes all delivery, handling and storage charges, GST, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to the Seller arising out of the sale of the Goods and Services.
 - 1.2 "Seller" means, in respect of each Contract is Industrial Tyre Supplies NZ Limited trading as Rema Tip Top New Zealand
 - 1.3 "Contract" means the contract entered into between the Seller and the Customer and includes any purchase orders submitted by the Customer, whether verbal or written and approved by the Seller.
 - 1.4 "Customer" means the Customer purchasing or offering to purchase Goods from the Seller (including any successors, nominees and any Insolvency Administrator appointed to take control of the Customer's business), and where there is more than one Customer, the Customer's covenants and obligations are joint and several. "Date of delivery" is the date on which the Goods leave the premises of the Seller.
 - 1.5 "Goods" includes Goods manufactured, imported, supplied and/or delivered by the Seller to the Customer or as the Customer may direct.
 - 1.6 "GST" means the tax imposed or to be imposed by the GST Act.
 - 1.7 "GST Act" means the (Goods and Services Tax) Act 1985
 - 1.8 "Invoice" includes tax invoice.
 - 1.9 "Intellectual Property Rights" means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.
 - 1.10 "Purchase Price" means the amount invoiced by the Seller for the Goods and Services ordered by the Customer
 - 1.12 "Services" means the services provided by the Seller to the Customer or as the Customer may direct.
2. **SALE**
 - 2.1 The Seller has agreed to sell and the Customer has agreed to buy the Goods and Services for the Purchase Price and the Additional Charges on the terms and conditions set out herein.
 - 2.2 These Standard Terms and Conditions of Sale apply to Contracts with Customers where the seller is one or more of the entities referred to in the definition of "Seller".
3. **ORDERS, PURCHASE PRICE AND PAYMENT**
 - 3.1 Payment for Goods and Services supplied by the Seller to the Customer shall become due on the date of delivery of the Goods or otherwise on the date specified in the Seller's invoice.
 - 3.2 All prices quoted by the Seller shall unless stated otherwise be exclusive of any GST and the Customer shall pay the Purchase Price plus any GST when payment for the Goods and Services is due. Any quotation by the Seller is valid for a period of 30 days unless otherwise specified, and is not to be construed as an obligation to sell any Goods or Services but an invitation to the Customer to make an offer to purchase the Goods and Services subject to this agreement.
 - 3.3 All prices quoted are, unless expressly stated in the purchase order to the contrary, exclusive of freight, which will be added to the price of any order.
 - 3.4 Time for payment shall be of the essence of the Contract.
 - 3.5 If payment is not made on the due date then the Seller shall without prejudice to any other remedy be entitled to charge interest on monies outstanding at the rate of 18% per annum calculated on a daily basis until the date payment is received by the Seller. The Customer will also be liable for any legal or other costs incurred by the Seller in attempting to recover the outstanding amounts owed by the Customer. All amounts payable by the Customer under this agreement must be paid without set-off or counterclaim of any kind.
 - 3.6 If the Customer delays making payment under the terms of the Contract, the Seller may, without prejudice to any other remedy, suspend supply or delivery of any Goods or Services to the Customer until such payment is made and the Seller shall be entitled to increase the Contract price to cover any extra expense incurred as a result of the Customer's default.
 - 3.7 Each purchase order agreed between the Seller and the Customer constitutes a separate contract for the supply of Goods and Services, and unless otherwise permitted in these Terms and Conditions, the breach of any one such contract will not be grounds for the termination of any other contract so formed between the Seller and the Customer.
4. **DELIVERY OF GOODS**
 - 4.1 The Seller shall make all reasonable efforts to deliver the Goods and Services on the date agreed between the parties, but shall not be responsible for any consequential, indirect or other loss arising as a result of any failure by the Seller to deliver the Goods and Services at any agreed time or within a reasonable period. Where no date for delivery has been agreed upon, the Seller shall deliver the Goods and Services within a reasonable time. Where delivery is to be made during a certain period, the Seller may at its option deliver the Goods and Services in instalments during that period.
 - 4.2 Where delay in delivery or non-delivery is due to the Customer failing to obtain any necessary approvals, clearances or other prerequisites to delivery or arises as a result of any occurrence reasonably beyond the Seller's control, the Seller shall within 30 days of becoming aware of any such occurrence notify the Customer in writing of the Seller's inability to deliver and may terminate the contract if the Seller shall so determine.
 - 4.3 Unless otherwise agreed, Goods supplied shall be of ordinary commercial quality and all standards including but not limited to tolerances of dimension, strength and weight, shall be of such standard as the Seller generally applied to such type of Goods. The Seller shall not be liable for over or under delivery of bulk Goods provided that such delivery does not exceed 10% of the ordered quantity
 - 4.4 Any measures requested by the Customer to protect the Goods in storage or transit shall be at the Customer's expense
- 4.5 **Returns:** Except where there is a breach of a consumer guarantee and subject to the New Zealand Consumer Law;
 - (a) Goods for credit must be returned to the point of dispatch at the Customer's expense within twenty-one days of invoice date. Invoice number and date must be quoted and the Goods must be in their original condition and no allowance being made for wear and tear.
 - (b) For the returned goods a handling fee is charged of either the minimum of 20 NZD or 20% of the invoiced amount of the returned Goods (exclusive GST)
 - (c) No credit shall be issued for Goods returned in excess of twenty-one days from the date of original invoice or for Goods supplied specially to Customer's requirements.
5. **PROPERTY IN THE GOODS**
 - 5.1 "Insolvency Event" shall occur when
 - (d) the Customer is late or fails to make any of the payments to the Seller in accordance with the Seller's payment terms;
 - (e) an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Customer (other than a voluntary liquidation for amalgamation or reconstruction purposes);
 - (f) the Customer enters into an arrangement, compromise or composition or assignment for the benefit of its creditors or any class of them;
 - (g) the Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;
 - (h) the Customer is deemed unable to pay its debts as and when they fall due, or stops or suspends payments of its debts;
 - (i) a receiver, a receiver and manager, administrator, liquidator, or other officer is appointed to the Customer or any part of its property, or a third party attempts to levy execution against the Customer's property or the Goods, or the Customer (being a natural person) commits an act of bankruptcy.
 - 5.2 Title to the Goods delivered by the Seller to the Customer will not pass to the Customer until such time as the Seller has received payment in full of the Purchase Price of the Goods and Services ("the Debts").
 - 5.3 Notwithstanding anything in this clause, risk in the Goods shall pass to the Customer at the date of delivery.
 - 5.4 The Customer shall have the right to sell the Goods [in its own name and not as agent for the Seller] by way of bona fide sale at full market value and in the ordinary course of its business.
 - 5.5 Until the Debts have been paid:
 - (a) The Customer shall hold the Goods as bailee and fiduciary agent for the Seller and shall safely and securely store the Goods separately from other goods of the Customer in such a manner as to show clearly that the Goods are the property of the Seller;
 - (b) The Customer shall indemnify the Seller against any claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by the Seller arising out of the possession, use or disposal of the Goods by the customer or repossession or attempted repossession by the Seller;
 - (c) Any sale of the Goods under sub clause 5.4 shall be affected as fiduciary agent for the Seller and the proceeds of such sale and the rights against its Customers arising from such sales shall be held in trust for the Seller. The proceeds of such sale must be held in a separate account until the liability to the Seller has been fully discharged.
 - 5.6 In the event that:
 - (a) The Debts are not paid in accordance with this agreement and any other agreement between the Seller and the Customer;
 - (b) the Seller received notice of or reasonably believes that a third person may attempt to levy execution against the Goods; or
 - (c) An Insolvency Event occurs,then the Seller may at any time, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any Contract relating to the Goods and the bailment/agency referred to in sub clause 5.5 and enter upon the Customer's premises or any site owned, possessed or controlled by the Customer where the Seller reasonably believes the Goods may be stored, repossess the Goods without being liable for any damage caused, and subsequently dispose of the Goods at the Seller's discretion.
 - 5.7 If an Insolvency event occurs, the Customer shall bear the onus of proving that Goods supplied by the Seller in the Customer's possession (whether mixed with other Goods or not) have been paid in full by the Customer. If the Customer is unable to prove to the satisfaction of the Seller, that the Goods identified as the Seller Goods have been paid in full by the Customer, then those Goods shall be deemed to relate to unpaid invoices outstanding from time to time and such Goods are deemed to be the property of the Seller and may be repossessed by the Seller.
 - 5.8 The Customer grants an irrevocable licence to the Seller or its agent to enter the Customer's premises or any site owned, possessed or controlled by the Customer in order to recover possession of Goods pursuant to this clause. The Customer indemnifies the Seller in respect of any damage to property or personal injury which occurs as a result of the Seller entering any premises or site pursuant to this clause.
 - 5.9 If the Goods cannot be distinguished from similar Goods which the Customer claims to have paid for in full, the Seller may in its absolute discretion, seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Seller and the Customer can be ascertained. The Seller must promptly return to the Customer any goods the property of the Customer and the Seller is in no way liable or responsible for any loss or damage to Goods or for any loss or destruction to the Customer's business howsoever arising from the seizure of the Goods

- 5.10 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for the Seller in a separate account until the liability to the Seller has been fully discharged. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Seller at the time of the receipt of such proceeds.

6. WARRANTIES AND INDEMNITIES

- 6.1 Subject to these conditions of sale, the Seller warrants that the Goods are free of defects both in material and workmanship and are of merchantable quality. The liability of the Seller pursuant to this warranty or any other warranty implied by operation of any statute including the Consumer Guarantees Act & Fair Trade Act (as amended) shall be limited to the cost of replacing defective Goods, the cost of obtaining equivalent Goods, or the cost of repairing the Goods at the Seller's discretion provided that in all such cases any costs of dismantling and reassembly shall be borne by the Customer.

- 6.2 The warranty set out at clause 6.1, is subject to the following:

- the warranty applies for a period of 12 months commencing on the date of invoice of the Goods;
- the warranty does not apply to consumable components that are subject to normal wear and tear;
- the Customer must provide the Seller with either an invoice number or purchase order number referencing the defective Goods;
- the defects to the Goods must have arisen solely from faulty materials or workmanship; and
- the damage to the Goods must not arise from:
 - incorrect installation of the Goods contrary to the instructions contained within the Seller's Installation and Operation Manuals;
 - improper adjustment, calibration or operation by the Customer;
 - the use of accessories including consumables, hardware, or software which were not manufactured by or approved in writing by the Seller;
 - any contamination or leakages caused or induced by the Customer;
 - any modifications of the Goods which was not authorised in writing by the Seller;
 - any misuse of the Goods by the Customer;
 - any use or operation of the Goods outside of the physical, electrical or environmental specifications of the Goods;
 - inadequate or incorrect site preparation;
 - inadequate or improper maintenance of the Goods;
 - incorrect handling of the Goods; or
 - incorrect storage of the Goods.

- 6.3 Any claims to be made against the Seller for short delivery of Goods must be made within fourteen days of the delivery date, unless otherwise agreed by the parties.

- 6.4 If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the Goods. The Seller agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

- 6.5 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods and Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.

- 6.6 The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the Seller's breach of this agreement, the supply, layout, assembly, installation or operation of the Goods and Services or arising out of the Seller's negligence or in any way.

- 6.7 The liability of the Seller in respect of the Services provided by the Seller implied by operation of any statute including the Consumer Guarantees Act & Fair Trade Act (as amended) shall be limited to the supply of Services again or cost of re-supplying the Services again.

- 6.8 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Consumer Guarantees Act & Fair Trade Act) and which by law cannot be excluded, restricted or modified.

- 6.9 The Customer hereby indemnifies and keeps indemnified the Seller, its servants and agents in respect of any claim or demand made or action commenced by any person (including but not limited to, the Customer) against the Seller or, for which the Seller is liable, in connection with any loss arising from or incidental to the provision of Goods or Services, any order or the subject matter of this agreement, including but not limited to any legal costs incurred by the Seller in relation to meeting any claim or demand or any party/party legal costs for which the Seller is liable in connection with any such claim or demand. This provision remains in force after the termination of this agreement.

- 6.10 The Customer hereby indemnifies and agrees to hold the Seller harmless against all costs, claims, expenses or other liability arising out of or in connection with the delivery to the Customer of the Goods prepared, manufactured or dispatched in accordance with drawings, models, descriptions, analyses, prescriptions or other specifications submitted to the Seller by the Customer.

- 6.11 The Seller shall take all reasonable steps to care for and maintain any tools or models supplied to it by the Customer, provided that all such tools and models shall be insured by, and, where necessary repaired at the expense of, the Customer.

- 6.12 All information, specifications and samples provided by the Seller in relation to the Goods or Services are approximations only and, subject to any guarantees under the Consumer Guarantees Act & Fair Trade Act) (as amended), small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.

- 6.13 The Seller gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Seller or any of its supplier's liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:

- any Goods or Services supplied to the Customer;
- any delay in supply of the Goods or Services; or
- any failure to supply the Goods or Services.

- 6.14 To the fullest extent permissible at law, the Seller is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if the Seller has been advised of the possibility of damages.

- 6.15 The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.

7. ADVICE

- 7.1 Subject to clause 6, any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods and Services supplied is given in good faith. It is provided without any warranty or accuracy, appropriateness or reliability and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods and Services.

8. HAZARDOUS MATERIALS

- 8.1 Where the Seller sells potentially hazardous materials to the Customer, the Seller shall endeavour to provide a Material Safety Data Sheet ("MSDS") applicable to those hazardous materials. If not provided, the onus is on the Customer to request the MSDS from the Seller.

- 8.2 The Customer agrees to follow the instructions for use and handling of the hazardous materials, and accepts it is the Customer's responsibility to ensure that its employees, contractors, agents or customers comply with the instructions for use and handling as stipulated in the MSDS and/or Warning Labels supplied by the Seller.

- 8.3 The Customer hereby indemnifies and agrees to hold the Seller harmless against losses, damages, claims or other liability arising out of or in connection with the supply of the hazardous materials by the Seller, to the Customer and the use and handling of the hazardous materials by the Customer, its employees, contractors, agents or Customers.

- 8.4 The information supplied by the Seller in the MSDS or Warning Labels is often obtained from the Seller's own suppliers or other sources, and the Seller will not be held liable in contract and/or in tort for any reliance placed on such information.

- 8.5 The Seller reserves the right to withdraw further supply of any hazardous materials if the Customer, its employees, contractors, agents or Customers fail to comply with the conditions of use and handling as stipulated in the MSDS and/or Warning Labels.

9. CANCELLATION

- 9.1 No purchase order may be cancelled except with the consent in writing of the Seller and on terms, which will indemnify the Seller against all losses.

10. NOTICES

- 10.1 Any notice to be given to the Customer shall be deemed to be given upon its being posted or sent by electronic mail to the address of the Customer set out in the Contract or to the Customer's registered office or to the Customer's last known address.

11. ASSIGNMENT

- 11.1 Neither party may assign any right under this document without the other party's written consent.

12. APPLICABLE LAW

- 12.1 If any provision in this Agreement is deemed, by a Court of competent jurisdiction, void or otherwise unenforceable the remainder of this Agreement will continue in full force and effect.

13. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 13.1 Expressions defined in the Personal Property Securities Act 1999 ("PPSA") have the same meaning when used in this clause.

- 13.2 This Agreement is a Security Agreement and creates a Purchase Money Security Interest (PMSI) in the Goods and all proceeds from the sale of the Goods by the Customer to a third party.

- 13.3 The Customer consents to the Seller registering its Security Interest in the Goods on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration of its Security Interest, or registration of any other document on the PPS Register which is necessary to perfect the Seller's Security Interest. The Customer agrees to indemnify, and upon demand reimburse the Seller:

- for all expenses incurred in relation to the registration of its Security Interest in the Goods; and
- For any enforcement or attempted enforcement of any Security Interest granted by the Customer to the Seller.

- 13.4 Until such time as title in the Goods has passed to the Customer, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a Security Interest over the Goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.

- 13.5 Without limiting any other right that the Seller may have, the Customer must immediately return all Goods if requested to do so by the Seller following non-payment of any amount owing by the Customer to the Seller or following the breach of any other obligation of the Customer.

- 13.6 The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.

- 13.7 The Seller and the Customer agree that this Agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to

unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and the Customer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 177 of the PPSA.

- 13.8 the Seller and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Seller's Security Interest in the Goods or of this Agreement:

- (a) any requirement for the Seller to give the Customer a notice of removal of accession;
- (b) any requirement for the Seller to give the Customer a notice of an intention to seize Collateral;
- (c) any requirement for the Seller to give the Customer a notice of the Seller's proposed disposal of the Goods;
- (d) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- (e) any requirement for the Seller to give the Customer a statement of account if the Seller does not dispose of the Goods;
- (f) any right the Customer has to receive a notice of retention of Collateral;
- (g) any right the Customer has to redeem the Goods before the Seller exercises a right of disposal; and
- (h) any right the Customer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.
- (i) Any right of the Customer has to object to the purchase of the Collateral by the Seller.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Seller to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Seller for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Seller against all Losses incurred by the Seller in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.

- 14.2 Unless specifically agreed in writing between the Seller and the Customer, all Intellectual Property Rights in any works created by the Seller on behalf of the Customer vest in and remain the property of the Seller.

- 14.3 Subject to payment of all invoices due in respect of the Goods and Services, the Seller grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Seller in connection with the provision of Goods under this Agreement for the purposes contemplated by the Order.

15. FORCE MAJEURE

- 15.1 If circumstances beyond the Seller's control prevent or hinder its provision of the Goods or Services, the Seller is free from any obligation to provide the Goods or Services while those circumstances continue. The Seller may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

- 15.2 Circumstances beyond the Seller's control include, but are not limited to strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

16. EXISTING CONTRACTS

- 16.1 This agreement applies to all transactions between the Seller and the Customer relating to the provision of Goods and Services, including all quotations, contracts and variations. Subject to clause 16.2, this agreement shall apply to the exclusion of any agreement or conditions of sale contained in any document of the Customer or elsewhere.

- 16.2 The variation or waiver of the terms of this agreement or a party's consent to a departure to a provision by another party is ineffective unless in writing and signed by both parties.