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Definitions

- 1.1** "N.B.R. Tyres" means N.B.R. Tyres Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of N.B.R. Tyres Pty Ltd.
- 1.2** "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3** "Goods" means all Goods or Services supplied by N.B.R. Tyres to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4** "Price" means the Price payable for the Goods as agreed between N.B.R. Tyres and the Customer in accordance with clause 4 below.

Acceptance

- 2.1** The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2** These terms and conditions may only be amended with N.B.R. Tyres' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and N.B.R. Tyres.

Change in Control

- 3.1** The Customer shall give N.B.R. Tyres not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by N.B.R. Tyres as a result of the Customer's failure to comply with this clause.

Price and Payment

4.1 At N.B.R. Tyres' sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by N.B.R. Tyres to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to N.B.R. Tyres' current price list; or
- (c) N.B.R. Tyres' quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 N.B.R. Tyres reserves the right to change the Price if a variation to N.B.R. Tyres' quotation is requested.

4.3 At N.B.R. Tyres' sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by N.B.R. Tyres, which may be:

- (a) on delivery of the Goods;
- (b) thirty (30) days following the end of the date of any invoice given to the Customer by N.B.R. Tyres;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by N.B.R. Tyres.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Customer and N.B.R. Tyres.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to N.B.R. Tyres an amount equal to any GST N.B.R. Tyres must pay for any supply by N.B.R. Tyres under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.



Delivery of Goods

5.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:

- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at N.B.R. Tyres’ address; or
- (b) N.B.R. Tyres (or N.B.R. Tyres’ nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.

5.2 At N.B.R. Tyres’ sole discretion the cost of delivery is included in the Price.

5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then N.B.R. Tyres shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.4 N.B.R. Tyres may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by N.B.R. Tyres to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and N.B.R. Tyres will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

Risk

6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, N.B.R. Tyres is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by N.B.R. Tyres is sufficient evidence of N.B.R. Tyres’ rights to receive the insurance proceeds without the need for any person dealing with N.B.R. Tyres to make further enquiries.



6.3 If the Customer requests N.B.R. Tyres to leave Goods outside N.B.R. Tyres' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

Title

7.1 N.B.R. Tyres and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid N.B.R. Tyres all amounts owing to N.B.R. Tyres; and
- (b) Customer has met all of its other obligations to N.B.R. Tyres.

7.2 Receipt by N.B.R. Tyres of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

7.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to N.B.R. Tyres on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for N.B.R. Tyres and must pay to N.B.R. Tyres the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for N.B.R. Tyres and must pay or deliver the proceeds to N.B.R. Tyres on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of N.B.R. Tyres and must sell, dispose of or return the resulting product to N.B.R. Tyres as it so directs.
- (e) the Customer irrevocably authorises N.B.R. Tyres to enter any premises where N.B.R. Tyres believes the Goods are kept and recover possession of the Goods.
- (f) N.B.R. Tyres may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of N.B.R. Tyres.
- (h) N.B.R. Tyres may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.



Personal Property Securities Act 2009 (“PPSA”)

8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA

8.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by N.B.R. Tyres to the Customer.

8.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which N.B.R. Tyres may reasonably require to;

- (i) relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);

(b) indemnify, and upon demand reimburse, N.B.R. Tyres for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of N.B.R. Tyres;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of N.B.R. Tyres;

(e) immediately advise N.B.R. Tyres of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales



- 8.4** N.B.R. Tyres and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5** The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6** The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7** Unless otherwise agreed to in writing by N.B.R. Tyres, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8** The Customer must unconditionally ratify any actions taken by N.B.R. Tyres under clauses 8.3 to 8.5.
- 8.9** Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

Security and Charge

- 9.1** In consideration of N.B.R. Tyres agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2** The Customer indemnifies N.B.R. Tyres from and against all N.B.R. Tyres' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising N.B.R. Tyres' rights under this clause.
- 9.3** The Customer irrevocably appoints N.B.R. Tyres and each director of N.B.R. Tyres as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.



Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 10.1** The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify N.B.R. Tyres in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow N.B.R. Tyres to inspect the Goods.
- 10.2** Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 10.3** N.B.R. Tyres acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4** Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, N.B.R. Tyres makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. N.B.R. Tyres' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5** If the Customer is a consumer within the meaning of the CCA, N.B.R. Tyres' liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6** If N.B.R. Tyres is required to replace the Goods under this clause or the CCA, but is unable to do so, N.B.R. Tyres may refund any money the Customer has paid for the Goods.
- 10.7** If the Customer is not a consumer within the meaning of the CCA, N.B.R. Tyres' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by N.B.R. Tyres at N.B.R. Tyres' sole discretion;
 - (b) limited to any warranty to which N.B.R. Tyres is entitled, if N.B.R. Tyres did not manufacture the Goods;
 - (c) otherwise negated absolutely.



10.8 Subject to this clause 10, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 10.1; and
- (b) N.B.R. Tyres has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, N.B.R. Tyres shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by N.B.R. Tyres;
- (e) fair wear and tear, any accident, or act of God.

10.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by N.B.R. Tyres as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that N.B.R. Tyres has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 10.10.

10.11 The Customer accepts and acknowledges that N.B.R. Tyres' warranty applicable for retread Goods is the full life of the tread, however, this may vary depending on the fair wear and tear of the Goods and shall be at N.B.R. Tyres' sole discretion in respect of replacement in the event of any claim so arising.

10.12 In the event that the Goods fail for any reason, the Client agrees to return the Goods to N.B.R. Tyres for inspection and evaluation to determine the failure. If it is found that the failure of the Goods is at no fault of the Customer, then it shall be at N.B.R. Tyres' sole discretion as to whether the Goods shall be either repaired or replaced. The cost of repair and/or replacement shall be based upon the pro-rata assessment of N.B.R. Tyres.



10.13 Notwithstanding anything contained in this clause if N.B.R. Tyres is required by a law to accept a return then N.B.R. Tyres will only accept a return on the conditions imposed by that law.

Intellectual Property

- 11.1** Where N.B.R. Tyres has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of N.B.R. Tyres.
- 11.2** The Customer warrants that all designs, specifications or instructions given to N.B.R. Tyres will not cause N.B.R. Tyres to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify N.B.R. Tyres against any action taken by a third party against N.B.R. Tyres in respect of any such infringement.
- 11.3** The Customer agrees that N.B.R. Tyres may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which N.B.R. Tyres has created for the Customer.

Default and Consequences of Default

- 12.1** Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at N.B.R. Tyres' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2** If the Customer owes N.B.R. Tyres any money the Customer shall indemnify N.B.R. Tyres from and against all costs and disbursements incurred by N.B.R. Tyres in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, N.B.R. Tyres' collection agency costs, and bank dishonour fees).
- 12.3** Without prejudice to any other remedies N.B.R. Tyres may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions N.B.R. Tyres may suspend or terminate the supply of Goods to the Customer. N.B.R. Tyres will not be liable to the Customer for any loss or damage the Customer suffers because N.B.R. Tyres has exercised its rights under this clause.



12.4 Without prejudice to N.B.R. Tyres' other remedies at law N.B.R. Tyres shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to N.B.R. Tyres shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to N.B.R. Tyres becomes overdue, or in N.B.R. Tyres' opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation

13.1 N.B.R. Tyres may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice N.B.R. Tyres shall repay to the Customer any money paid by the Customer for the Goods. N.B.R. Tyres shall not be liable for any loss or damage whatsoever arising from such cancellation.

13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by N.B.R. Tyres as a direct result of the cancellation (including, but not limited to, any loss of profits).

13.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

Privacy Act 1988

14.1 The Customer agrees for N.B.R. Tyres to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by N.B.R. Tyres.

14.2 The Customer agrees that N.B.R. Tyres may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:



- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

14.3 The Customer consents to N.B.R. Tyres being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

14.4 The Customer agrees that personal credit information provided may be used and retained by N.B.R. Tyres for the following purposes (and for other purposes as shall be agreed between the Customer and N.B.R. Tyres or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by N.B.R. Tyres, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods

14.5 N.B.R. Tyres may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

14.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);



- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that N.B.R. Tyres is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of N.B.R. Tyres, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by N.B.R. Tyres has been paid or otherwise discharged.

Unpaid N.B.R. Tyres' Rights

15.1 Where the Customer has left any item with N.B.R. Tyres for repair, modification, exchange or for N.B.R. Tyres to perform any other service in relation to the item and N.B.R. Tyres has not received or been tendered the whole of any moneys owing to it by the Customer, N.B.R. Tyres shall have, until all moneys owing to N.B.R. Tyres are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

15.2 The lien of N.B.R. Tyres shall continue despite the commencement of proceedings, or judgment for any moneys owing to N.B.R. Tyres having been obtained against the Customer

General

16.1 conditions shall not be treated as a waiver of that provision, nor shall it affect N.B.R. Tyres' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected prejudiced or impaired.

16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which N.B.R. Tyres has its principal place of business, and are subject to the jurisdiction of the courts in that state.



- 16.3** Subject to clause 10 N.B.R. Tyres shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by N.B.R. Tyres of these terms and conditions (alternatively N.B.R. Tyres' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4** The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by N.B.R. Tyres nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5** N.B.R. Tyres may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.6** The Customer agrees that N.B.R. Tyres may amend these terms and conditions at any time. If N.B.R. Tyres makes a change to these terms and conditions, then that change will take effect from the date on which N.B.R. Tyres notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for N.B.R. Tyres to provide Goods to the Customer.
- 16.7** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.8** The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

