

CONDITIONS OF SALE

1. **DEFINITIONS**
For the purposes of these Conditions:
- 1.1 **"the Buyer"** means any party to which the Seller has agreed to supply Products and/or Services, whether or not for value;
- 1.2 **"Contract"** means any contract (whether or not in writing) between the Seller and the Buyer for the supply to the Buyer of Products and/or Services, which shall be deemed to incorporate these Conditions;
- 1.3 **"Dealer"** means any Buyer who is purchasing any Products for resale;
- 1.4 **"Default"** occurs when the Buyer either:
- 1.4.1 fails to make any payment due to the Seller on or before the due date (whether or not such payment is due under the Contract); or
- 1.4.2 commits any breach of the terms of the Contract; or
- 1.4.3 enters into any arrangement with any of its creditors; or
- 1.4.4 has a receiver, receiver and manager, administrator, administrative receiver or liquidator appointed over all or any part of its undertaking or assets; or
- 1.4.5 has a petition for an administration order or for a winding-up order brought against it; or
- 1.4.6 has proceedings equivalent to 1.4.4 or 1.4.5 above taken against it outside the UK; or
- 1.4.7 ceases to carry on its business or becomes unable to pay its debts; or
- 1.4.8 is in the reasonable opinion of the Seller unlikely to be able to fulfil all its obligations under the Contract;
- 1.5 **"Order"** means an order for Products and/or Services placed by the Buyer;
- 1.6 **"The Seller"** means whichever of Pirelli UK Tyres Limited or any of its subsidiaries is supplying Products and/or Services to the Buyer;
- 1.7 **"Price"** means the total amount payable by the Buyer for the relevant Products and/or Services;
- 1.8 **"Products"** means any tyres, accessories, wheel assemblies or other products to be supplied by the Seller under the Contract, whether or not manufactured by the Seller;
- 1.9 **"Intellectual Property Right"** means any patent, trade mark or registered design, any application for any of the same and any copyright or design right;
- 1.10 **"Services"** means any services to be supplied by the Seller under the Contract;
- 1.12 **"UK"** means the United Kingdom of Great Britain and Northern Ireland;
- 1.13 **"VAT"** means value added tax (or any replacement tax) at the appropriate rate.
2. **THE CONTRACT**
2.1 These Conditions shall apply to any Contract to the entire exclusion of any standard terms or conditions specified by the Buyer. Acceptance of the Products or Services by or on behalf of the Buyer shall be deemed to be full and unconditional acceptance of these Conditions.
- 2.2 The Contract shall consist solely of the following documents, which shall take priority in the following order:
- 2.2.1 The Seller's acceptance or acknowledgement of the Order (whether express or by performance of the Contract);
- 2.2.2 the Order but excluding any documents referred to in it and any standard Conditions of Purchase of the Buyer;
- 2.2.3 any documents referred to in the Order to the extent only that these have been expressly agreed in writing by the Seller;
- 2.2.4 any special terms and conditions agreed in writing between the Buyer and the Seller in respect of the Contract; and
- 2.2.5 these Conditions.
- 2.3 Where the Seller accepts the Order by performing the Contract, these Conditions shall apply to the entire exclusion of any Conditions of Purchase of the Buyer except for any terms agreed in writing by the Seller.
3. **AVAILABILITY AND CHANGES**
3.1 If the Seller is unable to obtain any raw materials or components required for the Products or Services without incurring significant additional expense or delay, it may give written notice to that effect to the Buyer. Upon receipt of such notice by the Buyer the Contract shall cease to have effect except as regards any consignment of Products already manufactured by the Seller or any Services already performed by the Seller, which shall be paid for in full at the price stated in the Contract. Where relevant, the Price shall be apportioned in such manner as the Seller may reasonably determine in respect of such Products or Services.
- 3.2 The Seller shall have the right at any time prior to delivery or collection of the Products to change their specification where, in the opinion of the Seller, such change constitutes an improvement to the Products, does not in any way adversely affect the performance of the Products and constitutes proper performance of the Contract. Any such change shall not affect the price for the Products.
4. **QUOTATIONS AND ORDERS**
4.1 Unless otherwise expressly stated on the quotation, a quotation shall only be valid until close of business on the day of issue.
- 4.2 Any Order shall be subject to acceptance by the Seller. All quantities and delivery terms shall be subject to the Seller's written agreement. Agreement as to quantities shall in any event be subject to the right of the Seller to reduce the quantities where it deems it necessary to do so.
5. **DELIVERY**
5.1 While the Seller will use all reasonable endeavours to adhere to any agreed delivery date, the time of delivery of the Products or performance of the Services shall not be of the essence. The Seller shall not be liable to the Buyer in damages or otherwise for any delay in delivery of the Products or performance of the Services.
- 5.2 If any details of the Contract are altered by the Buyer by agreement with the Seller (including but not limited to the design or quantity of the Products or Services) or if any queries are raised by the Buyer, the delivery date may be extended by the Seller by such period as shall be reasonable in all the circumstances.
- 5.3 Unless otherwise specified by the Seller when accepting an Order, prices are quoted on a CIF basis (as defined in Incoterms 2000). Buyer shall inspect the Products on delivery for any visible damage or shortages and shall record any such damage or shortages on the delivery documentation. Claims in respect of Products which arrive damaged or are short delivered must be notified to the Seller in writing within 5 working days after receipt together with a copy of the delivery documentation.
- 5.4 Except where the Seller has agreed to store the Products, if the Seller or its carrier is for any reason due to the Buyer unable to deliver the Products (including without limitation any suspension of performance of the Contract by the Buyer) the Seller may give written notice to the Buyer requiring the Buyer to take delivery of the Products within 7 days. If the Buyer fails to do so the Seller shall be entitled:
- 5.4.1 to give written notice to the Buyer stating that all risk in the Products shall pass to Buyer; and/or
- 5.4.2 to invoice the Buyer for the full value of the Products; and/or
- 5.4.3 to require the Buyer to take delivery of or to collect the Products within 7 days. Failure to do so shall be a breach of the Contract.
- 5.5 Where Condition 5.4 applies or where the Seller agrees to store any Products, the Seller shall be entitled to store the Products at the Seller's works or elsewhere. All costs incurred by the Seller for storage shall be paid by the Buyer within 30 days after submission of a supplementary invoice by the Seller. The Seller shall also be entitled to charge for storage at the Seller's works at a commercial rate, which shall be paid for in the same way. The Seller shall be entitled to require the Buyer to insure the Products against all normal risks and to provide to the Seller adequate evidence of such insurance on request. If the Buyer fails to do so, the Seller shall be entitled to insure the Products and to charge the Buyer for such insurance.
- 5.6 If the Buyer requests the Seller to delay delivery by a significant period and the Seller agrees to do so, the Seller shall have the right to increase the Price and shall notify the Buyer of the new Price.
6. **CLAIMS**
6.1 All claims in respect of Products must be sent in writing to the Claims Department of the Seller at Derby Road, Burton-on-Trent, Staffordshire DE13 0BH. The determination of the Seller's technical staff as to whether or not any Products are defective shall be conclusive.
- 6.2 Claims will only be considered by the Seller if:
- 6.2.1 adequate evidence of purchase is submitted with the Products;
- 6.2.2 notice in writing giving details of the alleged defects is given to the Seller as soon as possible;
- 6.2.3 where the Products were manufactured by the Seller, the defects are due to faulty manufacture or workmanship;
- 6.2.4 the Products have been used in accordance with all technical requirements or recommendations issued by the Seller; and
- 6.2.5 the Products are returned to the Seller at the Buyer's expense, if so required by the Seller.
- 6.3 All implied terms, warranties and conditions are excluded from the Contract to the maximum extent permitted by law.
- 6.4 Where the Buyer is a consumer, the provisions of these Conditions are without prejudice to any rights that the Buyer may have under any applicable consumer protection legislation.
- 6.5 Where the Seller is reselling Products purchased from a third party, the Buyer shall be entitled to enforce any warranties given to the Buyer by the third party to the extent permitted by law.
7. **BRANDING, MARKETING, REMOULDING AND RETREADING**
7.1 The Buyer shall not deface, brand, mark, recut or in any way tamper with the Products, except that the Buyer may regroove truck tyres if this is done strictly in accordance with the Seller's instructions and manuals.
- 7.2 The Buyer shall not sell or otherwise dispose of any Products under the name "Pirelli", "Courier", "CPK" or any other name or mark associated with the Seller or any of its subsidiaries where such Products have been defaced, branded, marked, recut, remoulded or retreaded by the Buyer or any third party, and the Buyer shall indemnify the Seller against any claims arising from any subsequent use of such Products. The supply of Products and/or Services to the Buyer shall not give the Buyer the right to use the name "Pirelli" (whether or not with the elongated P), any trade mark associated therewith or any other intellectual property belonging to any member of the Pirelli International Group except as an integral, unaltered part of Products resold by the Buyer. No promotional or advertising material (including without limitation signs and posters) may be used by the Buyer which contains any such intellectual property without the Seller's express written consent. Any use of any Intellectual Property Rights belonging to any member of the Pirelli International Group shall be for the benefit of the Seller.
- 7.4 The Seller may at any time undertake checks at any premises used by the Buyer in order to verify compliance with Condition 7.3. The Buyer shall give to the Seller every reasonable assistance in this respect.
8. **TECHNICAL DATA**
8.1 All catalogues, brochures, specifications or other technical characteristics, data or other descriptive matter included in any sales promotional material or in the Seller's tender are intended to give a general description of the Products offered and shall not form part of the Contract unless the Seller expressly agrees otherwise in writing.
9. **CONFIDENTIAL INFORMATION**
9.1 The Buyer shall keep confidential and shall not disclose to any third party without the Seller's prior written consent any information (whether of a commercial or technical nature) acquired from the Seller in connection with any tender to the Buyer or the Contract, including without limitation any information concerning the prices at which the Seller sells the Products.
10. **PRICES**
10.1 All prices shown in the Seller's current price lists are subject to alteration without notice. Such alteration shall not affect any order placed by the Buyer and accepted by the Seller in writing prior to such alteration.
- 10.2 If the cost to the Seller of fulfilling any of its obligations under the Contract is increased by any act or omission on the part of the Buyer or by the coming into force after the date of the Contract of any law or regulation having the force of law, then the Price shall be adjusted to cover such additional costs.
- 10.3 All prices are net of any discounts, unless otherwise so stated.
11. **PAYMENT**
11.1 Payment for the Products or Services or for storage charges under Condition 5.5 (where applicable) shall be made in pounds sterling within the month following the month in which the date of the invoice falls, or as otherwise agreed in writing. The Seller shall be entitled to statutory interest and to a fixed sum in respect of any late payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Payment on time is of the essence of the Contract.
- 11.2 Any consignment or part consignment of the Products or supply of Services shall, if so directed by the Seller, be treated as the subject of a separate Contract and be paid for accordingly.
- 11.3 The Seller shall be entitled to require adequate credit references from the Buyer and to require security for payment by means of a guarantee from such party as the Seller deems appropriate.
12. **VAT**
12.1 All prices quoted are exclusive of VAT which shall, if required by law, be added at the appropriate rate and paid by the Buyer in accordance with Condition 11.
13. **RISK**
13.1 Subject to Condition 5.4, risk in any consignment of the Products shall pass to the Buyer on delivery of the Products to the Buyer or on collection of the Products by or on behalf of the Buyer.
14. **RETENTION OF TITLE**
14.1 Legal and beneficial ownership of any consignment of the Products shall pass to the Buyer only when all amounts due from the Buyer to the Seller in respect of such Products and all other products and services supplied by the Seller to the Buyer have been received in full. Until such time, the Buyer shall hold the Products as bailee for the Seller and in such a way as to be clearly identifiable as the Seller's property, and the Buyer shall keep the Products separate and identifiable from any other products held by the Buyer. The Buyer shall also ensure that the Products are covered by insurance for an amount equal to the Price against all normal commercial risks, and shall provide the Seller on demand with evidence of such insurance.
- 14.2 If any Default occurs then:
- 14.2.1 any right of sale that the Buyer may have in respect of the Products shall automatically cease;
- 14.2.2 the Seller shall be entitled to enter upon the premises of the Buyer and to reclaim the Products; and
- 14.2.3 upon the Seller reclaiming the Products or part of them the Contract shall be deemed to have been cancelled in respect of the reclaimed Products only and the Seller shall repay to the Buyer the purchase price for such Products less (a) all amounts due from the Buyer to the Seller on any account whatsoever and (b) the cost of reclaiming such Products.
- 14.3 The Seller may at any time serve a written notice on the Buyer stating that legal and beneficial ownership of all or part of the Products shall pass to the Buyer. Ownership of such Products shall thereupon immediately pass to the Buyer without prejudice to the Buyer's obligation to pay for such Products.
15. **TERMINATION**
15.1 If a Default occurs then the Seller shall in its discretion be entitled:
- 15.1.1 to terminate the Contract; and/or
- 15.1.2 to terminate any other agreement between the Seller and the Buyer for the supply of Products and/or Services which has not been completely performed.
- 15.2 Such termination shall become effective either (a) when the Seller gives written notice to the Buyer to that effect or (b) when the Seller reclaims the Products under Condition 14.2. Such notice may be sent by ordinary or recorded delivery post or by telex or fax. Upon such termination:
- 15.2.1 the Buyer's obligations to make payments under the Contract or other agreement shall cease; and
- 15.2.2 the Seller shall be entitled to retain any payment already made by the Buyer; and
- 15.2.3 the Seller shall cease to be liable to supply any Products or Services to the Buyer under the Contract or such other agreement.
16. **PRODUCT LIABILITY**
16.1 The Buyer shall keep the Seller indemnified on demand in respect of any claims which arise as a result of any of the Products being found to be defective within the meaning of Part 1 of the Consumer Protection Act 1987 to the extent that such defects arise from:
- 16.1.1 the Products having been manufactured in compliance with instructions given by the Buyer; or
- 16.2 any failure on the part of the Buyer to comply with Condition 22.5; or
- 16.3 any failure by the Buyer to store or handle the Products in a proper manner, in compliance with the terms of the Contract or in compliance with any applicable laws, regulations, Codes of Practice or recommendations issued by the Seller or any appropriate trade organisation.
- 16.4 This indemnity shall include all legal costs incurred by the Seller on a full indemnity basis.
17. **DATA PROTECTION**
17.1 All personal data (as defined in the Data Protection Act 1988) relating to the Buyer will be dealt with by the Seller in full compliance with the Act and all associated legislation.
- 17.2 Any queries or requests relating to the Buyer's personal data should be made in writing to the Data Protection Officer of the Seller at Derby Road, Burton-on-Trent, Staffordshire DE13 0BH.
18. **LIABILITY**
18.1 The Seller's liability in respect of any defect in the Products or Services whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise howsoever shall be limited to the redelivery free of charge of repaired or replacement Products to the original point of delivery or the giving of a suitable allowance to the Buyer.
- 18.2 The Seller shall not in any event be liable whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise for:
- 18.2.1 any loss of revenue, profit, contracts, business or goodwill or any indirect or financial losses suffered by the Buyer; or
- 18.2.2 any liquidated damages or penalties or for any claims made against the Buyer by any third party, whether or not the Seller has been made aware of any such potential claim prior to or at the date of the Contract.
- 18.3 The aggregate liability of the Seller under the Contract whether for breach of contract, in tort (including without limitation negligence), by way of indemnity or otherwise shall not in any circumstances whatsoever exceed the total amount payable by the Buyer under the Contract.
- 18.4 The Buyer shall be fully responsible for ensuring the safe and proper installation and use of all Products. The Buyer shall ensure that instructions and warnings supplied by the Seller shall be drawn to the attention of its employees handling the Products and, where relevant, to the attention of Buyer's customers purchasing the Products, or any product in which the Products are comprised, from Buyer.
19. **FORCE MAJEURE**
19.1 The Seller shall not in any event be liable to the Buyer in damages or otherwise for any failure to deliver or delay in the delivery of the Products which arises from any cause beyond the Seller's reasonable control, including but not limited to shortages of raw materials or components, strikes, lock-outs, other industrial action, acts of warfare (whether or not declared) or terrorism or acts of God.
20. **EXPORT SALES**
20.1 Where the Products are supplied by the Seller to a destination outside the UK, this Condition 20 shall apply by way of modification to these Conditions.
- 20.2 Unless otherwise stated in the Contract, the Products are sold FOB, CIF or CIP (as defined in Incoterms 2000) at the Seller's option and the Seller shall not be required to give notice to the Buyer in accordance with Section 32(3) of the Sale of Goods Act 1979.
- 20.3 In the case of FOB UK port contracts, where VAT is claimed by HM Customs and Excise on the sale by reason of there being insufficient proof of the Products being exported the Buyer shall indemnify the Seller upon request in respect of such VAT.
- 20.4 The Buyer shall be responsible for any import duties and local taxes outside the UK.
- 20.5 Neither the Vienna United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 nor The Uniform Laws on International Sales Act 1967 shall apply to the Contract.
21. **LAW AND JURISDICTION**
21.1 The Contract (including these Conditions) shall be governed by and construed in accordance with English law.
- 21.2 The English Courts shall have exclusive jurisdiction in respect of any dispute arising out of the Contract. The Buyer irrevocably submits to such jurisdiction.
- 21.3 Headings to these Conditions shall be ignored for the purposes of construction.
- 21.4 References in these Conditions to any statutes mean such statutes as amended or re-enacted from time to time.
22. **DEALERS**
22.1 The provisions of this Condition 22 shall only apply where the Buyer is a Dealer.
- 22.2 A Buyer of tyres shall be entitled to assign all of its future rights and obligations under the Contract to another tyre distributor chosen by the Buyer who already forms part of the Seller's distribution system.
- 22.3 The Buyer shall not sell or otherwise make available to any third party any Products which show any obvious defects or which are known to the Buyer to be, or to be likely to be, defective.
- 22.4 The Buyer shall maintain full traceability of all Products sold or otherwise disposed of by it. Such traceability shall include:
- 22.4.1 maintaining sales records and copy invoices sufficient to enable the Buyer at any time to identify parties who have purchased Products from it during the last six (6) years; and
- 22.4.2 ensuring that all purchasers of the Products from the Buyer and their sub-purchasers maintain similar records; and
- 22.4.3 taking such further steps as may at any time be in the opinion of the Seller necessary or desirable to comply with the requirements of any legislation or anticipated legislation concerning product safety; and
- 22.4.4 ensuring that the records referred to in Conditions 22.4.1 and 22.4.2 are made available to the Seller where the Seller reasonably requires these for purposes relating to product safety.
- 22.5 Where the Products are tyres, the Buyer shall use its best endeavours to ensure that the BRMA leaflet "Car Tyres and your Safety" is available to consumers in adequate quantities at the point of sale of such tyres.
- 22.6 Without prejudice to the validity of any notice served under Condition 15.2, where the Seller terminates the Contract under that Condition it shall include detailed, objective and transparent reasons for the termination in the letter of termination.
- 22.7 Where there is any dispute between the Seller and a Dealer concerning the fulfilment of their contractual obligations, either party shall be entitled to refer the matter to three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. Such arbitration shall take place in London and shall be conducted in accordance with those Rules.
- 22.8 Condition 22.7 is without prejudice to the right of either party to bring legal proceedings in the English Courts in respect of any matter arising under the Contract.
23. **GENERAL**
23.1 Subject to Condition 22.2 where applicable, the Buyer shall not be entitled to assign or declare any trust in respect of any of its rights or obligations under the Contract without the Seller's prior written consent.
- 23.2 Failure by the Seller to enforce any term of the Contract shall not be deemed to be a waiver of any of its rights under the Contract.
- 23.3 The Seller shall be entitled to assign or sub-contract all or any of its rights and obligations under the Contract to a third party. The Seller shall remain fully liable to the Buyer under the Contract.
- 23.4 If any provision of the Contract which is not of a fundamental nature is held to be illegal or unenforceable, this shall not affect the validity or enforceability of the remainder of the Contract.
- 23.5 No amendment to the Contract shall be valid unless made in writing and signed by an authorised representative of both the Buyer and the Seller.
- 23.6 Nothing in the Contract shall confer on any third party any benefit or the right to enforce any term of the Contract.