

MICHELIN AUSTRALIA PTY LTD CONDITIONS OF SALE (effective 1 January 2019)

1. INTERPRETATION

The following expressions have these meanings in these Conditions unless the contrary intention appears.

"Agreement to Issue Recipient Created Tax Invoice" means the Agreement to Issue Recipient Created Tax Invoice published by Michelin Australia. Michelin Australia reserves the right to amend the terms and conditions of the Agreement to Issue Recipient Created Tax Invoice at any time. Any such amendments shall be binding on the Purchaser only from the date Michelin Australia has issued written notice to the Purchaser of the applicable amendments.

"Business Day" means a day (not being a Saturday or Sunday) on which banks are open for general banking business in the State or Territory where the Purchaser carries on business.

"Change in Law" means:

- (a) the introduction, amendment or repeal of any Law;
- (b) the imposition by an Authority of any tax, levy, duty, impost or charge not in force as at the Commencement Date;
- (c) any variation to the rate of any tax, levy, duty, impost or charge prevailing as at the Commencement Date; or
- (d) any variation in the basis of calculation of any tax, levy, duty, impost or charge prevailing as at the Commencement Date.

"Credit Terms" means the Credit Terms published by Michelin Australia reserves the right to amend the Credit Terms at any time. Any such amendments shall be binding on the Purchaser only from the date Michelin Australia has issued written notice to the Purchaser of the applicable amendments.

"GST" means any tax including any additional tax imposed on the supply of or payment for Products or services which is imposed or assessed under *A New Tax System (Products and Services Tax) Act 1999*, and all related and auxiliary legislation, or any other law imposing a GST.

"Law" means any law, by-law, statute, regulation, ordinance, judgment, rule of common law or equity, condition of any authorisation or rule of an applicable stock exchange, as amended, consolidated or replaced.

"Michelin Affiliate" means the ultimate holding company of Michelin Australia and any corporation in which it has a direct or indirect shareholder interest.

"Michelin Australia" means Michelin Australia Pty Ltd ABN 84 006 761 628 of 51-57 Fennell Street, Port Melbourne, Victoria.

"Michelin Australia Warranty" means the warranty offered by Michelin Australia to consumers that the Products used in normal service and in accordance with the manufacturers' maintenance recommendations and safety warnings, and subject to condition 6.6 – Additional disclaimer below, are covered by a warranty against defects in workmanship and materials. The Michelin Australia Warranty is available at <https://www.michelin.com.au/auto/home-auto>

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"PPS Register" means the Personal Property Securities Register established under the PPSA.

"Products" means products or services sold by Michelin Australia to the Purchaser.

"Purchaser" means a person who purchases Products.

"Purchaser Principal" means the effective owner or controller of the Purchaser's business.

"Relevant Collateral" means Collateral which is the subject of a Security Interest granted under this Contract.

"Security Interest" has the meaning given in the PPSA.

"Taxes" means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including, without limitation, stamp and transaction duties) (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income of Michelin Australia.

2. CONDITIONS OF SALE

These Conditions are the conditions upon which Michelin Australia will deal with and sell Products to a Purchaser insofar as these conditions have not been modified or varied by any other Agreement signed between the Purchaser and Michelin Australia. Michelin Australia may vary these Conditions from time to time. Any such amendments shall be binding on the Purchaser only from the date Michelin Australia has issued written notice to the Purchaser of the applicable amendments. The placement of an order by the Purchaser will be deemed acceptance of these Conditions.

3. ORDERS AND DELIVERY

3.1 Placement of orders

The Purchaser must place orders for Products in accordance with Michelin Australia's procedures. Orders are binding on the Purchaser and may not be cancelled without Michelin Australia's written consent. The Purchaser agrees that each order it places is a representation by it that it is solvent and able to pay its debts as and when they fall due.

3.2 Acceptance of orders

Orders for Products are subject to acceptance by Michelin Australia. Michelin Australia may accept or reject orders in whole or in part. Michelin Australia may suspend or cancel delivery of Products or refuse to accept orders if the Purchaser is overdue in making a payment, has reached its credit limit, if any contract between Michelin Australia has been breached, expired or terminated or the Purchaser is or may, in Michelin Australia's opinion, become insolvent.

3.3 Delivery

- (1) All deliveries to pre-agreed locations will be in accordance with the rates set out in the delivery schedule of Michelin Australia. Michelin Australia reserves the right to change the rates at any time and the Purchaser shall be informed of any such changes. Any changes to the pre-agreed locations may attract additional administrative charges.
- (2) Michelin Australia may deliver Products by instalments but if it fails to deliver a particular instalment by a date specified for delivery, the Purchaser is not entitled to cancel the order for the Products.
- (3) Notwithstanding any other provision in these Conditions, Michelin Australia will not be liable to the Purchaser for any failure or delay in supplying Products.

3.4 Claims for damage and short delivery

The Purchaser agrees to inspect the Products immediately on receipt. The Purchaser shall notify Michelin Australia of any shortage or damage by annotating and signing the consignment note retained by the carrier, failing which the Purchaser shall not have any claims against Michelin Australia.

3.5 Returns

All returns are subject to the "Delivery charges and returns policy" which is available at <https://www.michelin.com.au/order> under the Legal tab. Michelin Australia will only credit returns if it receives Products in their original condition.

4. PRICES

4.1 Prices

The Purchaser must pay the current prices for the Products, as notified by Michelin Australia to the Purchaser, for the Products. Orders for Products which have not been delivered to the Purchaser before the effective date of a price change, (including freight and other charges included in Michelin Australia's invoice) will be filled at the new price.

4.2 Credit Terms

If Michelin Australia provides credit to the Purchaser, the sale and payment for Products is subject to the Credit Terms.

4.3 GST

To the extent that any supply made under or in connection with these Conditions is a taxable supply, the GST-exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time by the Purchaser upon receipt of a valid tax invoice.

5. RESALE & SAFE PRACTICES

5.1 Recommended prices

Michelin Australia may from time to time specify the recommended retail price for Products. The Purchaser is under no obligation to sell Products to its customers at the recommended retail price.

5.2 Inspection of Products prior to sale

The Purchaser must inspect and check the condition of Products prior to delivery to a customer and ensure they are in a safe and appropriate condition.

5.3 Information to customers

Prior to or at the time of delivery of any Products to a customer, the Purchaser must inform the customer of the correct operating and safety procedures for the Products, including the fitting and mounting of tyres, advise the customer to read relevant safety information and of the applicable Michelin Australia Warranty. The

Purchaser must comply with Michelin Australia's technical and instruction manuals for tyre fitments.

5.4 Safety warnings if the Purchaser is end user

Prior to fitting and mounting the Products on the Purchaser's vehicles, the Purchaser shall ensure that it has inspected and checked that the Products have not been damaged during transportation or storage and that the Purchaser has read and understand the correct operating and safety procedures for the Products. The Purchaser must comply with Michelin Australia's technical and instruction manuals for tyre fitments.

5.5 Safety warnings Earthmover Products

The recommended conditions of storage, tyre selection, mounting, inflation, pressure, tyre use and its limits, tyre monitoring, repairs or similar interventions, and tyre maintenance, as stipulated by Michelin Australia, must be followed and respected by Purchaser who in turn are held to inform the end users. Purchaser should train their employees who are involved in placing Products with the end users and prohibit all repairs (tyre punctures, rim welding) without first deflating the tyre, then demounting it. If in doubt, we invite you to consult our technical documentation or one of our technicians, or, ultimately, our web site at http://www.michelinearthmover.com/en_asean/Welcome

5.6 Product recall

Each of Michelin Australia and the Purchaser must immediately notify the other in writing, on becoming aware of any circumstances which may require Products to be recalled ("Product Recall"). Purchaser shall comply with Michelin Australia's recall strategy.

5.7 Safe Disposal

Purchaser must only use tyre recyclers who are accredited / certified by government or other recognized industry wide bodies and who employ lawful, environmental friendly and responsible methods of tyre disposal. From time to time Michelin Australia may audit the Purchaser's compliance with this condition and make recommendations on practices to be followed.

5.8 Accreditation by Tyre Stewardship Australia

Where relevant, for the purpose of ensuring the public safety and environmental protection, the Purchaser shall make the best effort to deal with tyre recyclers and/ or other parties in the tyre supply chain who are accredited/certified by Tyre Stewardship Australia, or in the event of unavailability thereof, with those who are of equivalent accreditations/certifications, to give effect to the commitments and objects of the national Tyre Stewardship Scheme.

6. WARRANTIES AND PRODUCT LIABILITY

6.1 General limitation

(1) To the extent permitted by law, the warranties contained in the Michelin Australia Warranty are in lieu of all other warranties, obligations or liabilities on the part of Michelin Australia or any Michelin Affiliate, either express or implied (including any implied warranty of merchantable quality or fitness for purpose) and all such warranties, obligations and liabilities on the part of Michelin Australia or any Michelin Affiliate are excluded.

(2) To the extent permitted by law, the liability of Michelin Australia or any Michelin Affiliate for a breach of a warranty or condition, either express or implied, is limited, at the option of Michelin Australia or the Michelin Affiliate, to the repair or replacement of the relevant Products, the supply of products equivalent to the Products, or the cost of repairing or replacing the Products or acquiring products equivalent to the Products.

6.2 Notification of Product Complaints

The Purchaser must immediately notify Michelin Australia of any claim made by any person for any product liability, property damage or personal injury arising out of or in relation to the use of any Products ("Product Complaints"), provide any additional information that Michelin Australia requires and fully cooperates in the defence of any such Product Complaints.

6.3 Conceding of Product Complaints

In view of the high quality of the Products, the Purchaser must not concede any Product Complaints without the consent of Michelin Australia.

6.4 Michelin Australia indemnity

(1) Subject to the terms in these Conditions Michelin Australia indemnifies the Purchaser for all loss and damage arising out of any Product Complaints proved to be due to defects in design, workmanship or materials in Products, except to the extent that the loss and damage arises out of patent defects that ought to have been discovered by the Purchaser upon reasonable inspection of the Products following delivery to the Purchaser or its agents.

(2) The Purchaser is not entitled to an indemnity under this condition unless it has complied with all of its obligations under these Conditions.

6.5 Purchaser's indemnity

The Purchaser indemnifies Michelin Australia from all loss arising out of any Product Complaints to the extent that it relates to the Purchaser's fitting, mounting and servicing of Products, or the fitting, mounting or servicing of Products by any distributor or customer of the Purchaser, or any warranty granted by the Purchaser or any distributor or customer which exceeds or alters the Michelin Australia Warranty, or any act or omission (whether negligent or otherwise) of the Purchaser or any distributor or customer of the Purchaser.

6.6 Additional disclaimer

Without limiting conditions 6.1 to 6.5, Michelin Australia expressly disclaims responsibility for any Products that are:

- (1) damaged by accident;
- (2) fitted to or used on rims or wheels that do not comply with the Tyre and Rim Association of Australia's specifications or fitted or used in contravention of any law;
- (3) used on wheels or rims that are out of alignment, damaged or rusty;
- (4) improperly inflated or used with substitutes for air not recommended by Michelin Australia;
- (5) used to carry loads greater than, or used at speeds higher than, the ratings marked on the tyre sidewalls or specified by the Tyre and Rim Association of Australia;
- (6) fitted to vehicles used in racing, towage, competitive trials and rallies, speed record attempts or for any other purpose which Michelin Australia considers abnormal;
- (7) altered, reprocessed or repaired in any way other than by or through Michelin Australia;
- (8) bought second hand or blemished;
- (9) used in conjunction with a valve not recommended by Michelin Australia;
- (10) treated with any sealant (whether before or after damage to the tyre or tube);
- (11) fitted or used in breach of Michelin Australia's conditions of use or technical specifications as published from time to time; or
- (12) used or fitted with under-sized or over-sized tubes or flaps.

7. LIMITATION OF LIABILITY

Michelin Australia is not liable for any loss or damage:

- (1) arising in any manner including by reason of the negligence of Michelin Australia, a Michelin Affiliate, or any of their employees, agents or contractors;
- (2) arising from any delay, failure or inability to supply or deliver Products; or
- (3) any consequential, indirect, exemplary, incidental, special or punitive damages based on any claims in connection with the Products, notwithstanding any terms in these Conditions and except to the extent that Michelin Australia's liability cannot be excluded by law, the maximum liability of Michelin Australia to any person under or in connection with any matter relating to this Agreement (whether in contract, tort, law, equity or otherwise) shall be limited to (to the fullest extent permitted by law) the price of Products received by Michelin Australia.

8. PAYMENTS AND TAXES

8.1 Time and place of payment

The Purchaser must make payments to Michelin Australia not later than 10.00 am local time in the place of payment on the due date on the invoice in immediately available funds to the account of Michelin Australia at the bank which Michelin Australia designates by notice to the Purchaser. If payment is due on a day which is not a Business Day, then the due date for payment is the previous Business Day.

8.2 Payments

- (1) Michelin Australia may apply any payments made by or to the Purchaser or credits issued to the Purchaser as Michelin Australia determines in its absolute discretion.
- (2) To the extent permitted by law, the Purchaser must make payments under these Conditions without set-off or counterclaim and free and clear of any withholding or deduction for taxes.

9. INTEREST

9.1 Interest or overdue accounts

If the Purchaser does not pay the full amount of any invoice by the due date on the invoice or any other amount owing to Michelin Australia or a Michelin Affiliate by the date for payment, the Purchaser must pay

interest on those amounts from the date that the Products are delivered or the amount otherwise becomes payable to the date of payment in full at the rate specified in the relevant contract between the Purchaser and Michelin Australia under which Michelin Australia is supplying the Products, or, if there is no such specification, at the rate of 1.5 per cent per month. Interest may be accumulated and is payable at the end of each month.

9.2 No merger

If an amount is outstanding under these Conditions and becomes merged in a judgment or order the Purchaser must pay interest to Michelin Australia on the amount as an independent obligation. This interest accrues from the date the outstanding amount becomes due for payment both before and after the judgment or order until it is paid in full, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in condition 9.1.

10. RETENTION OF TITLE and SECURITY INTEREST

10.1 Title in Products

- (1) Title to Products sold by Michelin Australia to the Purchaser will pass to the Purchaser only when the full price in respect of all Products and all other sums payable by the Purchaser to Michelin Australia are paid. By accepting the terms of these Conditions, the Purchaser expressly authorises and permits Michelin Australia to enter upon the premises of the Purchaser to recover all Products for which payment is in arrears, at any time.
- (2) If the Purchaser sells or disposes of Products to a Customer in the ordinary course of business before title to the Products has passed to the Purchaser, the Purchaser does so as agent and in a fiduciary capacity for Michelin Australia and must account to Michelin Australia for the proceeds (including any proceeds from insurance claims).
- (3) Where payment by the Purchaser is made by cheque, payment will be taken to have been made only when the cheque is honoured.
- (4) Until title in the Products passes to the Purchaser in accordance with these Conditions, the Purchaser shall have no ownership or property rights in the Products and holds the Products as mere bailee for Michelin Australia, must store them in a way that they can be identified as property of Michelin Australia, and must not mortgage, encumber or dispose of them except in the ordinary course of business.

10.2 Risk

Unless otherwise stated, the risk with respect to Products passes to the Purchaser upon delivery of the Products to the Purchaser or its agent. (The Purchaser shall maintain in full force and effect a property damage / loss insurance policy and provide a certificate of currency when requested by Michelin Australia.)

10.3 Security Interest

1. In this clause, the terms "Accession", "Collateral", "Inventory", "PPS Lease", "Proceeds", "Purchase Money Security Interest" and "Secured Party" have the meaning given in the PPSA.
2. The Purchaser acknowledges that:
 - (a) the delivery of the Products under this Contract gives rise to a Security Interest in the Products being a Purchase Money Security Interest;
 - (b) Michelin Australia's rights and interest in Proceeds derived from the Products constitute a Security Interest in such Proceeds;
 - (c) if, notwithstanding clause 4, the Purchaser sells or otherwise disposes of the Products before the full purchase price has been paid for the Products, it does so as Michelin Australia's fiduciary agent and the Proceeds of such sale or other disposal are also property of Michelin Australia and are held by the Purchaser on trust for Michelin Australia;
3. Michelin Australia may, at the Purchaser's expense, register any Security Interest granted under this Contract on the PPS Register in any manner it chooses. The Purchaser must provide Michelin Australia with any information it requires for the purposes of effecting such registration. For the purposes of section 157(3) of the PPSA, the Purchaser irrevocably and unconditionally waives its right to receive any notice from Michelin Australia in connection with the registration of a Security Interest arising under this Contract.
4. The Purchaser agrees to take such steps as Michelin Australia reasonably requires to perfect or otherwise ensure the enforceability and first ranking priority of any Security Interest granted to it under this Contract, including by:
 - (a) obtaining and giving consents;
 - (b) producing and providing receipts;
 - (c) attending to the signing of documents or procuring the signing of documents;
 - (d) facilitating the registration of any Security Interest on the PPS Register;
 - (e) facilitating the giving of notice to any person, including any person who also has, or appears to have, a Security Interest over Relevant Collateral; and
 - (f) facilitating the exercise of Michelin Australia's right in enforcing any Security Interest.
5. Unless otherwise agreed in writing and until the Purchaser has paid to Michelin Australia the full purchase price in respect of any Products, the Purchaser agrees:
 - (a) to ensure that the Products do not become a fixture to any land or an Accession to other Products and are not processed or commingled with other products;
 - (b) to take such steps as Michelin Australia reasonably requires to prevent or remedy the affixation of the Products to any land or products including by:
 - (i) procuring appropriate acknowledgements and consents from landlords, mortgagees and property owners; and
 - (ii) detaching, or procuring the detachment of, the Products from any land or products to which they become attached.
6. The Purchaser warrants that the Products are not, and will not be, Inventory of the Customer.
7. The parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Relevant Collateral:
 - (a) section 95 (notice by Secured Party of removal of Accession);
 - (b) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (c) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
 - (d) section 130, to the extent that it requires Michelin Australia to give any notice to the Purchaser (notice by Secured Party of disposal of Collateral);
 - (e) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured

Parties in statement of account):

- (f) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period); and
 - (g) section 135 (notice by Secured Party of retention of Collateral).
8. Without limiting any other provision of this Contract, it is a default of the Purchaser under this Contract for the purposes of section 123(1) of the PPSA if any person with a Security Interest in Relevant Collateral seizes or becomes entitled to seize that Relevant Collateral without the consent of Michelin Australia.

11. TERMS AND CONDITIONS

11.1 Termination by Michelin Australia

Michelin Australia may terminate the agreement to which this Conditions of Sale is attached to immediately by notice in writing to the Purchaser if:

- (a) any change occurs in the legal or beneficial ownership of the Purchaser;
- (b) any change occurs in the Purchaser Principal;
- (c) it becomes apparent to Michelin Australia that any misrepresentation or non-disclosure considered by Michelin Australia to be material has been made to Michelin Australia by the Purchaser or by the Purchaser Principal;
- (d) the Purchaser attempts or purports to assign or transfer the agreement to which this Conditions of Sale is attached to or any of its rights or obligations under it;
- (e) any dispute or disagreement occurs between or among the owners or management personnel of the Purchaser which, in the opinion of Michelin Australia, may adversely affect the Purchaser's business or the interests of the Purchaser or Michelin Australia;
- (f) the Purchaser or any Purchaser Principal, director, principal officer, or any legal or beneficial owner of the Purchaser's Business is convicted in a court of any crime or any unfair business practice, which, in the opinion of Michelin Australia, may adversely affect the reputation or interest of the Purchaser or Michelin Australia; or falsely claims for any payment credit or allowance in relation to Products, whether or not the Purchaser offers or makes restitution;
- (g) in the opinion of Michelin Australia, the Purchaser, the Purchaser Principal or any owner or guarantor of the Purchaser's Business becomes insolvent or is likely to become insolvent; or
- (h) the Purchaser breaches any term or condition of the Purchaser Agreement (including constituent documents) and fails to rectify that breach within seven (7) days of Michelin Australia giving the Purchaser notice requiring rectification of the breach.

12. MISCELLANEOUS

12.1 Set-off

At its sole discretion Michelin Australia and any Michelin Affiliate may apply any credit balance in any currency in any account of the Purchaser with Michelin Australia towards satisfaction of any amount then payable by the Purchaser under these Conditions. The Purchaser authorises Michelin Australia in the name of the Purchaser or Michelin Australia to do anything (including, without limitation, to execute any document) that is required for this purpose.

12.2 Force Majeure

Michelin Australia will not be responsible or liable to the Purchaser for any failure to perform any of its obligations under these Conditions if the failure results from circumstances beyond its reasonable control ("Force Majeure Event"). Michelin Australia will notify the Purchaser as soon as is practicable after the occurrence of a Force Majeure Event, and the Purchaser will not be entitled to rescind or cancel any order outstanding at the date of the notice.

12.3 Proper Law

These Conditions are to be construed solely in accordance with and governed by the laws of the State of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts in and of the State of Victoria and the Commonwealth of Australia.

12.4 Anti-Corruption

Each Party undertakes to refrain from (1) offering, promising or giving intentionally, and from (2) attempting and conspiring to offer, promise or give, any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of business.

12.5 Embargo

- (1) The Purchaser undertakes not to export or re-export products sold by Michelin Australia to countries under commercial restrictions issued by the United Nations (UN), the European Council or the Organization for the Security and Cooperation in Europe (OSCE). Michelin Australia reserves the right not to sell products to the Purchaser, if the Purchaser is likely to resell them to end-users/sub-dealers located in the countries under such commercial restrictions.
- (2) In addition, the Purchaser undertakes not to sell any products, including products with potential military applications, to end-users/sub-dealers located in the countries under embargo by the United Nations (UN), the European Council or the Organization for the Security and Cooperation in Europe (OSCE). Michelin Australia reserves the right not to sell products to the Purchaser if the Purchaser is likely to resell them to end-users/sub-dealers located in the countries under embargo by the UN, the European Council or the OSCE. In cases where Michelin Australia strongly suspects a high level of risk that the products will be sold to countries under such embargo, Michelin Australia reserves the right to ask for an end-customer identification mark or to see a bill from the Purchaser to the end-customer in order to ensure that the above mentioned products are sold to an appropriate destination and not to sell the above mentioned products. Listings of products with potential military applications and of countries under military embargo are available upon request to Michelin Australia.

January 2019