

## CONTINENTAL TERMS AND CONDITIONS OF SALE Effective 4 December 2019

### 1. DEFINITIONS AND INTERPRETATION

In these Terms:

**ACL** means Australian Consumer Law under the *Competition and Consumer Act 2010 (Cth)*.

**Administration** includes (i) the bankruptcy or personal insolvency agreement of a natural person; and (ii) the appointment of administrator or liquidator to a corporation and/or an arrangement, receivership, receivership and management or anything similar.

**Consumer** means a Customer that is a Consumer (as that term is defined in the ACL) in respect of a particular supply of Goods.

**Consumer Guarantee** means the guarantees relating to the supply of goods and/or services to Consumers as provided by Division 1 of Part 3-2 of the ACL.

**Continental** means Continental Tyres of Australia Pty Ltd ACN 136 883 148 and any subsidiary or related entity and as trustee of any trust.

**Customer** means the customer who makes an agreement with Continental for the provision of Goods on these Terms and/or whose details appear in an Application for Commercial Credit, including the Customer's subsidiaries, holding companies and/or related entities.

**Event of Default** means any of the following events: (i) the Customer fails to pay for any Goods and services or breaches these Terms; (ii) the Customer ceases, or threatens to cease, carrying on business; (iii) if the Customer is a company: an order is made or a resolution effectively passed for winding up of the Customer, or the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or a liquidator or an administrator is appointed, or the Customer makes an assignment, arrangement or composition with the Customer's creditors, or the Customer stops payment or is deemed unable to pay the Customer's debts as and when they fall due within the meaning of the *Corporations Act (Cth) 2001*; (iv) if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to play the assets and affairs of the Customer under administration.

**Guarantee** means the guarantee and indemnity granted by each Guarantor to Continental forming part of an Application for Commercial Credit.

**Guarantor** means each person (if any) named as guarantor in the Schedule of an Application for Commercial Credit for the sale of Goods and/or provision of credit by Continental to the Customer.

**Goods** means goods and/or services of any kind provided by Continental to the Customer.

**Officer** means each director, secretary, credit manager, and authorised representative of Continental.

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

**Privacy Act** means the *Privacy Act 1988 (Cth)* as amended from time to time.

**Terms** means these Terms and Conditions of Sale as may be amended by Continental from time to time.

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### 2. GENERAL

**2.1** All Goods are provided by Continental on these Terms, including Goods provided by Continental to the Customer on credit and/or pursuant to an Application for Commercial Credit, and no terms of the Customer will apply to any agreement between Continental and the Customer.

**2.2** Acceptance of Goods by the Customer is conclusive evidence before any court that these Terms apply and are binding on the Customer and any Guarantor.

**2.3** However nothing contained in these Terms shall exclude, restrict or modify any rights, liabilities or remedies imposed by any legislation (including, without limitation, any applicable provision of the ACL or Fair Trading Acts in each State or Territory) unless and to the extent it is lawful to do so.

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### 3. AGREEMENT

**3.1** A written quotation given by Continental is an offer to sell and an agreement for the supply of Goods is made when the Customer communicates its acceptance of the written quotation, whether in writing or by conduct.

**3.2** Unless otherwise stated, Continental's written quotations are open for acceptance within the period stated in them or, when no period is stated, 14 days only from the date of the written quotation. Continental may vary, withdraw or revoke a written quotation at any time prior to the Customer communicating its acceptance.

**3.3** An order placed by a Customer which is inconsistent with Continental's written quotation and/or these Terms is an offer made by the Customer to buy Goods from Continental. An agreement for the supply of Goods is made (and taken to be made at the date of the Customer's order) if Continental communicates that it is willing to supply the Goods on these Terms and the Customer accepts delivery of the ordered Goods.

**3.4** Where there is a change in the cost of raw materials, labour energy or any other item between the Customer's acceptance of a written quotation and delivery of the Goods (or alternatively, between Continental communicating its willingness to supply Goods on these Terms and delivery pursuant to clause 3.3) Continental may increase the quoted price of the Goods at any time prior to delivery to the Customer and the Customer accepts any such increase.

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### 4. PRICE AND PAYMENT

**4.1 Price:** Subject to clause 3 above, the price of Goods is Continental's prevailing price at the date of delivery and delivery, performance and invoicing shall be done at the prices and on the terms established by Continental at the date of delivery. The costs associated with the delivery of Goods by Continental to the Customer (if any) together with

any additional charges will be included in a tax invoice rendered by Continental to the Customer for the Goods.

#### 4.2 Payment:

- (a) Unless Continental has agreed to extend credit to the Customer, payment for Goods must be made by the Customer to Continental in immediately available funds on or prior to delivery of the Goods;
- (b) Where Continental has agreed to extend credit to the Customer, Continental will issue a tax invoice to the Customer for Goods supplied to the Customer. The Customer must pay the full amount of Continental's tax invoice (together with any additional charges) net 30 days from the date of invoice, or within any alternative credit period granted by Continental in writing; and
- (c) Payment to Continental must be made by cheque or electronic funds transfer.

**4.3 GST:** Each amount payable by the Customer under these terms in respect of a Taxable Supply by Continental is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply and at the rate ruling on the date of that supply.

**4.4 Interest:** Continental is entitled to charge the Customer interest on all overdue amounts owed by the Customer to Continental at the rate equivalent to 3% more than the business overdraft commercial interest rate of Continental's principal bankers per annum from the invoice date until the payment of the debt.

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## 5. WITHDRAWAL OR VARIATION OF CREDIT

- 5.1** Continental may, at any time and at its absolute discretion:
- (a) Grant, sell and/or supply Goods to the Customer on credit and on a trading account; and
  - (b) Vary, limit, suspend and/or withdraw any credit granted to the Customer.
- 5.2** Any agreement by Continental to open a trading account for the Customer does not entitle the Customer, at any time, to credit or any particular amount of credit.

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## 6. SUSPENSION OR CEASING OF SUPPLY

- 6.1** Continental may, at its absolute discretion and without incurring any liability to the Customer, cease or suspend the supply of Goods to the Customer.
- 6.2** Without limiting clause 6.1, if an Event of Default occurs Continental may, without prejudice to its other rights, call up all monies owed to Continental by the Customer, retain all monies paid on account, cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Goods for which payment remains outstanding.

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## 7. DELIVERY AND RISK

**7.1** Continental may arrange transport of the Goods by any means and at its absolute discretion.

**7.2** Unless otherwise agreed in writing, Goods will be delivered as close to the location (***the delivery address***) notified to Continental at the time of the Customer ordering Goods as, in the opinion of the Continental or its transport contractor, it is safe or prudent to do so.

**7.3** Delivery occurs, and risk in the Goods passes to the Customer:

- (a) When Continental's or its transport contractor's delivery vehicle arrives at the delivery address or other agreed point of delivery; or
- (b) If the Customer or its transport contractor attends Continental's premises to acquire the Goods, when the goods are set down alongside the Customer's vehicle notwithstanding that the Continental may, upon request, assist the Customer to load the Goods into or onto the Customer's vehicle.

**7.4** Delivery times given by Continental to the Customer are estimates only and Continental is not liable to the Customer for any loss or damage (whether direct or indirect) arising from late or non-delivery of the Goods.

**7.5** Unless otherwise agreed to in writing, Continental may, at its discretion, deliver the Goods to the Customer in any number of instalments.

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## 8. RETENTION OF TITLE

**8.1** Property in the Goods shall not pass until the Customer has paid all monies owing to Continental in full. Risk in the Goods passes to the Customer at the time of delivery.

**8.2** Until payment of all monies owed by the Customer to Continental, the Customer holds all Goods as fiduciary bailee and agent for Continental and must keep the Goods physically separate from all other goods of the Customer and clearly identified as owned by Continental, keep the Goods in good, marketable and satisfactory condition, keep Continental informed of the location of the Goods, and keep the Goods insured (with a reputable insurer and noting Continental's interest on the relevant policy) for an amount not less than the price paid by the Customer against all normal risks.

**8.3** If an Event of Default occurs, then without prejudice to Continental's other rights, Continental may (without notice to the Customer) enter any premises occupied by the Customer or any other place where the Goods may be and recover possession of the Goods.

**8.4** The Customer must not sell or otherwise dispose of any Goods or things to which the Goods have been affixed while money is owed to Continental without first obtaining the written consent of Continental. If in breach of this condition the Customer sells any of the Goods or things to which the Goods are affixed, then without prejudice to Continental's other rights, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.

- 8.5 If the Customer uses the Goods in some manufacturing or construction process of its own or of some third party while money is owed to Continental, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Goods in trust for Continental. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Continental and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Goods will be discharged.
- 8.6 If the Goods are resold, or goods and services using the Goods are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for Continental. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to Continental at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without Continental's prior written consent.

## 9. CHARGE OVER THE CUSTOMER'S PROPERTY

- 9.1 As security for payment to Continental of all monies payable by the Customer and for the Customer's obligations generally under these Terms, the Customer charges in favour of Continental the whole of the Customer's undertaking, property and assets (including without limitation of all the Customer's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired.
- 9.2 The Customer irrevocably appoints each Officer as the Customer's attorney to do all things necessary to create and register each such charge.
- 9.3 Upon demand by Continental, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Continental to further secure payment of money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then Continental may execute such mortgage or other instrument as the Customer's attorney.

## 10. LIABILITY OF CONTINENTAL

- 10.1 The Customer will indemnify Continental in relation to any direct or indirect loss, liability, or damage suffered by Continental or by any other person as a result of the Customer's negligence or breach of these Terms.

## 11. PERSONAL PROPERTY AND SECURITIES ACT (CTH) 2009

- 11.1 The PPSA will apply to these Terms and terms used in this clause 11 that are defined in the PPSA will have the same meaning as in the PPSA.
- 11.2 The Customer grants to Continental:
- (a) A "Purchase Money Security Interest" (PMSI) in all Goods supplied by Continental from time to time as security for payment of the purchase price of such

Goods; and

- (b) A "Security Interest" (SI) in all Goods supplied by Continental to the Customer from time-to-time, and in all of the Customer's "personal property" (as defined in the PPSA) both current and later acquired, as security for payment of all amounts owed by the Customer to Continental and performance by the Customer of the obligations set out in these Terms.

11.3 The Customer acknowledges and agrees that:

- (a) Any Goods or proceeds of sale of the Goods coming into existence after the date of these Terms will come into existence subject to the PMSI and/or SI granted herein without the need for any further action or agreement by any party;
- (b) The Customer has received valuable consideration from Continental and that consideration is sufficient; and
- (c) The PMSI and/or SI have attached to all Goods supplied now or in the future by Continental to the Customer and that the attachment has in no way been deferred or postponed.

11.4 Continental reserves the right to register a "Financing Statement" in the Personal Property Securities Register to perfect the PMSI and/or SI created under these Terms. The costs of registering a "Financing Statement" may be charged by Continental to the Customer including, where applicable, to the Customer's trading account with Continental.

11.5 The Customer must promptly, on request by Continental, execute all documents and do anything else reasonably necessary required by Continental to ensure that the PMSI and/or SI created under these Terms is "perfected".

11.6 The Customer must not:

- (a) Allow any person to register a "Financing Statement" over any of the Goods in which Continental has a PMSI and/or SI without the prior written consent of Continental and must immediately notify Continental if the Customer becomes aware of any person or entity taking any steps to register a "Financing Statement" in relation to any such Goods;
- (b) Allow Goods in which Continental has a PMSI and/or SI to become accessions or commingled with other goods unless Continental has first "perfected" any PMSI and/or SI that Continental has in relation to the Goods; and
- (c) Do anything that results in Continental having less than the security or priority granted by the PPSA that Continental assumed at the time of "perfecting" any PMSI and/or SI, subject only to the rights of a mortgagee pursuant to a registered mortgage.

11.7 The Customer irrevocably grants to Continental the right to enter upon the Customer's property or premises, without notice and without being in any way liable to the Customer or to any third party. If Continental has cause to exercise any of Continental's rights under Chapter 4 of the PPSA,

the Customer will indemnify Continental for all claims made by any third party as a result of such exercise.

## 12. GUARANTEE & INDEMNITY AND SECURITY

In consideration of Continental, at the request of the Customer, agreeing to sell Goods or give credit to the Customer, the Guarantor covenants and agrees with Continental that:

**12.1 Guaranteed Monies:** means all monies which are, will, or may be at any time in the future, owing or payable by the Customer to Continental for any reason whatsoever including, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties, expenses, or payment of liquidated damages. Where the Customer would have been liable but for the Customer's Administration, the Customer and Guarantor will still be taken to be liable.

**12.2 Guarantee:** The Guarantor unconditionally and irrevocably guarantees to Continental the due and punctual payment of the Guaranteed Monies and agrees:

- (a) On demand from time-to-time to pay Continental an amount equal to the Guaranteed Monies then due and payable;
- (b) Any statement signed by an Officer certifying the amount of the Guaranteed Monies, or the money owing by the Guarantor under the Guarantee, is, in the absence of manifest error, binding and conclusive on and against the Guarantor;
- (c) The Guarantee is a continuing guarantee and remains in full force and effect until all of the Guaranteed Monies are paid or satisfied in full and is in addition to, and not prejudiced or affected by, any other security of guarantee held by Continental for the payment of the Guaranteed Monies;
- (d) The liabilities of the Guarantor and the rights of Continental under the Guarantee are not affected by anything which might otherwise affect such liabilities and rights at law or in equity;
- (e) If any payment by the Guarantor under the Guarantee or by the Customer is avoided, set aside, ordered to be refunded or reduced, rendered unenforceable by any laws relating to bankruptcy, insolvency, or liquidation, that payment will be taken not to have been made and this clause continues after this Guarantee is discharged; and
- (f) Continental may enforce the Guarantee without first having resort to any other guarantee or security in relation to the Guaranteed Monies.

**12.3 Indemnity:** As a separate and independent obligation, the Guarantor agrees to unconditionally and irrevocably indemnify Continental from and against any claim, action, loss, damage, liability, expense, outgoing, or payment suffered, paid or incurred by Continental in relation to the non-payment or non-recovery of the Guaranteed Monies. Continental need not incur any expense or make any payment before enforcing any right or indemnity

**12.4 Continuing Guarantee:** All guarantees will be continuing guarantees and will terminate only with

Continental's written agreement.

### 12.5 Charge and Security Interest:

- (a) As security for payment to Continental of all moneys payable by the Guarantor and for the Guarantor's obligations generally under the Guarantee, the Guarantor charges in favour of Continental the whole of the Guarantor's undertaking, property and assets (including without limitation all of the Guarantor's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired;
- (b) The Guarantor irrevocably appoints each Officer as the Guarantor's attorney to do all things necessary to create and register each such charge; and
- (c) Upon demand by Continental, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to Continental further secure payment of the money payable by the Guarantor. If the Guarantor fails within a reasonable time of such demand to execute such mortgage or other instrument, Continental may execute such mortgage or other instrument as the Guarantor's attorney.

### 12.6 Personal Property and Securities Act (Cth) 2009 (PPSA):

- (a) Expressions used in this clause in quotation marks have the meaning prescribed to them in the PPSA;
- (b) As security for payment to Continental of all moneys payable by the Guarantor and for the Guarantor's obligations generally under the Guarantee, the Guarantor grants a "*Security Interest*" (**SI**) in favour of Continental over all of the Guarantor's "*personal property*" both current and later acquired; and
- (c) The Guarantor consents to Continental registering a "*Financing Statement*" in the Personal Properties Securities Register to perfect the SI created under the Guarantee. The Guarantor must promptly, on request by Continental, execute all documents and do anything else reasonably required by Continental to ensure that the SI created under the Guarantee constitutes a "*perfected*" SI.

**12.7 Trusts:** The Guarantee binds the Guarantor both personally and as trustee of any trust of which the Guarantor is trustee.

**12.8 Claim in Administration:** Until the Guarantee is released by Continental, the Guarantor will not, without Continental's consent, prove in any Administration of the Customer in competition with Continental.

**12.9 Acknowledgment:** The Guarantor acknowledges that the Guarantor has:

- (a) Has entered into the Guarantee voluntarily;
- (b) Has read and understood the nature and consequences of entering into the Guarantee;
- (c) Has not signed the Guarantee on the basis of any representation of Continental and/or Continental's employees, agents or representatives and/or under the duress of any person; and
- (d) Is entitled to seek independent legal and

financial advice before signing the Guarantee.

### 13. CONTRACTING OUT OF THE PPSA

- 13.1 To the extent permitted by the PPSA, the Customer and Guarantor acknowledge and agree:
- (a) That nothing in sections 125, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to these Terms or to any security granted to Continental under these Terms;
  - (b) That sections 92, 95(1)(a), 97, 117, 118(1)(b)(i), 121(4), 123(2)(a), 129(2), 129(3), 130(1)(a), and 135(1)(a), of the PPSA will not apply to the enforcement of any Purchase Money Security Interest and/or Security Interest created under these terms, and waive any right given to the Customer and/or Guarantor, and obligations imposed on Continental, under the said sections;
  - (c) To waive a right to receive notice of a verification statement in relation to any registration event (including registration of a "Financing Statement" or a "Financing Change Statement") relating to a PMSI and/or SI created under these Terms under section 157 of the PPSA;
  - (d) To contract out of each other provision of Part 4.3 of the PPSA, but only to the extent that the provision imposes obligations on Continental; and
  - (e) That any "Security Agreement" (within the meaning of the PPSA) created by these Terms may only be reinstated on terms considered appropriate by Continental at its complete discretion.

### 14. STATUTORY RIGHTS

- 14.1 Nothing in these Terms shall be construed as being contrary to the provisions of the ACL or the *Competition and Consumer Act (Cth) 2010* or as restricting, limiting or modifying (or having the effect of restricting, limiting or modifying) the Customer's rights or remedies against Continental under the ACL or any other legislation applicable to the sale of goods and services which cannot be so excluded, restricted or modified.
- 14.2 To the extent that clause 16.3 does not apply, Continental acknowledges that:  
Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

### 15. LIMITATION AS TO TITLE

- 15.1 When and to the extent that the Customer is a Consumer, the Customer's right to undisturbed possession of the Goods shall not apply to the extent that the Continental maintains a valid "Security Interest" in the Goods pursuant to clauses 8 and/or 11 of these Terms.

### 16. LIMITATIONS AND EXCLUSIONS

- 16.1 The limitations and exclusions in this clause 16 are subject to clause 14 (Statutory Rights).
- 16.2 To the full extent permitted by the ACL and other applicable laws, other than as provided in these Terms, Continental makes no express warranties or representations in relation to the Goods.
- 16.3 When and to the extent that the Customer is a Consumer, and the Goods supplied by Continental are not of a kind ordinarily acquired for personal, domestic or household use or consumption:
- (a) Continental limits its liability for failure to comply with a Consumer Guarantee under the ACL (other than a guarantee as to title, undisturbed possession and undisclosed securities), at the sole discretion of Continental, to (i) replacement, resupply or repair of the Goods; (ii) payment of the cost or replacing or acquiring the Goods; or (iii) payment of the cost of having the Goods repaired; and
  - (b) To the extent that the Goods comprise a service, Continental's liability for any failure to comply with a Consumer Guarantee is limited, at the sole discretion of Continental, to supplying the service again or payment of the costs of having that service supplied again.
- 16.4 Clause 16.3 above does not apply if the Consumer establishes that it would not be fair and reasonable for Continental to rely on that clause.
- 16.5 When and to the extent that the Customer is not a Consumer and other than as provided in these Terms:
- (a) Continental's liability will be limited (other than from liability for death or personal injury caused by the negligence of Continental or by the negligence of another person in circumstances where Continental is taken to be liable for such negligence) to the refund of the reasonably discounted price of the relevant Goods or, at Continental's absolute discretion, a free or reasonably discounted replacement of the relevant Goods on their return to Continental;
  - (b) Continental will incur no liability if, upon discovery of any relevant defect to Goods (including, without limitation, where the Goods are tyres) the Customer does not (i) give written notice to the Continental of such defect within 14 days of becoming aware of the defect; and (ii) return the Goods carriage-paid to the Continental's nearest depot or other depot agreed between the parties;
  - (c) Where the Goods are tyres, in determining what constitutes a "reasonably discounted price" or "reasonably discounted replacement" Continental and the Customer will have regard to the proportion of the original tread depth remaining at the time when any relevant defect to the tyres is notified by the Customer to Continental; and
  - (d) Where the relevant Goods are tyres and Continental grants the Customer a monetary discount or allowance for the relevant defect, Continental may, at its absolute discretion, (i) supply replacement Goods or provide such discount or allowance as a credit note to Continental's employee, contractor or

agent handling the complaint; (ii) Continental expects its employee, contractor or agent to pass on that discount or allowance to the Customer and apply the same percentage of credit to the normal sell-out price of the Goods.

**16.6** Other than as provided in these Terms, Continental will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by the Continental, Continental's employees, contractors or agents whether negligent or not, except that nothing in these Terms limits liability imposed by any statute unless or to the extent that it is lawful to do so.

## 17 MAKING A CLAIM

**17.1** If during the first thirty (30) days from the date of delivery of the Goods (or such other period reasonable in the circumstances) the Goods prove to be defective, Continental will honour its obligations as set out above or in the ACL, as applicable.

**17.2** To make a claim the Consumer must telephone Continental on 1800 266 844 or email ([tyreorders.au@continental-corporation.com](mailto:tyreorders.au@continental-corporation.com)) and provide Continental with details of the date that the Goods were supplied, a description of the defect and the Consumer's contact details.

**17.3** All Goods the subject of a claim must be accompanied by satisfactory proof of purchase, such as a legible receipt or sales invoice.

**17.4** Unless the cost of returning the Goods is unreasonably significant, the Consumer shall be responsible for returning the Goods to Continental at its own expense. Continental will otherwise collect the Goods from the Consumer at its expense.

**17.5** Upon Continental accepting a claim, it will assist the Consumer with the appropriate remedy.

**17.6** Contact details for Continental are 2 Scholar Drive Bundoora, Victoria 3083. Telephone number: 1800 266 844

## 18. RETURN OF GOODS

**18.1** Continental has no obligation to provide the Customer with a refund or replacement where the Customer has changed its mind.

**18.2** Where the Customer has changed its mind and wishes to return the Goods to Continental, Continental may, at its absolute discretion:

- Accept the returned Goods (at the Customer's risk) and exchange the returned Goods for other Goods ("**the new Goods**") of at least the same value and in the same range;
- Credit the returned Goods, and debit the new Goods supplied to the Customer in exchange, to the Customer's account at prices current at the date of dispatch of the new Goods; and/or
- Charge a fee of \$15.00 or 10% of the value of the returned Goods, whichever is the greater, for transportation, and only if the return is made within 30 days of the invoice.

**18.3** For the avoidance of doubt, Continental has no

obligation to accept the return of any Goods that:

- Display signs of being fitted to a rim, roaded, or prepared for fitment;
- have their manufacturer label removed;
- were purchased through the Continental ChargeBack program;
- are or were clearance items; or
- were shipped directly to the Customer from plants or factories for Continental or its related entities.

**18.4** Property and risk in the new Goods pass in accordance with clause 7 above.

## 19. PATENTS, TRADEMARKS AND OTHER INTELLECTUAL PROPERTY

**19.1** Unless otherwise agreed in writing, any intellectual property rights in relation to the Goods which are created or developed by Continental will vest in Continental.

**19.2** The Customer shall give written notice to Continental within 10 days of the Customer becoming aware of any action, claim, demand or proceeding for infringement of any patent, trade mark or other intellectual property by the Goods.

**19.3** The Customer acknowledges and agrees that images are for representation purposes only and tread patterns may vary.

**19.4** Continental's price list(s), copies of which may be obtained at the Continental's principal branches, contain exhaustive lists of the range, specification and quality of Goods which may be offered for sale in writing, advertised, sold or supplied under Continental's family of brands, or under any other associated trade name, mark or logo, and all rights remain the property of Continental and cannot be used by the Customer without the prior written consent of Continental.

## 20. BRANDING, MARKING, REMOLDING OR RETREADING

**20.1** The Customer shall not, without the prior written consent of Continental, deface, brand, mark, re-cut or tamper in any way whatsoever with the Goods (other than partly worn tyres) and shall not, without the prior written consent of Continental, sell, offer for sale, advertise or supply any Goods (other than part worn tyres) which have been so defaced, branded, marked, re-cut or tampered with.

**20.2** Part worn tyres which have been remolded, retreaded, defaced, branded, marked, re-cut or tampered with shall not:

- Be sold without Continental's trade names having been previously obliterated from each sidewall of each tyre; and
- Be sold without having been branded in legible letters on the sidewall of each tyre with the word *Remold*, *Retread* or another appropriate word describing such treatment; and
- Be sold, offered for sale, advertised or supplied under Continental's trade names, marks or logos associated with the Continental.

**20.3** Nothing contained in these Terms shall be deemed to authorise any defacing, remolding, re-cutting or altering of any part work tyres or the reproduction of any name, brand, mark or design owned or used by Continental.

**20.4** In some cases it is necessary to remove the tread and sometimes the sidewall before it can be ascertained whether a cover is in suitable condition for re-molding.

**20.5** Any cover found to be unusable for remolding will be returned by Continental in the condition which it then is, at the request of the Customer. If the Customer requires Continental to return rejected casings then this must be clearly stated by the Customer in writing to Continental.

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## 21. ORIGINAL EQUIPMENT

**21.1** None of Continental's Goods supplied to a vehicle manufacturer shall be sold or supplied other than as an integral part of a new motor vehicle, new machine or other new implement without the previous written consent of Continental.

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## 22. FORCE MAJEURE

**22.1** Continental shall not be liable for delay in any performance or failure to render any performance under these Terms when such delay or failure is in whole or part due to governmental or administrative action of any kind (whether or not valid), war, civil disobedience, industrial dispute, natural disaster, shortages of transport or supplies (or the threat or reasonable apprehension of any of the forgoing) or any cause or causes whether of a like or different nature beyond the control of Continental.

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## 23. ANTI-SLAVERY, ANTI-BRIBERY AND PRIVACY

**23.1** The Customer must observe the Privacy Act in respect to all sensitive and personal information and must indemnify Continental against any damage or liability suffered by breach of this clause.

**23.2** The Customer and/or Guarantor acknowledge that:  
(a) Continental's Collection Notice (APP5) and Privacy Policy contains information about how Continental handles personal information and complies with its obligations under the Privacy Act and Australian Privacy Principles;  
(b) Continental's Statement of Notifiable Matters and Credit Reporting Policy contains information about credit reporting, including how Continental manages personal information it collects from credit reporting bodies (CRBs) and how it manages other types of credit-related information.

**23.3** Copies of Continental's Collection Notice (APP5), Privacy Policy, Statement of Notifiable Matters and Credit Reporting Policy are available on Continental's website at [www.continental-tyres.com.au](http://www.continental-tyres.com.au). Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting Continental's Privacy Officer on [tyresprivacyofficer.au@contityres.com.au](mailto:tyresprivacyofficer.au@contityres.com.au).

**23.4** The Customer must at all times comply with all

applicable laws, statutes, regulations and codes relating to anti-slavery, anti-bribery and improper payments, including but not limited to the *Modern Slavery Act 2018* (Cth) and the *Criminal Code Act 1995* (Cth), and must respond to the Continental's requests regarding compliance with such laws.

**23.5** The Customer agrees to abide by the Continental's policies as advised and updated from time to time, including Continental Business Partner Code of Conduct accessible at <https://www.continental.com/en/sustainability/general-information/suppliers-63222>.

**23.6** Without limiting any other audit rights in this agreement, during the term of this agreement and for a period of two years thereafter, Continental may, at its expense, audit the books and records of the Customer and its personnel relating to activities undertaken in connection with this agreement, including all charges made by the Customer pursuant to this agreement and payment made or benefits conferred (whether in kind or in cash) by the Customer for or on behalf of Continental in the performance of or otherwise in relation to this agreement.

**23.7** Without limiting any other rights of Continental at law or under this agreement (including any other rights of termination or in relation to a breach of this agreement), if Continental determines that the Customer is in breach of or has breached the Customer's obligation under clause 23.4, Continental may immediately terminate this agreement by notice to the Customer.

**23.8** Any claims for payment by the Customer in relation to the subject matter of any breach referred to in clause 23.7 shall be automatically terminated and cancelled.

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## 24. HEALTH AND SAFETY

**24.1** The Customer hereby undertakes to comply with such instructions as may be issued by Continental from time to time concerning any steps, precautions or other measures required to be taken in order to ensure that the Goods shall not cause damage or injury to any person (including the Customer) or its property.

**24.2** If the Goods are re-sold by the Customer, the Customer hereby agrees to bring to the notice of the sub-purchaser any such instructions as aforesaid and to use all reasonable endeavours to ensure that the sub-purchaser complies with such instructions.

**24.3** The Customer shall not obscure, remove, deface or tamper with any labels or instructions upon or with the Goods or their packaging when they are delivered to the Customer.

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## 25. GENERAL

**25.1 Interpretation:** In these Terms, unless the context requires otherwise, all reference to a party includes the party's successors and permitted assigns. No provision in these Terms will be construed against a party solely because the party was responsible for

drafting the provision.

**25.2 Time is of the essence:** Time is of the essence of these Terms, and the obligations of the Customer and/or the Guarantor to Continental.

**25.3 Continuing Guarantee:** All guarantees granted under or related to these Terms will be continuing guarantees and will terminate only with Continental's written agreement.

**25.4 Trusts:** These terms bind the Customer and/or Guarantor (as applicable) both personally and as trustee of which the Customer and/or Guarantor is trustee.

**25.5 Set-Off:** Continental may at any time set-off amounts owed by Continental to the Customer against amounts owed by the Customer to Continental and/or amounts owed by Continental to the Guarantor against amounts owed by the Guarantor to Continental.

**25.6 Certification:** A statement signed by an Officer certifying the amount of any monies payable by the Customer, or identifying any Goods as being "unpaid for" is, in the absence of manifest error, conclusive and binding on the Customer and/or Guarantor.

**25.7 Notification of Change of Details:**

- (a) The Customer and/or Guarantor must immediately provide written notice to Continental of any change in their respective details set out in the Guarantee and/or an Application for Commercial Credit; and
- (b) The Customer must provide written notice to Continental of any change in the Customer's structure or management (including any change of director, shareholder, partnership, trusteeship or address) within 7 days of such change.

**25.8 Expenses:** The Customer and/or Guarantor must pay to Continental all costs, charges, fees and expenses (including, without limitation, all stamp duty and legal fees and costs and debt recover expenses on a full indemnity basis as a liquidated debt) incurred by Continental in connection with any entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, and/or the failure by the Customer and/or Guarantor to comply with any obligations under these Terms and/or the Guarantee.

**25.9 Application of Monies Received:** If Continental receives money in respect of a debt of the Customer or anyone else, Continental may use the money to pay off whichever part of that debt Continental chooses and Continental is not compelled to apply the money as directed by the Customer or any other person, and does not have to apply the money for the Guarantor's benefit.

**25.10 Service of Notices and Documents:** All notices or documents required to be given to Continental for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by Continental for the purposes of the PPSA or any other purpose will be effectively 'given', 'served', and/or 'delivered' if sent by Continental by pre-paid ordinary post:

- (a) To the last address for the Customer or Guarantor

(as applicable) known to Continental; or

(b) If the Customer or Guarantor is a company, the registered office or principal place of business of the Customer or Guarantor (as applicable); or

(c) If the Customer or Guarantor (as applicable) trades under a registered business name, any address contained on a current business extract for that business name.

**25.11 Transactions:** The Customer will be liable for all transactions and expenses involving the Customer's trade account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents and/or contractors. The Customer will also be liable for any fraudulent use of the Customer's trade account which is directly or indirectly caused or contributed to by the Customer's negligence.

**25.12 Waiver:** Continental does not waive any breach by the Customer or Guarantor of these Terms unless the waiver is written and signed by Continental. No waiver is to be construed as a general waiver unless it is expressly stated to be a general waiver. Continental's rights and remedies under these Terms are in addition to any rights and remedies arising at law.

**25.13 Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several. If there is more than one Guarantor, the obligations of each Guarantor are joint and several.

**25.14 Severance:** Each clause, subclause and part of these Terms is separate and independent. If any clause or subclause or part of these Terms is found to be invalid or ineffective then it must be treated as deleted from these Terms, but the other clauses or subclauses or parts of these Terms will not be adversely affected.

**25.15 Amendment:** These Terms may only be amended with Continental's express, written agreement.

**25.16 Assignment:** The Customer may not assign any agreement under these Terms without Continental's prior written consent.

**25.17 Liability of Continental:** Continental will not be liable for any loss or damage whatsoever suffered by the Customer and/or Guarantor as a result of any act, omission, or statement made by Continental, Continental's employees, contractors or agents whether negligent or not, except that nothing in these Terms limits any liability imposed by statute unless or to the extent it is lawful to do so.

**25.18 Application of Laws:** These Terms are governed by the laws of the State of Victoria. The Customer and/or Guarantor submits and consents to the central courts of Melbourne having non-exclusive jurisdiction over these Terms. The terms of the United Nations *Convention on Contracts for the International Sale of Goods* (1960) is expressly excluded.