

## **Goodyear Dunlop Tyres UK Limited – General Terms and Conditions of Sale**

### **General**

Transactions for the supply of products and services by Goodyear Dunlop Tyres UK Limited ("Goodyear Dunlop") whether or not manufactured or performed by Goodyear Dunlop shall be exclusively and definitely governed by these general terms and conditions of sale, which are deemed read, understood and unconditionally accepted by a customer ("Customer") upon Customer's receipt of Goodyear Dunlop's order confirmation (or other written acceptance) for the same. These general terms and conditions of sale shall apply to the exclusion of any conflicting terms and conditions of the Customer. Goodyear Dunlop reserves the right to vary these general terms from time to time by written notice to the Customer.

### **Offer & Acceptance**

Price lists and standard business terms for the products of Goodyear Dunlop are available to Customers upon request. Purchase orders shall only be deemed accepted by Goodyear Dunlop (and Goodyear Dunlop shall only be bound by such Purchase order) upon and in accordance with Goodyear Dunlop's order confirmation (or other written acceptance).

### **Delivery Terms**

Unless otherwise agreed, products will be delivered to an address of the Customer within the United Kingdom (including Northern Ireland) and shall be deemed delivered when made available for unloading at the Customer's address. Goodyear Dunlop reserves the right to deliver the products in separate installments. Each separate installment shall be paid for in accordance with these general terms and conditions of sale. Unless the Customer notifies Goodyear Dunlop within 5 days of delivery of any discrepancies in the products received, all the products ordered as stated on the delivery note shall be deemed to have been delivered and Goodyear Dunlop shall have no liability to the Customer in respect of such discrepancies. Delivery dates are estimates only and shall never be legally binding upon Goodyear Dunlop. Unless otherwise agreed by Goodyear Dunlop, delays in delivery do not entitle the Customer to refuse acceptance of the products or to cancel an order. Goodyear Dunlop does not accept any liability in respect of late delivery. In the event that the Customer fails to accept the products at the time of delivery, Goodyear Dunlop shall be entitled to charge the Customer the full purchase price, together with any costs incurred by Goodyear Dunlop resulting from Customer's failure or delay in accepting delivery, including, but not limited to, transport, demurrage, storage and labour costs.

### **Retention of Title**

Ownership of the products shall not pass to the Customer until Goodyear Dunlop has received in full (in cash or cleared funds) all sums due to it in respect of: (i) the products; and (ii) all other sums which are due and payable to Goodyear Dunlop from the Customer on any account.

Until ownership of the products has passed to the Customer, the Customer shall: (i) hold the products on a fiduciary basis as Goodyear Dunlop's bailee; (ii) store the products (at no cost to Goodyear Dunlop) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Goodyear Dunlop's property; (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the products; and (iv) maintain the products in satisfactory condition and keep them insured on Goodyear Dunlop's behalf for their full price against all risks to the reasonable satisfaction of Goodyear Dunlop. On request the Customer shall produce the policy of insurance to Goodyear Dunlop.

The Customer may resell the Goods before ownership has passed to it solely on the following conditions: (i) any sale shall be effected in the ordinary course of the Customer's business at full market value; and (ii) any such sale shall be a sale of Goodyear Dunlop's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; (iii) the Customer shall hold the proceeds of sale on trust for Goodyear Dunlop in a separate account.

Goodyear Dunlop shall be entitled to require the Customer to return any products in respect of which title has not passed to the Customer at any time. The Customer also licenses Goodyear Dunlop to enter upon the premises of the Customer at any time in order to recover possession of such products.

### **Passing of Risks**

Except as otherwise agreed in writing by Goodyear Dunlop, risk of loss or deterioration of the products supplied hereunder shall pass from Goodyear Dunlop to Customer upon such products leaving Goodyear Dunlop's warehouse for delivery (or upon leaving factory in the case of direct deliveries from factory) or at the date products were ready to be delivered should effective delivery be prevented by Customer's acts or omissions, whichever is the earliest.

## **Prices**

The prices for the products (or services) shall be the prices in effect at the time the products are delivered to the Customer (or the services are provided to the Customer). Price lists do not include VAT.

## **Payment Terms & Penalties**

The standard payment period applicable to all Goodyear Dunlop's products and services is 30 days from the end of the month in which Goodyear Dunlop issues an invoice, unless otherwise agreed in writing. Payments are to be made by bank transfer to Goodyear Dunlop's designated bank account. Without prejudice to any of Goodyear Dunlop's rights under the Late Payment of Commercial Debts (Interest) Act 1998, Goodyear Dunlop reserves the right to charge simple interest on overdue payments, such interest to accrue daily, from and including the due date to and including the date of actual payment in cleared funds at the rate of 2% per calendar month. Goodyear Dunlop further reserves the right to suspend the manufacture and/or delivery in respect of any outstanding order from the Customer (or suspend the provision of any services) until such payment has been received. Goodyear Dunlop also reserves the right to suspend delivery of, or cancel, an order (or suspend the provision of any services) if it has reasonable grounds for doubting the Customer's ability to make future payments on a timely basis. Goodyear Dunlop reserves the right to demand payment in advance in such circumstances. In the event that monies remain overdue, the Company further reserves the right to take such action as it considers necessary, including taking legal advice and issuing proceedings to recover all monies owed by the Customer. The Customer shall indemnify Goodyear Dunlop in respect of all fees, charges, costs and expenses incurred by Goodyear Dunlop in the recovery of the overdue amount, including legal costs and the cost to Goodyear Dunlop (calculated by reference to time spent and materials) of assigning its own staff to dealing with such recovery.

## **Invoice queries**

The Customer shall notify Goodyear Dunlop of any invoice queries or disputes within 14 days of the date of such invoice, failing which the Customer shall be deemed to have accepted such invoices at the end of this 14 day period. Customer shall not be entitled to the benefit of any set off to which he might otherwise be entitled in law or in equity, except that the Customer may withhold an amount, certified in advance in writing by Goodyear Dunlop, being an amount that is subject to a genuine dispute between the Customer and Goodyear Dunlop.

## **Returns**

Unless otherwise agreed by Goodyear Dunlop, the Customer shall not be entitled to return products for reasons of convenience or Customer error. Without prejudice to Goodyear Dunlop's other rights, Goodyear Dunlop reserves the right to charge an administration fee in the event that products are returned in breach of this paragraph.

## **Warranty (THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE)**

Goodyear Dunlop warrants only that the products manufactured by it will, for a period of 5 years from date of production conform to their current technical specifications and be free from defects. Goodyear Dunlop warrants that it will provide the services using reasonable skill and care. These warranties are in lieu of all other written or unwritten conditions, guarantees or warranties whether express or implied by common law, statute or otherwise. The Customer's exclusive remedy and Goodyear Dunlop's sole responsibility for any claim of whatever nature arising out of the above warranties, is expressly limited to either the replacement within a reasonable time of the products shown to be other than as warranted or, at Goodyear Dunlop's option, a reimbursement in cash (such sum, in the case of tyres, to be calculated on the basis of the remaining tread depth) or in free products not to exceed the price effectively paid by the Customer for the specific products shown to be other than as warranted or the re-performance of the services. Any such replacement, reimbursement or re-performance is conditional on the Customer giving Goodyear Dunlop notice that the products or services are other than as warranted within 14 days from the date of discovery. Failure by the Customer to give this prior notice on time shall constitute the Customer's waiver of all claims hereunder with respect to such products or services. If requested by Goodyear Dunlop, all unsold or unprocessed products alleged by the Customer to be other than as warranted must be returned to Goodyear Dunlop, who will reimburse the Customer's reasonable return freight charges. Except as set out in these terms and conditions, the Customer shall not be entitled to return the products to Goodyear Dunlop.

## **Limitation of Liability (THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE)**

Goodyear Dunlop shall not be liable to the Customer for pure economic loss, loss of profits, loss of business, depletion of goodwill, loss of anticipated savings, loss of goods, loss of contracts, loss of use (in each case whether direct, indirect or consequential) nor shall it be liable in respect of any indirect or consequential loss or any special or exemplary damages, or any claims for consequential compensation whatsoever (howsoever caused).

To the extent permitted by law, Goodyear Dunlop's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance of its obligations shall be limited to the price paid for the products or services which are the subject of the purchase order. Except as set out in these general terms and conditions of sale, all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

Nothing in these general terms and conditions of sale excludes or limits Goodyear Dunlop's liability: (i) for death or personal injury caused by Goodyear Dunlop's negligence; (ii) under section 2(3) Consumer Protection Act 1987; or (iii) for fraud or fraudulent misrepresentation.

## **Cancellation**

Goodyear Dunlop reserves the right to cancel any accepted purchase order immediately in the event Customer breaches one of its material obligations under that accepted purchase order, and does not remedy the same within thirty (30) calendar days after notice of such breach sent by registered letter to Customer's address, without prejudice to any damages that Goodyear Dunlop could claim in contract, tort or otherwise. Goodyear Dunlop also reserves the right to immediately cancel any accepted purchase order should the Customer be subject to any of the following events: (i) cessation or threat of cessation of trade; (ii) inability to pay its debts when they fall due; (iii) making a voluntary arrangement with its creditors; (iv) an administration order is applied for or made; (v) a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (vi) a receiver is appointed over all or any of its assets (the Cancelling Events) and, in each case, without any compensation to the Customer as a result of such cancellation and without prejudice to any other remedies that Goodyear Dunlop may have in contract, tort or otherwise as a consequence of such Cancelling Events. No Purchase order or part Purchase order can be cancelled by the Customer without the agreement of Goodyear Dunlop.

## **Patents & Trademarks**

All the copyright, performance rights, database rights, design rights, trade marks, patents, goodwill and similar rights in any part of the world and whether or not registered or registrable, for the full period and all extensions and renewals ("IPRs") in the products and all and any other documents and items obtained by the Customer from Goodyear Dunlop, together with all derivatives and derivative IPRs belong, or are licensed, to Goodyear Dunlop. The Customer shall not use any IPRs except to the extent permitted by these general terms and conditions of sale. The Customer shall not and shall use its best endeavours to ensure that no other person shall use any business, product or service name, any logo, device or service mark, or any get up ("Trade Mark") or any other intellectual property rights whatsoever used by or belonging to (or display or otherwise promote any advertising or promotion of) Goodyear Dunlop, its holding companies or its or their subsidiaries, or any of its or their goods or services or other activities, for any purpose whatsoever except pursuant to a written licence from Goodyear Dunlop. A request for approval for any such use, particularly in relation to advertising material, should be addressed to Goodyear Dunlop.

## **Contingencies**

If in the course of executing any confirmed order, hardship or unfairness is anticipated by (or has occurred to) Goodyear Dunlop, such as, but not limited to, any reduction in the availability of raw materials or products, cost increase of raw materials or energy supplies, Goodyear Dunlop is entitled to modify unilaterally and without liability such confirmed order to the extent strictly necessary to rectify, remove or manage such hardship or unfairness, while still substantially meeting Goodyear Dunlop's obligations and duties anticipated under such confirmed order. Such modification could include an increase in purchase price or a reduction in quantity to be delivered under the confirmed order.

## **Force Majeure**

Strikes, whether internal or external to Goodyear Dunlop, floods and fires, war, riots, pandemics, transport disruptions or stoppages, shortage of raw materials or energy sources, significant accident affecting sub-contracted production, receivership or compulsory liquidation of subcontractors, accident of any kind, governmental decisions affecting the manufacture or storage of products and, in more general terms, any event unforeseeable at the time of order confirmation and outside the control of Goodyear Dunlop which prevents the manufacture, shipment or delivery of products to the Customer or the provision of the services, shall constitute cases of force majeure which authorize Goodyear Dunlop to

either suspend or eliminate the corresponding quantities of products or services from Customer's confirmed order without any liability to Goodyear Dunlop.

#### **Data Protection**

The Customer shall not supply any personal data of any person to Goodyear Dunlop without securing such person's express, informed consent to such supply and to Goodyear Dunlop processing such personal data for the purposes of performing its obligations under these general terms and conditions of sale.

#### **Dealing with Rights under the Contract**

Goodyear Dunlop may assign or sub-contract any of its rights or obligations under an order, may delegate performance of any of its obligations under the order to any agent, employee or contractor and may charge or otherwise deal in any way whatsoever with any of its rights under the order. The Customer may not assign, sub-contract, delegate, share, charge or otherwise deal with any of its rights under the order and may not so deal with any of its obligations under the order.

#### **Cumulative Rights**

The rights and remedies provided to Goodyear Dunlop by these terms are cumulative and are not exclusive of any rights or remedies otherwise available to it under statute or common law. To the fullest extent permitted by law, the rights and remedies provided to the Customer by these terms are the only rights and remedies of the Customer.

#### **Severability**

If any provision of these terms shall be found, by any court or administrative body of competent jurisdiction, to be void, invalid or unenforceable, the voidance, invalidity or unenforceability of such provision shall not affect the other provisions of these terms and all provisions not so affected shall remain in full force and effect to the extent this shall be lawful and commercially viable for Goodyear Dunlop.

#### **Waiver**

Failure by the Goodyear Dunlop to exercise or enforce any of its rights under or in connection with these terms, including delay in submitting any invoice or demanding any payment, shall not be deemed to be a waiver of such rights or a bar on the exercise or enforcement of such right subsequently. No provision of these terms shall be treated as being waived by Goodyear Dunlop unless such waiver is in writing signed by the Goodyear Dunlop.

#### **Applicable Law & Competent Jurisdiction**

These general terms and conditions of sale and any contracts incorporating them shall be governed by and construed in all respects in accordance with the laws of England and Wales. Goodyear Dunlop and the Customer shall submit to the non-exclusive jurisdiction of the English courts.

Revised November 2010

We confirm our agreement to these General Terms and Conditions of Sale

Signed.....

Print name.....

Position/job title.....

Customer/company name.....

Date.....