

TERMS AND CONDITIONS GOVERNING SALE OF TYRES BY TREADSETTERS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 16.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as varied from time to time in accordance with clause 24.1 and 24.2.

Contract: the contract between Treadsetters and the Customer for the supply of Goods in accordance with these conditions.

Credit: a credit equal to the value of the Goods which Treadsetters has agreed do not comply with the Warranty.

Customer: the person or firm who purchases the Goods from Treadsetters.

Delivery Note: a document produced by Treadsetters or the appointed carrier of the relevant Goods to the Customer at the Delivery Point.

Delivery Point: the Customer's Premises or such other location as the Customer specifies on the Order and which has been accepted by Treadsetters in the Order Confirmation.

"E-Mark" the UNECE approval mark and number.

Expenses: any out-of-pocket costs incurred by Treadsetters in fulfilling an Order, including (without limitation):

- (a) postage, packaging, carriage, freight, and handling charges;
- (b) insurance;
- (c) currency conversion and banking charges applicable to the payment method used;
- (d) value added tax or any other applicable sales tax in the country in which Treadsetters is resident; and
- (e) any customs, import or other duties charged in respect of the sale and importation of Products into the country in which the Customer is resident or the Delivery Point is located.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: the specification for the Goods which corresponds with the Goods E-Mark(s) and S-Mark(s) (the latter where applicable).

Intellectual Property Rights: all copyright, database rights, topography rights, design rights, trade marks, trade names, utility models, patents, domain names and

any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Goods.

Invoice: an invoice raised by Treadsetters in accordance with clause 6.3.

List Prices: the prices for the Goods as varied from time to time by Treadsetters in accordance with clause 6.2, but excluding any Expenses.

Net Selling Price: the List Prices of Goods ordered by the Customer less any discounts granted to the Customer by Treadsetters in writing from time to time.

Order: the Customer's order for the supply of Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of Treadsetters's quotation or the Customer's oral acceptance of Treadsetters's quotation.

Order Confirmation: an order confirmation document sent by Treadsetters to the Customer, agreeing to fulfil the Order.

"S-Mark" the UNECE approval sound mark.

Treadsetters: T.I.A (GB) Ltd incorporated and registered in the United Kingdom with company number 03873873 whose registered office is at Units C & D Halesfield 14, Telford, Shropshire, England, TF7 4QR, trading as Treadsetters.

- 1.2 Reference to a clause, paragraph or schedule is to a clause, paragraph or schedule of or to this Contract, unless the context requires otherwise.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to a **person** includes an incorporated or unincorporated body.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Unless the context otherwise requires, the words **including** and **include** and words of similar effect shall not be deemed to limit the general effect of the words which precede them.
- 1.8 The headings in this Contract are for ease of reference only and shall not affect its construction or interpretation.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when Treadsetters issues an Order Confirmation at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Treadsetters which is not set out in the Contract.
- 2.4 Any drawings, descriptive matter or advertising issued by Treadsetters and any descriptions of the Goods or illustrations contained in Treadsetters's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Treadsetters shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. SPECIFICATION OF THE GOODS

- 3.1 Treadsetters warrants that all Goods sold by Treadsetters to the Customer pursuant to this agreement will conform in all material respects to the Goods Specification (**Warranty**). All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in this agreement are excluded from this agreement to the fullest extent permitted by law.
- 3.2 Subject to the remaining provisions of this clause 3, the Customer shall be entitled to reject any quantity of the Goods which do not comply with the Warranty, provided that any purported rejection is made no later than seven days from the date of delivery in accordance with clause 4.6.

4. DELIVERY OF THE GOODS

- 4.1 Treadsetters shall arrange delivery of the Goods to the Delivery Point provided that the Customer shall be liable to pay for all Expenses incurred by Treadsetters in complying with such instructions. Such Expenses shall be included on the Invoice for the relevant Goods.

- 4.2 Delivery of the Goods shall take place at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Customer shall be at Treadsetters's sole discretion and the Customer shall be liable for any additional Expenses incurred by Treadsetters as a result of such change. Treadsetters shall arrange for suitable transport to the Delivery Point. On delivery, Treadsetters (or its appointed carrier) shall provide the Customer with such export documents as are necessary and which the Customer is unable to prepare together with a Delivery Note.
- 4.3 Treadsetters will have fulfilled its contractual obligations in respect of each delivery provided that the quantity actually delivered is no greater than 10% more or less than the quantity specified on the Order. The Customer shall pay for the actual quantity delivered.
- 4.4 Delivery dates in relation to the supply by Treadsetters of Goods are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery of the Goods.
- 4.5 Treadsetters may effect delivery in one or more instalments.
- 4.6 The Customer shall, within [seven] days of the arrival of each delivery of the Goods at the Delivery Point, give written notice of rejection to Treadsetters on account of any defect by reason of which the Customer alleges that the Goods delivered do not comply with the Warranty and which was apparent on reasonable inspection.
- 4.7 If the Customer fails to give notice as specified in clause 4.6 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Warranty and, accordingly, the Customer shall be deemed to have accepted the delivery of the Goods in question and Treadsetters shall have no liability to the Customer with respect to that delivery (except in relation to liability for any latent defects).
- 4.8 If the Customer alleges that any Goods are defective, it shall, if so requested by Treadsetters, return the relevant Goods (unaltered and unrepaired) to Treadsetters for inspection as soon as possible and at its own risk and expense.
- 4.9 If the Customer rejects any delivery of the Goods which do not comply with the Warranty, Treadsetters shall as soon as is reasonably practical following Treadsetters acceptance that the Goods do not comply with the Warranty:
- (a) supply replacement Goods which comply with the Warranty, in which event Treadsetters shall be deemed not to be in breach of this agreement or have any liability to the Customer for the rejected Goods; or
 - (b) notify the Customer that it is unable to supply replacement Goods, in which case Treadsetters has the discretion to grant to the Customer a Credit.

4.10 Treadsetters' reasonable decision as to whether the Goods comply with the Specification shall be final.

5. IMPORT AND EXPORT LICENCES

The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by Treadsetters, the Customer shall make those licences and consents available to Treadsetters prior to the relevant shipment.

6. PRICES AND PAYMENT

6.1 The Customer shall pay Treadsetters for the Goods in accordance with the provisions of this clause 6.

6.2 The price for Goods shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in Treadsetters published List Price as at the date of delivery.

6.3 Treadsetters shall invoice the Customer on or at any time after completion of delivery, or completion of delivery of an instalment pursuant to clause 4.5..

6.4 The method of payment shall be set out in the Order and in all cases time for payment shall be of the essence of the Contract.

6.5 Where the agreed method of payment is upon Invoice the Customer shall pay 30% of the total Order value upon placement of the Order.

6.6 The Customer shall pay to Treadsetters the total amount of each Invoice in pounds sterling by telegraphic transfer to such bank account as may be nominated by Treadsetters within 30 days after the date of the relevant Invoice, notwithstanding that delivery may not have taken place and that property to the Goods has not passed to the Customer.

6.7 If it has been agreed that payment will be by way of letter of credit then the price of any Goods sold pursuant to this agreement shall be secured by an irrevocable letter of credit satisfactory to Treadsetters, established by the Customer in favour of the Treadsetters immediately upon receipt of Treadsetters's acceptance of Customer's Order and confirmed by a United Kingdom bank acceptable to Treadsetters. The letter of credit shall be for the price payable for the Goods (together with any tax or duty payable) to Treadsetters and shall be valid for six months. Treadsetters shall be entitled to immediate cash payment on presentation to such United Kingdom bank of the documents provided by the Customer to Treadsetters.

- 6.8 Treadsetters reserves the right to:
- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Treadsetters that is due to:
 - (i) any factor beyond the control of Treadsetters (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Treadsetters adequate or accurate information or instructions in respect of the Goods.
- 6.9 All amounts of money referred to in this agreement shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to Treadsetters, the Customer shall increase the sum it pays to Treadsetters by the amount necessary to leave Treadsetters with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 6.10 All amounts due to Treadsetters under this agreement shall become due immediately if this agreement is terminated or novated despite any other provision.
- 6.11 The time for payment shall be of the essence and no payment shall be deemed to have been made until Treadsetters has received payment in cleared funds.
- 6.12 If the Customer does not make payment on or before the date on which it is due, interest shall be payable on the overdue amount at the rate in force pursuant to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 or from time to time. Interest shall be payable at this rate both before and after any judgment is made against the Customer until the date on which payment in cleared funds is received in full, including all accrued interest.
- 6.13 The Customer shall make all payments due under this agreement without any deduction by way of set-off, counterclaim, discount or otherwise unless the Customer has a valid court order from a court in England and Wales requiring an amount equal to or more than such deduction to be paid to Treadsetters by the Customer, or unless such rights relied on cannot be excluded by the law of England and Wales or the insolvency laws of the jurisdiction in which the Customer is resident.

7. RESALE

7.1 The Customer shall only be permitted to resell the Goods in countries not listed from time to time on the UK Home Office's website as not having trade restrictions levied against them.

8. TITLE AND RISK

8.1 Risk in and responsibility for the Goods shall pass to the Customer once they have been delivered to the carrier appointed to deliver the Goods to the Delivery Point.

8.2 Subject to clause 8.4, ownership of the Goods shall not pass to the Customer until Treadsetters has received payment in full of all monies owed by the Customer to Treadsetters for:

- (a) the Goods; and
- (b) any other goods that Treadsetters has supplied to the Customer in respect of which payment has become due.

8.3 Until ownership of the Goods passes to the Customer, the Customer shall hold the Goods on the following terms:

- (a) hold the Goods on a fiduciary basis as Treadsetters's bailee;
- (b) the Goods shall be stored separately from other goods held by the Customer and shall be clearly identifiable as the property of Treadsetters;
- (c) the Goods shall not be mixed with other goods or altered in any way;
- (d) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (e) the Goods shall be adequately stored and maintained in a satisfactory condition; and
- (f) each Good shall be insured for an amount at least equal to its List Price and any proceeds of the insurance policy shall be held on trust for Treadsetters in a separate account in the joint names of Treadsetters and the Customer. The Customer shall not mix the insurance proceeds with any other money or pay the proceeds into an overdrawn bank account. The Customer shall account to Treadsetters for the proceeds accordingly and make good any shortfall in the amount due to Treadsetters.

8.4 The Customer may resell (but may not deal in any other way with) the Goods to a third party and pass good title to that third party on the following terms:

- (a) the sale is in the ordinary course of the Customer's business; and
- (b) the Customer holds the proceeds of any resale on trust for Treadsetters in a separate account in the joint names of Treadsetters and the Customer and

does not mix them with any other money or pay the proceeds into an overdrawn bank account.

The Customer shall account to Treadsetters for the proceeds accordingly and shall make good any shortfall in the amount due to Treadsetters.

- 8.5 The Customer shall lose its rights to possession and resale of the Goods if:
- (a) the Customer becomes subject to any of the events in clause 12(1)(b) to clause 12.1(d) and clause 12.1(g) to clause 12.1(i); or
 - (b) this agreement terminates and the Customer does not pay all outstanding amounts under this agreement within 30 days; or
 - (c) the Customer suffers any legal or equitable execution to be levied on its property.
- 8.6 The Customer grants to Treadsetters an irrevocable licence for Treadsetters, its agents and employees to enter any premises where the goods of the Customer are stored to ascertain whether any Goods are stored there and to inspect, count and recover them.
- 8.7 The Customer shall register any necessary charge over money or goods and take such other steps as are necessary to give effect to this clause 8 at the request of Treadsetters.

9. CHANGES

- 9.1 Treadsetters may, immediately on giving written notice to the Customer elect to alter the Goods Specification of any of the Goods, provided that the alteration does not materially adversely affect the performance, quality or value of the Goods;
- 9.2 Treadsetters may, on giving written notice to the Customer, elect to alter the Goods Specification of any of the Goods otherwise than in accordance with clause 9.1. Where the Customer has placed an Order and Treadsetters has accepted that Order and the Goods Specification of any of the Goods contained in that Order are varied in accordance with this clause 9.2, the Customer may cancel the part of the Order that relates to the varied Goods only.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Customer acknowledges that:
- (a) the Intellectual Property Rights are Treadsetters's (or its licensor's) property;
 - (b) nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual

Property Rights. Treadsetters asserts its full rights to control the use of its trade marks within the EEA and the Customer shall assist Treadsetters as required in preventing parallel importers from diluting Treadsetters's rights; and

- (c) any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of Treadsetters or any other owner of the trade marks from time to time.
- 10.2 The Customer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods save for any removal which is a necessary result of a manufacturing process of which Treadsetters has been previously notified in writing by the Customer.
- 10.3 The Customer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which Treadsetters or any associated company of Treadsetters owns or claims rights in anywhere in the world.
- 10.4 If at any time it is alleged that the Goods infringe the rights of any third party or if, in Treadsetters reasonable opinion, such an allegation is likely to be made, Treadsetters may at its option and its own cost:
- (a) modify or replace the Goods without reducing the overall performance of the Goods in order to avoid the infringement; or
 - (b) procure for the Customer the right to continue using the Goods; or
 - (c) repurchase the Goods at the price paid by the Customer, less depreciation at the rate Treadsetters applies to its own equipment.
- 10.5 The Customer shall promptly and fully notify Treadsetters of:
- (a) any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and
 - (b) any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Goods infringes the rights of any person.
- 10.6 The Customer agrees (at Treadsetters request and expense) to do all such things as may be reasonably required to assist Treadsetters in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 10.5.
- 10.7 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Right connected with the Goods, Treadsetters shall defend the Customer at Treadsetters expense, subject to:

- (a) the Customer promptly notifying Treadsetters in writing of any such claim, proceeding or suit; and
- (b) Treadsetters being given sole control of the defence of the claim, proceeding or suit,

and provided that Treadsetters shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except Treadsetters or its authorised representative, or out of use or combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by Treadsetters, or where the claim, proceeding or suit arises from Treadsetters's adherence to the Customer's requested changes to the Goods Specification or from infringing items of the Customer's origin, design or selection.

- 10.8 Treadsetters shall reimburse the Customer with an amount equal to any cost, expense or legal fees incurred at Treadsetters's written request or authorisation and shall indemnify the Customer against any liability assessed against the Customer by final judgement on account of an infringement described in clause 10.7.

11. CONFIDENTIALITY

- 11.1 Each party undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other which it has obtained or received as a result of discussions leading up to entry into this Contract, or which it has obtained during the course of this agreement, except any information that is:
- (a) subject to an obligation to disclose under law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise; or
 - (b) already in its possession other than as a result of a breach of this clause 11; or
 - (c) in the public domain other than as a result of a breach of this clause 11.

- 11.2 Each party undertakes to the other to take all steps that are necessary from time to time to ensure compliance with the provisions of this clause 11 by its employees, agents and subcontractors.

12. DURATION AND TERMINATION

- 12.1 Either party may terminate this Contract by giving written notice to the other party if any of the following events occurs:
- (a) the other party commits a breach of this Contract which (in the case of a breach capable of remedy) has not been remedied within 30 days of the receipt by the other of a notice specifying the breach and requiring its remedy; or

- (b) a winding-up order or bankruptcy order is made against the other party; or
- (c) the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
- (d) the other party has appointed to it an administrator or an administrative receiver; or
- (e) being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or
- (f) being a partnership in addition to the above, suffers bankruptcy orders being made against all of its partners.
- (g) an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
- (h) the other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (i) any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
- (j) the other party ceases, or threatens to cease, to carry on business; or
- (k) any event analogous to those described in clause 12.1(b) to clause 12.1(i) occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business.

12.2 On termination or novation of this agreement for any reason and subject as otherwise provided in this Contract to any rights or obligations that have accrued before termination, neither party shall have any further obligation to the other under this agreement.

13. RIGHTS UPON TERMINATION

13.1 Without limiting its other rights or remedies, Treadsetters may suspend all further deliveries of Goods under the Contract or any other contract between Treadsetters and the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1(b) to (k), or Treadsetters reasonably believes that the Customer is about to become subject to any of them.

13.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Treadsetters all of Treadsetters' outstanding unpaid invoices and interest; and

- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) the following clauses shall continue in force:
 - (i) Clause 8 (Title & Risk)
 - (ii) Clause 10 (Intellectual Property Rights)
 - (iii) Clause 11 (Confidentiality)
 - (iv) Clause 13 (Rights of Termination)
 - (v) Clause 16 (Limitation of Liability)
 - (vi) Clause 18 (Disputes)
 - (vii) Clause 28 (Governing Law & Jurisdiction)

14. FORCE MAJEURE

- 14.1 Neither party shall be liable to the other, or be deemed to be in breach of this agreement, by reason of any delay in performing, or failure to perform, any of its obligations under this Contract if the delay or failure was beyond that party's reasonable control (including without limitation fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects this Contract and which is not in force on the date of this Contract).
- 14.2 A party claiming to be unable to perform its obligations under this Contract (either on time or at all) in any of the circumstances set out in clause 14.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.
- 14.3 This clause 13 shall cease to apply when such circumstances have ceased to have effect on the performance of this Contract and the party affected shall give notice to the other party that the circumstances have ceased.
- 14.4 If any circumstance relied on by either party for the purposes of this clause 13 continues for more than six months, the other party shall be entitled to terminate this Contract by giving one month's notice.

15. ENTIRE AGREEMENT

- 15.1 This Contract constitutes the entire Contract between the parties in connection with its subject matter and supersedes any previous Contract, agreement, warranty, statement, representation, understanding or undertaking (in each case whether

written or oral) given or made before the date of this agreement by or on behalf of the parties and relating to its subject matter.

- 15.2 Neither party has relied on any statement, representation, agreement, understanding or promise made by the other except as expressly set out in this Contract.

16. WAIVER OF RIGHTS BASED ON MISREPRESENTATION

- 16.1 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any oral or written statement made by the other or by its legal advisers (whether made carelessly or not) that is not set out or referred to in this Contract (or for breach of any warranty given by the other not so set out or referred to), unless such statement or warranty was made or given fraudulently.

- 16.2 Each party unconditionally waives any rights it may have to seek to rescind this Contract on the basis of any statement made by the other (whether made carelessly or not), unless such statement was made fraudulently.

17. LIMITATION OF LIABILITY

- 17.1 Treadsetters total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to this Contract shall be limited to the amount paid by the Customer for the Goods (excluding Expenses) to which the claim relates.

- 17.2 Treadsetters shall not be liable to the Customer for:

- (a) any indirect, special or consequential loss or damage; or
- (b) loss of data or other equipment or property; or
- (c) economic loss or damage; or
- (d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
- (e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,

even if Treadsetters is advised in advance of the possibility of any such losses or damages.

- 17.3 Treadsetters shall not be liable for any losses arising from the Customer's subsequent use or misuse of the Goods including (without limitation):

- (a) fair wear and tear;
- (b) wilful or accidental damage;

- (c) the Customer's negligence, or that of its agents or employees, or any failure to follow the E-Mark or S-Mark guidelines as to use of the Goods;
- (d) abnormal working conditions beyond those referred to in the Goods Specification including (but not limited to) use of the Goods at the incorrect pressure as specified by the vehicle manufacturer, or on overloaded vehicles;
- (e) used with any adaptations including but not limited to snow chains without Treadsetters prior written approval; and
- (f) any alteration or repair of the Goods by any manufacturing process or otherwise, save for any latent defect which means that the Goods did not comply with the Goods Specification.

17.4 Treadsetters is not liable for a defect in the Goods unless it is notified to Treadsetters within 7 days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within three months of the date of delivery.

17.5 Treadsetters is not liable for:

- (a) non-delivery, unless the Customer notifies Treadsetters of the claim within 7 working days of the date of Treadsetters's invoice.
- (b) shortages in the quantity of Goods delivered in excess of those permitted by clause 4.2, unless the Customer notifies Treadsetters of a claim within 15 working days of receipt of the Goods; or
- (c) damage to or loss of all or part of the Goods in transit (where the Goods are carried by Treadsetters own transport or by a carrier on behalf of Treadsetters), unless the Customer notifies Treadsetters within 15 working days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier.

17.6 The Customer acknowledges and agrees that the List Prices reflect the limitations of liability contained in the Contract.

18. ASSIGNMENT

18.1 The Customer shall not, without the prior written consent of Treadsetters, assign, transfer, charge or deal in any other similar manner with this Contract or its rights or any part of them under this Contract, subcontract any or all of its obligations under this Contract, or purport to do any of the same.

18.2 Treadsetters may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract.

19. DISPUTES

- 19.1 Subject as may be provided elsewhere in this Contract, all disputes, differences or questions arising in relation to this Contract shall be referred in the first instance to the sales director of Treadsetters and the Customer's representative who placed the Order, who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.
- 19.2 If the sales director and the Customer's representative who placed the Order fail to resolve the dispute, within one calendar month, then either party may refer the dispute to an appropriate court or tribunal, or may (at its discretion) opt for mediation (in which case such an election shall bind the other party until a conclusion is made or the mediator rejects the case).
- 19.3 Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution (CEDR). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within fourteen (14) days after the date of the request that the dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party. The mediation shall be conducted in English at the offices of CEDR in London. Mediation is without prejudice to the rights of the parties to the injunctive relief or to the rights of the parties in any future proceedings.
- 19.4 The commencement of mediation under this clause 19 shall not prevent the parties commencing or continuing court proceedings in relation to any dispute.

20. CUMULATIVE REMEDIES

Each right or remedy of the parties under this Contract is without prejudice to any other right or remedy of the parties, whether or not such rights or remedies are set out in this Contract.

21. NO PARTNERSHIP OR AGENCY

Nothing in this Contract shall create, or be deemed to create, a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the acts or failure to act of the other party, or authorise either party to act as agent for the other. Save where expressly stated in this Contract, neither party shall have the authority to make representations, act in the name or on behalf of or otherwise bind the other.

22. COSTS

Except as otherwise provided in this Contract, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and implementation of this Contract.

23. SEVERANCE

The invalidity, illegality or unenforceability of any provision of this Contract, or a provision in any other Contract which is identical to one in this Contract, shall not affect the other provisions and the Contract shall be given effect as if the invalid, illegal or unenforceable provision had been deleted, unless the provision so affected is so fundamental to the Contract that one or more of the essential elements of the contract is removed and replaced with a provision with a similar economic effect to that intended by the parties if this can be achieved by another clause.

24. FURTHER ASSURANCE

Either party shall, at the request and cost of the other, use all reasonable endeavours to do or procure the doing of all such further acts, and execute or procure the execution (as a deed or otherwise) of all such documents, as may from time to time be necessary to give full effect to this Contract and to vest in the requesting party the full benefit of the assets, rights and benefits to be transferred to the requesting party under this Contract.

25. AMENDMENT AND WAIVER

25.1 No variation of this Contract shall be effective unless it is made in writing, refers specifically to this Contract and is signed by both of the parties.

25.2 No waiver of any term, provision or condition of this Contract shall be effective, except where it is clearly made in writing and signed by the waiving party. No waiver of any particular breach of this Contract shall be held to be a waiver of any other or subsequent breach.

25.3 No omission or delay on the part of any party in exercising any right, power or privilege under this Contract shall operate as a waiver by it or of any right to exercise it in future or of any other of its rights under this Contract.

25.4 The rights and remedies arising under, or in connection with, this Contract are cumulative and, except where otherwise expressly provided in this Contract, do not exclude rights and remedies provided by law or otherwise.

26. THIRD PARTY RIGHTS

No person who is not party to this Contract shall have any right to enforce any term of the Contract.

27. NOTICES

27.1 Any notice or other communication to be given under this Contract shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to the relevant party at that party's registered office or last-known trading address.

27.2 Any notice or document shall be deemed served:

- (a) if delivered by hand, at the time of delivery unless delivered after 5.00 pm in which case they shall be given on the next day (other than Saturday or Sunday) on which the banks are ordinarily open for business in the City of London;
- (b) if posted, two Business Days after posting (five Business Days if sent by airmail post); and
- (c) if sent by fax, at the time of transmission printed on the transmission confirmation sheet provided that an error free transmission report has been received by the sender and if the time of transmission is after 5.00 pm on a Business Day or at any time on a day that is not a Business Day the notice shall be deemed to have been received at 9.00 am on the next Business Day.

27.3 Notices under this Contract shall not be validly served by e-mail.

28. SURVIVAL OF OBLIGATIONS

Any of the provisions of this Contract that are expressed to take effect in whole or in part on or after termination, or are capable of having effect after termination, shall remain in full force and effect despite termination.

29. GOVERNING LAW AND JURISDICTION

29.1 This Contract shall be governed by and construed in all respects in accordance with English law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with this Contract, this Contract shall prevail.

- 29.2 Subject to clause 19 and clause 29.3, the parties submit to the exclusive jurisdiction of the courts of England and Wales and agree that in respect of proceedings in England and Wales and in any other jurisdiction, process may be served on either of them in the manner specified for notices in clause 27.
- 29.3 Nothing in this clause 29 shall limit the right of Treadsetters to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude Treadsetters from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 29.4 It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Customer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Point. Where necessary, the Customer shall inform Treadsetters at a reasonable time before delivery of any documents which it is necessary for Treadsetters to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.
- 29.5 The rights set out in this clause 29 are in addition to any other manner of service permitted by law at the time when service is made.