

## Terms and Conditions of Sale

1. THE TERMS OF ANY SALE PROVIDED BY SUPERIOR TIRE & RUBBER CORP. ("SELLER") SHALL BE AS HEREIN SET FORTH: ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER EITHER BEFORE OR AFTER THIS DOCUMENT ARE REJECTED UNLESS EXPRESSLY ASSENTED TO IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. IF BUYER WISHES TO PROPOSE ADDITIONAL OR DIFFERENT TERMS, THE PROPOSAL SHALL BE MADE IN WRITING WHICH EXPRESSLY REFERS TO THE PROVISION OR PROVISIONS OF THIS DOCUMENT WHICH BUYER PROPOSES TO MODIFY. PRINTED MATERIAL ON BUYERS FORMS SHALL NOT CONSTITUTE A SUFFICIENT WRITING TO MODIFY THIS DOCUMENT.

2. Any sale shall be construed in accordance with the law of the Commonwealth of Pennsylvania and shall not be assignable by Buyer without written consent of Seller.

### 3. Liability of Seller (Warranty)

These Terms and Conditions apply to all goods and services sold by Seller, except as otherwise specifically provided in a document signed by Seller. This sale and any sale resulting herefrom conforms only to these terms and conditions and those in other documents referenced herein or attached hereto or in a document subsequently signed by Seller and referencing this transaction (all of which constitute the "Agreement").

#### 3.1. General Express Warranties.

- Seller warrants to Buyer only, that Goods (or portions thereof manufactured by Seller) and/or services provided shall be free from defects in materials and workmanship which are identified to Seller in writing within the one (1) year warranty period following the shipment of the Goods to Buyer, or within the usable work life of the goods, whichever comes first, subject to the disclaimers and limitations of the Agreement. Absence of such written claims during this period will constitute a waiver of all claims with respect to the Goods.
- Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is non-material.
- Seller's warranties shall apply only if the Goods: (i) have been installed, maintained, and used in conformity with instructions and recommendations furnished by Seller from time to time, if any; (ii) have not been subjected to misuse, movement of the structure, physical abuse, installation error, negligence or accident; and, (iii) have not been altered or repaired by persons other than Seller in a manner, which, in the judgment of Seller, adversely affects the condition of the Goods. It is Buyer's responsibility to determine suitability of the Goods for Buyer's use and Buyer assumes all risk and liability associated therewith.
- Other Express Warranty documents signed by Seller can be obtained at [www.superiortire.com](http://www.superiortire.com) or by calling 800.289.1456 for full Warranty terms and conditions

**3.2. Disclaimer and Limitation of Express Warranties.** There are no express warranties other than those contained in this Seller's Warranty Agreement or others Seller's Warranty Agreements subsequently signed by Seller. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines, or procedures unless specifically contained in the Agreement.

#### 3.3. Remedy and Limitation of Seller's Liability.

- Defective or non-conforming Goods or parts thereof discovered during the warranty period shall be repaired or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller determines to be not in conformity with the express warranties contained herein. If Seller elects, Seller may, upon return of such Goods and making a determination of non-conformity or defect, keep the Goods and refund the full or partial purchase price, based on the pro rata basis as a percentage of the remaining work life. Buyer's remedies shall be limited exclusively to those provided in this section. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the Uniform Commercial Code ("UCC") as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new warranty except the warranty period provided for herein shall be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date repaired or replacement Goods are delivered to Buyer.
- Buyer must contact Seller requesting warranty coverage plus a Return Material Authorization ("RMA") form with a RMA number and other instructions for the return of Goods to Seller or other instructions. The Seller may, at sole discretion of the Seller, request alternative evidence and/or information. Applicable credit will be issued toward existing account balance or future orders only, no cash refunds. Buyer must comply with Seller's return instructions (including return of the Goods) within sixty (60) days or the RMA form will be voided. Returned products have to arrive at the Seller's factory no later than thirty (30) days after warranty period ends or the warranty coverage shall be voided. Buyer is responsible for properly tagging, identifying, and packing returned Goods. Goods returned without compliance to the above procedures shall be returned to the Buyer at Buyer's cost. Decision on the inspection results and all warranty treatment are final and decided at the sole discretion of the seller.

**3.4. Disclaimer of Implied Warranties.** SELLER DISCLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in this Agreement.

### 4. Blanket Order

\$1,500 minimum order – Orders received with multiple release dates will be accepted on the basis whereby the order will be completed within twelve months from the order date. A minimum of three months firm release dates must be maintained for the duration of the order with projected delivery dates for the entire quantity on order. All items ordered on a blanket order not released within twelve months from the original order date, will be shipped and invoiced.

### 5. Terms

All shipments F.O.B. Warren, Pennsylvania: thirty (30) days net; Accounts past due are subjected to finance charge of 1.5% per annum. All collection and legal expenses are to be paid by the purchaser when past due invoices are submitted for collection through Agency, Attorney or Court. Prices subject to change without notice. Billings will be made at prices in effect at time of shipment. Buyers whose checks are returned for insufficient funds will be charged a \$20.00 fee per returned check.

### 6. Credit Approval

Shipments, deliveries and performance of work shall at all times be subject to approval of Seller's Credit Department and Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to such Department.

### 7. Product Changes

We reserve the right to make reasonable changes of any kind without notice and to deliver revised designs or models of goods without reference to illustrations or specifications in catalogs.

### 8. Returned Goods

A minimum handling charge of 20%, but not to exceed 50%, will apply to any non-defective products returned to Seller by Buyer. Product invoiced more than 12 months prior is not eligible for return. Buyer must obtain Seller's permission in writing before any products will be accepted for return. Products which are being returned for credit must be in resalable condition and shipping charges must be prepaid by Buyer. Seller will not accept obsolete models or styles of products for credit. Where applicable, Buyer will be charged the original prepaid freight cost related to the original order. This prepaid freight reimbursement is in addition to the restock charge.

### 9. Credits Issued

Credits issued may only be redeemed against product on services from Superior Tire & Rubber Corp. No cash refunds.

### 10. Cancellations

Orders cancelled by Buyer after manufacture has begun will be subject to a cancellation charge equal to Sellers expense involved.

### 11. Routing

Buyer's routing will be followed where possible, but not specified by Buyer, Seller's Traffic Department will route according to the best available carrier.

### 12. Taxes

Where required, Seller will add these taxes to its invoicing unless Buyer furnishes a valid exemption certificate.

13. Buyer agrees not to sue Seller nor to join Seller as a defendant in any capacity in any lawsuit brought by third persons, on any claim or theory that Seller was negligent or breached any expressed or implied warranty or supplied defective products or services or for strict liability of a manufacturer or Seller. Buyer further agrees to indemnify and save harmless Seller from any costs, expenses (including reasonable attorney's fees) or losses suffered by Seller as a result of any such suit Buyer or joiner of Seller by Buyer in any such third party lawsuit.

### 14. Delays

Seller shall not be responsible for reasonable or excusable delays, nor shall Buyer refuse to accept deliveries because of any such delays. "Excusable delays" include delays resulting from accidents, strike, fire, government controls, inability to obtain materials from suppliers, failure of materials correctly ordered by Seller to meet specifications, or other causes beyond Seller's control. "Reasonable delays" include without limitation, delays to which Buyer when notified, makes an objection.