

# Cushothane® XL™, Cushothane® XL-AC™ “No Bond Failure Guaranteed” Warranty Terms and Conditions

These Terms and Conditions apply only to Cushothane® XL™ Load Wheel products and Cushothane® XL-AC™ Products (“Goods”) sold under specific term “No Bond Failure Guaranteed” by Superior Tire & Rubber Corp. (“Seller”), except as otherwise specifically provided in a document signed by Seller. This sale and any sale resulting herefrom consists of only 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”).

## 1. Express Warranties.

A. Seller warrants to Buyer only, that Goods (or portions thereof manufactured by Seller) 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 (“Warranty period”), and be free from bond failure until the end of usable work life of the Goods, subject to the disclaimers and limitations of the Agreement. Absence of such written claims during this Warranty period will constitute a waiver of all claims with respect to the Goods.

B. 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.

C. 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.

**2. Disclaimer and Limitation of Express Warranties.** There are no express warranties other than those contained in this Seller’s Warranty Agreement. 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. Remedy and Limitation of Seller’s Liability.

A. 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.

B. Buyer must contact Seller requesting warranty coverage plus a 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 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 on 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 with 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 sole discretion of the seller.

**4. Disclaimer of Implied Warranties.** SELLER DIS-CLAIMS 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.

## Superior Tire & Rubber Corp.

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