



TENDER
FOR THE SUPPLY OF KARTING TYRES, 2008 - 2011

Wet Weather

Group 1

Clubman Classes – Formula Australia
– National 100cc Classes – Midgets - Rookies

**Delete any Groups not applicable to your Tender*

(Note: If submitting a Tender for more than one Group, Tenderers must use and submit a separate Tender document for each Group. If submitting a Tender for more than one tyre in a Group, Tenderers must use and submit a separate Tender document for each tyre.)

TENDER
FOR THE SUPPLY OF KARTING TYRES, 2008 - 2011
FOR A FIXED PRICE AND FOR A FIXED TERM

1. **Introduction**

1.1 The Australian Karting Association Inc (“AKA”) calls Tenders for the fixed price supply and sale of sprint kart tyres (“The Tyres”) for use in AKA sanctioned competition throughout Australia. The successful Tenderer will be bound by an agreement to supply and sell The Tyres for a fixed term of three (3) years commencing 1st May 2008 and ending 30th April 2011, both dates inclusive, (“The Term”).

1.2 This Tender is for the supply and sale of The Tyres for the following karting categories:-

Group 1 – Clubman Classes – Formula Australia
-National 100cc Classes – Midgets - Rookies

** Delete any Groups not applicable to your tender.*

Tenderers may submit a tender for more than one Group and may submit a tender for more than one tyre type in any one Group up to a maximum of three tyre types in any one Group. If submitting a tender for more than one Group, or submitting a tender for more than one tyre type in any one Group, Tenderers must use and submit a separate Tender document for each tyre in each Group.

1.3 The Tender process shall be conducted as follows:-

- (i) Parties wishing to tender shall complete the whole of the Tender document in accordance with the provisions contained herein and forward the whole of the Tender document to the AKA at the address provided for in this document so that it reaches the AKA no later than 5pm, 24th August 2007 (“Closing Date”).

Schedule 4 of the Tender document must be placed in a separate sealed envelope and marked “Schedule 4”. The balance of the Tender document must be placed in a further sealed envelope, together with the “Schedule 4” envelope, marked “Tender”.

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Tenderer

Accompanying each Tender document shall be the Tenderer's Sample Tyres which shall be supplied and submitted as follows:-

- (a) Two (2) complete sets of tyres mounted on aluminium rims;
(Front - ED FUT 117-5, Rear – ED FUT 200-5)
- (b) Five (5) front tyres and five (5) rear tyres not mounted on rims. At least one (1) front tyre and one (1) rear tyre shall be kept by the AKA as a control sample.

Sample Tyres submitted must strictly conform in every respect to any specification or description of the Sample Tyres contained in this Tender document.

Further accompanying the Tender document and Sample Tyres shall be a cheque made payable to the AKA for the prescribed sum. Such prescribed sum is the tyre testing fee ("Test Fee"). Note:- The Test Fee is generally not refundable.

The Test Fee is as follows:-

- (aa) \$3,500.00 for the first Tender submitted for any one Group;
- (bb) \$4,800.00 for the second Tender submitted for any one Group;
- (cc) \$6,500.00 for the third Tender submitted for any one Group.

For example:- If a Tenderer submits a Tender for two different Tyres, whether or not they be of the same brand, for Group 1, the Test Fee will be \$3,500.00 plus \$4,800.00, making a total of \$8,300.00. If a Tenderer submits a Tender for one type of Tyre for Group 1, and one type of Tyre for Group 2, the Test Fee will be \$3,500.00 plus \$3,500.00, making a total of \$7,000.00.

- (ii) Sample Tyres will be tested against specific criteria set by the AKA ("The Benchmark") by independent contracted tyre testers ("the Tyre Testers"). It is

anticipated that The Benchmark testing will be conducted between 1st September 2007 and 31st October 2007.

Data collected from The Benchmark testing shall be submitted to the AKA by the Tyre Testers and the AKA shall use such data in the Tender selection process.

The AKA shall make its best endeavours to complete its analysis of The Benchmark data and examination of the Sample Tyres tested on or before 15th November 2007. The results of such testing and examination shall thereafter be provided to the National Karting Council ("NKC") for its consideration.

Tyre selection criteria shall include but shall not be limited to, perceived tyre quality, uniformity to specification, tyre performance, Benchmark data, perceived ability of a Tenderer to supply and sell tyres on a consistent and timely basis throughout all of Australia and price.

The AKA reserves the right, at its sole discretion to use any selection criteria it deems appropriate. Tyre quality, performance and a Tenderer's perceived ability to provide a consistent supply of tyres in a timely manner shall take precedence over price.

- (iii) All Tenders submitted in accordance with this Tender document shall be opened in public by the AKA as provided for in this document.

Opened Tenders shall thereafter be provided to the NKC.

It is anticipated that the successful Tenderer shall be selected by the NKC on or by 15th December 2007 ("the Selection Date").

2. Irrevocable Tender

By submitting this tender document to the AKA, the Tenderer:-

- (a) Irrevocably offers to supply and sell The Tyres in any and every part of Australia at the Tender Price for The Term.
- (b) Warrants that the information provided by the Tenderer in this Tender document is true and accurate.
- (c) Declares that its Tender is made in strict accordance with the provisions of this Tender document.
- (d) Acknowledges that upon notification by the AKA that its Tender has been successful, the Tenderer will be irrevocably bound by the provisions of this Tender document.

3. Interpretation and Guidance Notations

3.1 In this Tender document the following terms have the following meanings unless otherwise expressed to the contrary:-

- a) “**Selection Date**” means 15th December 2007 or such other date as determined by the NKC at its sole discretion.
- b) “**The Benchmark**” or “**The Benchmark data**” means the performance criteria against which Sample Tyres will be tested. (A failure to meet The Benchmark may result in the Tenderer being notified that it is ineligible to participate any further in the tender process.)
- c) “**Day One**” means the first day of the AKA testing procedure. (A principal part of Day One will be to compare the lap times of the Sample Tyres.)
- d) “**Acceptance Notice**” means a Notice substantially in the form as set out in Schedule 5 of this Tender document.

- e) “**Closing Date**” means 5pm (Eastern Standard Time), 24th August 2007.
- f) “**Offer**” means the Tenderer’s offer made in this Tender document.
- g) “**The Tyres**” or “**Sample Tyres**” means those tyres on which the Tenderer bases its Tender.
- h) “**Fixed Tender Price**” or “**Fixed Price**” means the sum of money in Australian Dollars which the Tenderer offers to supply and sell The Tyres. (Fixed Tender Price or Fixed Price shall be a price inclusive of all costs, margins, duties, taxes, levies, royalties and any other charge or impost of whatsoever nature and shall be a maximum price absolutely subject always to the provisions of this Tender document.)
- i) “**Tender**” means the Offer made in accordance with or subject to the provisions of this Tender document.
- j) “**Tenderer**” means any legal entity including but not limited to a natural person or corporation that submits to the AKA this Tender document.
- k) “**Tender Conditions**” or “**Tender Provisions**” means the terms, conditions, and provisions of this Tender document and any other document or materials that by the provisions of this Tender document can be expressly or impliedly incorporated into this Tender document.
- l) “**Tender Opening Date**” means 12 noon (Eastern Standard Time), 15 November 2007 (Tender documents will be publicly opened on the Tender Opening Date.)
- m) “**The Term**” means the inclusive period commencing 1st May 2008 and ending 30th April 2011.
- n) “**\$**” means Australian Dollars (Any reference to money shall be read as a reference to money in Australian Dollars unless otherwise expressed.)

- o) Unless otherwise expressed to the contrary, any sums of money payable to the AKA does not take into account **GST**. If **GST** is applicable, it must be added to the sum of money payable.
- 3.2. Unless the context otherwise requires, the singular includes the plural and vice versa, each gender includes each other gender, references to persons includes corporations and other legal entities and vice versa.
- 3.3 Headings are for reference only and have no effect on interpretation.
- 3.4 Words contained within brackets, unless the contrary appears elsewhere, form part of the Tender document provisions.
- 3.5 Examples are for illustration purposes only.

4. Invitation to Tender

- 4.1 The AKA invites offers for the supply and sale of The Tyres for a Fixed Price and for The Term.
- 4.2 A Tenderer may submit more than one Tender for any one Tyre Group and may submit a Tender for more than one Tyre Group.
- 4.3 The AKA shall have the unfettered right at its sole discretion to reject any Offer at any time without reason and without penalty or liability of any kind whatsoever.

5. Offer to Supply and Sell

- 5.1 Submission of a Tender to the AKA by a Tenderer shall be deemed to be an irrevocable offer (“Offer”) by the Tenderer to supply and sell The Tyres for a Fixed Price and for the Term subject to the provisions of this Tender document. A Tenderer’s Offer cannot be withdrawn or varied by the Tenderer once it has been received by the AKA. The Offer shall remain capable of acceptance by the AKA until the Selection Date or at the sole discretion of the AKA for a date 60 days after the Selection Date.

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Tenderer

6. Acknowledgments by Tenderer

6.1 The Tenderer acknowledges and agrees:-

- (a) It does not rely any representation, warranty, letter, document or arrangement whether oral or in writing or by conduct, as adding to or amending the Tender Provisions. In the event that this Offer is accepted, the only agreement existing between the AKA and the successful Tenderer is the agreement made in accordance with the provisions of this Tender document.
- (b) It relies solely on its own enquiry and expertise in making the Offer and expressly acknowledges that it has not relied on any act or omission, whether express or implied, of the AKA.
- (c) It has or has had the opportunity to obtain its own independent legal and financial advice as to the rights and obligations created as a consequence of it executing and submitting this Tender document to the AKA.
- (d) The AKA shall not be responsible for any cost or expense or loss of whatsoever kind incurred by or on behalf of the Tenderer in preparing and submitting its Tender.

6.2 The Tenderer warrants to the AKA that in all matters relating to this Tender, the Tenderer is not in breach of the provisions of the Trade Practices Act as the said provisions apply to the preparation and submission of this Tender.

7. Incentives and Inducements

Unless otherwise expressly provided for in this Tender document, the Tenderer shall not make, nor shall the AKA accept any incentive or inducement for the AKA to accept any Tender where such incentive or inducement is made after the Tender Opening Date. Any incentive or inducement must be made in this Tender document.

8. Lobbying and Canvassing Prohibited

8.1 The Tenderer shall not in any circumstance or by any means whatsoever:-

- (a) Canvass or lobby AKA State Delegates, AKA Affiliated Clubs, Club Officials, Club Members, AKA Members, the AKA Secretariat or any other person to support or influence the outcome of the Tender process.
- (b) Permit publication of material in any form whatsoever to support or influence the outcome of the Tender process.
- (c) Contact directly or indirectly any AKA Tyre Tester, or any person or entity involved in the AKA tyre testing procedure.
- (d) Collude or join with any other entity in the preparation and submission of its Tender. This clause 8.1(d) shall not operate to prohibit the submission of a bona fide Tender where the Tenderer consists of more than one entity and each entity is fully and properly identified in the Tender document.
- (e) Request or cause any person or entity to do the things referred to in this clause 8.

8.2 A breach of this clause by a Tenderer shall result in its Tender being rejected.

8.3 A Tenderer may, in writing only, contact the National Administration Office of the AKA to clarify any provision of this Tender document and as a sole consequence of bona fide doing so, shall not be in breach of this clause. (Tenderers are reminded of clause 8.1)

9. Tyre Specifications

9.1.A Tenderer shall include in its Tender document proper and adequate tyre specifications for both front and rear tyres.

9.2 It is mandatory that the specifications include as a minimum:-

- 1 Shore Hardness
- 2 Dimensions
- 3 Recommended Service Pressures
- 4 Depth of Tread
- 5 Depth of Wear Indicators
- 6 Maximum inflation pressure
- 7 Weight
- 8 Maximum Design Speed
- 9 Recommended operating temperature range

Specifications shall be provided in accordance with any statutory standard and/or accepted industry standard and where reasonably necessary, shall contain explanatory or qualifying remarks. (eg. Shore Hardness may be qualified by reference to temperature and the time the Shore Hardness was determined, after the tyre was released from the manufacturer's mould.)

9.3 Specification sheets showing original technical drawings of all facets of tyre shape and markings together with legible photographs of The Tyres, must be annexed to this Tender document.

9.4 All Tyres supplied to retailers, competitors and end users after 1 January 2008 shall have a barcode imbedded in or otherwise permanently affixed to at least one outside surface of The Tyre wall. The imbedding or affixing shall be carried out in such a manner so that the barcode remains tamper-proof to the extent that it cannot be removed or replaced or otherwise modified without it being obvious that the barcode has been tampered with. The barcode must be of a sufficient type, design and quality that it will, under conditions

of typical race use, and after allowing for fair wear and tear, remain readable for the race life of The Tyre.

10. Tender Price and Details

10.1 A Tenderer shall specify the separate elements used to calculate its Tender Price. Two prices are to be provided (i) Trade Price which is the price the Tenderer shall sell The Tyre to the retailer and (ii) the Recommended Retail Price which is the price the Tenderer recommends that the retailer sells The Tyre to the competitor or other end user. as follows:-

(i) Trade price - (price to retailers) shall include the following elements:

- (a) Total tyre cost to Tenderer including Tenderer's profit component.
- (b) Delivery cost to retailer.
- (c) AKA Royalty.
- (d) Total of government or other statutory charges, imposts, levies and the like, but excluding GST, payable by the Tenderer which has been included in the price the Tenderer pays for the tyres.
- (e) Goods and Services Tax (GST).

The totals of (a) + (b) + (c) + (e) shall be the Trade Price.

For the avoidance of doubt, it is noted that whilst (d) is included in (a) it is still to be shown as a separate element for audit purposes.

Notwithstanding the requirement for specifying the elements comprising the Trade Price, the Trade Price must be clearly shown as a separate total sum.

(ii) Recommended Retail Price - (price to competitor) this price shall be the trade price plus a sum equivalent to 30% of the Trade Price.

The Recommended Retail Price shall include GST (Tenderers are referred to Schedule 4 herein)

10.2 The Trade Price and the Retail Price shall be calculated on a per set basis. A set is two (2) front tyres and two (2) rear tyres. If there is any price differential between front tyres and rear tyres, such price differential must be clearly specified in the Tender.

10.3 The successful Tenderer shall sell and supply to any retailer anywhere in Australia The Tyres at a price no more than the Tender Price offered by the Tenderer provided however that the retailer orders not less than five (5) sets of tyres, or not less than 20 tyres for shipment as a single order.

10.4 The successful Tenderer may supply The Tyres direct to an end user at the recommended retail price, provided all reasonable efforts have been made by the Tenderer to supply The Tyres to an appropriate retailer for onselling to that end user and further provided that the successful Tenderer first obtains in writing, the consent of the AKA to do so.

11. Method Of Tendering Including Times For Receipt of Tenders

11.1 Tenders not made in accordance with the form and provisions of this Tender document shall be invalid and not accepted.

11.2 The Tender document shall be dated and duly executed by or on behalf of the Tenderer. The Tenderer shall ensure that the foot of each page of the Tender document is duly executed by or on behalf the Tenderer.

(a) Where the Tenderer comprises more than one entity, the Tender document shall be executed by or on behalf of each and every entity.

(b) Where the Tenderer is or includes a Corporation, the Tender document shall be executed in accordance with Corporations Law and the Corporation's Constitution.

- (c) Where the Tender document is executed under a Power of Attorney, a copy of the Power of Attorney must be certified by a Solicitor holding a current practising certificate in any State or Territory of Australia and the certified copy attached to the Tender document.

11.3 A Tender may be lodged by:-

- (a) Post, in which case the duly completed and executed Tender document shall be forwarded by prepaid post in a sealed envelope and marked “Tyre Tender” and addressed to AKA NATIONAL ADMINISTRATION OFFICE, PO Box 4222 PENRITH PLAZA 2751.

Tender documents must be posted to arrive at the AKA postal box no later than the Closing Date.

- (b) Facsimile transmission, in which case the duly completed and executed Tender document shall be transmitted to the AKA, facsimile number (02) 4721 1522 with a header page marked “Tyre Tender” and addressed to “AKA National Administration Office”.

Tender documents must be transmitted so that the complete transmission arrives at the AKA facsimile machine no later than the Closing Date.

- (c) Email transmission, in which case the duly completed and executed Tender document shall be transmitted to the AKA email address admin@austkarting.com.au with a header page marked “Tyre Tender” and addressed to “AKA National Administration Office”.

Tender documents must be transmitted so that the complete transmission arrives at the AKA email address no later than the Closing Date.

- (d) Hand delivery, in which case the duly completed and executed Tender document shall be hand delivered in a sealed envelope and marked “Tyre Tender” and addressed to AKA NATIONAL ADMINISTRATION OFFICE. The delivery

address for hand delivered Tender documents is Suite 2, 483 High Street, Penrith NSW.

Tender documents must be delivered to arrive at the AKA office no later than the Closing Date.

- 11.4 The AKA shall not be responsible under any circumstances for the failure of a Tender being received by the AKA for any reason whatsoever, including the failure of an AKA device which includes but is not limited to facsimile machine, computer, telephone line, email service, or, a failure of the postal service. In the absence of manifest error, a statement by the AKA that a Tender or a part thereof was not received by the Closing Date shall be conclusive evidence of fact and shall be binding on the parties. Similarly, in the absence of manifest error, a statement by the AKA that a Tender or a part thereof was received by the Closing Date shall be conclusive evidence of fact and shall be binding on the parties.
- 11.5 Any Tender received after the Closing Date, shall be ineligible to further participate in the Tender process.
- 11.6 Any Tender received by facsimile transmission or Email transmission shall be placed in a sealed envelope by an authorised officer of the AKA without being examined in any way for compliance with the provisions of this Tender document. The envelope so sealed, will be marked for identification, including the time and date the transmission was received by the AKA.

12. Opening of Tender Documents

- 12.1 Tenders will be opened in public on the Tender Opening Date at the AKA's National Administration Office at which time the Tenderer or an appointed representative of each Tenderer shall be permitted to be present and witness the Tender opening.
- 12.2 Each Tenderer or the Tenderer's appointed representative present at the Tender Opening shall be entitled to view all Tender documents opened by the AKA from the time the last

Tender is opened until 5pm the same day. No person, Tenderer, Tenderer's appointed representative or otherwise shall be entitled to any further details regarding the opened Tenders, nor shall any person be entitled to make representations whatsoever to the AKA including, but not limited to, the form or content of any Tender.

13. The Benchmark and The Sample Tyres

13.1 The Benchmark for The Tyres includes tyre performance measured by reference to lap times within an inclusive range of plus or minus one point two five percent (+/- 1.25 %) of the lap times obtained for the following tyres

Group 1 – Dunlop KT6-SLW1.

13.2 The Tenderer's Sample Tyres shall be forwarded by or on behalf of the Tenderer to arrive at the AKA National Administration Office no later than the Closing Date in accordance with the provisions of this Tender document.

13.3 Once received by the AKA, the Test Fee is non refundable except as otherwise expressly provided for in this Tender document. (See clause 15.2)

13.4 The AKA has the absolute right to elect to not test any Sample Tyre without giving reason.

13.5 Sample Tyres accepted for testing, shall be subjected to Day One of the AKA test procedure which shall be conducted by Tyre Testers in accordance with procedures determined by the AKA. Once a Sample Tyre is tested, that tyre and all other tyres submitted as Sample Tyres become the property of the AKA and may be held by the AKA for any use it deems appropriate, at its sole discretion, including but not limited to approval, control, disposal, testing or audit purposes.

13.6 Tyres subjected to Day One AKA test procedure and found to be outside The Benchmark may be rejected in which case no further testing will be conducted. However, a Tenderer whose tyre is found to be outside the Benchmark, may make an urgent submission to the AKA as to why the tyre should not be rejected. If such submission is accepted by the

AKA, at the sole election of the AKA, the tyre may be allowed to be further tested.

13.7 All remaining Sample Tyres may be further tested and examined (the Further Tests) in accordance with the AKA tyre testing procedure and the resultant data will be a primary factor in the determination of the successful Tenderer.

13.8 Any material or item or thing submitted to the AKA under this Tender document is submitted at the Tenderer's risk and if a Tenderer requires the return of any such material, item or thing submitted, such return is at the Tenderer's sole cost. Any material, item or thing not collected by the Tenderer within 14 days written notice by the AKA to the Tenderer to collect the material, item or thing, shall be deemed abandoned by the Tenderer and on such deemed abandonment, shall become the sole and absolute property of the AKA.

14. Selection of Tenders After Tyre Testing Procedures

On completion of the tyre testing procedure and receipt by the AKA of the results, the test results together with the Tenderer's documents will be submitted to the NKC for consideration and subsequent successful Tender selection.

15. Acceptance Of Tender

15.1 The AKA reserves the right in its absolute discretion to withdraw from this Tender at any time prior to the Acceptance Date and may refuse to consider and/or accept any Offer without reason and without any reference back to any Tenderer.

15.2 In the event that the AKA abandons the whole of the Tyre Testing procedure and unilaterally withdraws from the Tender process without good reason, it shall refund to Tenderers their Test Fee. Except as provided for in this clause 15.2 the Test Fee is not refundable.

15.3 The AKA shall not be obliged to consider any Tender unless such Tender is in accordance with this Tender document. Notwithstanding, the AKA in its absolute discretion may consider any Offer not in strict accordance with this Tender document

where it is just and reasonable to do so for the benefit of AKA competitors.

The AKA shall not be obliged under any circumstance to accept the lowest priced Tender or any Tender at all and shall not be required to give reasons for non acceptance of any Tender or give notice to any Tenderer that its Tender has been rejected or has not been successful.

- 15.4 The AKA will do all things reasonable to attempt to notify the successful Tenderer on or before 5.00pm on the fifth business day following the Selection Date. The AKA shall notify the successful Tenderer in writing via ordinary prepaid post or facsimile transmission or email transmission and the successful Tenderer shall be bound by its Offer at the time the written notification is placed in a Australia Post letterbox or when the AKA facsimile device shows the facsimile transmission has been completed or when the AKA Email device shows the Email transmission has been completed.

16. Lodgment Of Performance Bond

- 16.1 The successful Tenderer must provide to the AKA an unendorsed bank cheque made payable to the AKA in the sum of \$10,000.00 as a Performance Bond. Such cheque must be received by the AKA no later than 5.00pm on the fifth business day, in which respect time is of the essence, after notification by the AKA that the Tenderer has been successful.
- 16.2 The Performance Bond shall be held for The Term by the AKA in an interest bearing account with the Commonwealth Bank of Australia. The Performance Bond and any interest accrued shall be refunded to the successful Tenderer after the expiration of The Term conditional upon there being no breach of the provisions of this Tender document or any subsequent agreement between the AKA and the successful Tenderer.

17. Application Of Bond Monies

- 17.1 The AKA at its sole and absolute discretion may apply any part or all of the Performance

Bond without reference to the successful Tenderer in compensation to the AKA or any other legal entity suffering any loss, damage or inconvenience occasioned as a consequence of any breach or default by the successful Tenderer of any provision of any agreement relating to the supply and sale of The Tyres, the subject of this Tender document.

- 17.2 The AKA Secretariat shall be entitled to unilaterally determine the amount of loss or damage or inconvenience suffered by the AKA or any other legal entity as a consequence of the Tenderer's breach or default and thereafter, may at its absolute discretion deduct from the Performance Bond such amount and apply such amount by way of compensation for loss, damage or inconvenience to the AKA or other legal entity suffering loss, damage or inconvenience.
- 17.3 Should the successful Tenderer commit any breach or default of its obligations then the AKA shall not be limited to the sum of the Performance Bond for any claim for loss, damage or inconvenience suffered. The AKA shall be entitled to exercise all its rights whether such rights arise at law or in equity.

18. Topping up the Bond

In the event that the AKA uses or otherwise applies all or any part of the Performance Bond to remedy or compensate for any loss, damage or inconvenience suffered as a result of any breach or default by the Tenderer, then within 5 business days of the Tenderer being notified that such monies have been used or applied, the Tenderer shall then pay to the AKA such additional sum of money as may be necessary to reinstate the Performance Bond to its original level of \$10,000.00.

19. Return of Bond

At the completion of the Term, the Performance Bond including any interest accrued less any amount used or applied by the AKA shall be returned by the AKA to the successful

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Tenderer

Tenderer subject always to the successful Tenderer performing its obligations with respect to the matters referred to in this Tender document and any collateral agreement reached between the AKA and the Tenderer.

20. Bank Guarantee Alternative

20.1 The Tenderer may at its sole election provide to the AKA a bank guarantee in lieu of a cash Performance Bond provided that:-

- (a) The bank guarantee is provided by an entity approved by the AKA and the bank guarantee is made in favour of the AKA;
- (b) The bank guarantee is irrevocable and is unconditional in all respects including expiry date;
- (c) The form and terms and conditions of the bank guarantee are in all other respects satisfactory to AKA.

20.2 In the event that the AKA calls upon the bank guarantee, then the Tenderer shall forthwith provide to the AKA a further bank guarantee or guarantees in such amounts that the bank guarantee at all times remains in the sum of \$10,000.00.

21. Failure to pay Performance Bond

21.1 In the event that the successful Tenderer fails to pay the Performance Bond or fails to provide a bank guarantee acceptable to the AKA, or fails to top up the Performance Bond or replace the bank guarantee, then the AKA may in its absolute discretion by notice in writing, waive the default by the Tenderer in which event, the tender agreement will be deemed to be amended accordingly; or the AKA may terminate the tender agreement in which circumstance the AKA shall be entitled inter alia, without limiting the AKA's other rights and remedies to forfeit to it any valuable consideration in whatever form which the Tenderer may have provided to the AKA under this Tender Agreement.

21.2 In the event that the AKA for whatever reason terminates its agreement with the

Tenderer, the AKA may without limiting any other rights and remedies available to it negotiate an agreement with any other entity in substitution of the terminated agreement.

22. Variation to Tender Price

The Tender Price shall remain fixed for The Term subject only to the following:-

- (a) In the event that there is an **increase** in GST or other government charge or levy or like impost (“the Charge”) which has the direct effect of bona fide increasing the successful Tenderer’s cost of supplying The Tyres, then the successful Tenderer shall be entitled to increase the Fixed Price by the same amount that the Charge increased, such increase to be applied only to sales of The Tyres made after the successful Tenderer has:-
 - (i) Notified the AKA of the increase in writing. Such notice must be given within 7 days of the Tenderer becoming aware of the increase in the Charge;
 - (ii) Provided to the AKA documentary evidence of the increase in the Charge, such evidence to be to the reasonable satisfaction of the AKA;
- (b) In the event that there is an increase in the Royalty payable to the AKA, which the AKA may apply at any time in its absolute discretion, the successful Tenderer shall be entitled to increase the Fixed Price by the same amount that the AKA Royalty increased, such increase to be applied only to sales of The Tyres made after the Tenderer has been notified in writing by the AKA that the Royalty sum is increased.
- (c) In the event that there is an increase of more than five percent (5%) in the exchange rate between the Australian Dollar and the Currency that the successful Tenderer is required to use to purchase The Tyres, then the successful Tenderer

shall be entitled to increase the Fixed Price by the same amount of the increase in the exchange rate above five percent (5%), such increase to be applied only to sales of The Tyres made after the successful Tenderer became aware of the increase, provided however:-

- (i) The Currency shall be limited to Euros, US Dollars, and Japanese Yen. If the successful Tenderer is required to use a Currency other than Euros, US Dollars, or Japanese Yen, then the exchange rate of the Currency shall be referenced to US Dollars.
 - (ii) The successful Tenderer has notified the AKA in writing within 7 days of the increase occurring;
 - (iii) Any increase in the exchange rate shall be calculated by reference to the exchange rate applicable at 5pm on the date of the Acceptance Notice referred to in Schedule 5 herein;
 - (iv) No increase shall be made for a period of 365 days from the date of the Acceptance Notice referred to in Schedule 5 herein;
 - (v) The successful Tenderer may only increase the Fixed Price once in any 180 day period thereafter.
- (d) In the event that there is any **decrease** in the Charge, the AKA Royalty or the exchange rate, then the Tenderer shall decrease the Fixed Price, such decrease to be applied only to sales of Tyres made after the Tenderer receives written notice from the AKA that there has been a said decrease in the Charge, the AKA Royalty or the exchange rate.

The successful Tenderer shall notify the AKA within 7 days of it becoming aware of any decrease in the Charge or decrease in the exchange rate. The successful Tenderer shall be deemed to be aware of any decrease in the Charge or decrease in the exchange rate in circumstances where it is reasonable where a person in the

successful Tenderer's position ought reasonably be aware of such decrease.

In the event that the successful Tenderer fails to notify the AKA of any decrease in the Charge or the exchange rate, then the AKA shall be entitled to demand that the successful Tenderer adjust its sale price retrospective to the date of the decrease and pay to the AKA a sum equivalent to the decrease times the number of Tyres sold by the Tenderer from the effective date of the decrease to the date of demand by the AKA to reduce the sale price or to the date on which the successful Tenderer reduces the sale price to take into account the decrease, whichever is the earlier.

Any such sum paid by the successful Tenderer will be used by the AKA for the sole purpose of promoting the sport of sprint karting.

- 22.1 (a) No increase or decrease shall be applied for the first 365 days from the date of the Acceptance Notice referred to in Schedule 5 herein (First Review Date). Any subsequent increase or decrease shall only be applied at intervals of 180 days thereafter.

Example

Acceptance Date 5 December 2007

No increase allowed before 4 December 2008

No further increase allowed before 1 June 2009

Note: No further increase will be allowed before 180 days after 1 June 2009 and so on.

This provision shall apply to any and all increases or decreases referred to in this clause 22.

23. Tyre Supply and Delivery

- 23.1 The successful Tenderer shall at all times keep in stock an adequate supply of The Tyres

so that any retailer or competitor (or end user where a direct sale is permitted), in Australia, ordering tyres shall be able to receive The Tyres within five (5) business days of the order being placed with the successful Tenderer.

- 23.2 If a Tenderer is unable to supply Tyres or is unable to supply Tyres in sufficient quantities or within the time frame specified in this Tender document, then the Tenderer shall be in breach of its obligations under this Tender document and as a consequence of the breach, will forfeit to the AKA the sum of \$2,500.00 per month (or on a pro rata basis) from its Performance Bond whilst ever the Tenderer is in breach.

Any sum of money so forfeited from the Performance Bond shall be topped up by the defaulting Tenderer within 5 business days of the date on any written notice issued by the AKA to the defaulting Tenderer to do so. Any failure by a defaulting Tenderer to top up the Performance Bond will cause the defaulting Tenderer's agreement with the AKA to be terminated forthwith in which circumstance, any balance of the defaulting Tenderer's Performance Bond shall be unconditionally forfeited to the AKA.

- 23.3 The successful Tenderer warrants and covenants with the AKA that The Tyres sold and supplied during The Term will be consistent with both the specifications and The Sample Tyres provided to the AKA pursuant to the provisions of this Tender document.

24. Royalty Payable by Successful Tenderer

- 24.1 The successful Tenderer shall pay to the AKA a Royalty calculated at the rate of \$1.14 plus GST ("the Royalty"), on each tyre produced for or on behalf of, or by the Tenderer for the supply in Australia whether or not such tyres are ultimately sold by the Tenderer during The Term.

- 24.2 The successful Tenderer shall supply to the AKA verified documentation evidencing the number of tyres produced for or on behalf of or by the Tenderer ("the Documentation").

The Documentation shall be provided to the AKA at not more than three (3) monthly

intervals. The first Documentation shall be provided to the AKA on or by 1 August 2008. The successful Tenderer shall, as required, provide to the AKA copies of any supporting documentation including but not limited to order documentation, sales documentation, customs declarations, bills of lading and such other documentation as is necessary for the AKA to properly calculate and audit the amount of Royalty payable to the AKA.

24.3 The successful Tenderer shall pay the Royalty as calculated by the AKA within thirty (30) days of the date of any tax invoice forwarded by the AKA to the successful Tenderer.

24.4 Notwithstanding anything to the contrary contained in this Tender document, the AKA shall be entitled to increase the Royalty at its sole and absolute discretion during The Term, but in such circumstance, the successful Tenderer shall be entitled to increase its Tender price by the same amount of the Royalty increase subject however to the provisions of this Tender document.

25. Use of Tyres

25.1 The AKA shall not be liable to the successful Tenderer in the event that any club, member, affiliate or other entity associated with the AKA allows or permits in competition the use of a tyre in Group 1, Group 2 or Group 3 Classes that is not a tyre the subject of this Tender. In the circumstance where a non Tender tyre is used, the Tenderer shall hold harmless the AKA, its members, clubs, affiliates, agents and servants for any loss or damage occasioned to the successful Tenderer.

25.2 Nothing in this tender document shall prevent the successful Tenderer supplying The Tyres, to third parties not affiliated with the AKA, provided however, such supply does not breach any provision of this Tender document.

26. Elimination or Substitution Of a Karting Category

26.1 The AKA does not warrant, promise or represent that any Karting Category, Class or

Group will not be eliminated or downgraded during The Term.

- 26.2 In the event that any Karting Category, Class or Group is to be eliminated or downgraded during The Term, then the AKA shall give the successful Tenderer not less than three (3) months written notice of such elimination or downgrading.
- 26.3 In the event that any Karting Category, Class or Group is eliminated or downgraded, then the obligation of the successful Tenderer to supply and sell The Tyres shall cease after three (3) months after the successful Tenderer has been given the said notice. The successful Tenderer agrees and acknowledges that the cessation of the obligation to supply and sell The Tyres is confined to that obligation alone and that any and all other obligations subsist for The Term in accordance with the provisions of this tender document and that the successful Tenderer shall not in any circumstance be entitled to make any claim for loss or damage or seek compensation against or from the AKA or its affiliates as a consequence of the elimination or downgrading of any Karting Category, Class or Group.
- 26.4 The successful Tenderer agrees and acknowledges that Karting Categories, Classes and Groups fluctuate in popularity and as a consequence, the demand for The Tyres may also fluctuate and such fluctuation is at the sole risk of the successful Tenderer.

27. Substitution of Tyres by Tenderer

Notwithstanding anything to the contrary in this Tender document, in exceptional circumstances, which circumstances shall be determined at the sole and absolute discretion of the AKA, a Tenderer may be permitted, during the Term, to substitute a Tyre for the Tyre which was previously accepted by the AKA. In such event, the successful Tenderer shall forfeit all of its Performance Bond to the AKA and before it shall be permitted to substitute a Tyre, shall lodge with the AKA a further Performance Bond of \$10,000.00 which thereafter shall be subject to the provisions of this Tender document.

28. Substantial Breach of Essential Terms

28.1 The successful Tenderer agrees and acknowledges that it will be in breach of essential provisions of this Tender document in the following circumstances:-

- (a) It fails to comply with its obligations pursuant to the provisions relating to the supply and sale of The Tyres.
- (b) It fails to remedy, within 5 business days of the date on any written notice by the AKA to remedy a breach, any matter deemed by the AKA to be a breach.
- (c) During the Term the Tyre changes in any form or manner whatsoever which shall include but not be limited to a change in design, construction, compound, material, manufacturing/production technique, factory source, performance.

28.2 In the event of substantial breach by the successful Tenderer, the AKA may by written notice to the successful Tenderer, terminate any agreement created by this Tender document and thereafter exercise any and all rights accruing to the AKA.

Notwithstanding any right of the AKA, the AKA at its sole and absolute discretion may waive or suspend enforcing any right. The AKA retains the right to enforce a suspended right.

29. Unilateral Termination by AKA

In the event that The Tyre changes in any form or manner whatsoever which shall include but not be limited to a change in design, construction, compound, material, manufacturing/production technique, factory source, performance, then the AKA shall be entitled, without liability or obligation of any kind whatsoever to the successful Tenderer to terminate any agreement of whatsoever kind or nature created by or in consequence of this Tender document on 7 days written notice to the successful Tenderer.

Upon such termination, the Tenderer covenants with the AKA that it will not make any claim or demand of whatsoever nature upon the AKA as a consequence of the said termination.

30. Variation of Dates

Notwithstanding anything to the contrary herein, the AKA reserves the right to change or amend or otherwise alter any date referred to in this Tender document where it is inconvenient or impractical for the AKA to abide by or enforce such date.

In the event that such change, amendment or alteration is made by the AKA the AKA shall notify Tenderers and successful Tenderers in writing as soon as is practical of the change, amendment or alteration and upon such notification the parties agree that such change, amendment or alteration shall be deemed to be incorporated into this Tender document as at the date the AKA issues the written notice.

31. Disputes

31.1 In the event of a dispute that is not a dispute involving a discretionary right of the AKA, the AKA and the successful Tenderer shall agree to refer the dispute to a single arbitrator for arbitration by a mutually agreed upon arbitrator whose decision shall be final and binding upon the parties.

31.2 In the event that the AKA and the successful Tenderer cannot agree upon the appointment of a single arbitrator, then either party may apply to the president of the NSW Law Society Inc. to appoint an arbitrator to arbitrate the dispute. Both parties shall then forthwith submit themselves to the jurisdiction of the appointed arbitrator whose decision shall be final and binding upon the parties.

31.3 In appointing an arbitrator each party shall bear its own costs and share equally the costs of the appointment of the arbitrator and the costs of the arbitrator unless the arbitrator directs otherwise.

32. Notices

.....
Tenderer

Notices shall be served in accordance with the provisions of this Tender document and may be forwarded to the postal addresses, or the street addresses, or the facsimile numbers or the email addresses nominated in this Tender document.

33. Governing law and jurisdiction

This tender document is governed by the laws of New South Wales and the parties hereto irrevocably submit to the jurisdiction of the Courts of New South Wales.

34. Severability

If any part of this Tender document is found by a Court of competent jurisdiction to be illegal or unenforceable, then that part so found, shall be severed from this Tender document and thereafter all unsevered parts shall remain in force and effect.

35. Formation of Agreement

On the AKA notifying the Tenderer that the Tenderer is the successful Tenderer, the AKA and the successful Tenderer agree and acknowledge that they have entered into a legally binding agreement for the supply and sale of The Tyres upon the terms, conditions and provisions recorded in this Tender document.

DATED this _____ day of _____ 2006.

Executed by or on behalf of The Tenderer)

In the presence of)
(Tenderer Signature)

.....
(Print Name)

.....
(Witness Signature) (Capacity of Signatory)

.....
(Print Name)

.....
Tenderer

SCHEDULE 1

1. Tenderer's Details

- (a) Name _____
- (b) ABN _____
- (c) Street Address _____
- (d) Postal Address _____
- (e) Address for Service _____
- (f) Telephone number _____
- (g) Facsimile number _____
- (h) Email address _____
- (i) Contact Person _____
- (j) Interest of Tenderers (if more than one) _____

- (k) *Currency – Euros / US Dollars / Japanese Yen
**Delete the Currency not applicable to your Tender*

2. Tyre Manufacturer's Details

- (a) Name _____
- (b) Street Address _____
- (c) Postal Address _____
- (d) Address for Service _____
- (e) Telephone number _____
- (f) Facsimile number _____
- (g) Email address _____
- (h) Contact Person _____

3. Group Tendered For _____

SCHEDULE 2

Tyre Specifications

Manufacturer	
Model / Type	
Group	
Homologation Details	
Other	

Specification sheets are attached hereto.
If this tyre is accepted the manufacturer shall NOT modify or otherwise alter it in any manner inconsistent with the specification sheets or The Sample Tyres.

PHOTO OF TYRE	TREAD DESIGN DRAWING

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Tenderer

SCHEDULE 3
(Refer to Clause 9 particularly)

TYRE TECHNICAL INFORMATION		REMARKS/ QUALIFICATIONS/ NOTATIONS
Dimensions		
Maximum Design Speed		
Service pressure		
Tread compound designation		
Depth of tread		
Weight		
Number of ply		
Shore hardness		
Number/ depth of wear indicators		
Maximum inflation pressure		
Carcass material		
Angle of tyre canvas		
Tubeless type		
Operating Temperature		
Other details		

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Tenderer

Drawing of tyre cross section and optimum rim dimensions.

Remarks		

.....
Tenderer

Photos and Inscriptions		Only inscriptions, which do not change during production, are mentioned.		
Photo of side wall – OUTSIDE		Inscriptions on side wall - OUTSIDE		
		Text	Height	Stroke
Photo of side wall – INSIDE		Inscriptions on side wall - INSIDE		
		Text	Height	Stroke

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Tenderer

SCHEDULE 4

FIXED PRICE TENDER OFFER FOR FIXED TERM OF 3 YEARS

Refer to Clause 10 of tender document.

Group _____

Tyre Identification Name _____

1 Tender Price and Details

Total Tyre Cost	See Clause 10.1(i)(a)	\$
Delivery Cost	See Clause 10.1(i)(b)	\$
AKA Royalty	See Clause 10.1(i)(c) and Clause 24.1	\$
Total Government Charges	See Clause 10.1(i)(d)	\$
GST	See Clause 10.1(i)(e)	\$
Trade Price	See Clause 10 generally	\$
Recommended Retail Price	See Clause 10.1(ii)	\$

2 Other Details

.....
Tenderer

SCHEDULE 5

ACCEPTANCE NOTICE

DATE

TO:

OF:

RE: CATEGORY – * *Delete as necessary*

*** Group 1 – Clubman Classes – Formula Australia– National 100cc Classes
– Midgets – Rookies.**

The Australian Karting Association Inc hereby accepts the offer to supply the tyres for the Category and by the tyre manufacturer referred to above and in accordance with the tender submitted by you.

A valid and enforceable contract now exists between you and the A.K.A.

We congratulate you on your tender being accepted and we look forward to a rewarding association.

Yours faithfully

AUSTRALIAN KARTING ASSOCIATION INC.

E. & O.E.

.....
Tenderer