



STANDARD TERMS & CONDITIONS OF SALE

P.O. Box 245
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ABN # 74 149 244 655

Unless TyreSafe Australia Pty Ltd ABN 74 149 244 655 agrees in writing that other terms and conditions apply all orders by Clients are accepted subject to the following terms and conditions without variation.

1. Definitions and interpretation

In these conditions:

- (a) Conditions means these terms and conditions of sale.
- (b) Contract means a binding agreement between the Provider and the Client for the supply of Goods to which these Conditions apply.
- (c) Client means the party who purchases or has agreed to purchase the Goods. Where more than one person is a party hereto, the word "Client" will be read as "Clients" and this Contract will bind each of the Clients jointly and severally.
- (d) Goods means the goods and/or services the subject of the Contract supplied by the Provider.
- (e) GST means the goods and services tax as imposed by A New Tax System (Goods and Services Tax) Act 1999.
- (f) Provider is TyreSafe Australia Pty Ltd ABN 74 149 244 655.

2. General

- (a) These Conditions will apply to every Contract made by the Provider unless otherwise agreed in writing by the Provider, and no amendment will be effective unless it is in writing signed by both the Provider and the Client.
- (b) The Client will be deemed to have agreed to these Conditions if the Client:
 - (i) and whereby the client communicates in writing or by conduct to the Provider its' acceptance of the Provider's written quotation;
 - (ii) supplies to the Provider delivery instructions for the Goods; or
 - (iii) Accepts the delivery, or part delivery, of the Goods.
- (c) The Client agrees that it does not rely on the skill or judgement of any employee or agent of the Provider in relation to the suitability, capabilities, or performance of the Goods for a particular purpose unless indicated expressly in writing by the Provider to the Client.
- (d) All designs, specifications, illustrations, sketches, drawings and diagrams, descriptions, recommendations or suggestions submitted by the Provider or contained in the Provider's catalogues, brochures, price lists, trade literature and other published matter are of a generally informative nature and approximate only and none of these form part of any contract or give rise to any independent or collateral liability of any nature on the part of the Provider.
- (e) No Contract will be a sale by sample unless the Provider expressly agrees in writing.

3. Provider's quotation

- (a) The Provider may revoke, withdraw or vary a written quotation at any time prior to the Client submitting an order which accepts the offer to sell comprised by the written quotation, in the event of any increase of the cost to the Provider of supplying the Goods.
- (b) Unless previously withdrawn, a quotation issued by the Provider remains current for the confirmation of orders for 30 days from the date of issue.

4. Purchase price

- (a) Unless otherwise agreed the purchase price for Goods free on transport:
 - (i) Excludes delivery of the Goods to the Client; and
 - (ii) Is strictly net and excludes any GST or other statutory charges payable on the supply of the Goods.
- (b) Notwithstanding any provision in the Contract, the Provider may at its absolute discretion increase the price of the Goods prior to delivery if the price of any inputs which comprise whole or part of the Goods increases.
- (c) The Client is not entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaims whether arising out of this or any other contract nor will the Client have an equitable right of set-off.
- (d) The Provider shall be entitled to bring an action for the recovery of the price of the Goods whether or not title in the Goods has passed.

5. Delivery

- (a) Delivery of Goods to the Client will be deemed to be effective when the Goods are:
 - (i) placed onto an authorised carrier for delivery to the Client;
 - (ii) Delivered to a place stipulated as the place of delivery by the Client; or
 - (iii) Collected by the Client from the premises of the Provider.
- (b) The Provider shall not be liable on any basis whatsoever for any loss or damage to the Goods occurring after delivery is effective in accordance with Condition 5(a).
- (c) Any delivery time agreed between the Client and the Provider is an estimate only and not a term or condition of the Contract.
- (d) The Provider is not liable to the Client or the Client's Clients for the consequences of any delay in delivery.
- (e) The Provider may make partial deliveries of the Goods by instalments and these terms and Conditions will apply to each partial delivery.
- (f) Any claim for non-delivery of Goods must be notified to the Provider within 21 days of the date of the invoice or the date of despatch, whichever is later.

6. Payment and credit

- (a) After establishment of payment history all goods supplied by the Provider to clients within the territories and jurisdiction of Australia must be paid for in full by the Client no later than 30 days after the date of invoice (Due Date) without rebate or claim for set-off.
- (b) Time for payment is of the essence and the Provider may deem a failure to pay as a repudiation of the Contract by the Client.
- (c) The Provider reserves the right to require full payment prior to delivery of goods for clients outside of Australian territories.
- (d) Clients wishing to use a Letter of Credit (LC) as payment are notified of a 40% premium on the total invoice value for this service. LC's are not a preferred method of payment.
- (e) The Provider reserves the right to vary the terms of payment with due notice and to require payment in cash in full prior to delivery should the credit worthiness of the Client at any time become in the Provider's opinion unsatisfactory or other condition as is reasonable.



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7. Interest

- (a) If the Client fails to pay the purchase price on the Due Date, in addition to any other right pursuant to these Conditions or at law, the Provider will be entitled to interest on the outstanding amount accruing daily.
- (b) The rate of interest is 3.5% above the rate per annum certified by the Provider's banker for the time being to correspond to that bank's reference, base or indicator rate for unsecured overdrafts in excess of \$10,000.

8. Retention of title

- (a) Legal and equitable title to the Goods is retained by the Provider until full payment for the order by the Client has been paid or title is properly vested in some other person by the operation of any statute.
- (b) Until title in the Goods passes to the Client, the Client holds the Goods as bailee and fiduciary agent of the Provider, and the Client agrees to accept this appointment.
- (c) The Provider may at any time until title in the Goods passes to the Client require that the Goods to be returned to the Provider. The Provider has the power to:
- (i) Enter the Client's premises and retake possession of the Goods without liability for trespass; and
 - (ii) Keep or resell any Goods repossessed under this Condition without prejudicing any legal rights the Provider may have against the Client.
 - (iii) Until title to the Goods passes to the Client, the Client must keep the Goods free from any charge, fee or other encumbrance whatsoever.
 - (iv) Until title to the Goods passes to the Client, the Client must:
 - (v) Mark the Goods conspicuously as being the property of the Provider and ensure that any such markings are not removed; and
 - (vi) Promptly on request of the Provider, identify and display the Provider's Goods to the Provider or the Provider's representative.
- (d) The Provider or the Provider's nominee will, at any time until payment in full has been made by the Client, have full access to all the books of accounts and the documents and papers of the Client relating to any of the following:
- (i) The Client's dealings with the Provider;
 - (ii) The Client's dealings with the Goods; and
 - (iii) The Client's dealings with the proceeds of sale of the Goods.

9. Resale

- (a) The Client may agree to re-sell any Goods in its possession in the ordinary course of trading, notwithstanding that the Goods are the property of the Provider, provided the Provider has not required the return of the Goods under Condition 9 and provided none of the events mentioned in Condition 16 has occurred.
- (b) In the event of a sale of Goods in accordance with Condition 10(a), the Client will hold all proceeds from the sale on trust for the Provider until such time as all money owing by the Client to the Provider has been paid in full.

10. Risk

- (a) Risk in the Goods passes to the Client on delivery in accordance with Condition 5(a). Accordingly, the Client is responsible for any risk to Goods under the control of the Client that are still the property of the Provider.
- (b) The Client must insure against the risk outlined in Condition 11(a) and will:
- (i) Keep the Goods in the same condition as that in which they were delivered;
 - (ii) Make good any damage or deterioration; and
 - (iii) Claim under any such insurance made pursuant to this Condition as reasonably required by the Provider.

11. Warranty

- (a) The Provider will, at its option, refund the purchase price, replace the Goods or issue credit for the purchase price to the Client for any goods found to be defective by reason of faulty materials or poor workmanship provided that:
- (i) The Provider is notified in writing within 7 days of the discovery of any defects by the Client and in any event not later than 14 days from the date of delivery;
 - (ii) The defective Goods are returned to the place nominated by the Provider, at the expense of the Client; and
 - (iii) Examination by the Provider of the Goods establishes to the Provider's satisfaction that defects exist and have not been caused by misuse, neglect, alteration, accident or abnormal conditions.
- (iv) Any warranty contained in Condition 12(a) is in addition to any warranty that is implied by the Trade Practices Act 1974 (Commonwealth of Aust.) that cannot be excluded from these Conditions.

12. Exclusion of liability

- (a) Save as provided in these Conditions the Provider is not liable for any indirect or consequential loss or damage of any kind however caused. All conditions, warranties or other terms express, implied, statutory or otherwise are excluded from these Conditions.
- (b) If Condition 13(a) above is held to be wholly or partly ineffective:
- (i) The Provider shall not be liable on any claim for damages for any such breach where the claim is not made in writing and notified to the Provider within fourteen (14) days of the date of delivery of the Goods or within seven (7) days after the Client learns of the facts giving rise to the claim, whichever first occurs; and
 - (ii) The Client's claim is limited to the reasonable cost of remedying the breach, provided that the Provider will first be afforded the opportunity to carry out the remedial work itself.



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13. Force majeure

- (a) The Provider is not liable for any delay in performance or for non-performance in whole or in part of its obligations under the Contract directly or indirectly resulting from causes beyond the control either of the Provider or of the Provider's Providers.
- (b) If an event occurs as outlined in Condition 14(a) the Provider may without liability cancel or vary the terms of the Contract including, but not limited to, extending the time for performing the Contract.

14. Indemnity

- (a) The Client indemnifies the Provider against any costs, claims, demands, expenses, penalties or liability which the Provider may pay or incur arising out of or in connection with the use, processing, storage or sale of the Goods.

15. Breach and Client's insolvency

- (a) The Provider may determine the Contract, without prejudice to any other claim or action against the Client, if:
 - (i) The Client defaults in, or commits a breach of, any of its obligations to the Provider;
 - (ii) The Client enters into any negotiations for an arrangement or composition with its creditors;
 - (iii) The Client commits any act of bankruptcy or if any petition in bankruptcy is presented against it;
 - (iv) Any resolution is proposed or petition presented to appoint a liquidator or provisional liquidator of the Client;
 - (v) A receiver of the Client's assets or undertaking, in whole or in part, is appointed;
 - (vi) A "controller" (as defined in section 9 of the Corporations Act 2001 (Commonwealth of Aust)), manager, trustee, administrator or similar officer is appointed in respect of the Client or any asset of the Client; or
 - (vii) The Client is deemed to be unable to pay its debts within the meaning of Section 460(2) of the Corporations Act 2001 (Commonwealth of Aust).

16. Cancellation of order

- (a) The Client may not terminate the Contract by cancelling any order except with the written consent of the Provider and on terms which will indemnify the Provider against all losses.

17. Assignment

- (a) The Client must not assign or transfer or purport to assign or transfer the Contract or any benefit under the Contract to any person.

18. Waiver

- (a) The Provider can only waive a right or obligation under this Contract by written notice to the Client.

19. Variation

- (a) The Provider may vary the Conditions at any time without notice to the Client.

20. Sub-contract

- (a) The Provider has the right to sub-contract the performance of the Contract in whole or in part.

21. Jurisdiction

- (a) All Contracts will be construed in accordance with the law of Western Australia.
- (b) Any disputes arising under a Contract are to be determined by the Courts of Western Australia.

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