

1. Definitions

- 1.1 “Seller” shall mean Australian Tyre Traders Pty Ltd, (A.C.N. 097 694 141) its successors and associated entities or any person acting on behalf of and with the authority of Australian Tyre Traders Pty Ltd.
- 1.2 “Buyer” shall mean the Buyer (or any person acting on behalf of and with the authority of the Buyer) as described on any quotation, work authorisation or other form as provided by the Seller to the Buyer.
- 1.3 “Goods” shall mean all Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
- 1.4 “Services” shall mean all Services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.5 “Price” shall mean the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 4 of this contract
- 1.6 “Portal” shall mean any electronic platform supplied and/or operated by the Seller.
- 1.7 “Confidential Information” means all information (written or oral) which is confidential to the Seller and is not publicly available.

2. The Competition and Consumer Act 2010 (“CCA”) and Fair-Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Buyer buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

3. Acceptance

- 3.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer’s acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Goods are supplied by the Seller subject to these terms and conditions of trade.
- 3.3 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding on both parties and may only be amended in writing subject to the relevant clauses within this document.
- 3.5 Parties shall give the other party not less than fourteen (14) days prior written notice of any proposed change of ownership of the notifying party or any change in the notifying party’s name and/or any other change in the notifying party’s details (including but not limited to, changes party’s address, phone number, business practice or legal entity). Notwithstanding any change of ownership by the Buyer and unless otherwise agreed by the parties in writing, the Buyer remains liable to pay for all Goods purchased prior to any change of ownership. To the extent permitted by law, the Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer’s failure to comply with this clause (including unpaid Goods).

- 3.6 In the event of a change of ownership all funds owing must be paid in full before any account can be closed and/or any security interest can be discharged.
- 3.7 This agreement is between the Seller and the Buyer as specified in the completed account application; in the event of a change a new account application form must be completed before trading can commence.

4 Price and Payment

- 4.1 At the Seller’s sole discretion, the Price shall be either:
 - (a) If there is no quotation or a quotation has expired, as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Seller’s quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer has accepted the Seller’s quotation in writing within thirty (30) days.
- 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller’s quotation.
- 4.3 Payment is due as follows:
 - (a) If the Buyer does not have a credit account, on delivery/completion of the Goods; or
 - (b) payment for approved credit account Buyers shall be due in line with the credit account terms offered and as outlined on issued invoices and statements to the Buyer’s address or addresses for notices.
- 4.4 Time for payment of the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated, then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment can be made by cash, cheque, or by credit card (plus a surcharge at reasonable rates that the Seller incurs from time-to-time), direct credit or by any other method as agreed to between the Buyer and the Seller.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.7 Credit is provided at the sole discretion of the Seller and can be withdrawn at any time without notice if:
 - (a) the Buyer is in breach of the Seller’s credit terms; or
 - (b) The Seller becomes aware of circumstances or information that causes the Seller to reasonably believe that the Buyer is unable to pay it’s debts as and when they fall due; or
 - (c) The Buyer suffers, or the Seller reasonably believes that the Buyer has suffered, an adverse change in the Buyer’s financial circumstances

5 Delivery of Goods

- 5.1 Delivery of the Goods shall take place when:
 - (a) the Buyer takes possession of the Goods at the Seller’s address; or
 - (b) the Buyer takes possession of the Goods at the Buyer’s nominated address (in the event that the Goods are delivered by the Seller or the Seller’s nominated carrier).
- 5.2 Unless expressly stated otherwise, the costs of delivery are in addition to the Price and payable by the Buyer.
- 5.3 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 5.4 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of either party.

6 Risk

6.1 The Seller retains ownership of the Goods as set out in these terms and conditions however, all risk for the Goods passes to the Buyer on delivery.

6.2 Risk in the Goods passes to the Buyer on delivery and the Buyer remains liable to pay for the Goods, notwithstanding any damage that may occur after delivery. If any of the Goods are damaged or destroyed following delivery and the Goods remain unpaid, the Buyer must pay any insurance proceeds that the Buyer receives for the Goods to the Seller in payment of the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6.3 Where the Buyer expressly requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended or third-party location then such Goods shall be left at the Buyer's sole risk and it shall be the Buyer's responsibility to ensure the Goods are insured adequately or at all.

7 Title

7.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:

- (a) the Buyer has paid the Seller all amounts owing for the goods; and
- (b) the Buyer has paid all other sums due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.

7.2 Where payment by the Buyer is made by cheque, payment will be taken to have been made only when the cheque is honoured. Until then the Seller's ownership or rights in respect of the Goods shall continue.

7.3 It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and
- (b) until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods to the Seller. Upon such notice the Buyer must return the Goods to the Seller; and
- (c) the Seller shall have the right of stopping the Goods in transit; and
- (d) if the Buyer fails to return the Goods to the Seller, then the Seller or the Seller's agent may (as the invitee of the Buyer) enter upon and into land and premises owned, occupied or used by the Buyer, or any premises where the Goods are situated and take possession of the Goods; and
- (e) the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Buyer owes to the Seller for the Goods, on trust for the Seller; and
- (f) the Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
- (g) the Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods

while they remain the property of the Seller; and

- (h) If the Goods are not returned to the Seller on notice, the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and
- (i) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8 Personal Property Securities Act 2009 ("PPSA")

8.1 In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Buyer and the Seller by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.

8.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
 - i. all Goods previously supplied by the Seller to the Buyer (if any);
 - ii. all Goods that will be supplied in the future by the Seller to the Buyer.
 - iii. present and future amounts owing to Buyer in respect of Goods sold on account, on credit or on any other deferred payment terms by buyer.

8.3 Seller may, at Buyers expense, register any security interest granted under these terms and conditions on the PPS Register. The Buyer must provide the Seller with any information it requires for the purposes of effecting such registration. For the purposes of section 157(3) of the PPSA, the Buyer irrevocably and unconditionally waives its right to receive any notice from the Seller in connection with the registration of a security interest arising under these terms and conditions.

8.4 The Buyer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Seller may reasonably require to:
 - i. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - ii. register any other document required to be registered by the PPSA; or
 - iii. correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - i. not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
 - ii. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller; and

iii. immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

- 8.5 The Buyer acknowledges that the delivery of products under this contract gives rise to a Security Interest, being a Purchase Money Security Interest and the Seller's rights derived from the products supplied constitutes a Security Interest in such Proceeds.
- 8.6 The Seller and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.7 The Buyer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.8 The Buyer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.9 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.10 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 8.3 to 8.6.

9. Security and Charge

9.1 Despite anything to the contrary contained herein or any other rights which the Seller may have:

- (a) where the Buyer is the owner of land, realty or any other asset capable of being charged, both the Buyer agree to mortgage and/or charge all of their interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer acknowledges and agrees that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat. This caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) The Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements incurred to recovery unpaid amounts from the Buyer, including legal costs on a solicitor and own client basis.
- (c) the Buyer agrees to irrevocably nominate, constitute and appoint the Seller or the Seller's nominee as the Buyer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.

10 Defects

- 10.1 Goods may be returned in accordance with the Competition and Consumer Act 2010 (Cth) or where the Seller has made an error in delivery (such as shortage or damage within the Seller's control). The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any shortage or damage.
- 10.2 The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage.
- 10.3 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Buyer has acquired Goods as a consumer

within the meaning of the Competition and Consumer Act 2010 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

- 10.4 Goods will not be accepted for return other than in accordance with 10.1 above.

11 Warranty

- 11.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 11.2 Any representation, warranty, guarantee, condition or undertaking that would be implied in the T&C's by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

12 Default and Consequences of Default

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at sellers' discretion, at a rate of two and a half percent (2.5%) per calendar month after as well as before any judgment.
- 12.2 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be liable for any dishonour fees incurred by the Seller.
- 12.3 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 12.4 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions.
- 12.5 The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
- 12.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) the Buyer becomes insolvent, or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

13 Cancellation

- 13.1 Either party may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the other party. On giving such notice the Seller shall repay to the Buyer any sums paid.

The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation. If delivery has already been made and the Goods remain unpaid, either party may only terminate these Terms by written notice to the other party if there has been a material breach of these Terms and the breach has not been rectified within 3 days of the termination notice.

- 13.2 The Buyer can cancel an order without cause before the Goods have left the Seller's possession for delivery. In all other situations, the Buyer cannot cancel an order for Goods that have left the Seller's possession for delivery without the Seller's consent (which will not be unreasonably withheld).
- 13.3 If the Buyer cancels an order after the Goods left the Seller's possession for delivery, the Buyer shall be liable for any loss and expenses incurred by the Seller up to the time of cancellation and must pay the Seller for that loss and expense.
- 13.4 Cancellation of orders for Goods made to the Buyer's specifications or non-stocklist items will not be accepted once production has commenced.

14 Privacy Act 1988

- 14.1 The Buyer and/or the Guarantor/s (herein referred to as the Buyer) agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.
- 14.2 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Buyer; and/or
 - (b) to notify other credit providers of a default by the Buyer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Buyer.
- 14.3 The Buyer understands that the information exchanged can include the Buyer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.4 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.5 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by the Seller, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.

- 14.6 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer.
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 14.7 The information given to the credit reporting agency may include but is not limited to:
- (a) personal particulars (the Buyer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number).
 - (b) details concerning the Buyer's application for credit or commercial credit and the amount requested.
 - (c) advice that the Seller is a current credit provider to the Buyer.
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started.
 - (e) that the Buyer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed.
 - (f) information that, in the opinion of the Seller, the Buyer has committed a serious credit infringement (that is, traded fraudulently or shown an intention not to comply with the Buyer's credit obligations).
 - (g) advice that cheques drawn by the Buyer for one hundred dollars (\$100) or more, have been dishonoured more than once.
 - (h) that credit provided to the Buyer by the Seller has been paid or otherwise discharged.

15 ATT Portals

- 15.1 Access to any information provided through any portal is the sole property of the Seller and is provided in good faith on an "as is" basis.
- 15.2 In using the portal, you agree to be bound by the terms and conditions.
- 15.3 Unless agreed prior in writing access is intended for the sole use of Seller's distributors, their immediate employees & customers only and access must not be used or granted for any purpose outside its intended use and users.
- 15.4 Information supplied cannot be sold or supplied from the portals to any third party.
- 15.5 The Seller reserves the right to terminate the Buyer's access to the Seller's portal and information technology systems at the Seller's discretion.
- 15.6 Where information provided contains opinions or judgements we do not endorse or warrant the information supplied.
- 15.7 Portals are hosted by 3rd parties and the Seller (including the Seller's related and associated entities, officers, staff members, agents and representatives) is not responsible for any act or omission of the 3rd party.

16 Confidential Information, Trademark & Copyright

- 16.1 Confidential Information may be supplied by the Seller to the buyer, including but not limited to:
- Text, graphics, logos, icons, sound recordings, documentation and software that is owned and/or licensed by the Seller.
 - Information relating to the Sellers procedures & pricing data, suppliers, training programs and services.

- Any other evaluation material, design work, technologies, technological ideas or strategies, strategic plans and ideas, marketing strategies, innovations, creative plans, concepts and any other plans or ideas developed by the Seller or on its behalf.
- 16.2 Unless agreed prior in writing information provided is intended for the sole use of the intended recipient, their immediate employees & customers and the buyer warrants that the information supplied will only be used for its intended purpose.
- 16.3 On supply of information the use or reproduction is prohibited under the Commonwealth Copyright Act 1968 unless written authorisation is granted by Directors of the Seller.
- 16.4 All Trademarks remain the property of the Seller and its associated entities.
- 16.5 Any information provided by a third party may be subject to copyright by that third party.
- of the notice, unless the Buyer objects in writing within the notice period. If the Buyer objects to the updated terms and conditions, the Buyer may exercise its termination rights provided by these terms and the Seller may choose not to accept any new orders from the Buyer or proceed with any unfulfilled orders until the updated terms and conditions are accepted.
- 17.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, lock-down or other event beyond the reasonable control of either party.
- 17.10 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.
- 17.11 These Terms and Conditions together with the account application form the whole agreement between the parties.

17 General

- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 17.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria, Australia.
- 17.4 The parties shall be under no liability whatsoever to each other for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by one party arising out of a breach by the other party of these terms and conditions.
- 17.5 In the event of a breach of this contract by the Seller the remedies of the Buyer shall be limited to damages which not exceeding the Price of the Goods supplied under these Terms, except for the following types of loss and damage:
- (a) Personal injury (including sickness and death);
 - (b) Breach of privacy legislation;
 - (c) Breach of intellectual property rights;
 - (d) Breach of confidentiality;
 - (e) Statutory liability that cannot be contracted out of;
 - (f) Property damage that is covered by insurance.
- 17.6 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.7 The Seller may license or sub-contract any part of its rights and obligations under these Terms by notifying the Buyer in writing. Unless the Seller receives a written objection from the Buyer within 7 days of the Seller's notice, the Buyer will be deemed to have consented to the license or sub-contract.
- 17.8 The Buyer agrees that the Seller may review its standard terms and conditions of trade from time-to-time and at any time. The Seller will provide the Buyer with 7 days' written notice of any proposed updates or variations to the terms and conditions of trade. Any such updated terms and conditions will vary the contract created by these Terms and apply to all orders placed after the date