

## 1. Interpretation

**Tyres4U** means Tyres4U (NZ) Limited acting as trustee of the Independent Tyre Distributors Trust and trading as "Tyres4U®", and where applicable includes its servants, agents, successors and assigns.

**Customer** means the person placing an order with Tyres4U for the purchase of Goods or Services.

**Terms** means these terms and conditions of trade.

**Goods** mean any goods and merchandise supplied by Tyres4U.

**Services** means replacement and fitting, servicing or maintenance of tyres, as such services as supplied by Tyres4U.

## 2. Orders

2.1 These Terms apply to all offers, quotations and agreements for Goods and/or Services entered into between Tyres4U and the Customer.

2.2 The placement of an order for Goods and/or Services shall be deemed to be acceptance of these Terms by the Customer. An order may be placed by telephone, facsimile, or other method of communication approved by Tyres4U.

2.3 Tyres4U reserves the right to accept or decline in whole or in part any order for Goods or Services.

2.4 Cancellation or variation of any order placed with Tyres4U must be agreed by Tyres4U in writing and will be subject to payment by the Customer of all costs, expenses and losses incurred by Tyres4U as a result of such cancellation or variation (as reasonably determined by Tyres4U).

## 3. Price

3.1 The Customer must pay the price for the Goods and/or Services indicated on the invoice issued by Tyres4U. Unless otherwise stated, the Customer must pay all Goods and Services Tax in addition to the price.

3.2 The Customer must pay all freight and handling costs incurred by Tyres4U in connection with an order if the value of the Goods in that order is less than the minimum order amount set by Tyres4U from time to time. If Tyres4U incurs cost which is additional to its normal freight and handling costs and can be attributed to a particular order, the Customer must pay that cost.

3.3 Any price list and/or discount offered to the Customer may be varied by Tyres4U at any time, provided that such variation will only bind the Customer from the Customer's next order.

## 4. Payment

4.1 The Customer must pay all amounts owing to Tyres4U in full in cleared funds by the 20th day of the month following the date of the invoice, without settlement discount, set-off or deduction of any kind but immediately where there has been a default under these Terms.

4.2 Tyres4U may charge interest on any overdue amount at the rate of 2% per month, to be calculated and accrued daily from the due date until payment in full is received by Tyres4U including any interest on the overdue amount.

4.3 The Customer will indemnify Tyres4U and pay all collection costs which Tyres4U may incur in recovering from the Customer any overdue account, including all costs and expenses on a solicitor/client basis. The Customer will also indemnify Tyres4U and pay all costs incurred by Tyres4U in general administration, delivery of Goods, storage, securing its position, repossessing, attempted exercise of rights, and exercising its rights against the Customer under these Terms.

## 5. Delivery

5.1 Delivery of the Goods is deemed to be made:

- a. when the Goods are made available to the Customer or the Customer's agent for collection at Tyres4U's warehouse or at another agreed collection point; or
- b. when the Goods are delivered to the carrier,

whichever is the earlier ("Delivery"), provided that, in relation to any Goods supplied to a Customer in the course of the provision of Services, Delivery will be deemed to have occurred when the Goods are fitted to the Customer's vehicle or otherwise when the Customer takes possession of the Goods.

5.2 Tyres4U may choose the carrier and the method of transport, unless otherwise agreed by Tyres4U in writing. Tyres4U may choose to deliver by instalments and may treat each delivery as a separate sale governed by these Terms. Any delivery date agreed by Tyres4U is approximate only, and no late delivery will entitle the Customer to cancel any order, withhold any payment, or constitute a default. Tyres4U shall not be liable in any way to the Customer or any other party for loss resulting from any delay in delivery.

5.3 If Tyres4U believes in its sole discretion that the Customer may not make any payment when due, Tyres4U may suspend or cancel any Delivery. If the Customer delays, fails or refuses to take Delivery, Tyres4U (without limiting any other rights) may charge the Customer for any costs incurred by Tyres4U as a result, which must be paid when invoiced and in accordance with the provisions of these Terms.

5.4 Immediately upon Delivery, the Customer or its agent must inspect the Goods and make any claim for short or defective Delivery or Delivery of damaged Goods in writing within 5 working days of Delivery. Upon return of the damaged Goods at Tyres4U's request (where relevant) and verification of the claim, Tyres4U will deliver replacement Goods or the deficient amount of Goods to the Customer free of charge. No claim for Delivery of damaged Goods will be accepted if the Tyres4U's carrier has been given a receipt signed without objection by the Customer or its agent. Tyres4U reserves the right to reject all claims made outside the 7 day period.

## 6. Risk and Ownership

6.1 Risk in the Goods will pass to the Customer upon Delivery.

6.2 Ownership in the Goods remains with Tyres4U and will not pass to the Customer until all obligations of the Customer in respect of those Goods have been met.

6.3 Until ownership in the Goods passes to the Customer, the Customer:

- a. keeps the Goods as bailee for Tyres4U and must return the Goods following non-fulfilment of any obligation of the Customer to Tyres4U (without limiting any other rights Tyres4U may have);
- b. must have in place an all risks insurance to cover both its interest as bailee of the Goods and Tyres4U's interest as owner of the Goods to full insurable value;
- c. shall forthwith notify Tyres4U of the happening of any event in relation to the Goods against which the Goods are insured. Where the Customer receives any insurance proceeds for the Goods, such proceeds shall be paid to Tyres4U in reduction of amounts owing by the Customer to Tyres4U;
- d. allows Tyres4U to recover possession of the Goods supplied to the value of monies outstanding to Tyres4U;
- e. Irrevocably authorises Tyres4U or its agent the right to enter any premises where it believes any Goods may be stored (without liability for trespass or any resulting damage), and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods;
- f. agrees to indemnify Tyres4U and its agent from any damage, injury or loss arising from such recovery or attempted recovery of Goods from the Customer's possession or control;
- g. must store the Goods separate from other goods and in a manner to enable them to be identified and cross referenced to their invoices;
- h. keep full and complete records of the physical location of each item of Goods from time to time;
- i. must not supply any of the Goods to any person outside of its ordinary or usual course of business; and
- j. must not change its name, address or contact details without providing Tyres4U with at least 14 days' prior written notice.

6.4 In the event of any doubt as to whether any Goods in the possession of the Customer belong to Tyres4U, Tyres4U's decision as to the identity of those Goods is final and conclusive except in the case of manifest error. The onus of proving such error is on the Customer.

## 7. Personal Property Securities Act 1999 ("PPSA")

7.1 The Customer grants a purchase money security interest to Tyres4U in all present and after acquired Goods and in any proceeds, book debts and accounts receivable arising from selling those Goods.

7.2 Until the Goods are paid for in full the Customer may only sell the Goods in the ordinary course of its business, and immediately advise Tyres4U of any material change in its business practices of selling the Goods.

7.3 On Tyres4U's request, the Customer must promptly execute all documents and do everything required by Tyres4U to ensure that the security interest created under these Terms constitutes and remains a first ranking perfected purchase money security interest in the Goods. The Customer must also provide Tyres4U with any information Tyres4U may reasonably require to complete a financing statement, and immediately notify Tyres4U in writing of any change in the Customer's name and any other information Tyres4U may need in order to complete a financing change statement.

7.4 The Customer must not allow a security interest to be created or registered over the Goods in priority to Tyres4U.

7.5 The Customer agrees:

- a. that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms;
- b. that its rights as debtor provided in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA will not apply to these Terms; and
- c. to waive its right under the PPSA to receive a copy of any verification statement or financing change statement.

7.6 The expressions "personal property", "purchase money security interest", "security interest", "verification statement", "financing statement" and "financing change statement" have the meanings given to them under, or in the context of the PPSA.

## 8. Return of Goods

8.1 Tyres4U may in its sole discretion agree to accept return of any Goods by the Customer for credit, provided that in addition to obtaining that agreement from Tyres4U the Customer has complied with clause 5.4 of these Terms and:

- a. the return request stating the reason for returning the Goods is made to Tyres4U in writing within 5 working days of the Delivery;
- b. the Goods are returned:
  - i. to Tyres4U original point of despatch within 14 days of despatch;
  - ii. via the carrier who delivered those Goods, unless otherwise agreed by Tyres4U;
  - iii. in the same condition as upon Delivery;
  - iv. accompanied by an itemised credit claim signed by an authorised person of the Customer and the relevant invoice number; and
- c. the Customer meets all costs associated with the return of the Goods.

8.2 Tyres4U may accept any Goods returned after 14 days of despatch provided that the Customer pays a handling fee of 10% of the total price of the returned Goods.

## 9. Services

9.1 Tyres4U will provide the Services at times and places to be agreed with the Customer from time to time. Tyres4U may, when providing the Services, use sub-contractors to supply the Services (being, generally, a member of the Tyres4U service network (Network Member)). The Services will be provided at the Customer's premises, the Network Member's premises, or the roadside as agreed between Tyres4U and the Customer. If the Services are to be provided at the Customer's premises, the Customer will provide Tyres4U (or the relevant Network Member) with reasonable access to the premises in order to carry out the Services.

9.2 *[The Services will be supplied with reasonable care and skill.]* Tyres4U will use all reasonable endeavours to provide the Services in the timeframe required by the Customer but takes no responsibility for, will not be liable for, any loss or damage of any sort arising from or connected with any delays in the provision of the Services.

9.3 The Customer shall comply with its obligations under the Health and Safety in Employment Act 1992 (including any applicable regulations or codes of practice made pursuant to that Act) and any amending or substituting legislation to ensure that, in performing the Services, a safe working environment exists for:

- a. employees, contractors, sub-contractors and agents of Tyres4U and/or the Network Member; and
- b. third parties entering, or on, the Customer's premises.

## 10. Liability and Guarantee

10.1 To the extent permitted by law, Tyres4U excludes all warranties, descriptions, representations or conditions whether implied by law or otherwise, except to the extent stated in these Terms and any other written guarantee provided by Tyres4U in respect of the supply of any particular Goods or Services. To the extent permitted by law, Tyres4U will not be liable in any event for any loss or damage of any kind and howsoever arising, including loss of profit or consequential loss, whether suffered or incurred by the Customer or any other person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from any Goods or Services supplied by or on behalf of Tyres4U to the Customer.

10.2 Insofar as Tyres4U may be liable (despite clause 10.1), to the extent permitted by law the total aggregate liability of Tyres4U (whether in tort, contract or otherwise) for any loss, damage or injury arising directly or indirectly from the supply of or any defect in the Goods or the Services, or any breach of Tyres4U's obligations to the Customer is limited to the price of the relevant Goods or Services supplied.

10.3 Unless otherwise agreed in writing, the parties agree that the Goods and the Services are being acquired by the Customer for business purposes and accordingly the Consumer Guarantees Act 1993 will not apply.

## 11. Default

11.1 Irrespective of any other rights or remedies which Tyres4U may have, if:

- a. any amount payable by the Customer to Tyres4U is overdue;
- b. the Customer fails to comply with any of these Terms, any information or representation given by the Customer is incorrect, or there is a breach of any obligation under any other contract or deed between the Customer and Tyres4U;
- c. Tyres4U deems, in its sole discretion, the Customer's credit to be unsatisfactory at any time;
- d. the Customer becomes bankrupt, insolvent, has a receiver or administrator appointed in respect of any of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator appointed, is placed under statutory or official management or any equivalent or analogous event occurs under the law under which the Customer is incorporated, domiciled, resident or carries on business or has assets, or if Tyres4U has reasonable grounds to believe the Goods are 'at risk' (as that term is defined in the PPSA),
- e. if the Customer no longer carries on its business or threatens to cease carrying on its business, then Tyres4U may do one or more of the following:
  - i. cease to supply any Goods or Services under these Terms;
  - ii. cancel any outstanding order from the Customer irrespective of whether or not such order has been accepted by Tyres4U;
  - iii. cease all credit in favour of the Customer;
  - iv. recover possession of any Goods supplied in accordance with clause 6.3(d) and dispose of them or retain them for its own benefit, and all amounts owing to Tyres4U, whether due for payment or not, will become immediately due and payable.

## 12. Internet Sales

12.1 Any Goods or Services ordered by the Customer through any Internet site operated by or on behalf of Tyres4U ("Internet Orders") will be supplied on these Terms as modified by any additional terms and conditions set out on that Internet site ("Additional Terms"). In the event of conflict between any provision in these Terms and any Additional Terms, the Additional Terms will prevail in respect of Internet Orders.

## 13. Independent Tyre Distributors

13.1 Any reference to Independent Tyre Distributors or ITD in any document issued by Tyres4U, including invoice, order and credit forms, means Tyres4U.

## 14. General

14.1 **Agreement:** These Terms, together with the provisions in the Application For Credit Account and all invoices, order forms and any other documents or statements describing the Goods or Services delivered and issued by Tyres4U, constitute a full and binding agreement between Tyres4U and the Customer ("Agreement"). The Agreement will prevail over any terms offered by the Customer.

14.2 **Amendment:** Tyres4U may amend any of these Terms at any time without notice provided that any such amendment will bind the Customer from the Customer's next order.

14.3 **Waiver:** Waiver of any of these Terms by Tyres4U will not take effect unless it is in writing.

14.4 **No Assignment:** The Customer may not assign all or any of its rights or obligations under these Terms without the prior written consent of Tyres4U.

14.5 **Severability:** Where any provision of these Terms is rendered void, unenforceable or otherwise ineffective by operation of law that does not affect the enforceability or effectiveness of any other provision of these Terms.

14.6 **Error:** Tyres4U is not responsible for any error or omission on any invoice, order form or other document or statement issued by Tyres4U.

14.7 **Intellectual Property:** The Customer acknowledges that it does not and will not at any time have any rights in or to any intellectual property rights associated with the Goods or the Services (including but not limited to their design and manufacture).

14.8 **Governing Law:** The Agreement between Tyres4U and the Customer will be governed by the laws of New Zealand.

14.9 **Legislation:** Reference to any legislation includes its successor or amendment legislation.