



# Sales Terms & Conditions



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# Definitions

- 1.1** "St Mary's Tyre Service" shall mean St Mary's Tyre Service (NSW) Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of St Mary's Tyre Service (NSW) Pty Ltd.
- 1.2** "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by St Mary's Tyre Service to the Customer
- 1.3** "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4** "Goods" shall mean Goods supplied by St Mary's Tyre Service to the Customer (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 St Mary's Tyre Service to Customer.
- 1.5** "Services" shall mean all Services supplied by St Mary's Tyre Service to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6** "Price" shall mean the price payable for the Goods as agreed between St Mary's Tyre Service and the Customer in accordance with clause 4 of this contract.

## The Commonwealth Trade Practices Act 1974 ("TPA") 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 TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.



# Acceptance

- 3.1** Any instructions received by St Mary's Tyre Service from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by St Mary's Tyre Service shall constitute acceptance of the terms and conditions contained herein.
- 3.2** Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3** Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of St Mary's Tyre Service.
- 3.4** The Customer shall give St Mary's Tyre Service not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by St Mary's Tyre Service as a result of the Customer's failure to comply with this clause.
- 3.5** Goods are supplied by St Mary's Tyre Service only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

# Price And Payment

- 4.1** At St Mary's Tyre Service' sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by St Mary's Tyre Service to the Customer in respect of Goods supplied; or
  - (b) St Mary's Tyre Service' current price at the date of delivery of the Goods according to St Mary's Tyre Service' current Price list; or
  - (c) St Mary's Tyre Service' quoted Price (subject to clause 4.2) which shall be binding upon St Mary's Tyre Service provided that the Customer shall accept St Mary's Tyre Service' quotation in writing within thirty (30) days.

**4.2** St Mary's Tyre Service reserves the right to change the Price in the event of a variation to St Mary's Tyre Service' quotation.

**4.3** At St Mary's Tyre Service' sole discretion a deposit may be required.

**4.4** At St Mary's Tyre Service' sole discretion:

- (a) payment shall be due on delivery and/or pickup of the Goods; or
- (b) payment for approved Customers shall be due thirty (30) days following the date of the invoice.

**4.5** Time for payment for 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.

**4.6** Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and St Mary's Tyre Service.

**4.7** 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.

## Delivery Of Goods

**5.1** At St Mary's Tyre Service' sole discretion delivery of the Goods shall take place when:

- (a) the Customer takes possession of the Goods at St Mary's Tyre Service' address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by St Mary's Tyre Service or St Mary's Tyre Service' nominated carrier).

**5.2** At St Mary's Tyre Service' sole discretion the costs of delivery is included in the Price.

**5.3** The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then St Mary's Tyre Service shall be entitle to charge a reasonable fee for redelivery.





**5.4** Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

**5.5** St Mary's Tyre Service 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.

**5.6** The failure of St Mary's Tyre Service to deliver shall not entitle either party to treat this contract as repudiated.

**5.7** St Mary's Tyre Service shall not be liable for any loss or damage whatsoever due to failure by St Mary's Tyre Service to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of St Mary's Tyre Service.

## Risk

**6.1** If St Mary's Tyre Service retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

**6.2** If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, St Mary's Tyre Service is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by St Mary's Tyre Service is sufficient evidence of St Mary's Tyre Service' rights to receive the insurance proceeds without the need for any person dealing with St Mary's Tyre Service to make further enquiries.

## Title

**7.1** St Mary's Tyre Service and the Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid St Mary's Tyre Service all amounts owing for the particular Goods; and

(b) the Customer has met all other obligations due by the Customer to St Mary's Tyre Service in respect of all contracts between St Mary's Tyre Service and the Customer.

**7.2** Receipt by St Mary's Tyre Service of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then St Mary's Tyre Service' 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 St Mary's Tyre Service shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from St Mary's Tyre Service to the Customer St Mary's Tyre Service may give notice in writing to the Customer to return the Good or any of them to St Mary's Tyre Service. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) St Mary's Tyre Service shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to St Mary's Tyre Service then St Mary's Tyre Service or St Mary's Tyre Service' agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as St Mary's Tyre Service has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to St Mary's Tyre Service for the Goods, on trust for St Mary's Tyre Service; and
- (f) the Customer shall not deal with the money of St Mary's Tyre Service in any way which may be adverse to St Mary's Tyre Service; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of St Mary's Tyre Service; and



- (h) St Mary's Tyre Service can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that St Mary's Tyre Service will be the owner of the end products

## Defects

**8.1** The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify St Mary's Tyre Service of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford St Mary's Tyre Service an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which St Mary's Tyre Service has agreed in writing that the Customer is entitled to reject, St Mary's Tyre Service' liability is limited to either (at St Mary's Tyre Service' discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) 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

## Returns

**9.1** Returns will only be accepted provided that:

- (a) the Customer has complied with the provision of clause 8.1; and
- (b) St Mary's Tyre Service has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) St Mary's Tyre Service will not be liable for Goods which have not been stored or used in a proper manner and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances





# Warranty

- 10.1** Subject to the conditions of warranty set out in clause 10.2 St Mary's Tyre Service warrants that if any defect in any workmanship of St Mary's Tyre Service becomes apparent and is reported to St Mary's Tyre Service within twelve (12) months of the date of delivery (time being of the essence) then St Mary's Tyre Service will either (at St Mary's Tyre Service' sole discretion) replace or remedy the workmanship.
- 10.2** The conditions applicable to the warranty given by clause 10.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by St Mary's Tyre Service ; or
- 10.3** The Customer accepts and acknowledges that St Mary's Tyre Service' warranty applicable for retread Goods is the full life of the tread, however, this may vary depending on the fair wear and tear of the Goods and shall be at St Mary's Tyre Service' sole discretion in respect of replacement in the event of any claim so arising.
- 10.4** In the event that the Goods fail for any reason, the Client agrees to return the Goods to St Mary's Tyre Service for inspection and evaluation to determine the failure. If it is found that the failure of the Goods is at no fault of the Customer, then it shall be at St Mary's Tyre Services sole discretion as to whether the Goods shall be either repaired or replaced. The cost of repair and/or replacement shall be based upon the pro-rata assessment of St Mary's Tyre Service.
- 10.5** In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by St Mary's Tyre Service as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. St Mary's Tyre Service shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 10.6** For Goods not manufactured by St Mary's Tyre Service, the warranty shall be the current warranty provided by the manufacturer of the Goods. St Mary's Tyre Service 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.



# Default & Consequences of Default

- 11.1** Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at St Mary's Tyre Service' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2** In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by St Mary's Tyre Service.
- 11.3** If the Customer defaults in payment of any invoice when due, the Customer shall indemnify St Mary's Tyre Service from and against all costs and disbursements incurred by St Mary's Tyre Service in pursuing the debt including legal costs on a solicitor and own client basis and St Mary's Tyre Service' collection agency costs.
- 11.4** Without prejudice to any other remedies St Mary's Tyre Service may have, if at any time the Customer is in breach of any obligation (including those relating to payment), St Mary's Tyre Service may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. St Mary's Tyre Service will not be liable to the Customer for any loss or damage the Customer suffers because St Mary's Tyre Service has exercised its rights under this clause.
- 11.5** If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6** Without prejudice to St Mary's Tyre Service' other remedies at law St Mary's Tyre Service shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to St Mary's Tyre Service shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to St Mary's Tyre Service becomes overdue, or in St Mary's Tyre Service' opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors 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 Customer or any asset of the Customer.

## Security And Charge

Despite anything to the contrary contained herein or any other rights which St Mary's Tyre Service may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to St Mary's Tyre Service or St Mary's Tyre Service' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that St Mary's Tyre Service (or St Mary's Tyre Service' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should St Mary's Tyre Service elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify St Mary's Tyre Service from and against all St Mary's Tyre Service' costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint St Mary's Tyre Service or St Mary's Tyre Service' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

## Cancellation

- 13.1** St Mary's Tyre Service 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 Customer. On giving such notice St Mary's Tyre Service shall repay to the Customer any sums paid in respect of the Price. St Mary's Tyre Service shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2** In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by St Mary's Tyre Service (including, but not limited to, any loss of profits) up to the time of cancellation.

## Privacy Act 1988

- 14.1** The Customer and/or the Guarantor/s agree for St Mary's Tyre Service to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by St Mary's Tyre Service.



**14.2** The Customer and/or the Guarantor/s agree that St Mary's Tyre Service may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Customer and/or Guarantor/s.

**14.3** The Customer consents to St Mary's Tyre Service being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

**14.4** The Customer agrees that personal credit information provided may be used and retained by St Mary's Tyre Service for the following purposes and for other purposes as shall be agreed between the Customer and St Mary's Tyre Service or required by law from time to time:

- (a) provision of Goods; and/or
- (b) marketing of Goods by St Mary's Tyre Service, its agents or distributors in relation to the Goods; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

**14.5** St Mary's Tyre Service may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.



# General



- 15.1** 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.
- 15.2** These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 15.3** St Mary's Tyre Service shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by St Mary's Tyre Service of these terms and conditions.
- 15.4** In the event of any breach of this contract by St Mary's Tyre Service the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 15.5** The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by St Mary's Tyre Service nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.6** The Customer agrees that St Mary's Tyre Service may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which St Mary's Tyre Service notifies the Customer of such change.
- 15.7** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.8** The failure by St Mary's Tyre Service to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect St Mary's Tyre Service' right to subsequently enforce that provision.