
Tyrepower Dealer's Terms and Conditions of Sale

Effective Date: April 2025

1. These terms and conditions apply to all sales of goods and services by Dealers (hereinafter referred to as “your Tyrepower Dealer”) licensed by Tyrepower Ltd. ABN 65 005 363 477 of 1/109 Whitehorse Road, Blackburn 3130 (hereinafter referred to as “Tyrepower”).
2. A contract is formed when you (“the Buyer”) place an order, whether in person, electronically or by telephone, which order is accepted by your Tyrepower Dealer, or when you accept a quote from your Tyrepower Dealer, whether in writing, electronically, or by delivery to you the Buyer or your agent, of the goods and or services. These terms and conditions regulate every such Contract.
3. **PRICE, TAXES AND DUTIES, PAYMENT INTEREST**
 - 3.1. The Contract Price shall not include GST unless otherwise expressly quoted to the Buyer.
Your Tyrepower Dealer will provide a tax invoice on delivery of the goods and or services. The tax invoice will include any delivery costs where your order stipulates out of store delivery.
 - 3.2. Prices may vary if the Buyer requests variations to its order.
 - 3.3. The Buyer must indemnify your Tyrepower Dealer against any loss or damage suffered by your Tyrepower Dealer, its subcontractors, or employees arising from any agreed delivery and If delivery is attempted but cannot be completed, the Buyer is deemed to have taken delivery and may be made liable for storage charges unless the goods are collected, or a further delivery is agreed and effected at the cost of the Buyer.
 - 3.4. Payments shall be made on delivery of the goods and or services unless otherwise specified in Your Tyrepower Dealer's invoice. The Buyer may not withhold payment nor make any deduction from the Contract Price.
 - 3.5. If your Tyrepower Dealer extends credit to a Buyer, and later considers the credit of the Buyer to be unsatisfactory, your Tyrepower Dealer may require security for payment and may suspend sales to the Buyer until such security is provided. All costs and expenses of, or incurred by, your Tyrepower Dealer as a result of such suspension and any recommencement shall be payable by the Buyer upon demand.
 - 3.6. If the Buyer defaults in the payment of any moneys payable to your Tyrepower Dealer under the Contract , simple interest at a rate equal to the Penalty Interest Rate Act 1983 (Vic) on the due date payment is due plus 2% p.a. calculated on a daily basis shall be payable on such moneys outstanding under the Contract from the date payment is due until the date payment is received by your Tyrepower Dealer, but without prejudice to Your Tyrepower Dealer's other rights or remedies in respect of such default.
 - 3.7. These Conditions of Sale apply to the Buyer and to your Tyrepower Dealer in respect of goods or services ordered by the Buyer, unless otherwise mutually agreed between the parties in writing. Any terms and conditions set out in the Buyer's order deviating from or inconsistent with these conditions of Sale will not bind your Tyrepower Dealer notwithstanding any statement by the Buyer in its order.
4. **DELIVERY, LIABILITY AND RISK**
 - 4.1. Delivery shall be made at the place indicated in the Contract or, if no place is Indicated, at your Tyrepower Dealer's premises.

4.2. These Conditions and any express warranties provided are the only terms, conditions, or warranties that apply to the Goods and Services. Your Tyrepower Dealer gives no warranty of fitness or suitability of the Goods for the Purchaser's uses thereof, save as may be necessarily implied by the ACL or other applicable law. If the Buyer is a Consumer, nothing in these Conditions restricts your rights under the ACL, however your Tyrepower Dealer's liability is limited as is stipulated in the ACL.

4.3. If you are not a Consumer, or you on-supply the Goods to a Consumer:

- then except as stated in these Conditions or any written warranty, your Tyrepower Dealer is not liable for any losses or expenses arising from the sale, use, or storage of the Goods or Services nor for any indirect or consequential losses, including loss of profits or business, and the Buyer acknowledges that:
- You have not relied on any advice or recommendation from your Tyrepower Dealer in relation to the Goods or Services.
- You are solely responsible for satisfying yourself that the Goods or Services are suitable for your use and the use of any purchaser from you, and
- Your Tyrepower Dealer shall be under no liability whatsoever for any failure to meet any regulations, by-laws, codes and standards other than those specified in these Terms and Conditions, however these Conditions do not exclude any State or Federal legislation that cannot be excluded.
- Your Tyrepower Dealer shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of your Tyrepower Dealer's obligations arising under or in connection with the Contract or from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of your Tyrepower Dealer, its servants, agents or contractors nor shall your Tyrepower Dealer be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. The Buyer shall indemnify your Tyrepower Dealer against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.
- Notwithstanding anything contained in this paragraph 4 or elsewhere in the Contract, the liability of Your Tyrepower Dealer in respect of all claims for loss, damage or injury arising from breach of any of Your Tyrepower Dealer's obligations arising under or in connection with the Contract, from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of Your Tyrepower Dealer, its servants, agents or contractors shall not in aggregate exceed the invoice price of the Goods being the subject of the claim.

4.4 In all cases the risk in the Goods and all insurance responsibility passes to the Buyer upon:

- The actual or constructive delivery of the Goods to you or
- The collection of the Goods from your Tyrepower Dealer, its agent, or an authorised supplier, and the Buyer assumes all risk and liability for loss, damage, or injury to persons or property arising from the use, installation, or possession of the Goods, unless recoverable under the ACL in which case your Tyrepower Dealer's liability is limited to the amount stipulated in the ACL.

4.5 All claims for defective Goods may be lodged with your Tyrepower Dealer. All claims by the Buyer must be lodged in writing within 7 days of delivery of the Goods, and shall otherwise be null and void. No claim shall be allowed in respect of Goods which have been damaged in delivery to, or storage by on behalf of, the Buyer.

5. Retention of Title / Passing of Property

(a) Title and property in the Goods remain in your Tyrepower Dealer until you make full payment for all Goods and Services supplied, and any other outstanding amounts.

(b) The Personal Property Securities Act 2009 (Cth) applies to the supply of the Goods and this condition creates a security interest, and a purchase monies security interest under that Act.

(c) If you are an onseller of the goods:

(i) You must hold the Goods as your Tyrepower Dealer's bailee and agent until full payment is received.

(ii) You must keep the Goods separate from your own goods and maintain your Tyrepower Dealer's labelling and packaging.

(iii) You must hold any proceeds of sale of the Goods on trust for your Tyrepower Dealer in a separate account.

(iv) Your Tyrepower Dealer may enter any premises to repossess unpaid-for Goods, and you must indemnify you Tyrepower Dealer from any costs or claims arising from such action.

(v) While ownership of the Goods remains with your Tyrepower Dealer, the Buyer may sell the Goods in the ordinary course of business and the sale proceeds must be held in a separate account and paid to your Tyrepower Dealer when due. This authority may be revoked by written notice from your Tyrepower Dealer at any time if your Tyrepower Dealer considers the credit of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under this Contract or any other contract between your Tyrepower Dealer and the Buyer, and shall be deemed automatically revoked if the Buyer commits any Act of Default.

6. DEFAULT AND INDEMNITY

If the Buyer defaults in the payment of any moneys payable to your Tyrepower Dealer or in the performance of its obligations under this Contract or any other contract between the Buyer and your Tyrepower Dealer, or commits any Act of Default then:

- a) Your Tyrepower Dealer may, without prejudice to any other right it has at law or in equity, suspend or terminate any provisions of the Contract which allow for payment subsequent to delivery. Payment for the Goods delivered and work performed up to the date of such suspension or termination and any other moneys payable thereafter shall immediately become due and payable. All costs and expenses of or incurred by your Tyrepower Dealer as a result of any such action together with transportation and storage charges shall be payable by the Buyer upon demand. Any suspension of the Contract by your Tyrepower Dealer shall not prevent it terminating the Contract during the period of suspension; and

b) All debt recovery costs including legals costs on a solicitor/own client basis and any mercantile agent costs shall be deemed to be part of the indebtedness of the Buyer to your Tyrepower Dealer. A certificate signed by a Director or a secretary of the time being of your Tyrepower Dealer as to any sum payable to your Tyrepower Dealer and such shall be conclusive evidence and proof of the indebtedness of the Buyer to your Tyrepower Dealer.

7. Competition and Consumer Act 2010

7.1 Nothing in these terms shall affect the rights of the Buyer under the Competition and Consumer Act 2010

7.2 The Buyer shall not, in relation to the supply of any goods by the Buyer to a third party, give or make any undertaking, assertion or representation in relation to the Goods without the prior approval in writing of your Tyrepower Dealer, and the Buyer shall indemnify Your Tyrepower Dealer against any liability or cost incurred by your Tyrepower Dealer as a result of any breach by the Buyer of this provision.

8. PRIVACY ACT 1988

8.1 The Buyer agrees that your Tyrepower Dealer may obtain information about the Buyer from the Buyer or any other persons (including any Credit or Debt Collection Agencies) in the course of its business, and the Buyer consents to any person providing your Tyrepower Dealer with such information. The Buyer agrees to the terms and conditions of the Tyrepower Privacy Policy as published on the website of Tyrepower the address of which is <https://www.tyrepower.com.au/terms-conditions>.

9. GENERAL / DEFINITIONS

9.1 All the original rights, powers, exemptions and remedies of your Tyrepower Dealer shall remain in force notwithstanding any neglect, forbearance or delay in their enforcement. Your Tyrepower Dealer shall not be deemed to have waived any condition unless such waiver is in writing from Your Tyrepower Dealer and any such waiver shall apply to an operate only in a particular transaction, dealing or matter.

9.2 The Contract shall in all respects be deemed to be a contract made in the State of Victoria and the construction, validity and performance of the Contract shall be governed by the laws of that State.

9.3 Tyrepower may update or amend these Terms and Conditions of Sale at any time and the updated or amended version will become operative on orders placed after the time of its publication on the website of Tyrepower.

9.4 A reference to “terms” includes “conditions” and vice versa.

9.5 In these conditions:

“ACL” means the Australian Consumer Law (Schedule 2) of the Competition and Consumer Act (Cth.) 2010.

"Act of Default" means any act of bankruptcy, entering into any composition or arrangement with its creditors (in this case of a company) any act which would render it liable to be wound up, the passing of any resolution of commencement of any proceedings for its winding up or the appointment of a receiver, voluntary administrator or administrator over all or any of its assets.

"Buyer" or "you" means the party buying the goods from your Tyrepower Dealer.

"Contract" means the contract between your Tyrepower Dealer and the Buyer for the purchase of Goods.

"Consumer" has the meaning ascribed to it in the ACL.

"Contract Date" means:

- a) where the Contract arises from an order placed by the Buyer, the date of the acceptance of the order by Your Tyrepower Dealer.
- b) where the Contract arises from a quotation given by your Tyrepower Dealer, the date upon which written notification of acceptance of the quotation is received by your Tyrepower Dealer or, where no written notification of acceptance of the quotation is received by your Tyrepower Dealer, the date such other form of acceptance as your Tyrepower Dealer in its discretion determines to treat as a valid acceptance.

"Contract Price" means the price of the Goods as agreed between Your Tyrepower Dealer and the Buyer, subject to any variation in accordance with these conditions of sale.

"Goods" means the goods being purchased by the Buyer from your Tyrepower Dealer which are the subject of the Contract.

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