

## TERMS AND CONDITIONS

Welcome to the Tyre Trading Company Ltd's Website, New Zealand's newest 'Business to Business' Trading Site. These terms and conditions are intended to help keep the Tyre Trading Companies' digital Website a safe place to trade.

**1.1 Acceptance of terms and conditions:** The terms and conditions are the terms on which the Tyre Trading Company Ltd. offers you access to the Website. By registering as a member of the 'Tyre Trading Company Website' you accept these terms and conditions. If you do not accept these terms and conditions, we ask that you refrain from using the Services.

**1.2 Amendment of terms and conditions:** As the Tyre Trading Company Ltd. operates in a changing commercial, technological and regulatory environment, we may amend these terms and conditions from time to time. We will communicate any changes by virtue of a Website post and written update. Unless otherwise stated, amendments will be effective immediately upon posting the amended terms and conditions on this Website. You are responsible for ensuring that you are familiar with the latest Terms and Conditions and your continued use of the Service represents your agreement to be bound by the terms and conditions as amended. These terms and conditions were last updated 26 August 2018.

**1.3 Terminology:** In these terms and conditions, the following expressions have the meanings set out:

- 'item', 'items' means goods that may be bought or sold on the Website;
- 'member' means a registered member of the Tyre Trading Company Ltd. Website;
- 'we', 'us' and 'our' are a reference to the Tyre Trading Company Ltd.;
- 'you' and 'your' are a reference to you as a member and user of our service;
- 'Website' means the Tyre Trading Company Ltd. Website, on which the services are offered;
- 'listing' means a listing on the Website which you might offer to purchase;

## SPECIFIC WARNINGS

**2.1 The Services:** The Tyre Trading Company Ltd. provides a forum for Trade members who want to buy and sell specific items. The Tyre Trading Company Ltd. does not take any part in the sale of the items other than by providing our Website as a venue for members. If an offer is accepted by the seller, a contract of sale will be formed between the buyer and the seller directly. We do not act as an agent for either party and do not participate in any sale or transaction between you and other members. As a result, even though some of the Services might resemble an auction, the Tyre Trading Company Ltd. is not an auctioneer (whether under the Auctioneers Act 2013 or otherwise).

**2.2 At your own risk:** The Tyre Trading Company Ltd. gives no undertakings, representations, or warranties in relation to items sold or listed on the Website:

- about ownership of any item;
- as to the description, worthiness, quality, or legality of the items that are listed on the Website;
- as to the accuracy or truth in the description of listings;
- that any item, will meet your requirements or expectations; or
- about the ability of members to complete a transaction.

**2.3 Disclaimer:** You expressly understand and agree that your use of the Services is at your sole risk. The Website and Services are provided on an "as is" and "as available" basis. To the maximum extent permitted by law and without limiting clause 2.2, the Tyre Trading Company Ltd. disclaims and excludes all implied

conditions or warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose, and non-infringement.

The Tyre Trading Company Ltd. does not warrant that:

- the Services provided will be uninterrupted, timely, secure, or error free, or;
- that any information provided on the Website is error-free or reliable;

**2.4 Warranty:** No advice or information that is obtained by you from the Tyre Trading Company Ltd. or anyone else shall create any warranty by the Tyre Trading Company Ltd. that is not expressly stated in the terms and conditions, and the responsibility for the content of advertisements appearing on this Website rests solely with the advertisers. The placement of such advertisements on the Website does not constitute the Tyre Trading Company Ltd.'s recommendation or endorsement of the advertised product.

**2.5 Liability:** You agree that, to the maximum extent permitted by law, any and all liability and responsibility of the Tyre Trading Company Ltd. to you or any other person under or in connection with these terms and conditions, or in connection with the services, this Website, another Member's acts or omissions, or your use of or inability to use, the services or this Website, is excluded regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise. The Tyre Trading Company Ltd.'s liability and responsibility is excluded in respect of any and all loss or damage, whether direct or indirect, including, without limitation, loss of profits, loss of data, loss of business or anticipated savings, general and special damages, and consequential and incidental loss.

**2.6 Indemnity:** You agree to release, indemnify and keep indemnified the Tyre Trading Company Ltd. from and against all actions, claims, costs (including legal costs and expenses), losses, proceedings, damages, liabilities, or demands suffered or incurred by us to any person arising out of or in connection with your failure to comply with these terms and conditions, your failure to complete a transaction, or your use of the Tyre Company Website.

**2.7 Breach:** Without limiting any other rights and remedies available to the Tyre Trading Company Ltd., the Tyre Trading Company Ltd. may limit your activities on the Website, remove your bids, or listings, issue a warning to you, suspend or terminate your membership, or refuse to provide our Services to you if you breach these terms and conditions, in particular, your obligations under Clause 4, or where the Tyre Trading Company considers it appropriate.

## BECOMING A MEMBER

**3.1 Becoming a Member:** Becoming a member is free. You may only register as a member if you are resident in New Zealand (or unless specifically authorised by us in writing) and can form a legally binding contract that is enforceable against you. By registering as a member, you warrant that you can form a legally binding contract.

**3.2 Accurate Information:** You warrant that you have provided complete, accurate and current personal information when registering as a member. You must maintain and update your personal information (held by Tyre Trading Company Ltd.) to ensure it is kept current at all times. The Tyre Trading Company Ltd. may phone or mail you to verify these details.

**3.3 Termination of membership:** The Tyre Trading Company Ltd. reserves the right to decline to register or to terminate your membership without entering into further discussions with you. Without limiting the foregoing, the Tyre Trading Company Ltd. may terminate your membership if a serious complaint or multiple

complaints are received about you from other members, if you breach these terms and conditions, or if we, at our sole discretion, deem your behaviour to be unacceptable. When limiting your activities on the Website the Tyre Trading Company Ltd. may consider offsite conduct such as prior criminal convictions, insolvency, or any other conduct that puts our systems at risk. In the event of termination, you also agree that you will not open or attempt to open a new membership. You may at any time close your membership by giving notice in writing. If you close your membership, or if it is terminated by the Tyre Trading Company Ltd. your ability to use the Website will end.

**3.4 Security of your login information:** You are responsible for keeping your login information, including your email address and password, secret and secure. Without limiting the foregoing, you agree:

- not to permit any other person to use your user name or membership; and
- not to disclose, or provide to any other person, your password, email address, date of birth or any other information in connection with your membership that may allow them to gain access to your membership.

**3.5 Emails and newsletters:** The Tyre Trading Company Ltd. may send you emails relating to your membership, transactions and other activities on the Website, and for promoting and marketing any other Tyre Trading Company Ltd. products and services to you. The Tyre Trading Company Ltd. may also send electronic newsletters to members. Newsletters will contain clear and obvious instructions for how you can unsubscribe from the mailing list.

## GENERAL RULES

**4.1 General:** All listings, bids or communications made on the Tyre Trading Company Website shall be made in good faith.

- you must not damage, interfere with or harm the Website or Services, or any network, or system underlying or connected to them, or attempt to do so.
- You shall not list your email address, phone number or any other contact detail within the description of listings, listing comments and/or questions, or in your member profile.

Not notwithstanding the above, you may enter your appropriate contact details in the relevant contact fields of your membership page.

- You must list sale items in New Zealand dollars (exclusive of GST). All tax obligations are the responsibility of the seller and/or the buyer (as the parties determine)
- You must not complete a transaction outside of the The Tyre Trading Company Ltd. process or otherwise seek to avoid the Tyre Trading Company's transaction fees. Attempts by you to avoid fees, may result in the Tyre Trading Company Ltd. suspending or terminating your membership at the discretion of the Tyre Trading Company Ltd.
- You are responsible for any actions taken through your membership. The Tyre Trading Company Ltd. memberships are not transferable and cannot be sold, leased, lent or traded without specific written authorisation from the Tyre Trading Company Ltd.

**4.2 Your obligations as a seller:** Sellers must be located in New Zealand. Sellers outside of New Zealand are not permitted to sell on Tyre Trading Company Ltd. Website, unless specifically authorised in writing by the Tyre Trading Company Ltd. Sellers should not send items to an address that is outside New Zealand.

- You will only enter listings that are accurate, current, complete, and include all relevant information about the sale.
- You will only place listings for items that exist, are to be sold, and that you are legally entitled to sell.

- You will only list items that are in your possession, except where the Tyre Trading Company Ltd. has approved otherwise in writing.

**4.3** All listings must comply with New Zealand law: You must not list anything that is illegal, stolen, or unsafe, or items which have been illegally imported or which would require illegal import or export in order to complete the transaction, or any item of which the sale is prohibited by, or violates any, law.

- You are responsible for ensuring that any listing by you does not breach this clause.
- You agree that the Tyre Trading Company Ltd. may disclose your personal information, including your name and contact details, to the relevant authorities, parties (or their representatives) if we consider that you are in breach of this clause at any time.

When you list an item for sale on The Tyre Trading Company Ltd. Website, you should do so with the intention of selling this item through the site. Therefore you should not advertise your item through another forum. Listings are not pre-screened for content. The Tyre Trading Company Ltd. reserves the right to remove any listing that it deems unsuitable or in breach of the terms and conditions.

**4.4 Your obligations as a buyer:**

- You must be located in New Zealand to purchase items on the Tyre Trading Company Website.
- If you are notified that your purchase request has been successful, you must complete the transaction in the manner specified. By accepting and completing a transaction, you warrant and represent that you have the legal right to enter into and complete the transaction.
- You must make full and prompt payment for any item you buy. When the bank transfer is received the Goods will be shipped.
- If your purchase request is successful and you do not pay for the item, you will receive a warning from the Tyre Trading Company Ltd. After 3 such complaints, the Tyre Trading Company Ltd. reserves the right to suspend or terminate your membership.

**FEES AND ACCOUNTS**

**5.1 The Tyre Trading Company Ltd. Listing Fees and Success Fees**

- The Tyre Trading Company Ltd. charges fees for the use of the Website as a sales platform.
- Listing fees are only relevant to those suppliers invited to load product to the site.
- The Tyre Trading Company Ltd.'s current fees are listed on our fees page in the help section, after a Sales Profile has been established.

The Tyre Trading Company Ltd. reserves the right to change the fees charged for any of our Services at any time.

If you are a New Zealand resident, then all fees are exclusive of GST and in New Zealand dollars unless otherwise stated. If you are not a New Zealand resident, then all fees are (unless otherwise stated) in New Zealand dollars and exclusive of GST.

The Tyre Trading Company Ltd. reserves the right to investigate queries regarding the refund of success fees with members and any other relevant party.

Before listing an item, you should review The Tyre Trading Company Ltd. fees to ensure you are aware of the fees that you will incur. You must pay the fees immediately upon demand by The Tyre Trading Company Ltd.

## GENERAL PROVISIONS

**6.1 System Integrity:** The Tyre Trading Company Ltd. will use its reasonable endeavours to ensure the availability of the Website and Services, subject to any downtime required for maintenance. However, the Tyre Trading Company Ltd. takes no responsibility for any system unavailability, or for any loss that is incurred as a result of Website or Services being unavailable. Further, the Tyre Trading Company Ltd. assumes no responsibility for the corruption of any data or information held by the Tyre Trading Company Ltd.

**6.2 Resolution of disputes:** As The Tyre Trading Company Ltd. is not a party to any sale or transaction between you and another member, you agree not to involve, or attempt to involve, the Tyre Trading Company Ltd. in any dispute or in the resolution of disputes that arise between you and another member as a result of the Services provided, other than as provided in clause 4. If you wish to take Disputes Tribunal (or other) proceedings against another member, you can contact the Tyre Trading Company Ltd. for a statutory declaration form, which must be completed before we will consider releasing anyone else's information to you. You may only request contact details for the sole purpose of making a claim.

**6.3 Force Majeure:** Without prejudice to clause 2. the Tyre Trading Company Ltd. has no liability for any lack of performance, unavailability or failure of the Services or the Website, or for any failure of the Tyre Trading Company Ltd. to comply with these terms and conditions where the same arises from any cause reasonably beyond the control of the Tyre Trading Company Ltd.

**6.4 No Waiver:** If we do not exercise or enforce any right available to us under these terms and conditions, it does not constitute a waiver of those rights.

**6.5 Partial Invalidity:** If any provision of these terms and conditions becomes or is held to be invalid, unenforceable or illegal for any reason, and in any respect, that provision shall be severed from the remaining terms and conditions, which shall continue in full force and effect.

**6.6 Governing Law:** These terms and conditions are governed by the laws of New Zealand. You submit to the non-exclusive jurisdiction of the Courts of New Zealand.

**6.7 Intellectual Property Rights:** The Tyre Trading Company Ltd. (and its licensors or suppliers, as the case may be) owns all proprietary and intellectual property rights in the Website (including text, graphics, logos, and icons) and the software and other material underlying and forming part of the Services and the Website. You may not without our prior written permission, in any form or by any means:

- Adapt, reproduce, copy, store, distribute, print, display, perform, publish or create derivative works from any part of this Website; or
- Commercialise, copy, or on-sell any information, or items obtained from any part of this Website.

**6.8 Entire agreement:** These terms and conditions supersede all previous conditions, understandings, commitments, agreements and representations whatsoever whether oral or written, and constitutes the entire agreement, between the parties, relating to the subject matter of these terms and conditions.