

January 2020

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**JEWELL
TYRES**

ABN 65 623 463 511

Jewell Tyres Standard Terms and Conditions of Purchase

Definitions

1. In these Standard Terms and Conditions of Purchase:

"Contract" means the legal relationship between the Purchaser and the Supplier created when the Supplier accepts a Purchase Order.

"Goods™" means the goods specified in the Purchase Order. Manufacture™ includes grow, extract, produce, process and assemble.

"Purchaser" means KEELANGIE NOMINEES PTY LTD ACN 005 226 497 as trustee for the DG & CV Jewell Family Trust trading as "Jewell Tyres".

"Purchase Order" means any offer by the Purchaser to purchase Goods from the Supplier for the Price.

"Price" means the price of the Goods specified in the Purchase Order.

"Supplier" means the Supplier of Goods named in the Purchase Order; and

"Terms and Conditions" means these Terms and Conditions of Purchase which form part of the Contract.

Interpretation

2. Except if the context otherwise requires:

- (a) any party named means and includes any or all of the heirs executors administrators and permitted assigns of that party or in the case where the party named is a corporation then the corporation its successors and permitted assigns;
- (b) where two or more persons are named as a party these Terms and Conditions bind them jointly and severally;
- (c) in the event of any inconsistency between these Terms and Conditions and any other document, these Terms and Conditions prevail;

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- (d) the names and descriptions of the parties contained in any Quotation or Purchase Order has the meaning therein defined;
- (e) reference to any legislation includes any amendments or re-enactment of the legislation and any statutory instruments and regulations issued under the legislation;
- (f) words denoting individuals or persons include bodies corporate and trusts and vice versa;
- (g) headings are for convenience only and do not affect interpretation;
- (h) the description of any party includes that party's officers, servants, agents, assigns, successors and legal representatives.
- (i) reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule in these Terms and Conditions;
- (j) reference to any document or deed includes reference to such document or deed as amended, novated, supplemented, varied or replaced from time to time;
- (k) words denoting any gender include all genders;
- (l) where any word or phrase is given a definite meaning in these Terms and Conditions any part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (m) unless otherwise stated in writing:
 - (i) reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia; and
 - (ii) reference to a time and date in connection with the performance of an obligation by a party is a reference to Australian Eastern Standard Time notwithstanding that the obligation is to be performed elsewhere.

3. Headings are not part of these Terms and Conditions.

4. In any event of any inconsistency between the Terms and Conditions and any or all documents comprising the Contract, they shall be relied upon and interpreted in the descending order of precedence: Purchase Order, Special Conditions referred to in the Purchase Order, Terms and Conditions, and any other documents.

Incorporation of Terms

5. These are the Terms and Conditions of Purchase referred to in the Purchase Order.

6. These Terms and Conditions shall apply to any Contract entered into by the Purchaser issuing a Purchase Order to the Supplier and the Supplier is deemed to have accepted these Terms and Conditions upon either written acceptance of the Purchase Order, part performance of the Purchase Order or full performance of the Purchase Order.

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Price

7. The Price for the Goods includes:
 - (a) all taxes and duties for which the Supplier is liable;
 - (b) all pre-delivery costs including insurance and freight to the place of delivery; and
 - (c) all amounts payable for the use (whether in course of performance of the services or their enjoyment) of patents, copyright, registered designs, trademarks and other intellectual property rights.

Quality

8. The Goods must be:
 - (a) free from defects in materials and workmanship, and
 - (b) of merchantable quality.
9. The Purchaser may:
 - (a) inspect the Goods at any time and reject those not in accordance with the Contract; and
 - (b) reject Goods after acceptance if they do not comply with the Contract.
10. The Supplier must use its best endeavours to assist the Purchaser to inspect the Goods.
11. The Purchaser is not liable to pay for:
 - (a) rejected Goods;
 - (b) Goods damaged by inspection, or
 - (c) or costs of the Supplier associated with inspection or rejection.
12. If the Goods are rejected by the Purchaser, the Supplier must, without prejudice to the Purchaser's rights:
 - (a) replace or repair, without cost to the Purchaser, the rejected Goods; or
 - (b) remove the rejected Goods and refund payment made for the rejected Goods.
13. The Supplier must not manufacture or order Goods in bulk until the Purchaser has provided the Supplier with a Purchase Order.

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Delivery

14. The date, time, method and place of delivery will be as specified in the Purchase Order.
15. The Purchaser may specify in writing a later time for delivery.
16. Either a delivery docket, packing note or invoice shall accompany all deliveries and shall specify the Purchase Order number, description and quantities of Goods delivered and the consignment details.

Title and Risk

17. Property in, title to, and risk of loss or damage to the Goods, shall only pass to the Purchaser upon delivery and subject to acceptance pursuant to clause 9.
18. The Supplier will insure the Goods until the Purchaser has confirmed acceptance of the Goods pursuant to clause 9.
19. Upon request by the Purchaser, the Supplier will provide the Purchaser with proof of insurance acceptable to the Purchaser.

Warranty by the Supplier

20. If the Purchaser gives notice of any defect or omission discovered in the Goods during any a warranty period, the Supplier must either, at the election of the Purchaser, correct that the defect or omission without delay at no cost to the Purchaser, or issue a refund.
21. Where no warranty is otherwise specified, the warranty period shall be 90 days from acceptance by the Purchaser.
22. The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and re-assembly costs.
23. The warranty period subject to clause 20 and clause 21 does not prevail over any consumer guarantee the Purchaser is emitted to under the Competition and Consumer Act 2010 (Cth).

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Indemnity

24. The Supplier indemnifies the Purchaser, its officers, employees and agents against all loss, damage, injury or expense the Purchaser may sustain or incur as a result, whether directly or indirectly, of any breach of this Contract, including any action or claim for alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of the Purchaser's receipt or enjoyment of the Goods.

Payment

25. The Purchaser must pay for the Goods no later than 30 days after title to the Goods has passed to it or upon receipt of a correctly rendered invoice, whichever is the later.

Invoices

26. An invoice will be correctly rendered if it is addressed in accordance with the Purchase Order, identifies the Purchase Order number, is a tax invoice for GST purposes and identifies the Goods referred to in the Purchase Order.

Assignment

27. Any rights or obligations provided in these Terms and Conditions may not be assigned or transferred by the Supplier without the prior written permission of the Purchaser.

Sub-contracting

28. The Supplier must not sub-contract the whole or any part of the manufacture or supply of the Goods without the Purchaser's consent in writing.
29. The Supplier will be liable to the Purchaser for the acts and omissions of any sub-contractor as if those were the acts or omissions of the Supplier.

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Waiver

30. No right under these Terms and Conditions is waived or deemed to be waived except by notice in writing signed by the party waiving the right.
31. A waiver by one party does not prejudice its rights in respect of any subsequent breach of these Terms and Conditions by the other party.
32. A party does not waive its rights under these Terms and Conditions because it grants an extension, indulgence or forbearance to the other party.

Variation

33. This Contract may only be varied by written agreement between the Purchaser and the Supplier.
34. The Purchaser and the Supplier shall act reasonably in deciding whether to agree to a variation requested by the other party.

Termination

35. If the Supplier:
 - (a) fails to deliver the Goods by the date required by the Contract,
 - (b) is in breach of any other material term of the Contract,
 - (c) being an individual, commits an act of bankruptcy, becomes a bankrupt, executes a deed of assignment or deed of arrangement under Part 10 of the Bankruptcy Act 1966 as amended or a creditor accepts a composition under that Act or any analogous overseas law, or
 - (d) being a corporation (other than for the purpose of a reconstruction or amalgamation):
 - (i) is the subject of a compromise or arrangement with its creditors,
 - (ii) in respect of property of which a receiver or a receiver and manager is appointed, or

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(iii) in respect of which an administrator, a provisional liquidator or liquidator is appointed,

the Purchaser may, without prejudice to any other rights and remedies it has under the Contract or otherwise, terminate the Contract in whole or part by notice in writing to the Supplier.

36. On such termination the Purchaser may:

- (a) cease payment under the Contract;
- (b) recover from the Supplier all sums paid for undelivered Goods; and
- (c) purchase similar Goods from alternative Suppliers and claim by way of indemnity from the Supplier any loss it may occur in doing so.

No Partnership or Agency

37. This Contract does not create a relationship of agency or partnership between the Supplier and the Purchaser.

Governing Law & Jurisdiction

38. This Contract is governed by the laws of the state of Victoria.

39. The parties irrevocably submit to the exclusive jurisdiction of the courts of the state of Victoria.

Entire Agreement

40. These Terms and Conditions form part of the Contract and comprise the entire agreement between the parties.

Notices

41. Any communication to be given by a party under the Contract must be in writing addressed in accordance with the particulars for that party appearing in the Contract as may be notified in writing by that party to the other parties.

42. Each communication must be delivered by hand, prepaid post, fax transmission or email.

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43. A communication is deemed to be received:

(a) if hand delivered: on the same business day;

(b) if posted: on the second business day after posting; and

44. if sent by facsimile or email: at the time of transmission recorded on the fax or email and otherwise on the same business day unless the receiving party has requested re-transmission before the end of the business day.