

January 2020

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



**JEWELL  
TYRES**

ABN 65 623 463 511

# Jewell Tyres Standard Terms and Conditions of Sale

## DEFINITIONS

**'Contract'** means the legal relationship between the Purchaser and the Seller created when the Purchaser accepts a Quotation or the Seller accepts a Purchase Order.

**'Credit Account'** means a credit account established with the Seller pursuant to the Seller's credit terms.

**'Delivery'** has the defined meaning contained in s.3 of the Goods Act, 1958 (Vic.).

**'Goods'** means the goods described in any Invoice, Quotation or Seller's Acceptance.

**'Invoice'** means the Seller's invoice to the Purchaser for the Goods.

**'Interest Rate'** means a rate equivalent to the Commonwealth Bank of Australia's corporate overdraft reference rate (quarterly charging cycle) plus 5%.

**'Manufacturer'** means the original manufacturer of the Goods.

**'Price'** means the price of the Goods specified in the Invoice.

**'Purchaser'** means any person or corporation who accepts the Seller's Quotation for the sale of the Goods or whose Purchase Order is accepted by the Seller.

**'Purchase Order'** means any offer by the Purchaser to purchase Goods from the Seller for the Price.

**'PPSA'** means the Personal Property Securities Act, 2009, (Cth) as amended.

**'PPS Register'** means the personal property securities register established under s.146 of the PPSA.

**'Quotation'** means any offer made by the Seller to the Purchaser that specifies the Goods which the Seller offers to the Purchaser for the Price.

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

**'Seller's Acceptance'** means any document signed for or on behalf of the Seller with its authority accepting the terms of a Purchase Order

**'Terms and Conditions'** means these Terms and Conditions which form part of the Contract.

The terms **'Collateral'**, **'Debtor'**, **'Financing Change Statement'**, **'Financing Statement'**, **'Grantor'**,

**'Personal Property'**, **'Proceeds'**, **'Secured Party'**, **'Security Agreement'** and **'Security**

**Interest'** have the defined meanings contained in the Dictionary in s.10 of the PPSA.

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



ABN 65 623 463 511

## INTERPRETATION

1. 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;
  - (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, and

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



ABN 65 623 463 511

## INCORPORATION OF TERMS

2. These terms and conditions:
  - (a) form part of the Contract;
  - (b) constitute a Security Agreement as defined in the PPSA; and
  - (c) may not be varied or excluded except in writing signed by a duly authorised employee or director of the Seller.

## COMMENCEMENT AND TERMINATION

3. Any Quotation given by the Seller is capable of acceptance by the Purchaser within 7 days of the date of the Quotation unless otherwise provided in writing by the Seller or unless altered or withdrawn before the Purchaser's acceptance and subject always to availability.
4. Acceptance by the Purchaser of the Seller's Quotation:
  - (a) must be in writing; and
  - (b) shall be deemed to incorporate these Terms and Conditions.
5. Acceptance by the Seller of any Purchase Order from the Purchaser:
  - (a) may be in writing; and
  - (b) shall be deemed to incorporate these Terms and Conditions.

## ORDERS & SPECIFICATIONS

6. Any advice or recommendation, verbally or in writing, given by the Seller or its employees or authorised agents to the Purchaser or its employees or authorised agents regarding storage, use or application of the Goods is given in good faith and does not constitute professional advice or a guarantee of suitability or fitness for use. The Purchaser shall at all times remain responsible for the use and application of the Goods and the Seller's liability in this regard shall be limited absolutely to the providing of Goods in compliance with the manufacturer's specifications.
7. Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction in writing without any liability on the part of the Seller.
8. The Purchaser shall be responsible to the Seller for ensuring the accuracy of the terms of any Purchase Order submitted by it to the Seller and shall provide to the Seller all necessary information within a time sufficient to enable the Seller to perform the terms of the order.
9. The quantity, quality, description and specification of the Goods shall be as stated in the Quotation (if accepted by the Purchaser) or the Purchase Order (if accepted by the Seller).
10. The Seller shall be entitled to make changes:

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



**JEWELL  
TYRES**

ABN 65 623 463 511

- (a) to the specification of the Goods in order to conform with any applicable safety or other statutory requirements as directed by the Manufacturer.
- (b) to the specification of the Goods where the Goods are to be supplied to the Seller's specification, provided the changes proposed by the Seller do not materially affect quality or performance of the Goods.

## **PRICE**

11. Unless otherwise stated on the Quotation or the Seller's Acceptance, the Price is:
  - (a) 'Ex Works' being the place of delivery specified in the Invoice;
  - (b) exclusive of GST and sales taxes (as applicable); and
  - (c) subject to adjustment for exchange rate variations, duties, levies and taxes up to the time of delivery.
12. The Purchaser shall be responsible for all costs, insurance and freight from the time of dispatch of the Goods from the Seller's possession or control for delivery to the Purchaser.

## **PAYMENT**

13. Payment shall be made in full prior to delivery unless the Purchaser has an approved Credit Account with the Seller or unless otherwise agreed in writing.
14. Payment shall be made prior to delivery by electronic funds transfer to the Sellers' nominated bank account.

## **TRANSFER OF TITLE & RISK**

15. Risk in the Goods shall pass to the Purchaser upon the date of the Invoice or dispatch of the Goods from the Seller's possession or control for delivery to the Purchaser, whichever occurs first.
16. Property in and title to the Goods will not pass to the Purchaser until the Price with all adjustments has been paid in full.
17. Until the Purchaser makes payment in full:
  - (a) the Purchaser is the bailee of the Goods and must return them upon demand by the Seller;
  - (b) the Purchaser must keep the Goods separate and clearly marked as the property of the Seller;
  - (c) the Purchaser must:
    - (i) secure the Goods from risk, damage and theft;
    - (ii) insure and keep insured the Goods against such risks as are usual or common to insure against in a business of the type conducted by the Purchaser;

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



**JEWELL  
TYRES**

ABN 65 623 463 511

- (iii) keep the Goods in a good and serviceable condition; and
- (iv) not charge or encumber the Goods.

18. The Purchaser may sell the Goods in the ordinary course of business as agent for the Seller, but:

- (a) the Purchaser shall hold the proceeds of any such sale upon trust for the Seller in a separate and identifiable bank account;
- (b) the Purchaser will keep and make available to the Seller upon request, records of to whom the Goods have been sold or disposed and the payments made for the Goods;
- (c) the Seller may revoke the right to sell the Goods at any time; and
- (d) any payment made by the Purchaser which is later avoided by the application of any statutory provision will be deemed not to discharge the Purchaser's indebtedness and in that event the parties will be restored to the rights which each of them respectively held as if the payment had not been made.

19. The Seller holds an unpaid vendor's lien on the Goods until payment in full.

20. Provided that the Seller has made a demand for payment in writing which remains unsatisfied, it may dispose of the Goods and may recover the balance of the Price from the sale proceeds.

## **UNPAID INVOICES & CREDIT ACCOUNTS**

- 21. Terms for all approved Credit Accounts will be determined on a case by case basis by the Seller and will be detailed in the Credit Account approval given to that Purchaser as approved on a case by case basis.
- 22. The Seller reserves the right to charge interest on all unpaid Credit Accounts at the overdraft reference rate published by the Seller's bank.
- 23. If the Purchaser's cheque is dishonoured:
  - (a) the Purchaser shall pay to the Seller a fee per cheque as specified in Item 1 of Schedule 1; and
  - (b) the balance owing under any credit account will become immediately due and payable.
- 24. Interest at the Interest Rate will accrue on overdue Invoices from the date that payment was due until the date of payment (both dates inclusive).
- 25. The Purchaser shall indemnify the Seller for all costs and expenses incurred by the Seller in recovering unpaid monies including but not limited to legal costs and mercantile agent's costs.
- 26. Payments received from the Purchaser will be allocated first to payment of the Seller's costs and expenses.

## **DELIVERY**

- 27. The date, time, method and place of delivery will be as specified in the Seller's Invoice.
- 28. Time of delivery shall not be of the essence of the Contract unless agreed in writing.

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



ABN 65 623 463 511

29. The Seller reserves the right to make partial delivery of the Goods and each partial delivery shall for the purpose of payment be deemed as a separate agreement and will be invoiced respectively.
30. The Goods may be delivered by the Seller in advance of the delivery date unless otherwise provided in writing.
31. Where no method of delivery of the Goods has been specified, the Purchaser shall provide the Seller with all necessary instructions and authority to effect delivery within 5 business days after the Seller notifies the Purchaser of the availability of the Goods.
32. If the Purchaser does not take delivery of the Goods, the Seller may, at the Seller's discretion, and without prejudice to any other rights:
  - (a) store or arrange for the storage of the Goods and will charge Purchaser for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and/or
  - (b) make arrangements for the redelivery of the Goods and will charge the Purchaser for the costs of such redelivery; and/or
  - (c) after ten (10) business days of the Purchaser failing to take delivery of the Goods, resell or otherwise dispose of part or all of the Goods and charge Buyer for any shortfall below the Price.
33. If redelivery is not possible as set out above, the Purchaser must collect the Goods from Seller's premises and will be notified of this. The Seller can charge the Buyer for all associated costs including, but not limited to, storage and insurance.

## **DELAY**

34. The Seller shall not be responsible for delay or demurrage.
35. In the event of any delay or failure of delivery, the Purchaser shall grant the Seller an extension of time for delivery.
36. The Purchaser will not be relieved of any obligation to accept or pay the Price by reason of any delay in delivery or any war, riots, civil commotion, vandalism, theft, strike, lockout, industrial dispute, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storms or tempest, transport delays, acts of God, restrictions or interventions imposed by any laws, regulations, governments or agencies of governments and any other cause beyond the control of the Seller.

## **DEFECTIVE GOODS**

37. It is the Purchaser's responsibility when accepting the Contract or making the Purchase Order to ensure the Goods ordered conform to the Purchaser's requirements and are suitable and sufficient for the Purchaser's purpose.

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



**JEWELL  
TYRES**

ABN 65 623 463 511

38. The Purchaser must inspect the Goods on delivery or collection. Acceptance of the Goods will be deemed to have taken place upon satisfactory inspection of the Goods by the Purchaser.
39. If the Purchaser identifies any damages or shortages in quantity, the Purchaser must inform the Seller before acceptance of the Goods, providing details of the damages and/or shortages.
40. Other than by agreement, the Seller will only accept returned Goods if the Seller is satisfied, in its discretion acting reasonably, that those Goods are defective and if required, has carried out an inspection.
41. The Seller's obligation with respect to defective Goods is limited to supplying replacement Goods or a full credit or refund at its discretion.
42. The Seller does not provide refunds for the return of Goods in circumstances where the Purchaser:
  - (a) has had a change in mind; or
  - (b) has ordered too high of a quantity of Goods for the Purchaser's purposes.
43. The Seller will be under no liability or further obligation in relation to the Goods if:
  - (a) the Buyer fails to provide notice as set above; and/or
  - (b) the Purchaser makes any further use of such Goods after giving notice under this clause relating to damages and/or shortages; and/or
  - (c) the defect arises because the Purchaser did not follow the Seller's oral or written instructions about the storage, commissioning, installation, use and maintenance of the Goods; and/or
  - (d) the defect arises from normal wear and tear of the Goods; and/or
  - (e) the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by the Purchaser, the Purchaser's employees or agents or any third parties.
44. The Purchaser bears the risk and cost of returning the Goods.

## WARRANTY

45. The Seller agrees to assign to the Purchaser on request made by the Purchaser the benefit of any warranty or entitlement to the Goods that the Manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
46. The warranty and guarantee of the Manufacturer is accepted by the Purchaser **and is the only warranty and guarantee given to the Purchaser in respect of the Goods.**
47. To the extent permitted by applicable law, all warranties and conditions whether express, implied or statutory concerning the Goods supplied are excluded (including warranties as to merchantability and fitness for a particular purpose) save the warranties and manufacturer's warranties herein provided for.
48. Nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Purchaser by the *Competition and Consumer Act 2010* (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



ABN 65 623 463 511

49. Photographs and illustrations supplied by the Seller may not depict the specific Goods the subject of these terms and conditions.

## LIMITATION OF LIABILITIES

50. The Seller shall not be liable for, and the Purchaser releases the Seller from, any claims in respect of any injury, loss or damage (whether direct or consequential) arising from any defect in, or in the operation of, any Goods or part thereof or from loss of use thereof caused by any act or omission of the Seller or its servants or agents (including negligent acts or omissions).
51. The Purchaser shall indemnify the Seller against any claims which may be made against the Seller by any third party in respect of such injury, loss or damage.
52. The Seller will not be liable to the Purchaser for lost profits or other special, consequential, incidental, or indirect damages, losses, costs or expenses of any kind, however caused, and whether based on contract, tort including negligence or any other theory of liability.

## DEFAULT

53. If the Purchaser fails to pay the Price or to take delivery of the Goods:
- (a) the Seller shall be entitled to sell the Goods to a third party; and
  - (b) the Purchaser:
    - i. shall pay to the Seller the difference between the price paid by the third party and the Price due under this Contract including all adjustments; and
    - ii. indemnify the Seller for the costs of the sale to the third party including legal costs.
  - (c) If the Purchaser fails to pay for the Goods within the period of credit (if any) or of any period extended by the Seller at its discretion, the Seller may recover possession of the Goods and the Purchaser agrees that the Seller has irrevocable right to do so without incurring liability to liability to the Purchaser or any person claiming through the Purchaser, even if the Goods have become a fixture of a site.
54. The Purchaser is not entitled to set-off any claim for moneys allegedly owing by the Seller to the Purchaser.

## DISPUTES

55. The Seller and the Purchaser must use their best efforts to negotiate in good faith and amicably settle any disputes. If those negotiations do not result in a resolution of the dispute, then either party may submit the dispute for mediation by a mediator agreed by the parties, and failing agreement, appointed by the President of the Law Institute of Victoria.
56. If the dispute is not resolved within 21 days of reference to mediation then, but not earlier, the dispute shall be submitted to arbitration in accordance with either:



10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



**JEWELL  
TYRES**

ABN 65 623 463 511

- (a) the provisions of the Commercial Arbitration Act, 1984 (Vic) where both the parties have their places of business in Australia; or
- (b) the International Arbitration Act, 1974 (Cth) if the Purchaser's place of business is outside Australia and in a foreign State.

## **SEVERABILITY**

- 57. Any clause or part of a clause of these Terms and Conditions which is void, voidable, illegal or unenforceable in any jurisdiction is void, voidable, illegal or unenforceable only to that extent in that jurisdiction.
- 58. Where any clause or part of a clause is void, voidable, illegal or unenforceable it may be severed without affecting any other part of these Terms and Conditions.
- 59. If, notwithstanding the provisions of these Terms and Conditions a provision is still void, voidable, illegal or unenforceable:
  - (a) if the provision would not be void, voidable, illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
  - (b) in any other case the whole provision is severed, and the remainder of these Terms and Conditions remain in full force and effect.

## **WAIVER**

- 60. 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.
- 61. 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.
- 62. 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**

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

## **GOVERNING LAW & JURISDICTION**

- 65. This Contract is governed by the laws of the state of Victoria.
- 66. The parties irrevocably submit to the exclusive jurisdiction of the courts of the state of Victoria.

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



ABN 65 623 463 511

## ASSIGNMENT

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

## ENTIRE AGREEMENT

68. These Terms and Conditions form part of the Contract and comprise the entire agreement between the parties.
69. No earlier representation or agreement whether oral or in writing in relation to any matter dealt with in these Terms and Conditions has any effect from the date of the Contract.

## FURTHER ACTS

70. Each party must do or cause to be done or refrain from doing all such acts or things necessary to give effect to these Terms and Conditions.

## MERGER

71. None of these Terms and Conditions or any act, matter or thing done under or by virtue of the Contract and these Terms and Conditions or any other deed, instrument or document, or judgment, or order of any court, or judicial proceedings operates as a merger of any of the rights and remedies of the parties under these Terms and Conditions and those rights and remedies at all times continue in force.

## NOTICES

72. 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.
73. Each communication must be delivered by hand, prepaid post, fax transmission or email.
74. 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
  - (c) 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.

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



ABN 65 623 463 511

## PERSONAL PROPERTY SECURITIES ACT, 2009 (Cth)

75. The Purchaser acknowledges and agrees that by accepting these terms and conditions which form part of the Contract and constitute a Security Agreement for the purposes of the PPSA:

- (a) the Seller holds (as Secured Party) a Security Interest over the Goods and all after-acquired goods supplied by the Seller to the Purchaser and any Proceeds of the sale of those goods ('Collateral');
- (b) any purchase by the Purchaser on credit terms from the Seller or retention of title pursuant to clause 18 hereof will constitute a Purchase Money Security Interest' as defined under s.14 of the PPSA ('PMSI');
- (c) the PMSI granted herein will continue to apply to any Goods or Proceeds of sale of Goods;
- (d) the Seller will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other goods.
- (e) any Security Interest held by the Seller shall be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;
- (f) until title in the Goods passes to the Purchaser, it shall ensure all the Goods are kept free of any charge, lien or Security Interest and shall not otherwise deal with or encumber the Goods so as to prejudice any rights of the Seller under the Contract or the PPSA; and
- (g) in addition to any other rights under these terms and conditions or otherwise arising, the Seller may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Buyer, to search for and seize, dispose of or retain the Goods in respect to which the Purchaser has granted a Security Interest to the Seller.

76. The Purchaser undertakes to:

- (a) sign any further documents and provide such information which the Seller may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
- (b) indemnify and upon demand reimburse the Seller for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests;
- (c) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of the Seller; and
- (d) provide the Seller not less than 7 days prior written notice of any proposed change in the Purchaser's name, address, contact numbers, business practice or such other change in the Purchaser's details registered on the PPS Register to enable the Seller to register a Financing Change Statement if required.

77. The Seller and the Purchaser agree that ss.96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Contract.

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



**JEWELL  
TYRES**

ABN 65 623 463 511

78. The Purchaser hereby waives its rights to received notices under ss.95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
79. The Purchaser waives its rights as a Grantor and/or a Debtor under ss.142 and 143 of the PPSA.
80. Unless otherwise agreed in writing by the Seller, the Purchaser waives its right to receive a verification statement in accordance with s.157 of the PPSA.
81. The Purchaser shall unconditionally ratify any actions taken by the Seller pursuant to clauses 78 to 85 inclusive.
82. Clauses 78 to 85 inclusive will survive the termination of the Contract to the extent permitted by law.

## **TERMINATION**

83. Purchase Orders for Goods placed with the Seller can not be cancelled except with the prior approval of the Seller.
84. In the event the Seller accepts a cancellation of any Purchase Order with the Purchaser then the Seller shall be entitled to charge a reasonable fee for any work done on behalf of the Seller in respect to the Purchase Order to the date of cancellation of such Purchase Order, including but not limited to a fee for processing and acceptance of the Purchase Order and request for cancellation.
85. The Seller can terminate the Purchase Order immediately by notice to the Purchaser:
  - (a) if the Purchaser defaults on any of these Terms and Conditions;
  - (b) if the Seller reasonably determines the Purchaser is unable to pay any debts when they would fall due; or
  - (c) in the Seller's sole discretion, for whatever reason deems it suitable to warrant termination.
86. The above termination rights are without prejudice to any other rights (including damages) that the Seller may have as a result of any default, breach or termination.
87. If the Seller terminates the Purchase Order the Purchaser undertakes to indemnify the Seller against any claim or action in connection with any termination.
88. If the Purchase Order is terminated for whatever reason, the Seller may in its discretion refund to the Purchaser that much of the Price that the Seller has been paid except that much of the Price, if any, relating to Goods that have already been delivered to the Purchaser

## **FORCE MAJEURE**

89. Neither party shall be liable for any failure or delay in performing their respective obligations where such failure or delay in results from any force Majeure Events.
90. In the case where the Seller is affected by a Force Majeure Event, the Seller will give the Purchaser notice and the Seller's obligations under these Terms and Conditions may be

10 Beard Crescent  
Wodonga VIC 3690  
Phone: (02) 6024 1910  
Fax: (02) 6056 8039

Mobile: 0419 358 439  
Email: [tyres@jewelltyres.com.au](mailto:tyres@jewelltyres.com.au)  
Skype: dgjewell1  
Web: [www.jewelltyres.com.au](http://www.jewelltyres.com.au)



**JEWELL  
TYRES**

ABN 65 623 463 511

suspended to the extent to which they are affected by the relevant Force Majeure Event, for as long as the Force Majeure Event continues.

91. The Seller will use the Seller's best endeavours to remove, overcome or minimise the effects of that Force Majeure Event, however, where such act is industrial dispute specific to its own workforce it will deal with the event as its complete discretion. If a Force Majeure Event continues for more than three (3) months, either party may terminate the Purchase Order by giving three (3) business days written notice to the other party.

## **Schedule 1**

Dishonoured Cheque Fee:  
\$50 excluding GST per cheque.