



STANDARD TERMS & CONDITIONS FOR TIRE/WHEEL STORAGE

The following terms and conditions comprise the Agreement (“Agreement”) between The Tire Shelter, LTD (hereinafter “TTS”) and the Client identified in the Tire/Wheel Storage Agreement entered into by the TTS and the Client in respect to the Services and/or Products described therein. A copy of the present Terms and Conditions is available at all times on TTS’ website and the Client specifically agrees that the present Terms and Conditions are incorporated into the Tire/Wheel Storage Agreement entered into by the parties. More particularly, the present Standard Terms and Conditions and the Tire/Wheel Storage Agreement constitute the entire and final agreement of the parties and cancels and supersedes any prior or contemporaneous negotiations, agreements or information provided to the Client by TTS. Any modification to the present terms and conditions will be available from time to time on TTS’ website. The Client shall review any such changes as required. The Client acknowledges that it has not received or signed a printed copy of the present Standard Terms and Conditions but acknowledges having taken cognizance of same on TTS’ website.

- 1. Agreement.** By tendering Tire Sets (“*Client Tire Sets*”) or Wheel Sets (“*Client Wheel Sets*”) to TTS for storage or utilizing other related services of TTS with respect to Client Tire Sets or Client Wheel Sets, Client accepts these terms and conditions. TTS will accept requests for deposits and withdrawals of Client Tire Sets or Client Wheel Sets only from those individuals authorized by the Client, as identified to TTS in writing by a duly authorized officer of Client, and subject to the terms and conditions hereof;
- 2.** Client represents and warrants that it has the right to be in possession of all tires furnished to TTS and agrees to defend, hold harmless and indemnify TTS against any claim of any third party alleging that TTS is illegally and without right in possession of tires and/or wheel sets furnished by the Client, including payment of TTS’ reasonable attorney fees;
- 3. Terms.** Unless otherwise agreed in writing, the Term will be extended automatically by two (2) seasons (up to seven months) renewals at the FEE in the event the Client does not request delivery or pick-up of the tires or wheels. At the end of the second season, TTS will advise the Client that if the tires/wheels in issue are not delivered or picked-up with thirty (30) days, TTS may dispose of the tires/wheels at its discretion and in accordance with applicable legislation with no further recourse on the part of the Client. All storage amounts due will still be payable by the Client.

4. **Duty of Care, Claims and Limitations.** The liability of TTS to the Client or its customers shall be limited to damages or loss in amounts stated in this Section 4. TTS shall exercise that degree of care in safekeeping Client Tire Sets and Client Wheel Sets entrusted to it by Client which a reasonable and careful person, in a similar situation to that of TTS, would exercise with respect to similar goods of his own. Any claim by Client for missing or damaged Client Tire Sets or Client Wheel Sets must be made in writing to TTS within 3 days after delivery to Client;
5. **Limits on TTS's Liability.**
- A) **Tire liability:** TTS's liability, if any, to Client or any third party for any loss or damage to tires included in any Client tire set, regardless of the cause, is limited to the reasonable replacement value thereof with same or similar model tire discounted to reflect remaining tread life as determined at the time of receipt by TTS (i.e. depreciated value);
 - B) **Wheel liability:** TTS's liability, if any, to Client or any third party for any loss or damage to all or any portion of a Client wheel set or any wheel included in a Client tire set, regardless of the cause, is limited to cost of having wheels repaired, or in event of loss, the reasonable replacement of, or replacement value thereof, with the same or similar model wheel at dealer cost, including used wheels, reflecting similar age, wear and tear, up to a maximum value of \$250.00 per wheel in all cases;
 - C) In no event will TTS be liable for incidental, special, indirect, exemplary, punitive or consequential damages, including without limitation, loss of profits or goodwill, in any event whatsoever, even if advised of the possibility of such damages;
 - D) The limitations on TTS's liability set forth in this Section 4 will apply regardless of the form of action, whether in contract or tort, including negligence and in no event will TTS be liable for any reason beyond any limitation of liability set out herein, regardless of the form of action under which such liability is claimed. Without limitation, and in no event, will TTS be liable for any damage due to causes beyond the reasonable control of TTS including, but not limited to, acts of God, or the public enemy, labor disputes, riots or any other cause beyond TTS's control;
 - E) Without limitation, in no event will TTS be liable for air loss or corrosion that is a normal consequence of storage;
6. **Payments.** Storage fees will be billed by statement or via direct invoice to the Client and will be due and payable according to your applicable payment terms, or the 10th day of the month in the month directly following the invoice, whichever is earlier. Any amount not paid when due shall bear a late

payment charge until paid, at the rate of 1.5% per month or, if less, the maximum amount permitted by law. The Client shall also pay all applicable federal, state, provincial, local, sales, use and other taxes relating to this Tire/Wheel Storage Agreement for any services or products provided hereunder. Time is of the essence for all payments due hereunder, and if any payment due TTS is collected at law, or through an attorney-at-law or under advice therefrom, or through a collection agency, Client agrees to pay all costs of collection, including, without limitation, all court costs and reasonable attorneys' fees. If payment has not been made by Client in accordance with this provision, then TTS may suspend all or any parts of the services to Client until all payments due are made. If services are suspended or cancelled during the terms of this Tire/Wheel Storage Agreement, Client shall remain liable for all contracted charges accruing during such suspension;

7. **Transportation.** TTS is not and shall not be deemed a contract or common carrier. TTS shall pick-up and deliver a Client Tire Set or Client Wheel Set at Client's location(s) one time per season (up to seven (7) months). TTS shall use all commercially reasonable efforts to provide deliveries and pick-up services within the time periods specified in the Tire/Wheel Storage Agreement; A delivery and/or pick up request made in less than the stipulated time in the Tire/Wheel Storage Agreement and/or not entered on the TTS's provided online interface may be subject to an extra fee (Rush Order fee) of up to fifty dollars (\$50);

8. **Events of Default.** Client shall be in default under this Tire/Wheel Storage Agreement upon the occurrence of any one or more of the following events ("*Events of Default*"):
 - (a) failure of Client to pay any amounts owed hereunder by the due date of such payments and its failure to cure the same within 30 days of the due date therefor, or failure of Client to pay by the due date for such payment any amounts owed hereunder two or more times during any three consecutive month period (regardless if such act is "cured");
 - (b) Client's breach of any other provision of this Tire/Wheel Storage Agreement, which is not cured within 30 days thereof;
 - (c) Client becomes insolvent or makes any assignment for the benefit of its creditors;
 - (d) any proceeding is instituted by or against Client under any bankruptcy or similar laws for the relief of debtors; or
 - (e) the appointment of any trustee or receiver for any of Client's assets.

Upon the occurrence of any Event of Default, TTS in its sole discretion may exercise any and all of the following remedies:

- (i) refuse to provide further services with respect to, or provide access to, Client Tire Sets or Client Wheel Sets until the Event of Default is cured;
- (ii) demand in writing that Client (at Client's cost and expense) pick up all Client Tire Sets and Client Wheel Sets by a reasonable date at Dealer

Tire's facility or facilities, and dispose of such materials as it sees fit if Client fails to do so;

- (iii) deliver Client Tire Sets or Client Wheel Sets to Client at any of the Client locations with reasonable prior notice thereof;
- (iv) terminate this Tire/Wheel Storage Agreement;
- (v) recover all damages suffered by TTS for Client's breach of its obligations under this Tire/Wheel Storage Agreement;
- (vi) exercise all rights granted to storers by the Repair and Storage Liens Act (Ontario) or equivalent as adopted in each province where Client Tire Sets or Client Wheel Sets are stored; and
- (vii) such other rights and remedies as are available under applicable law. TTS shall have no liability to Client or any other person for taking any actions permitted by this section. The exercise by TTS of any one or more of its rights under this Tire/Wheel Storage Agreement shall not preclude TTS's exercise of any one or more of its other rights or remedies.

9. Restriction on Stored Materials. All Client Tire Sets and Client Wheel Sets shall be packaged and labeled in accordance with TTS's instructions prior to Client scheduling a pickup. TTS reserves the right to refuse acceptance of any Client Tire Sets or Client Wheel Sets that fail to comply with applicable storage restrictions and guidelines;

10. Indemnification. Client shall defend, indemnify and hold harmless Dealer Tire, its affiliates, and their respective officers, directors, employees and agents against any liability, cost or expense (including court costs and reasonable attorneys' fees) directly or indirectly arising out of third party claims, demands or actions relating to:

- (a) Dealer Tire's possession of Client Tire Sets or Client Wheel Sets;
- (b) Client's breach of this Tire/Wheel Storage Agreement; or
- (c) any failure of The Tire Shelter in connection with this Tire/Wheel Storage Agreement or the services (including, without limitation, any damage or destruction of Client Tire Sets or Client Wheel Sets), unless caused solely by the negligence or willful misconduct of Dealer Tire. The Tire Shelter shall defend, indemnify and hold harmless Client, its affiliates, and their respective officers, directors, employees and agents against any liability, costs or expense arising from a breach of this Tire/Wheel Storage Agreement by Client, subject to any other limitations contained in this Tire/Wheel Storage Agreement, including those contained in Section 4 above;

11. Notice of Loss and Time Bar. In the event that damage occurs to Client's property and it is alleged that the damage was caused directly or indirectly by TTS, then, without prejudice to Section 4 above, the Client must:

- (a) Immediately report the damage to TTS in writing but in no event later than three (3) days following discovery of the damage;
- (b) Allow TTS a reasonable opportunity to inspect the damage prior to undertaking repairs;

- (c) Report the claim to their own insurers and/or any potentially liable third party;
- (d) Failure to respect Sections 11a and 11b above will vitiate and constitute a complete bar to any claim by the Client. TTS is not responsible for any damages arising out of the failure of the Client to respect Section 11c.

12. Online Interface. TTS will make available to the Client use of its online Interface and/or software. Use by the Client of the Online Interface or any replacement thereof provided by TTS is compulsory and the Client agrees that it will use same to the extent reasonably required by TTS;

13. Modification. This Agreement binds the heirs, executors, administrators and assigns of the respective parties and cannot be changed orally. All prior understandings and agreements between the parties are merged in this Tire/Wheel Storage Agreement, which fully and completely expresses their agreement. This Tire/Wheel Storage Agreement may only be modified or amended by a written agreement signed by both the Client and TTS;

14. Non-waiver. The failure of TTS to enforce any right, remedy or condition of this Tire/Wheel Storage Agreement shall not be deemed a waiver thereof nor shall it void or otherwise affect its right to enforce the same right, remedy or condition at any subsequent time;

15. Addresses. Any notice of redelivery of deposits hereunder may be given or made at the addresses set out in the Tire/Wheel Storage Agreement, written notice of change of address has been delivered to TTS at the address noted above by certified mail;

16. Assignment. This Storage Agreement may not be assigned by the Client without the prior written consent of TTS;

17. Invalidity. In the event that any provision of this Tire/Wheel Storage Agreement is declared to be void or unenforceable, the remainder of this Tire/Wheel Storage Agreement will not be affected thereby and will remain in full force and effect to the extent feasible in the absence of the void or unenforceable provision. The parties furthermore agree to execute and deliver such amendatory contractual provisions to accomplish lawfully as nearly as possible the goals and purposes of the provision so held to be void or unenforceable;

18. Governing Law. This Tire/Wheel Storage Agreement will be governed by and be construed in accordance with the Laws of the Province of Ontario, Canada without regard to the conflicts of law principles thereof. No party to this Tire/Wheel Storage Agreement shall commence or prosecute any suit, proceeding or claim to enforce the provisions of this Tire/Wheel Storage Agreement, to recover damages for the breach of default of this Tire/Wheel Storage Agreement or otherwise arising under or by reason of this Tire/Wheel Storage Agreement, other than in the courts located in Ontario, Canada (the "Jurisdiction"). Each of the parties to this

Tire/Wheel Storage Agreement consents to and submits to the jurisdiction and venue of the federal or provincial courts located in the Jurisdiction and waives any and all objections to the Jurisdiction that they have under any provincial or federal laws of Canada;

19. Entire Agreement. Client acknowledges that this Tire/Wheel Storage Agreement constitutes the entire agreement between TTS and Client with regard to the subject matter hereof, and supersedes any prior discussions, agreements, representations, warranties or undertakings between the parties.