

TERMS & CONDITIONS

Last updated: October 1, 2012

Please read these Terms & Conditions (“Terms”, “Terms and Conditions”) carefully before ordering from the <https://flextyres.com/> website (the “Service”, “Seller”) operated by FlexTyres (“us”, “we”, or “our”).

You (“Buyer”), your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who access or use the Service.

(collectively referred to as the “Parties” or individually as the “Party”) and includes that Party's successors and assigns.

By accessing or using the Service you agree to be bound by these Terms. If you disagree with any part of the terms then you may not access the Service.

Purchases

If you wish to purchase any product or service made available through the Service ("Purchase"), you may be asked to supply certain information relevant to your Purchase including, without limitation, your Name, Address, Company Name, Phone Number and E-mail.

Payment Terms. All payments are due net thirty (30) days from the invoice date unless otherwise specified by Seller. Amounts unpaid after such date shall bear interest from the date of the invoice at a rate of 3% percent per day. Seller shall be entitled to reimbursement from Buyer for all costs and fees, including reasonable attorneys’ fees, incurred by Seller in the collection of any overdue amounts.

Seller may suspend its performance until any overdue payment is made or Seller receives assurances, adequate in Seller’s opinion, that the payment will be promptly made. In the event of such suspension of performance by Seller, there will be an equitable adjustment made to the remaining delivery schedule and order pricing to reflect the duration and cost resulting from such suspension.

Buyer shall not withhold payment of any amounts due and payable because of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise. Suppose Buyer disputes any invoice or portion thereof. In that case, it shall notify Seller in writing within 3 days of receipt of said invoice, detail the reason for the dispute, and pay all undisputed amounts. All charges, not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth above.

Buyer may only suspend the order upon Seller’s written consent. In the event of such Buyer suspension, the delivery time will be changed, taking into account the suspension, and Buyer will promptly pay Seller for all costs, including related overhead costs, resulting from such suspension.

Delivery and Shipping Terms. The delivery date(s) quoted are based on the Seller's best estimate of a realistic time when delivery will be made and are subject to confirmation at the time of acceptance of any resulting order. They are also dependent upon prompt receipt by the Seller of all information necessary to proceed with the work without interruption. Seller reserves the right to make either early shipment or partial shipments and invoice Buyer accordingly.

Cancellation of Purchase Order. Buyer may cancel its order only with the prior written consent of Seller. All cancelations will be subject to payment to Seller of reasonable and proper cancelation charges.

Rejection of Goods and Refund Policy. A rejection of the Goods for nonconformity shall not be effective unless it is made, and written notice thereof is given to Seller within three days of receipt of the Goods (hereinafter called "Notification of Inspection Result".) Buyer shall deliver at their expense the rejected Goods to Seller at the location specified by Seller. If any Goods are deemed defective, the Buyer may bill Seller for the costs arising from such return shipment. If the Notification of Inspection Result is not sent to Seller within three days of receipt of the Goods, it shall be deemed that the Goods had no defect. Seller shall promptly ship non-defective replacement Goods at its sole expense in exchange for the returned defective Goods if such returned Goods are reported as having a defect in the Notification of Inspection Result. Seller reserves the right to inspect the rejected Goods and to determine lack of conformity in its sole discretion.

No returns of special, custom, or made-to-order Goods will be permitted. Returns for credit are not allowed without the Seller's written consent. Credit will be based on the price at the time of the original invoice. All returns will be assessed a 10% percent restocking fee. The Seller has a refund policy of up to fifty (50) tires (at sales price).

Seller's Lien. Until the unpaid contract price and any other amounts payable by Buyer to Seller under the order acknowledgment are paid in full, Seller shall have a lien on the Goods for the unpaid amounts. Buyer hereby grants to Seller a security interest in the Goods to secure payment of such amounts.

Taxes and Fees. Unless expressly stated and agreed to in writing by Seller, quoted prices do not include shipping and handling charges, sales, use, excise, or similar taxes or duties. Buyer shall pay these taxes directly if the law permits or reimburse Seller if Seller is required to collect and pay them.

Changes in Cost. Any change in insurance premiums, destination, or other shipping charges, including fluctuations in freight, which may be established after the date of the Seller's order acceptance, shall be at the expense of the Buyer.

Limitation of Liability.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER OR, AS TO SERVICES, FOR THE AMOUNTS PAID TO SELLER FOR SERVICES PERFORMED HEREUNDER.

Disclaimer of Warranty. All Goods not manufactured by Seller are sold only with the manufacturer's warranties if any. SELLER MAKES NO OTHER WARRANTY CONCERNING THE GOODS, AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller personnel are not authorized to alter this disclaimer of warranty.

Indemnification. Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other Party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third Party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent

negligence of Buyer and Seller, each Party shall bear the loss or expense in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Goods is considered third-party property.

Failure to Take Delivery. If any Goods to be delivered under this Contract cannot be delivered to Buyer when ready due to any cause attributable to Buyer, the Goods shall be held at Buyer's sole risk in all respects. At Buyer's expense, Seller may thereafter store, insure or otherwise protect such Goods or may resell same for Buyer's account. Any amounts otherwise payable to Seller upon delivery or shipment shall be due, and a fee of 10% percent of the value of the Goods will be charged to Buyer.

Title and Risk of Loss or Damage. Title, risk of loss, or damage shall pass to Buyer when the Goods are delivered to the destination port designated in the applicable accepted purchase order.

Compliance with Laws. Seller will take reasonable steps to ensure the Goods conform with applicable laws and regulations; however, Buyer acknowledges that Goods may be used in various jurisdictions for various applications subject to disparate regulations. Therefore, Seller cannot warrant compliance with all applicable laws and regulations. Seller disclaims any representation or warranty that the Goods conform to laws, regulations, ordinances, codes, or standards, except as expressly set forth by Seller in writing. Buyer shall comply with all applicable laws, regulations, and ordinances related to their Country and shall hold harmless and indemnify the Seller for any damages caused as a result of breach or non-compliance of the said laws, regulations, and ordinances.

Non-assignment: The Buyer shall not transfer or assign this agreement without the Seller's consent. The Seller may transfer or assign this agreement or subcontract its obligations without the Buyer's consent.

Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Contract is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

Force Majeure

For this agreement, "Force Majeure" means an event which a diligent party could not have reasonably avoided in the circumstances, which is beyond the control of a party and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes, lockouts or other industrial action, terrorist acts, confiscation or any other action by government agencies, failure of manufacturers or suppliers to deliver, bankruptcy or insolvency of manufacturers or suppliers, suspension of shipping facilities or act or default of carrier.

A Party's failure to fulfill its obligations due to Force Majeure, shall not be considered a breach of this agreement, provided that the Party has taken all reasonable precautions, due care, reasonable alternative measures, and minimal delay all to carry out the terms of this agreement.

Default. If Buyer breaches or is otherwise in default under the order acknowledgment or under any other contract between the parties hereto, Seller at its sole option may defer delivery of the Goods until the default is cured, or may treat the default as a repudiation by Buyer of the Order in its entirety, resell the Goods and hold Buyer liable for such damages as Seller may incur, including consequential and incidental damages.

Termination:

- Either Party may terminate this agreement upon giving the other Party no less than 7 days' notice in writing. If a Party wishes to terminate the Contract with less than these stated days, the other Party reserves the right to charge costs they have already paid in advance or incurred.
- The termination of this agreement shall not discharge the liabilities accumulated by either Party.
- Any Clauses intended by the Parties or this agreement to survive the termination of this agreement shall survive the termination of this agreement by whatever cause.

Dispute resolution: Parties agree to settle disputes under this agreement through (select one)

Negotiation

Mediation

Arbitration

Litigation

Court Costs and Attorneys' Fees. In any action under this agreement, the prevailing Party shall be entitled to recover costs of court and reasonable attorneys' fees from the other Party, which fees shall be in addition to any other relief that may be awarded.

Parties acknowledgments: The Parties acknowledge that they have been provided with the opportunity to negotiate this agreement and to seek legal counsel before signing this agreement. In addition, they acknowledge that they have the capacity to contract and enter into this agreement and that further, they have entered into this agreement freely and voluntarily.

General provisions

- This agreement may be amended only by the written consent of the Parties hereto.
- If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.
- This agreement constitutes the entire agreement between the Parties. It supersedes all prior oral or written agreements or understandings between the Parties concerning the subject matter of this agreement. The Parties will exercise utmost good faith in this agreement.
- Unless otherwise provided, failure by either Party to enforce any of the terms or conditions of this agreement shall not be a waiver of their right to enforce the terms and conditions of this agreement.
- This agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute the same instrument.
- The Article and Section headings in this agreement are for convenience, and they form in no part of this agreement and shall not affect its interpretation.
- Whenever used herein, the singular number shall include the plural, and the plural number shall include the singular.
- Any references herein to the masculine gender or to the masculine form of any noun, adjective, or possessive shall be construed to include the feminine or neuter gender and form, and vice versa.
- This agreement shall be governed in all respects by the Laws of Belgium without regard to its conflict of law provisions. If the Contract includes the sale of Goods and Buyer is outside of Seller's Country, the United Nations Convention on Contracts for the International Sale of Goods shall apply.
- The Parties shall be served through the above-named addresses in writing and delivered in person or sent by registered or certified mail (return receipt requested) or nationally recognized overnight delivery service, postage prepaid, or delivered via telecopier or facsimile transmission, and either Party may change the below addressees by reasonable notice in writing given to the other Party.

Changes

We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material we will try to provide at least 30 (change this) days' notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

Contact Us

If you have any questions about these Terms, please contact us.