



# CREDIT ACCOUNT APPLICATION FORM AND TERMS AND CONDITIONS OF TRADE AGREEMENT

## 1. Applicant's Details

Applicant's business structure (please tick one):

Sole Trader  Partnership  Company  Trust  Local Gov./Gov. Authority  International applicant

Applicant's full legal name: .....

Trading as: .....

ACN: ..... Date of registration: .....

ABN: .....

Street address: .....

Postal address:  
.....  
.....

Telephone: ..... Fax: .....

Applicant's Website: .....

Accounts Contact Person: ..... Email Address: .....

List of associated companies names and ACNs:  
.....  
.....  
.....

## 2. Type of Business

Type of business or main income-producing activity: .....

Date commenced trading: .....

Number of employees: .....

Are the premises on which the activity is carried out (please tick one):

Owned  Rented  Mortgaged

**3. Trade References**

**Reference 1**

Name:.....

Address: .....

Telephone: ..... Fax: .....

**Reference 2**

Name:.....

Address: .....

Telephone: ..... Fax: .....

**Reference 3**

Name:.....

Address: .....

Telephone: ..... Fax: .....

**4. Applicant's Credit Details**

Bank: .....

BSB: .....Account number: .....

Credit requested (monthly estimate): \$.....

Payment run dates: .....

Invoice processing cut-off dates: .....

Note: The amount requested is not the Credit Limit. In accordance with clause 3.3 of the Terms and Conditions the approved Credit Limit will be confirmed with the Applicant in writing.

**5. Details of Sole Trader / Partners / Directors / Trustees**

Title: ..... Name: .....

Residential address: .....

Telephone (Home & Mobile): ..... Email: .....

Driver's licence number: ..... DOB: .....

**Additional partners/directors/trustees:**

Title: ..... Name: .....

Residential address: .....

Telephone (Home & Mobile): ..... Email: .....

Driver's licence number: ..... DOB: .....

Have any of the directors/partners/trustees previously been bankrupted or involved in a company which has been liquidated or placed into administration?

Yes  No  (if YES, please provide the details below):

.....  
.....  
.....  
.....

**6. Terms of Application**

The applicant (**Applicant**) named in section 1 of this application form requests that Get A Grip Tyres Pty Ltd ACN 104023145 (**Get A Grip Tyres**) provide goods and/or services to the Applicant, or any person authorised by the Applicant, on the Terms and Conditions of Trade (**Conditions**) set out in section 9 of this application form (**Application**).

**Applicant please note:**

By signing this Application in the space provided in section 7 of this application form, the Applicant:

- a) applies to open a credit account with Get A Grip Tyres, to be operated, established and used in accordance with the Conditions (a copy of which Conditions the Applicant acknowledges having received and read);
- b) acknowledges that Get A Grip Tyres may accept this Application expressly in writing or impliedly by conduct (including by providing goods or services to the Applicant after receipt of this Application) – however, Get A Grip Tyres may, at its absolute discretion, refuse to open a credit account pursuant to this Application;
- c) acknowledges and agrees that the Conditions apply and bind Get A Grip Tyres and the Applicant in every case where Get A Grip Tyres provides goods and/or services to (or on behalf of) the Applicant at any time on or after the date on which the Applicant makes this Application (whether or not Get A Grip Tyres agrees to open a credit account pursuant to this Application);
- d) acknowledges and agrees that it is bound by the Conditions as may be varied by Get A Grip Tyres in accordance with clause 21 of the Conditions from time to time; and
- e) warrants to Get A Grip Tyres that the information provided to Get A Grip Tyres in this application form is true and correct.

**Guarantor(s) please note:**

If Get A Grip Tyres accepts this Application, then the guarantor(s) named below agree(s) to guarantee, and provide an indemnity with respect to, the Applicant’s obligations to Get A Grip Tyres in accordance with section 8 of this application form.

**7. Signature of Applicant**

Executed by the Applicant, in accordance with s 127 of the *Corporations Act 2001* (Cth):

.....

Signature of Director

Signature of Director/Company Secretary

.....  
Full Name of Director .. Full Name of Director/Company Secretary

Date: ..... Date: .....

## 8. Guarantee, Indemnity and Charge

1. In consideration for Get A Grip Tyres agreeing to supply or continuing to supply goods and/or services on credit to the Applicant, each guarantor named below (**Guarantor**) (and if more than one, then jointly and severally):

1.1 unconditionally and irrevocably guarantees:

- (a) the due and punctual payment to Get A Grip Tyres of all amounts, debts and monetary liabilities whatsoever (including, without limitation, costs and expenses) which are, or which may become, payable by the Applicant to Get A Grip Tyres on any account and in any capacity (**Guaranteed Moneys**); and
- (b) the performance of each of the Applicant's other obligations under this Application and the Conditions.

**(Guarantee)**

1.2 as a separate and independent obligation, agrees to hold Get A Grip Tyres fully indemnified with respect to every claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by Get A Grip Tyres in relation to the nonpayment of the Guaranteed Moneys, non-recovery of goods for which payment has not been received or any claw back by any liquidator of moneys paid, or property transferred or delivered, as a voidable preference or on any other basis at law or in equity or as a result of any breach by the Applicant of this Application or the Conditions (**Indemnity**).

2. The Guarantor hereby agrees with Get A Grip Tyres that:

2.1 To the extent to which any Guaranteed Moneys are not paid when due, the Guarantor must immediately on demand pay to Get A Grip Tyres the amount of the Guaranteed Moneys that have not been paid.

2.2 If the Applicant fails to perform any other of the Applicant's obligations under this Application and the Conditions when they are due, the Guarantor must immediately on demand cause the Applicant to rectify its default in that regard within any period of time reasonably specified by Get A Grip Tyres in a notice of default.

2.3 The Guarantee, Indemnity and charge specified in clause 11 of this section 8 (**Charge**) shall be a continuing obligation of the Guarantor and the Guarantor's obligations under the Guarantee, Indemnity and Charge are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including but not limited to:

- (a) any other guarantee or any security or instrument which Get A Grip Tyres may hold in respect of any Guaranteed Moneys or any judgment obtained by Get A Grip Tyres, or any release, discharge, surrender or modification of, or dealing with, any such guarantee, security, instrument or judgment;
- (b) any arrangement with, or release of, the Applicant or any other guarantor or person by Get A Grip Tyres or by operation of law;
- (c) the fact that any of the Guaranteed Moneys are irrecoverable for any reason;
- (d) any change in the membership of or termination of any partnership or firm of which the Applicant or Guarantor is a member or the death, liquidation or bankruptcy of the Applicant or the assent of Get A Grip Tyres to any composition, arrangement or scheme in respect of the Applicant or the acceptance by Get A Grip Tyres of any dividend or sum of money thereunder;
- (e) the failure of any other person named as a party to execute this Guarantee, Indemnity and Charge;
- (f) any variation of the terms upon which the goods and/or services are supplied to, or paid for by, the Applicant (including, without limitation, any variation to the Conditions);
- (g) any claim the Applicant may have against Get A Grip Tyres;
- (h) any act or omission by Get A Grip Tyres which may result in prejudice to the Guarantor;
- (i) an increase in the amount of Guaranteed Moneys;
- (j) the fact that any credit was provided by Get A Grip Tyres before this Guarantee, Indemnity and Charge was signed;
- (k) payment to Get A Grip Tyres by any person which is later avoided by the application of any statutory provision;
- (l) the death, liquidation or bankruptcy of the Applicant or the Guarantor;
- (m) the granting of any time, waiver, credit, any indulgence, concession to, composition with, release or discharge by novation of any person whatsoever by Get A Grip Tyres;
- (n) the assignment, novation, transfer or assumption of, or other dealing with, any rights or obligations under this Guarantee, Indemnity and Charge or any other document or agreement;
- (o) whether or not Get A Grip Tyres has made demand upon the Applicant, given notice to the Applicant or any other person in respect of anything, or taken any other steps against the Applicant or any other person; and
- (p) any other act, omission, matter or thing whatsoever.

3. Until Get A Grip Tyres has received payment of all of the Guaranteed Moneys, the Guarantor agrees:

- 3.1 in the event of any bankruptcy or other administration of the Applicant's estate or any winding up of or scheme of arrangement with respect to the Applicant, that the Guarantor will not without the prior consent of Get A Grip Tyres lodge any proof of debt or similar claim in respect of any debt or liability of the Applicant to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Applicant and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for Get A Grip Tyres;
  - 3.2 if requested by Get A Grip Tyres, to lodge a proof of debt or similar claim in any such administration and to enforce any such security and to execute all such documents and do all such things as Get A Grip Tyres may require to enable Get A Grip Tyres to have and receive the benefit of or arising from any such proof, claim or security;
  - 3.3 not to attempt or purport to be subrogated to Get A Grip Tyres; and
  - 3.4 the Guarantor's liability under this Guarantee, Indemnity and Charge shall be that of principal debtor.
4. The Guarantor irrevocably appoints Get A Grip Tyres as the Guarantor's attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do in order to give effect to the terms and intent of this Guarantee, Indemnity and Charge, including without limitation the following:
    - 4.1 to make, sign, execute, seal and deliver any document; and
    - 4.2 to take possession of, use, sell or otherwise dispose of any asset of the Guarantor.
5. The Guarantor further acknowledges and agrees that:
    - 5.1 the Guarantor has signed this Guarantee, Indemnity and Charge voluntarily;
    - 5.2 the Guarantor has had the opportunity to, before entering into this Guarantee, Indemnity and Charge, consult and receive advice as to the significance, effect and consequences of, and obligations created by, this Guarantee, Indemnity and Charge from a legal adviser independent of Get A Grip Tyres and that the Guarantor has either obtained or elected not to obtain such advice;
    - 5.3 the Guarantor understands the nature and effect of this Guarantee, Indemnity and Charge; and
    - 5.4 it has not entered into this Guarantee, Indemnity and Charge in reliance on any representation, warranty, promise or statement of Get A Grip Tyres or any person on behalf of Get A Grip Tyres.
6. The Guarantor agrees that a certificate issued by Get A Grip Tyres stating any moneys owed by the Applicant or Guarantor to Get A Grip Tyres under this Guarantee, Indemnity and Charge shall be conclusive evidence of such amounts owing by the Applicant and Guarantor.
  7. Get A Grip Tyres may give the Applicant more credit than the Applicant has asked for in this Application. Get A Grip Tyres is not required to inform the Guarantor of the amount of credit given to the Applicant at any time.
  8. No payment shall operate to discharge or reduce a liability of the Guarantor if such payment is or becomes voidable under any law relating to bankruptcy or the winding up of companies, and no discharge or release consequent upon such payment shall discharge the liability of the Guarantor under this Guarantee, Indemnity and Charge.
  9. Where any provision of or application of any provision of this Guarantee, Indemnity and Charge is rendered ineffective by operation of law in any jurisdiction that shall not affect the validity, legality, enforceability or effectiveness of the remaining provisions or of that provision in any jurisdiction other than the jurisdiction where the provision is rendered ineffective.
  10. The contracts of guarantee and indemnity comprising the Guarantee and Indemnity are separate and independent obligations of the Guarantor and neither limits the generality of the other.
  11. To secure payment of the Guaranteed Moneys the Guarantor hereby charges with due payment of the Guaranteed Moneys all of the Guarantor's present and future interests in real property (**the Property**). The Guarantor agrees that the charge creates a caveatable interest in the Property and the Guarantor consents to Get A Grip Tyres lodging a caveat or caveats against the Property with respect to the interest of Get A Grip Tyres in the Property. Upon demand by Get A Grip Tyres the Guarantor agrees to immediately execute a mortgage or other instrument over the Property in terms satisfactory to Get A Grip Tyres to further secure payment of the Guaranteed Moneys. The Guarantor hereby and by way of security irrevocably appoints every officer and legal practitioner acting for Get A Grip Tyres jointly and each of them severally as the Guarantor's lawful attorney with the power and for the purpose of executing (including as a deed) a mortgage or other instrument of security in any form determined in the absolute discretion of the Attorney over any of the Property to secure the Guaranteed Moneys, if the Guarantor fails within a reasonable time of such demand to execute such mortgage or other instrument of security, and to procure the registration of such mortgage or other instrument of security.
  12. All payments which the Guarantor is required to make under this Guarantee, Indemnity and Charge must be made without any set-off, counterclaim, condition or deduction of any kind and for any reason, and are payable to Get A Grip Tyres on demand.
  13. Any demand or notice may be served on the Guarantor by (a) delivering it to the Guarantor personally, or (b) sending it by post to the Guarantor's address as shown in this Application or as otherwise notified by the Guarantor to Get A Grip Tyres in writing from time to time.
  14. The Guarantor agrees to fully indemnify Get A Grip Tyres for all expenses and legal costs (including actual legal fees and disbursements on a solicitor and client basis) that Get A Grip Tyres incurs in enforcing this Guarantee, Indemnity and Charge.
  15. The Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this Guarantee, Indemnity and Charge. The Guarantor agrees to pay the GST inclusive amount of any taxable supply made under or in connection with this Guarantee, Indemnity and Charge.
  16. In this Guarantee, 'Guarantor' means the Guarantor jointly and each person who is a Guarantor severally and their respective successors and assigns, and 'Agreement' means all current and future agreements or arrangements.

- 17. In this Guarantee, Indemnity and Charge, the following rules of interpretation apply unless the context otherwise requires:
  - 17.1 words denoting the singular number include the plural (and vice versa);
  - 17.2 words denoting natural persons include bodies corporate and unincorporate and their permitted assigns (and vice versa); and
  - 17.3 references to any party to this Guarantee, Indemnity and Charge or any other agreement or instrument include the party's successors and permitted assigns.
- 18. This Guarantee, Indemnity and Charge is governed by the laws of Western Australia and the Guarantor irrevocably submits to the exclusive jurisdiction of the Courts of that jurisdiction.

**Executed as a deed**

**SIGNATURE OF GUARANTORS**

Each director of a corporate applicant must give this Guarantee, Indemnity and Charge.

**Signatory 1**

Signature: .....

Full Name of Guarantor: .....

Date of birth: .....

Residential Address: .....

.....

Position: .....

Date: .....

**THIS GUARANTEE MUST BE WITNESSED BY AN INDEPENDENT THIRD PARTY**

Witness signature: .....

Full Name of Witness: .....

Address:.....

.....

Occupation of Witness: .....

.....

**Signatory 2**

Signature: .....

Full Name of Guarantor: .....

.....

Date of birth: .....

Residential Address: .....

.....

Position: .....

Date: .....

**THIS GUARANTEE MUST BE WITNESSED BY AN INDEPENDENT THIRD PARTY**

Witness signature: .....

Full Name of Witness: .....

Address:.....

.....

Occupation of Witness: .....

.....

**Signatory 3**

Signature: .....

Full Name of Guarantor: .....

Date of birth: .....

Residential Address: .....

.....

**THIS GUARANTEE MUST BE WITNESSED BY AN INDEPENDENT THIRD PARTY**

Witness signature: .....

Full Name of Witness: .....

Address:.....

.....

Position: .....

Occupation of Witness: .....

Date: .....

.....

**Signatory 4**

**THIS GUARANTEE MUST BE WITNESSED BY AN  
INDEPENDENT THIRD PARTY**

Signature: .....

Witness signature: .....

Full Name of Guarantor: .....

Full Name of Witness: .....

Date of birth: .....

Address:.....

Residential Address: .....

.....

.....

Position: .....

Occupation of Witness: .....

Date: .....

.....



## 9. Terms and Conditions

### 1. Definitions

- 1.1 **'Account'** means the credit account with Get A Grip Tyres the subject of an Application which Get A Grip Tyres has opened (or may open) for the Applicant's use.
- 1.2 **'Applicant'** means the applicant named in section 1 of this application form.
- 1.3 **'Application'** means the request by the Applicant that Get A Grip Tyres supply to it Goods and Services and the application by the Applicant that Get A Grip Tyres open a credit account for the Applicant, as set out in this application form.
- 1.4 **'Confidential Information'** means any and all commercially sensitive information relating to Get A Grip Tyres' business, the Goods and the Services including but not limited to know-how and trade secrets, however it does not include information in the public domain other than as a result of disclosure by the Applicant in breach of its obligations of confidentiality under these terms and conditions.
- 1.5 **'Goods'** means any and all goods provided (or to be provided) by Get A Grip Tyres to the Applicant or to any third party at the request of or authorised by the Applicant.
- 1.6 **'GST'** means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 1.7 **'Get A Grip Tyres'** means Get A Grip Tyres Pty Ltd ACN 104023145.
- 1.8 **'Intellectual Property Rights'** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property right, anywhere in the world whether or not registered.
- 1.9 **'Loss'** means damage, loss, cost, expense or liability (whether actual or contingent).
- 1.10 **'Services'** means any and all services provided (or to be provided) by Get A Grip Tyres to the Applicant or to any third party at the request of or authorised by the Applicant.
- 1.11 **'Website'** means each internet site owned by Get A Grip Tyres including that operating under the URL [www.getagriptyres.com.au](http://www.getagriptyres.com.au).

### 2. Application

- 2.1 These Terms and Conditions apply in every case where Get A Grip Tyres provides Goods or Services of any kind to the Applicant, unless otherwise agreed in writing between Get A Grip Tyres and the Applicant. Acceptance of Goods or Services by the Applicant is conclusive evidence before any court that these Terms and Conditions (as varied from time to time) apply and are binding on the Applicant.
- 2.2 The terms and conditions of any contract made pursuant to clause 5.1 prevail to the extent that they are inconsistent with these Terms and Conditions. Where no inconsistency arises, the provisions of these Terms and Conditions shall be taken to apply in addition to any terms and conditions expressed in the contract.
- 2.3 Subject to clause 2.2, these Terms and Conditions prevail to the extent that they are inconsistent with any trading terms or other communication provided by the Applicant to Get A Grip Tyres.

### 3. Credit terms

- 3.1 For the purposes of considering whether to approve the Application and, upon approval of the Application, at any time during the existence and operation of the Account, the Applicant authorises Get A Grip Tyres to make such enquiries as Get A Grip Tyres may require to be satisfied as to the creditworthiness of the Applicant. For that purpose, Get A Grip Tyres may disclose the information in the Application and seek consumer credit information, per Part IIIA of the *Privacy Act 1988* (Cth) (**Privacy Act**). Without limiting the effect of this clause 3.1, Get A Grip Tyres may make such enquiries with any trade referee named by the Applicant, credit reporting agency or any other relevant third party. The Applicant agrees to provide such signed written authorities, permitting Get A Grip Tyres to access information pertaining to the Applicant, addressed to the Applicant's banker, or other credit providers, as Get A Grip Tyres requires from time to time.
- 3.2 Get A Grip Tyres reserves the right to require, as a condition of the provision of credit, that the Applicant spend a minimum dollar amount per year to obtain Goods or Services from Get A Grip Tyres.
- 3.3 Get A Grip Tyres may specify in writing to the Applicant the maximum (GST inclusive) amount that may be charged to the Account over a particular period (**Credit Limit**). The Applicant's Credit Limit is subject to review at any time by Get A Grip Tyres. Get A Grip Tyres may, on request in writing by the Applicant, agree in writing to increase or decrease the Credit Limit. The balance of the Account at any one time must not exceed the Credit Limit. The Applicant agrees to immediately pay the amounts charged to the Account for any Goods or Services supplied by Get A Grip Tyres in excess of the Credit Limit, whether or not demand for payment has been made by Get A Grip Tyres.
- 3.4 The Applicant acknowledges and agrees that Get A Grip Tyres may (at any time in its absolute discretion, without notice and without giving any reason) refuse credit to the Applicant and/or suspend or cancel the Account or any credit facilities granted by Get A Grip Tyres to the Applicant. If Get A Grip Tyres suspends or cancels the Account under this clause 3.4, the balance of the Account and any amounts owing to Get A Grip Tyres but not then billed are immediately due and payable by the Applicant to Get A Grip Tyres.
- 3.5 Get A Grip Tyres is not responsible for any Loss whatsoever or howsoever caused which the Applicant may suffer as a result of Get A Grip Tyres refusing to supply the Applicant with any Goods or Services on credit or cancelling or suspending any credit facility granted to the Applicant.
- 3.6 The Applicant is responsible for and agrees to indemnify Get A Grip Tyres against any unauthorised use of the Account. The Applicant must notify Get A Grip Tyres in writing of any unauthorised transactions on the Account immediately upon the Applicant becoming aware of them.

### 4. Terms of Payment

- 4.1 The Applicant must pay to Get A Grip Tyres the whole amount of any debit balance shown on an invoice or statement issued by Get A Grip Tyres to the Applicant (**Amount Payable**) no later than thirty (30) days from the date of issue of the invoice or statement, unless otherwise stated by Get A Grip Tyres.
- 4.2 An Amount Payable by the Applicant under these Terms and Conditions must be paid in Australian Dollars and without deduction, retention or set-off of any kind and for any reason whatsoever.
- 4.3 If the Applicant makes any payment to Get A Grip Tyres, then Get A Grip Tyres may apply the payment to satisfy any obligation that the Applicant owes to Get A Grip Tyres (whether the obligation is unsecured, secured by 'security interest', or secured by 'purchase money security interest'). Further, Get A Grip Tyres may (a) apply or appropriate the payment in any order, in any manner, and at any time that it (in its absolute discretion) thinks fit, and (b) amend, re-apply or re-appropriate any application or appropriation.

- 4.4 Invoices and statements shall be posted to the Applicant at the address specified by the Applicant for that purpose in the Application (or such other address as the Applicant may notify Get A Grip Tyres in writing from time to time). This shall be sufficient notice of the amount due under the Account.
- 4.5 Any complaint made by the Applicant that a transaction recorded on the Applicant's tax invoice is incorrect must be advised to Get A Grip Tyres in writing within seven (7) days of the issue of the tax invoice. If this does not occur, the transactions recorded in the tax invoice shall be taken to be correct. If part of the amount in the tax invoice is in dispute, the Applicant agrees to pay the undisputed amount by its due date for payment.
- 4.6 Notwithstanding clause 4.5, the amount stated in a certificate signed by Get A Grip Tyres' duly authorised representative or solicitor as being due and payable by the Applicant to Get A Grip Tyres under these Terms and Conditions is prima facie evidence that such amount is owing.
- 4.7 Where the Applicant has defaulted in its payment obligations under these Terms and Conditions, any amounts owing by the Applicant to Get A Grip Tyres in connection with the Account may be deducted by Get A Grip Tyres from any fee payable by Get A Grip Tyres to the Applicant under any other agreement, contract or arrangement. However, this clause 4.7 does not in any way preclude or otherwise limit the rights of Get A Grip Tyres to pursue legal recourse in the event of default by the Applicant.
- 5. Quotations, Orders and Contract**
- 5.1 A written quotation issued by Get A Grip Tyres to the Applicant is an offer to provide Goods and/or Services to the Applicant and will not create any contract for the supply of Goods and/or Services between Get A Grip Tyres and the Applicant until the Applicant accepts the quotation by written communication to Get A Grip Tyres or by its conduct in accepting delivery of the Goods or provision of the Services.
- 5.2 Get A Grip Tyres may withdraw, revoke or vary a written quotation at any time prior to the Applicant accepting the quotation.
- 5.3 A written quotation expires on the date specified as the expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.
- 5.4 Get A Grip Tyres shall have the right to cancel any contract made pursuant to clause 5.1 including the cancellation of the supply of Goods and/or Services in respect of the same, at any time before the supply of the Goods and/or Services by giving written notice to the Applicant. On giving such notice, Get A Grip Tyres shall repay to the Applicant any monies paid in respect of the contract. Get A Grip Tyres shall not be liable for any Loss whatsoever arising from such cancellation.
- 6. Price**
- 6.1 The amount payable by the Applicant to the Customer for the supply of Goods and/or Services is at Get A Grip Tyres' sole discretion and shall be either:
- 6.1.1 as indicated on invoices provided by Get A Grip Tyres in respect of the supply of Goods and/or Services;
- 6.1.2 Get A Grip Tyres' current price as at the date of supply according to Get A Grip Tyres' current prices; or
- 6.1.3 Get A Grip Tyres' quoted price provided that the Applicant accepts Get A Grip Tyres' written quotation within thirty (30) days of the date on the written quotation.
- 6.2 Where in the period between acceptance of a written quotation and the supply of Goods and/or Services, Get A Grip Tyres incurs an increase in the cost of supplying the Goods and/or Services, Get A Grip Tyres reserves the right to (at any time prior to supply) increase the quoted price of those Goods and/or Services by the same amount by which Get A Grip Tyres' costs increase (**Price Escalation**). The Applicant accepts any such Price Escalation.
- 6.3 Get A Grip Tyres reserves the right to vary the price in the event of a variation to the written quotation.
- 6.4 Get A Grip Tyres reserves the right to seek a non-refundable deposit from the Applicant, the terms of which to be stated in any written quotation issued by Get A Grip Tyres to the Applicant.
- 6.5 In addition to the amount payable by the Applicant to Get A Grip Tyres for the supply of Goods and/or Services, the Applicant will pay to Get A Grip Tyres any GST or other taxes related to, or arising out of, the supply of the Goods and/or Services by Get A Grip Tyres and any other taxable supply arising under these Terms and Conditions or the Application.
- 6.6 The Applicant agrees to hold Get A Grip Tyres fully indemnified with respect to all GST paid or payable by Get A Grip Tyres in respect of any supply to the Applicant.
- 7. Default and Consequences of Default**
- 7.1 In the event that the Applicant fails to make any payment when due then (without prejudice to the Application of any other provision contained in these Terms and Conditions or to any other remedy provided for by these Terms or Conditions or otherwise):
- 7.1.1 the Applicant must (on demand) pay to Get A Grip Tyres interest on the amount of the overdue payment calculated daily at the rate of fifteen percent (15%) per annum from the date payment was due until the date that it is paid in full; and
- 7.1.2 Get A Grip Tyres may withhold the supply of Goods and/or Services and may (in addition but without limiting the preceding right) cancel all outstanding orders by the Applicant and retain all payments already made.
- 7.2 No cheque will be treated as payment if dishonoured despite the issue of a receipt. The Applicant will be responsible for any charge or fee issued to Get A Grip Tyres for any cheques not met on presentation.
- 7.3 The Applicant unconditionally and irrevocably indemnifies Get A Grip Tyres from and against all costs and disbursements (including, without limitation, legal and/or collection agency costs) incurred by Get A Grip Tyres in pursuing any outstanding amount or amounts owing by the Applicant to Get A Grip Tyres which have not been paid by their due date for payment.
- 7.4 Without prejudice to any other remedies Get A Grip Tyres may have, if at any time the Applicant is in breach of any obligation (including those related to payment) which the Applicant owes to Get A Grip Tyres, Get A Grip Tyres may suspend any of its obligations under these Terms and Conditions. Get A Grip Tyres is not liable to the Applicant for any Loss the Applicant suffers because Get A Grip Tyres has exercised its rights under this clause 7.4.
- 7.5 Without prejudice to any other remedies which Get A Grip Tyres may have at law or in equity, Get A Grip Tyres shall be entitled to cancel all or any part of any order of the Applicant which remains unfulfilled and all amounts owing to Get A Grip Tyres shall, whether or not due and payable, become immediately payable in the event that:
- 7.5.1 any money payable by the Applicant to Get A Grip Tyres becomes overdue, or in Get A Grip Tyres' opinion the Applicant will be unable to meet its payments as they fall due; or

7.5.2 the Applicant becomes bankrupt, insolvent, convenes a meeting with its creditors or proposes to or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

7.5.3 a receiver, manager, liquidator (provisional or otherwise), trustee in bankruptcy or similar person is appointed in respect of the Applicant or any asset of the Applicant.

## **8. Limitation of Liability**

8.1 To the extent permitted by the law the liability of Get A Grip Tyres whether in contract or in tort, in respect of all claims for loss, damage or injury in respect of any Goods and/or Services arising from a breach of any of Get A Grip Tyres' contractual obligations, from any negligence or any act, matter or thing done or permitted to be done by Get A Grip Tyres, its servants, agents and contractors shall not in the aggregate exceed the amount paid or payable by the Applicant to Get A Grip Tyres for the Goods and/or Services.

8.2 To the extent permitted by law, Get A Grip Tyres is not liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Applicant or its servants, agents or contractors in connection with any Goods and/or Services (including as a result of a breach by Get A Grip Tyres of these Terms and Conditions) and the Applicant acknowledges this express limit of liability and agrees to limit any claim accordingly.

8.3 To the extent permitted by law but except as otherwise provided in these Terms and Conditions, all express and implied warranties and guarantees in respect of the supply of any Goods and/or Services are hereby expressly excluded and Get A Grip Tyres shall not be liable for loss or damage (including consequential loss or damage) of any kind arising in connection with the supply of any Goods and/or Services.

## **9. Get A Grip Tyres' Warranty**

9.1. The Applicant shall, within seven (7) days of the supply of any Goods and/or Services (time being of the essence), notify Get A Grip Tyres of any alleged defect, error, omission, shortage in quantity, damage or failure to comply with the description or quotation. The Applicant shall afford Get A Grip Tyres an opportunity to inspect the alleged defect, error, omission, shortage in quantity, damage or failure to comply within a reasonable time of receiving notification. If the Applicant fails to give notice in accordance with this clause 9.1, the Goods or Services shall be presumed to be free from any defect, error, omission, shortage in quantity, damage or failure to comply. "If the Goods are defective, Get A Grip Tyres shall either re-supply or repair them, or refund to the Applicant the compensation paid for them, at its' sole option. This obligation applies for the period of twelve (12) months from the date of delivery of the defective Goods. Get A Grip Tyres shall bear the re-supply or repair costs for the defective Goods, but will not be responsible for costs to retrieve, remove, transport or re-install the defective Goods."

9.2. Goods will not be accepted for return other than in accordance with clause 9.1.

## **10. Indemnity**

10.1. The Applicant indemnifies and holds harmless Get A Grip Tyres, its employees and agents from and against any Loss including, but not limited to:

- 10.1.1. legal costs and expenses on a solicitor and client basis;
- 10.1.2. Loss (including consequential loss) in relation to property;
- 10.1.3. Loss in respect of personal injury, disease, illness or death;
- 10.1.4. Economic Loss;
- 10.1.5. Loss in relation to the environment; and
- 10.1.6. Loss arising from the occurrence of any of the circumstances set out in clause 13.

caused by a breach by the Applicant of these Terms and Conditions or any other contract between the Applicant and Get A Grip Tyres, or any willful, unlawful or negligent act or omission by the Applicant. Get A Grip Tyres and its employees and agents shall not be held responsible for any Loss suffered by the Applicant (whether by disruption to the Applicant's normal business operation, defect in workmanship or any other reason whatsoever) in relation to the supply of Goods and/or Services by Get A Grip Tyres if the loss is caused by or arises as a result of such breach, act or omission.

## **11. Rights in Relation to Goods**

11.1. The Applicant and Get A Grip Tyres agree that:

11.1.1. Property and ownership (including legal and equitable title) in all Goods sold or otherwise provided by Get A Grip Tyres to the Applicant remains with Get A Grip Tyres until all money which the Applicant (now or in future, actually or contingently) owes to Get A Grip Tyres is paid in full;

11.1.2. Risk in the Goods shall pass to the Applicant at the time of delivery. The Applicant shall insure (and keep insured) all Goods on the following conditions until such time as property and ownership (including legal and equitable title) in the Goods passes to the Applicant:

11.1.2.1. The Goods shall be insured for their full insurable or replacement value (whichever is higher); and

11.1.2.2. The Goods shall be insured by an insurer licensed or authorised to conduct the business of insurance in the place where the Goods will be stored.

11.1.3. If the Applicant fails to pay for the Goods within the period of credit (if any) extended by Get A Grip Tyres to the Applicant:

11.1.3.1. The Applicant shall deliver the Goods to Get A Grip Tyres, when demanded by Get A Grip Tyres or its agent; or

11.1.3.2. Get A Grip Tyres may recover possession of the Goods by any necessary means at any site owned, possessed or controlled by the Applicant;

11.1.3.3. The Applicant agrees that Get A Grip Tyres has an irrevocable licence to exercise its rights under clause 11.1.3;

11.1.3.4. The Applicant shall be liable for all costs associated with the exercise of Get A Grip Tyres' rights under clause 11, and this liability shall be payable on demand.

11.2. Get A Grip Tyres and the Applicant agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Applicant:

11.2.1. The Applicant will not supply any of the Goods to any third party outside of its ordinary or usual course of business;

- 11.2.2. The Applicant will not grant or register (or allow any person to have, acquire or register) any 'security interest' (within the meaning of the Personal Property Securities Act 2009 (**PPSA**)) in the Goods;
- 11.2.3. The Applicant will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by Get A Grip Tyres;
- 11.2.4. The Applicant must not remove, deface or obliterate any identifying place, mark or number on any of the Goods;
- 11.2.5. Where the Applicant is in actual or constructive possession of the Goods:
  - 11.2.5.1. The Applicant shall hold the Goods as fiduciary bailee and agent for the seller;
  - 11.2.5.2. After giving 48 hours notice to the Applicant, Get A Grip Tyres shall be entitled to enter upon the Applicant's premises between 9am and 5pm to inspect the Goods;
  - 11.2.5.3. The Applicant will not deliver the Goods, or any document of title to the Goods, to any person except as directed by Get A Grip Tyres;
  - 11.2.5.4. The Applicant shall store the Goods separately and in a manner that enables the Goods to be identified and cross- referenced to particular invoices issued to the Applicant by Get A Grip Tyres; and
  - 11.2.5.5. Without limiting the effect of Division 2 of Part 2.4 of the PPSA (Proceeds and Transfer) or any other provision of the PPSA, the proceeds of any Goods sold shall be kept in a separate account and shall not be mixed with any other moneys, including funds of the Applicant.
- 11.2.6. Without limiting the effect of Part 3.3 (Accessions) or Part 3.4 (Processed or Comingled Goods) of the PPSA, the Applicant acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable, then the Applicant and Get A Grip Tyres shall be owners in common of the new product;
- 11.2.7. The Applicant has no right to claim any interest in the Goods to secure any liquidated debt or obligation Get A Grip Tyres owes to the Applicant; and
- 11.2.8. The Applicant cannot claim any lien over the Goods.

**12. The Applicant's Warranty**

- 12.1. The Applicant warrants, represents, guarantees and acknowledges to Get A Grip Tyres that:
  - 12.1.1. All statements made, and documents provided, in connection with the Application and all representations that the Applicant has made or may make during the existence and operation of the Account to Get A Grip Tyres are true and correct; and
  - 12.1.2. The Account is required for the Applicant's business or commercial purposes and will not be used for personal, domestic or household purposes.

**13. Get A Grip Tyres' enforcement costs**

- 13.1. The Applicant must pay to Get A Grip Tyres any amounts reasonably incurred or expended by Get A Grip Tyres in exercising its rights under or in respect of these Terms and Conditions as a result of any default by the Applicant under these Terms and Conditions or as a result of any of the following circumstances:
  - 13.1.1. Get A Grip Tyres being induced by fraudulent misrepresentation on the Applicant's part to approve the Application; or
  - 13.1.2. The amount charged to the Applicant's Account exceeding the Credit Limit at any time without the prior written approval of Get A Grip Tyres; or
  - 13.1.3. Any amount charged to the Account being due and unpaid (amounts disputed in accordance with clause 4.5 are not considered due until the dispute is rectified); or
  - 13.1.4. any change of circumstances, including, without limitation, changes in the Applicant's constitution, ownership, membership, control status or ability to provide security for payments of amounts which have been or are likely to be charged to the Account, making the continued operation of the Account undesirable or unsatisfactory (in Get A Grip Tyres' opinion); or
  - 13.1.5. The Applicant:
    - 13.1.5.1. Being a company, becoming, threaten or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; or
    - 13.1.5.2. Being a partnership, dissolving, threatening or resolving to dissolve or being in jeopardy of dissolving; or
    - 13.1.5.3. The Applicant being a natural person, dying; or
  - 13.1.6. The Applicant ceasing or threatening to cease conducting business in the normal manner; or
  - 13.1.7. The Applicant using the Account for any non-commercial purposes including, without limitation, for personal, domestic or household purposes; or
  - 13.1.8. The Applicant otherwise being in default of their obligations under these Terms and Conditions or any contract made thereunder.

**14. Confidential Information and Privacy Policy**

- 14.1. The Applicant will not, without the prior written approval of Get A Grip Tyres, disclose Get A Grip Tyres' Confidential Information.
- 14.2. The Applicant will not be in breach of clause 14.1 to the extent to which it is legally compelled to disclose Get A Grip Tyres' Confidential Information.
- 14.3. The Applicant must ensure that its employees and agents, and any sub-contractors, do not make public, disclose or use for any purpose other than that expressly permitted by these Terms and Conditions Get A Grip Tyres's Confidential Information.
- 14.4. Get A Grip Tyres use the Applicant's Personal Information (as defined in the Privacy Act) only as described in Get A Grip Tyres' Privacy Policy available on the Website (**Privacy Policy**). For a complete description of how Get A Grip Tyres uses and protects the Applicant's Personal Information, see the Privacy Policy.

**15. Intellectual Property**

- 15.1. Nothing in these Terms and Conditions constitutes a transfer of any Intellectual Property Rights. Get A Grip Tyres reserves all rights not expressly granted to the Applicant.
- 15.2. Get A Grip Tyres (and its licensors as applicable) own all Intellectual Property Rights in the Website (including text, graphics, logos, icons and sound recordings), the Goods (including in the specification and design), the Services and all material underlying and forming part of the Website, the Goods and/or Services. The Applicant may not reproduce or copy any part of the Website, the Goods and/or Services.

**16. Website**

- 16.1. When accessing and using the Website, the Applicant must:
- 16.1.1. not attempt to undermine the security or integrity of Get A Grip Tyres' computing systems or networks or, where the Website is hosted by a third party, that third party's computing systems or networks;
  - 16.1.2. not use, or misuse, the Website in any way which may impair the functionality of the Website or impair the ability of any other user to use Website;
  - 16.1.3. not attempt to gain unauthorised access to any materials other than those to which the Applicant has been given express permission to access or to the computer system on which the Website is hosted;
  - 16.1.4. not transmit or input into the Website any:
    - 16.1.4.1. files that may damage any other person's computing devices or software;
    - 16.1.4.2. content that may be offensive; or
    - 16.1.4.3. material or data in violation of any law.

**17. Notice**

- 17.1. Notice served pursuant to these Terms and Conditions or any contract made thereunder may be delivered by post, or by facsimile to:
- 17.1.1. In the case of the Applicant, at the postal or facsimile address provided in the Application or notified in writing by the Applicant to Get A Grip Tyres in accordance with this clause 17; or
  - 17.1.2. In the case of Get A Grip Tyres, at its office as listed in the Application or as notified in writing by Get A Grip Tyres to the Applicant in accordance with this clause 17.
- 17.2. Notice is taken to be given:
- 17.2.1. In the case of ordinary post, the second business day after the day of posting; or
  - 17.2.2. In the case of facsimile, the business day following the date of transmission provided that the sender has received confirmation receipt.

**18. Assignment**

- 18.1. A party must not assign all or any of its rights under these Terms and Conditions without the prior written consent of the other party.
- 18.2. Get A Grip Tyres may licence or sub-contract all or any part of its rights or obligations arising under these Terms and Conditions without the Applicant's consent.

**19. Personal Property Securities Act 2009 (Cth) (PPSA)**

- 19.1. The Applicant hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a 'purchase money security interest' in favour of Get A Grip Tyres in respect of the Goods.
- 19.2. The Applicant acknowledges and agrees that by assenting to these Terms and Conditions the Applicant grants a security interest (including, without limitation, by virtue of clause 11.1.1 of these Terms and Conditions) to Get A Grip Tyres.
- 19.3. The Applicant undertakes to:
- 19.3.1. Sign any further documents and provide any further information (which information the Applicant warrants to be complete, accurate and up-to-date in all respects) which Get A Grip Tyres may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register (**PPSR**) in respect of any security interest granted by the Applicant to Get A Grip Tyres (**Security Interest**);
  - 19.3.2. do all other things that Get A Grip Tyres at any time reasonably requires or considers necessary or desirable to (with respect to any Security Interest), ensure the security interest is enforceable and perfected or enable the enforcement of the security interest by Get A Grip Tyres;
  - 19.3.3. Not register a financing statement or financing change statement, or make a demand to alter any financing statement pursuant to section 178 of the PPSA, in respect of the Goods without the prior consent of Get A Grip Tyres;
  - 19.3.4. Pay all costs incurred by Get A Grip Tyres in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce any security interest created by these Terms and Conditions including executing subordination agreements;
  - 19.3.5. Be responsible for the full costs incurred by Get A Grip Tyres (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and
- 19.4. To the full extent permitted by the PPSA and by law, the following apply with respect to each and every security interest granted by
- 19.4.1. PPSA sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 are excluded and contracted out of;
  - 19.4.2. the Applicant waives all rights under the PPSA to receive any notice (including the right to notice of a 'verification statement' pursuant to PPSA section 157); and
  - 19.4.3. Get A Grip Tyres need not give to the Applicant any notice required under the PPSA.
- 19.5. The Applicant agrees that immediately on request by Get A Grip Tyres the Applicant will procure from any persons considered by Get A Grip Tyres to be relevant to its security position such agreement and waivers as Get A Grip Tyres may at any time require.

**20. General**

- 20.1. Upon acceptance of these Terms and Conditions by the Applicant, these Terms and Conditions become binding and, subject to clause 21, can only be amended with the written consent of Get A Grip Tyres.
- 20.2. The Applicant shall give to Get A Grip Tyres not less than fourteen (14) days prior written notice of any proposed change of ownership of the Applicant or any change to the Applicant's constitution, membership, control status, or the Applicant's name and/or any other

change in the Applicant's details including, but not limited to, changes in the Applicant's address, facsimile number or business practice. The Applicant shall be liable for any loss incurred by Get A Grip Tyres as a result of the Applicant's failure to comply with this clause 20.2.

- 20.3. If any provision of these Terms and Conditions or their application to any person or circumstance is or becomes invalid or unenforceable, that provision will be taken to be omitted without invalidating or modifying the remaining provisions of these Terms and Conditions which will continue in full force and effect as if the invalid or unenforceable provision had not been included in them.
- 20.4. These Terms and Conditions and any contract to which they apply shall be governed by the laws of Western Australia and the Applicant irrevocably submits to the exclusive jurisdiction of the Courts of that jurisdiction.
- 20.5. The Applicant acknowledges that the Applicant has had the opportunity to obtain independent legal advice before accepting these Terms and Conditions.
- 20.6. The Applicant shall not be entitled to set off against, or deduct from amount payable, any sums owed or claimed to be owed to the Applicant by Get A Grip Tyres nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.8. The failure of Get A Grip Tyres to enforce any provision of these Terms or Conditions or any provision of any contract made thereunder shall not be treated as a waiver of that provision, nor shall it affect Get A Grip Tyres' right to subsequently enforce that provision.

**21. Variation**

- 21.1. Get A Grip Tyres may vary these Terms and Conditions from time to time.
- 21.2. Get A Grip Tyres may give notice of any variation of these Terms and Conditions on its website and may (but is not obliged to) notify the Applicant that it has varied these Terms and Conditions in an invoice, statement or other written communication by Get A Grip Tyres to the Applicant.
- 21.3. If the Applicant continues to deal with and place orders for the supply of Goods with Get A Grip Tyres after any such notification to the Applicant, the Applicant is taken to have agreed to those Terms and Conditions and to have taken supply of Goods on those varied Terms and Conditions. the Applicant to Get A Grip Tyres:

**OFFICE USE ONLY:**

Trade References

Checked

Account Open On: .....

Sign / Name / Dates

Letter sent to Customer

Checked

Date Received: .....

Application Status: .....

Checked By: .....

Approved By: .....

Date Checked: .....

Signature: .....