

TERMS OF USE

1. Introduction

- A. Welcome to Tire Rack. Through our tirerack.com website (“Site”) we provide information, the ability to purchase product, set up installation of tires, and related services (collectively, the “Services”). The Site is owned and operated by Tire Rack, Inc. (collectively, with its affiliates and parents, “Tire Rack”, “we”, “us” or “our”).
- B. Your use of our Site and our Services is governed by these Terms of Use and our privacy policy (which may be found at www.tirerack.com/about/privacy.jsp, as updated from time to time, and which is incorporated by reference herein (“Privacy Policy”) (collectively, these “Terms” or the “Agreement”). References to “Users”, “you” or “your” mean you as a visitor to our Site, user of our Services, member, account holder, or customer, as applicable.
- C. **IMPORTANT – PLEASE READ CAREFULLY.**

By clicking the “I Accept” box or by using the Site or the Services, you acknowledge and agree that these Terms (including the Privacy Policy) form a binding agreement between us and you as a user of the Site and/or the Services.

IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT USE THE SITE OR THE SERVICES. **IMPORTANT: THESE TERMS CONTAIN AN ARBITRATION PROVISION REQUIRING ALL CLAIMS TO BE RESOLVED BY WAY OF BINDING ARBITRATION, AND ALSO CONTAIN A CLASS ACTION WAIVER.** Please carefully review Sections 19 and 20 of these Terms for more information.

2. Changes to the Terms

- A. If you don’t agree with future changes to the Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.
- B. Except for changes by us as described herein, no other amendment or modification of these Terms will be effective unless in writing and signed or otherwise consented to by both you and us.
- C. We regularly update and improve the Services, and may at times remove features in order to improve your ability to use the Services. These Terms may also need to change because we are constantly trying to improve our Site and our Services. We reserve the right to change the Terms at any time. You should review our Site periodically to ensure that you are aware of our current Terms. You can review the most current version of the Terms at any time by clicking on the “Terms of Use” link located [here](#). Modifications to these Terms will be will be effective immediately upon posting. Even without such “click accept” agreement, your continued use of the Site or the Services after such modifications will constitute your acknowledgement and agreement of the modified Terms. IF ANY MODIFICATION IS NOT ACCEPTABLE TO YOU, YOUR SOLE AND

EXCLUSIVE REMEDY AND RECOURSE IS TO DISCONTINUE USE OF THE SITE AND THE SERVICES.

3. **Privacy**

- A. We will maintain and use your “Personal Information” as defined in and according to our Privacy Policy. Your continued access or use of the Site or purchase or use of our products or Services indicates that you agree with such modifications.
- B. **Use By Minors.** Please note that we do not knowingly collect or solicit Personal Information from individuals under 18 years old. If you under 18, please do not attempt to register for the Services or send any Personal Information about yourself to us. If we learn we have collected Personal Information from an individual under 18, we will delete that information as quickly as possible. Please contact us if you believe that an individual under 18 may have provided us Personal Information..

4. **Registration; Account Creation**

- A. The Services are intended for access and use by individuals who are at least 18 years old, and by agreeing to the Terms you represent (i) that you are at least 18 years old and reside in a state, region, or country in which our Services may legally be provided, (ii) you are the person whose name and other information have been provided for the account that you have or are creating, (iii) that you have not previously been suspended or removed from the Service, and (iv) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by these Terms on behalf of such organization.
- B. All of the information that you supply to us in creating your User account must be accurate. You are responsible for maintaining the confidentiality of your User account and password. We may reject any user name that violates these Terms, including any user name that uses another person’s identity or that violates our community and Review Submission Guidelines which may be changed by us at any time in our sole discretion.
- C. We may use the email you provide to us in your User account profile to provide you with service messages and updates. By becoming a User you are consenting to the receipt of these communications.
- D. You are responsible for authorizing, deauthorizing and administering account access.
- E. You are responsible for maintaining confidentiality of all passwords.
- F. When you purchase product for which an installer can be chosen, if you choose an installer, you acknowledge and agree that we may transmit certain of your Personal Information (including, but not limited to, name, email address, phone number, vehicle information, product ordered, order number, etc.) to the installer (which may be an affiliate of ours or an independent contractor), and that the installer may contact you.

5. **Grant of Access**

- A. We grant you a personal, limited, non-transferable, non-exclusive right to access and use the Site as set forth in these Terms, provided that (i) your use of the Site as permitted hereunder is solely for your personal, non-commercial use; (ii) you will use the Site only for purposes that are permitted by these Terms; (iii) you will not alter, adapt or otherwise modify any part of the Site other than as may be reasonably necessary to use that part of the Site for its intended purpose; (iv) you will use the Site in accordance with all applicable laws and regulations; (v) you will otherwise comply in full with these Terms; and, (vi) you will not distribute or transfer any portion of the Site on any media or electronically without our prior written approval.

6. **Our Services; Availability**

- A. We shall use commercially reasonable efforts to provide continuous access to the Site. We do not guarantee that the Site will be accessible at all times. The Site may be unavailable during maintenance periods or during an emergency. In addition to normal maintenance, there may be events that will make the Site inaccessible for a limited amount of time due to unforeseen circumstances. We will not be liable if for any reason all or any part of the Site is unavailable at any time or for any period. We may use service providers or subcontract services, such as, but not limited to, offsite data hosting and storage, to third parties, which may be inside or outside the United States.
- B. We reserve the right to withdraw or amend the Site, and any Services or material we provide on or via the Site, in our sole discretion without notice. From time to time, we may restrict Users access to some parts of the Site, or the entire Site.
- C. To access the Site or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Site that all the information you provide on the Site is correct, current, and complete. You agree that all information you provide to register with the Site or otherwise, where applicable, including but not limited to through the use of any interactive features on the Site, is governed by our Privacy Policy, and you consent to all actions we take with respect to your information consistent with our Privacy Policy.
- D. When you choose a user name, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you should not disclose it to any other person or entity. You also acknowledge that your account is personal to you and you should not provide any other person with access to this Site or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. If you become aware that your password may be compromised, you should immediately change it on your User account page. You also agree to ensure that you exit/log off from your account at the end of each session of use. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other Personal Information.

- E. If any information that you provide, or if we have reasonable grounds to suspect that any information that you provide, is false, inaccurate, outdated, incomplete, or violates the terms of these Terms or any applicable law, then we may suspend or terminate your account. We have the right to disable any user name, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms.
- F. Data uploaded to our Site is backed up periodically, but we are not responsible for storing or retaining data or content and we shall not be liable for any loss, deletion or alteration of any posted content or user data. Users should have a backup copy of their data before uploading. We reserve the right to deactivate any accounts which have not been active for at least six (6) months. We reserve the right to delete data in deactivated accounts.

7. **Intellectual Property Rights**

- A. The Site and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by us, our licensors or is used with permission, and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.
- B. Other than as expressly provided herein, no right, title or interest in or to the Site or any content on the Site is granted to you, and all rights not expressly granted are reserved by us. Any use of the Site not expressly permitted by these Terms is a breach of these Terms and may violate copyright, trademark and other laws.
- C. You may not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the material on our Site, except as follows:
 - i. Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials;
 - ii. You may store files that are automatically cached by your web browser for display enhancement purposes; and
 - iii. You may print or download a reasonable number of pages of the Site (or any downloadable content offered in any of the Site pages) for your own use and not for further reproduction, publication or distribution.
- D. You may not modify copies of any materials from the Site, or delete or alter any copyright, trademark or other proprietary rights notices from copies of materials from this Site.
- E. TIRE RACK and our other brands and all related trademarks and service marks, are our trademarks or are used with permission. You may not use such marks without our prior written permission. All other brands on this Site are the trademarks of their respective owners.

- F. We shall own any improvements or modifications you suggest to the Site, our products or Services, and you agree to and do hereby assign to us all your right, title and interest in and to any modifications and improvements automatically upon creation and without the need for further action, consideration, or notice to affect such assignment.

8. **Restrictions on Use.**

You shall not (and shall not allow any third party to): (i) engage in commercial use of the Site or any content on the Site; (ii) reproduce, copy, display, store, perform, re-post, publish, transmit, distribute, sell, offer for sale, license, modify, create derivative works, or otherwise use any portion of the content offered on the Site for other than your own personal, non-commercial use; (iii) remove any copyright, trademark or other proprietary rights notices contained in or on the Site or Service or in or on any content or other material obtained via the Site or the Services; (iv) use any “deep-link”, “page-scrape”, “robot”, “spider” or other automatic device robot, spider, site search/retrieval application, or other automated device, process or means to access, retrieve, scrape or index any portion of the Site or the Services, including, but not limited to, for purposes of constructing or populating a searchable database; (v) collect or harvest any information about other users or members (including usernames and/or email addresses) for any purpose; (vi) reformat or frame any portion of the web pages that are part of the Site or the Services; (vii) create user accounts by automated means or under false, misleading or fraudulent pretenses; (viii) create or transmit unwanted electronic communications such as “spam” to other users or members of the Site or the Services or otherwise interfere with other users’ or members’ enjoyment of the Site or the Services; (ix) transmit any viruses, worms, defects, Trojan horses or other items of a destructive nature; (x) use the Site or the Services to violate the security of any computer network, crack passwords or security encryption codes, transfer or store illegal material, including any material that may be deemed threatening or obscene; (xi) copy or modify the HTML code used to generate web pages on the Site; (xii) use any device, software or procedure that interferes with the proper working of the Site or the Services, or otherwise attempt to interfere with the proper working of the Site or the Services; (xiii) take any action that imposes, or may impose in our sole discretion, an unreasonable or disproportionately large load on our IT infrastructure (e.g., DDOS attack); (xiv) modify, adapt, translate, or reverse engineer any portion of the Site or the Services; or (xv) use the Site or the Services, intentionally or unintentionally, to violate any applicable international, national, federal, state, provincial, or local law or regulation.

9. **User Content**

- A. In certain areas of our Site you are able to submit for posting reviews, comments and/or other User Content. “**User Content**” means the text, and, where permitted, the files, images, photos, videos, sounds, works of authorship and/or other materials and content submitted by you to us via our Site or by other means. You retain copyright and any other rights you already hold in User Content which you submit. By submitting User Content you agree to and do hereby grant us, and our successors and assigns us a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to use, reproduce, adapt, modify, translate, publish, publicly perform, publicly display, distribute, sublicense, transmit, and broadcast any User Content which you submit and to provide such User Content to any other User of the Site

or Service, or any portion thereof, in any manner or form and in any medium or forum, whether now known or hereafter devised, without notice, payment or attribution of any kind to you or any third party. You agree that this license includes a right for us to make such User Content available to other companies, organizations or individuals with whom us has relationships for the provision of services, and to use such User Content in connection with the provision of those services. You understand that we, in performing the required technical steps to provide the Services to our users, may (i) transmit or distribute your User Content over various public networks and in various media; and (ii) make such changes to your User Content as are necessary to conform and adapt that User Content to the technical requirements of connecting networks, devices, services or media. You agree that this license shall permit us to take these actions. You waive and agree not to assert any moral or similar rights you may have in such User Content. All of the foregoing in this paragraph is as limited by our Privacy Policy.

- B. You agree to abide by our Review Submission Guidelines (as set out at the end of these Terms).
 - C. We reserve the right (but has no obligation) to remove, block, edit, move or disable User Content that is objectionable to us for any reason. The decision to remove User Content or other Content at any time is in our sole and final discretion. To the maximum extent permitted by applicable law, we do not assume any responsibility or liability for User Content or for any failure to or delay in removing User Content or other content. You are solely responsible for your User Content and may be held liable for User Content that you post.
10. **DMCA Notice.** We honor the intellectual property rights of others and asks the same of Users of the Site. We may, in our sole discretion, terminate the accounts or access rights of Users whose actions infringe or otherwise violate the intellectual property rights of others. If you believe that any content on the Site violates these Terms or your intellectual property rights, you can report such violation to us in accordance with the Digital Millennium Copyright Act (17 U.S.C. §512).
- A. It is our policy to respond expeditiously to legitimate claims of copyright and other intellectual property infringement. We will promptly process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act (“DMCA”) and other applicable intellectual property laws. Upon receipt of notices complying or substantially complying with the DMCA, we may act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and may act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. We may terminate access for users of our services who are repeat infringers.
 - B. To provide us with notice of an infringement, you must provide a written communication to the attention of “DMCA Notification Dept.” at copyright@firerack.com that sets forth the information specified by the DMCA. Please note that you may be liable for damages (including costs and attorneys’ fees)

if you materially misrepresent that an activity is infringing your copyright. We will need the following information from you:

- i. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
 - ii. Identification of the copyright work claimed to have been infringed or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
 - iii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to identify the material;
 - iv. Information that is reasonably sufficient to permit us to contact the complaining party, such as address, telephone number and, if available, e-mail address;
 - v. A statement that the complaining party has a good faith belief that use of the material in a manner complained of is not authorized by the copyright owner, its agent, or the law; and
 - vi. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- C. If we remove or disable access to material in response to an infringement notice, we may make reasonable attempts to contact the owner or administrator of the affected content. If your material has been removed and you feel that your material does not constitute infringement, you may provide us with a counter notification by written communication to the attention of “DMCA Counter Notification Dept.” at copyright@firerack.com that sets forth all of the necessary information required by the DMCA. Please note that you may be liable for damages (including costs and attorneys’ fees) if you materially misrepresent that an activity is not infringing the copyrights of others. If you are uncertain whether an activity constitutes infringement, we recommended seeking advice of an attorney.
- D. We have the right to terminate the User account of any User who repeatedly submits content that violates our policies. Specifically, a repeat offender is a User who has been notified of infringing or violating activity more than twice and/or has had User Content removed from the Site at least twice.

11. **Suspension of Service**

- A. **Suspension.** We may suspend your account and access to the Service, with or without notice, if you violate any provision of these Terms.
- B. **The Effects of Account Suspension.** Upon any suspension of your account, all Service associated with your account will be suspended or otherwise made inaccessible until and unless all issues are addressed and resolved by you, to our satisfaction, and within the time frame we specify. During any suspension of your account or any individual Service, you will not be permitted to: (i) add, upgrade,

downgrade or modify any of the Service; (ii) request an emergency restoration; (iii) transfer any Service; (iv) access any of the websites, email accounts or Content associated with the suspended Service or account. You agree to hold us harmless from and against any and all claims, losses or damages arising from any suspension of your account or the individual Service.

12. Term; Termination

- A. **Term.** The terms of this Agreement shall commence upon your use of the Site or Service or creation of a User account, and shall continue until terminated.
- B. **Termination.**
- i. We reserve the right to stop providing the Service to you or access to the Site at any time for any reason and without prior notice.
 - ii. We reserve the right, at our sole discretion, to close your User account, without prior notice, for any one or all of the following: (i) if you, whether intentionally or unintentionally, breach any section of these Terms; (ii) if we receive notice that you or your company will be or is subject to insolvency proceedings; (iii) if, in our judgment, your use of the Site has the potential to pose any harm to us, any of our affiliates, partners, service providers or customers; (iv) if you fail to cure any suspension of your User account to our satisfaction, and within the time frame we specify. In the event of any such closure of your User account, you will not be eligible for a refund of any fees and you may be prohibited from reopening an account, opening a new account or accessing any existing account. You agree that we shall not be liable, in any way, for any damages or loss caused by closure of your User account pursuant to this section of these Terms. You agree to hold us harmless from and against any and all claims, losses and damages arising from any closure or suspension of your User account.
 - iii. In the event of any closure of your account pursuant to (ii) above, you will not be eligible for a refund of any fees and you may be prohibited from reopening your User account, opening a new account or accessing any existing account. You agree that we shall not be liable, in any way, for any closure of your User account pursuant to this section of the Terms.
 - iv. Upon any closure of your User account: (i) this Agreement and all rights granted under this Agreement shall cease immediately (except those expressly surviving or which by their nature would survive); (ii) all access to the Service and your User account will cease immediately; (iii) and all of your data and User Content will (at our option) be deleted from our servers and backup systems and we may not have or keep backup of the data and User Content. You agree to hold us harmless from and against any and all claims, losses or damages arising from any closure of your User account. Any and all sections in this Agreement which impose obligations continuing in their nature shall survive closure or otherwise continue to remain in full force and effect even after account closure. You are not permitted to access

your User account or any of the Service formerly associated with your account following any closure.

13. **Disclaimers**

- A. THIS SITE AND THE MATERIALS, INFORMATION, SERVICES, AND PRODUCTS PRESENTED IN THE SITE, INCLUDING, WITHOUT LIMITATION, TEXT, GRAPHICS, AND LINKS, ARE PROVIDED “AS IS” AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OTHER THAN AS EXPRESSLY STATED HEREIN. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUS, AND WARRANTIES ARISING FROM COURSE OF DEALING, OR COURSE OF PERFORMANCE OR USAGE OF TRADE. WE DO NOT REPRESENT OR WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE, SOFTWARE, OR RELATED TO THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE, SOFTWARE, OR RELATED TO THE SERVICES OR THE SERVER THAT ENABLES THE SERVICES TO BE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE USE OF THE MATERIALS IN THIS SITE IN TERMS OF THEIR COMPLETENESS, CORRECTNESS, ACCURACY, ADEQUACY, USEFULNESS, TIMELINESS, RELIABILITY OR OTHERWISE. DEPENDING ON THE STATE IN WHICH YOU RESIDED, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. WE ARE NOT RESPONSIBLE FOR THE ACTIONS OR INFORMATION OF THIRD PARTIES, AND YOU RELEASE US FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES.

14. **Limitation of Liability**

- A. THE SITE AND SERVICE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE SHALL NOT BE LIABLE FOR ANY DAMAGES YOU OR ANY OTHER PERSON MAY SUFFER. NOTWITHSTANDING THE FOREGOING, YOU AGREE THAT IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF THE SERVICES) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE SITE OR THE SERVICE (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF OUR OR OUR CONTRACTORS’ SERVERS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF WE HAVE

BEEN ADVISED OF, KNEW, OR SHOULD HAVE KNOW OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY LOSS THAT MAY OCCUR DUE TO ANY LOSS OF THE USE OF THE SITE OR THE SERVICE, ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THE SERVICES, THE NON-DELIVERY OR MIS-DELIVERY OF DATA BETWEEN YOU AND US, EVENTS BEYOND OUR REASONABLE CONTROL, THE NON-RECOGNITION OF OUR HOSTING SERVERS, THE PROTECTION OR PRIVACY OF ELECTRONIC MAIL OR OTHER INFORMATION TRANSFERRED THROUGH THE INTERNET OR ANY OTHER NETWORK PROVIDER OR SERVICE ITS CUSTOMERS MAY UTILIZE, OR THE APPLICATION OF ANY POLICY SET FORTH HEREIN.

- B. YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH US, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS ARISING OUT OF OR RELATING TO THE SITE, THE SERVICE, OR ANY USER CONTENT IS TO STOP USING THE SITE AND SERVICES, AND TO CANCEL YOUR USER ACCOUNT. YOU ACKNOWLEDGE AND AGREE THAT WE, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS ARE NOT LIABLE FOR ANY ACT OR FAILURE TO ACT BY THEM OR ANY OTHER PERSON REGARDING CONDUCT, COMMUNICATION OR CONTENT ON THE SERVICES. IN NO CASE SHALL THE LIABILITY OF US, ITS OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS TO YOU EXCEED THE GREATER OF THE AMOUNT THAT YOU PAID TO US FOR THE SERVICE OR ONE HUNDRED DOLLARS (US\$100).

- C. Exceptions by Some States on Non-Allowance of Exclusion.

BECAUSE SOME STATES, COUNTRIES, OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, OUR LIABILITY, OUR OWNERS, SUBSIDIARIES, DIRECTORS, EMPLOYEES, ATTORNEYS, AFFILIATES, AGENTS, REPRESENTATIVES, AND LICENSORS SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

IF YOU ARE A VISITOR TO THE SITE FROM NEW JERSEY, CERTAIN WARRANTIES AND/OR LIMITATIONS OF LIABILITY, INCLUDING THE LIMITATION OF LIABILITY BASED ON OUR NEGLIGENCE, GROSS NEGLIGENCE, OR INTENTIONAL CONDUCT MAY NOT APPLY TO YOU OR MAY BE UNENFORCEABLE UNDER NEW JERSEY LAW. SUCH PROVISIONS ARE ENFORCEABLE ONLY TO THE FULL EXTENT PERMITTED BY NEW JERSEY LAW.

15. Indemnification

- A. By utilizing the Site or the Services you agree to indemnify, defend and hold us and our officers, directors, employees, agents, and affiliates harmless from and against any and all liability, losses, costs, and expenses (including attorneys' fees) incurred by us through your use of the Site or the Services or your posting or transmission of User Content in violation of these Terms (including, but not limited to, negligent or wrongful conduct, infringement of any third party's intellectual property, confidentiality, privacy or publicity rights). You also agree to take sole responsibility for any royalties, fees or other monies owed to any person or entity by reason of any content you post or transmit through the Site or the Service we provide. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim. This Section shall survive any expiration or termination of the Terms.

16. Cooperation with Law Enforcement and Government Agencies; Required Disclosures

- A. You acknowledge that we have the right to investigate and prosecute violations of these Terms, including intellectual property, publicity and privacy rights infringement and Site security issues, to the fullest extent of the law. We may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that we have no obligation to monitor your access to or use of the Site or the Services, but we have the right to do so for the purpose of operating the Site, to ensure your compliance with these Terms or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental or regulatory body.
- B. You understand and agree that we may disclose your Personal Information if required to do so by law, court order, legal process, or subpoena, including to respond to any government or regulatory request (after, if permitted, giving reasonable notice to you and using commercially reasonable efforts to provide you with the opportunity to seek a protective order or the equivalent (at your expense), or if we believe that such action is necessary to (a) conform to the law, comply with legal process served on us or our affiliates or partners, or investigate, prevent, or take action regarding suspected or actual illegal activities; (b) to enforce these Terms (including for billing and collection purposes), take precautions against liability, to investigate and defend ourselves against any third-party claims or allegations, to assist government enforcement agencies, or to protect the security or

integrity of our Site; or, (c) to exercise or protect the rights, property, or the safety of us, our users or others.

17. **Disputes; Resolution**

- A. **Time Limitation.** Any claim or action against us must be brought within twelve (12) months of the cause of such claim or action arising.
- B. **Arbitration.**
- i. Other than for the grounds set forth in Section 1.C, in the event of any dispute, claim, question or disagreement arising from or relating to the Terms or the breach thereof, the parties hereto shall use their reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days, then, upon notice by either party to the other, such dispute, claim, question or disagreement shall be resolved by binding arbitration in St. Joseph County, Indiana in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”), subject to the limitations of this Section. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of a demand for arbitration shall be filed in writing with the other party hereto and with the AAA. The demand for arbitration shall be made within a reasonable time after the dispute has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. The parties agree that one (1) arbitrator shall arbitrate the dispute. The arbitrator shall be selected by the joint agreement of the parties, but if they do not so agree within twenty (20) days after the date of the notice of a demand for arbitration referred to above, the selection shall be made pursuant to the Commercial Arbitration Rules of the AAA (the “AAA Rules”) from the panels of business arbitrators maintained by the AAA. The decision of the arbitrator shall be made in writing and shall be final. Judgment may be entered upon it in any court having jurisdiction thereof, and the decision shall not be subject to vacation, modification or appeal, except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act, the terms of which Sections the parties agree shall apply. The expenses of arbitration, including and the fees and expenses of the arbitrator and the AAA, shall be shared equally by the parties.
 - ii. The arbitrator will have no authority to award attorneys’ fees, punitive damages, or any other monetary relief not measured by the prevailing party’s actual damages and each party irrevocably waives any claim thereto. The award may include equitable relief. The arbitrator will not make any ruling, finding, or award that does not otherwise conform to the Terms. The arbitrator may render a summary disposition relative to all or some of the

issues, provided that the responding party has had an adequate opportunity to respond to any such application for such disposition.

- iii. The parties agree to treat all aspects of the arbitration as confidential, as provided in the AAA Rules. Before making any disclosure permitted by the AAA Rules, a party shall give written notice to the other party and afford such party a reasonable opportunity to protect its interests. Further, judgment on the arbitrators' award may be entered in any court having jurisdiction.

C. Exceptions to Agreement to Arbitrate. You and we agree that, notwithstanding the provisions of this Section 17, either you or we have the right to seek relief in court and not be required to arbitrate, to resolve disputes relating to: (a) your or our intellectual property (e.g., trademarks, trade dress, domain names, trade secrets, copyrights or patents); (b) violation of the Restrictions on Use of Section 8; (c) your violation of our Review Submission Guidelines.

- 18. **Governing Law; Jurisdiction, Venue.** These Terms will be governed by the laws of the State of Indiana without regard to its conflict of laws provisions. We and you agree to submit to the exclusive jurisdiction and venue of the courts located within St. Joseph County, Indiana for entering any arbitrator's decision or award. Notwithstanding the foregoing sentence, we and you will still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.
- 19. **CLASS ACTION WAIVER.** Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither you nor we will seek to have any dispute heard as a class action or in any other proceeding in which either party acts or proposes to act in a representative capacity, and each party hereby waives any right to assert consolidated claims with respect to any disputes subject to arbitration under these Terms or any disputes between the parties. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.
- 20. **WAIVER OF JURY TRIAL.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury for any legal action arising out of or relating to these terms or the transactions contemplated hereby.
- 21. **Location of Operation.** Our Site is operated in the United States of America, and we make no representation that content provided is applicable or appropriate for use in other locations. We make no claims that the Site or any of its content is accessible or appropriate outside of the United States. Access to the Site may not be legal by certain persons or in certain countries. If you access the Site from outside the United States, you do so on your own initiative and are responsible for compliance with local laws. Your use of the Site does not subject us to judicial process in or to the jurisdiction of courts or other tribunals in your jurisdiction or location.
- 22. **Communications.** By creating a User account or giving us any contact information, you agree to and do hereby consent to receive mail and electronic communications (email, text/SMS and by telephone) from us and/or by posting the Communications on the Site (e.g., by posting notices on your account profile page) concerning information and/or our

Services (collectively, “Communications”). For Users with an account, Communications may be those that we are required to send to you by law concerning us, your account or information, the Site, or the Services (“Required Communications”). The Communications may also be those that we send to you for other reasons. You may change the email or mobile phone number on file for your User account by visiting your account profile page or by contacting us. You may opt out of receiving all Communications, other than Required Communications, via email by sending a notice to us that identifies your full name, user name and email address; however, you will not receive any further electronic notices from us (other than Required Communications), which notices may include important notices or announcements.

23. **General**

- A. **Entire Agreement.** These Terms, including, but not limited to, the Privacy Policy (and updates to the foregoing) and any other terms agreed to in writing by the parties or by way of your use of the Site or the Services shall constitute the entire and exclusive understanding and agreement between you and us regarding this subject matter, and shall supersede any and all prior or contemporaneous representations or understandings relating to this subject matter, and except as expressly permitted in these Terms may only be amended by a written agreement signed by authorized representatives of the parties. In the event that any part of these Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration. The failure of us to exercise or enforce any right or provision of these Terms, including any failure to act with respect to a breach, will not constitute a waiver of such right or our right to act with respect to subsequent or similar breaches.
- A. **Headings.** The headings of sections and paragraphs in these Terms are for convenience only and shall not affect its interpretation.
- B. **Assignment.** You may not assign, convey, or transfer (whether by contract, merger or operation of law) (collectively, “assign” or variants) these Terms, in whole or in part, without our prior written consent, which may be granted or withheld by us in our sole discretion. Any attempted assignment in violation of these Terms will be of no power or effect. We may assign these Terms freely at any time without notice. Subject to the foregoing, these Terms will bind and inure to the benefit of each party’s permitted successors and assigns. We reserve the right to, and you hereby consent to, our right to disclose, transfer, and/or assign your Personal Information in connection with a merger, consolidation, restructuring, financing, sale, or other transaction. In addition, when a potential buyer is interested in pursuing a merger, acquisition or another type of business combination with us, you agree that we may provide the potential buyer with your Personal Information, subject to the restrictions in these Terms.
- C. **Waiver.** The failure to exercise or enforce any right or provision shall not affect our right to exercise or enforce such right or provision at any time thereafter, nor shall

a waiver of any breach or default of these Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

- D. Severability. If any portion of these Terms is found by a court of competent jurisdiction to be invalid or unenforceable, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in such provision, and, notwithstanding such finding, the remaining provisions of these Terms shall remain in full force and effect.
- E. Independent Contractor. The parties intend that an independent contractor relationship will be created by these Terms, and that no additional partnership, joint venture, employee, employer or other relationship is intended. You agree not to hold yourself out as in any way sponsored by, affiliated with, endorsed by, in partnership or venture with, nor as an employee or employer of us, any of our affiliates or respective service providers. There are no third-party beneficiaries to these Terms.
- F. Contact Us. Our contact information is: Email: contact@tirerack.com; Phone: 888-541-1777; Address: Tire Rack, Inc., 7101 Vorden Parkway, South Bend, Indiana 46628.

Review Submission Guidelines for Posting of Content

Tire Rack wants your comments to be heard.

What to Include

- Your review should focus on specific characteristics of the product and your experience with it in different conditions.
- The best reviews include not only whether you liked or disliked a product, but also why. Comparisons to other products you have used on the same vehicle are helpful, although the review should focus on your current product.
- You are solely responsible for any User Content that you create, transmit, or display while using the Site or the Service.

What Not to Include

You may not post content that:

- Is not your own original creation or that you do not have permission to use (keep in mind that just because something on the internet does not have a copyright notice on it does not mean you can use it without permission);
- Infringes the copyright, trademark, patent right, or other proprietary right of any person or that is used without the permission of the owner;
- You know to be inaccurate;
- Is pornographic, sexually explicit, or obscene;
- Exploits children or minors;
- Violates the rights of privacy or publicity of any person;
- Is harassing, libelous, slanderous, or defamatory;
- Contains any personally identifying information about any person without their consent or about any person who is a minor;
- May be deemed generally offensive to the Site community, including blatant expressions of bigotry, prejudice, racism, hatred, profanity or religious or political radicalism;
- Includes advertisements, promotions, solicitations, spam, or offers to sell any goods or services for any commercial purpose;
- Is off topic;
- Is intended to provide professional advice, including but not limited to, the provision of medical treatment, or legal, financial or investment advice;
- Is intended to solicit, recommend, endorse, or offer to buy or sell any securities or other financial instruments, tout stocks, or recommend that any particular security, portfolio of securities, transaction, or investment strategy is suitable for you or any specific person;

- Violates any local, state, federal, and/or international laws or regulations;
- Promotes or provides instructional information about illegal or illicit activities;
- Contains software viruses or any other computer code, files, or programs designed to destroy, interrupt, or otherwise limit the functionality of any computer software, computer hardware, or other equipment;
- Is intended to overwhelm, cause technical disruptions of or denial of service to the Site;
- Reviews products not offered by Tire Rack;
- Contains personal comments about specific reviewers;
- Includes phone numbers, mail addresses, or URLs; or
- Contains availability, price, or alternative ordering/shipping information.

You agree to not upload or post any User Content to the Site that infringes or may infringe the copyright, trademark or other intellectual property rights of a third party nor may you upload User Content that violates any third party's right of privacy or right of publicity. You may upload only User Content that you are permitted to upload by the owner or by law.

All User Content you upload to the Site is deemed nonconfidential.

You agree to not engage, or permit others to have access to your login credentials to engage, in the practices of "screen scraping," "database scraping," or any other activity with the purpose of obtaining lists of users or other information or content.

Any review or comments in violation of these guidelines will not be posted.

Non-Product Related Comments

Comments that are not product-related such as content errors, order process issues, or follow-up service issues are best sent directly to customer service for prompt attention at 888-981-3953 or [via email](#).

For questions about products please contact one of our sales specialists at 888-541-1777 or [via email](#).