

## TERMS OF USE AGREEMENT

### 1. DEFINITIONS

TireRackFleet.com is the web site maintained on the World Wide Web by Tire Rack, Inc.. “**The site**” or “**site**” refers to TireRackFleet.com. “**User**,” or collectively “**Users**,” refers to any party who accesses the site. “**Tire Rack**” refers to Tire Rack, Inc. “**Access**” means viewing or otherwise obtaining information located on TireRackFleet.com. “**Agreement**” refers to these Terms of Use and any subsequent modification.

### 2. ACCEPTANCE OF TERMS

By accessing the site via the World Wide Web or any other medium, User accepts and agrees to all conditions imposed in this Terms of Use Agreement.

Tire Rack reserves the right to modify these Terms of Use at any time without notice to User, including imposing a fee to access certain materials contained on the site. Any change in these Terms of Use is effective immediately upon User’s receipt of notice from Tire Rack. Notice can be given through e-mail, posting on the site or any other means by which User may obtain notice. Users should periodically check these Terms of Use for changes. Any use of the site after changes have been made shall be deemed acceptance of those changed Terms of Use.

Tire Rack has the exclusive right to control accessibility, hours of use, features on the site and any other information found on the site. Tire Rack can restrict access to any or all portions of the site or remove any information or content from the site at any time. Tire Rack reserves the right to monitor use of the site.

User is solely responsible for providing the equipment related to accessing the site, including all computer, remote communications equipment, telephone or other equipment.

### 3. USER ACCOUNTS

If you establish an account at this site in order to purchase products or receive information from us, you are responsible for maintaining the confidentiality of your account and your password. By establishing an account, User agrees to accept responsibility for all activities that occur at the site under your account and password. Tire Rack reserves the right, in its sole discretion, to refuse service, cancel orders or terminate your account.

### 4. COPYRIGHT AND MARKS

All content on the site (with the exception of content provided by Tire Rack’s third party content providers and materials posted by Users) are the copyrighted property of Tire Rack. Other than the download to the viewer’s computer that is inherent in viewing a web page, site contents may not be copied, reproduced, modified, published, uploaded, posted, transmitted, “framed” on another site, or distributed in any way without the prior written consent of Tire Rack. Users must retain all copyright and other proprietary notices on any authorized reproductions of any portion of the site. Any third party marks and content appearing on the site are the property of their respective owners. You are not permitted to use any of these third party marks or content without permission of the respective owner.

Users posting their own content on the site pursuant to the terms of this Agreement retain the copyright in such material, but they are deemed to have given Tire Rack a license to the material sufficient for the purposes of operating the web site, which means Tire Rack can copy the

material for backup and archival purposes, display it on the web site, allow viewers to view it (including by downloading a copy to the viewer's machines) and edit it for length or compliance with the rules applicable to User postings on the site. This license is perpetual, worldwide, transferable as part of any transfer of the web site in whole or in part, and fully-paid up. Tire Rack also has the right to remove User content from the site at any time for any purpose.

## **5. PROHIBITED CONDUCT**

**User expressly agrees to refrain from doing, either personally or through an agent, any of the following:**

- a) Use any device or other means to harvest information about other Users.
- b) Transmit, install, upload or otherwise transfer any virus or other item or process to the site that in any way affects the use, enjoyment or service of the site.
- c) Transmit, install, upload or otherwise transfer any virus or other item to the site that in any way affects the use, enjoyment or service of any User's or any Tire Rack employee's computer or other medium used to access the site.
- d) Post any material on the site that is offensive to any other User. Tire Rack maintains the exclusive right to determine what is offensive.
- e) Post or store on the site any content that violates or infringes the intellectual property rights of others (including but not limited to copyrights, trademarks, trade secrets, patents and publicity rights).
- f) Modify the information, including headers, found on the web site.
- g) Transmit, install, upload or otherwise transfer to the site any unauthorized advertisement or communication.
- h) Engage in any action which Tire Rack determines is detrimental to the use and enjoyment of the site.
- i) Use the site for any unlawful or defamatory means.
- j) Transmit, install, upload, post or otherwise transfer any information in violation of the laws of the United States or post any information that could result in civil unrest.
- k) Attempt to access, or access, the personal information of another User which is stored on this site.
- l) Permit any person to access this site using the User's password.
- m) Attempt to, or access, this site using another User's password.
- n) Use any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the site or any content, or in any way reproduce or circumvent the navigational structure or presentation of the site or any content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the site. Tire Rack reserves the right to bar any such activity.

- o) Probe, scan or test the vulnerability of the site or any network connected to the site, or breach the security or authentication measures on the site or any network connected to the site, or reverse look-up, trace or seek to trace any information on any other User or any other customer of Tire Rack, including any Tire Rack account not owned by you, to its source, or exploit the site or any service or information made available or offered by or through the site, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than your own information, as provided for by the site.

## **6. DISCLAIMER AND LIMITATION OF LIABILITY**

Although Tire Rack has attempted to provide accurate information on the site, it makes no guarantee or warranty, express or implied, as to the reliability, accuracy, timeliness or completeness of that information and assumes no responsibility for any errors or omissions therein. USER ACCESSES THIS SITE AT HIS OR HER OWN RISK. THE SITE IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND AND ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE SPECIFICALLY DISCLAIMED. NEITHER TIRE RACK NOR ITS AFFILIATES, EMPLOYEES, AGENTS OR THIRD PARTY CONTENT PROVIDERS SHALL BE LIABLE FOR ANY LOSS RESULTING FROM USE OR UNAVAILABILITY OF INFORMATION OR CONTENT ON THIS SITE, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOSS OR DAMAGE TO DATA, OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, COMPENSATORY OR INCIDENTAL DAMAGES, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THIS DISCLAIMER IS APPLICABLE TO ANY DAMAGE OR INJURY RESULTING FROM NEGLIGENCE OR OMISSION OF TIRE RACK, COMPUTER VIRUS OR OTHER SIMILAR ITEM, TELECOMMUNICATIONS ERRORS, OR UNAUTHORIZED ACCESS TO OR USE OF USER INFORMATION THROUGH THEFT OR ANY OTHER MEANS. TIRE RACK IS NOT LIABLE FOR CRIMINAL, TORTIOUS, OR NEGLIGENT ACTIONS OR OMISSIONS OF THIRD PARTIES THAT AFFECT THIS SITE.

IN NO EVENT WILL TIRE RACK OR ANY OF ITS AFFILIATES, AGENTS, EMPLOYEES, ASSIGNS OR THIRD PARTY CONTENT PROVIDERS BE HELD LIABLE FOR ANY TORTIOUS OR ILLEGAL CONDUCT OF OTHER USERS.

IN NO EVENT WILL TIRE RACK OR ANY OF ITS AFFILIATES, AGENTS, EMPLOYEES OR ASSIGNS BE HELD LIABLE FOR ANY DAMAGE TO EQUIPMENT, HARDWARE OR OTHER PROPERTY OF USER OR PERSONAL INJURY THAT ARISES IN CONNECTION WITH USE OF THE SITE.

## **7. THIRD PARTY CONTENT**

Tire Rack is not the publisher or speaker of any information on the site that is provided by third party content providers or by Users, and Tire Rack is not liable for any claims related to that information. Any mention on the site of products or services provided by third parties is for informational purposes only and constitutes neither an endorsement nor a recommendation by Tire Rack. Tire Rack assumes no responsibility for those products or services. Any dealings among any User and any third parties mentioned on or found through the site are solely between

the Users and the third parties, and are subject to any terms, conditions, warranties or representations associated with those dealings.

TIRE RACK MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, OF THE ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE INFORMATION PROVIDED BY THIRD PARTIES. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY INFORMATION FOUND ON A LINK LOCATED ON THIS SITE THAT ALLOWS USERS TO ACCESS INFORMATION FOUND ON ANOTHER SITE. ADDITIONALLY, TIRE RACK DOES NOT WARRANT THE EXISTENCE OR FUNCTIONALITY OF ANY SITE WHICH CAN BE ACCESSED THROUGH A LINK LOCATED ON THIS SITE.

## **8. User Content**

Tire Rack may from time to time and at its sole discretion post content on the site that has been submitted to Tire Rack by User, including but not limited to product reviews or other comments (collectively, “**User Content**”). User may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of any User Content.

User retains the copyright in any User Content and grants Tire Rack a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display, throughout the world in any media, any and all User Content. User also grants Tire Rack the right to use the name submitted by User in connection with User Content, if Tire Rack so chooses. User represents and warrants that User owns or otherwise controls all of the rights to the User Content; that the User Content is accurate; that use of the User Content does not violate this Agreement and will not cause injury to any person or entity; and that User will indemnify Tire Rack for all claims resulting from the User Content. Tire Rack has the right but not the obligation to monitor and edit or remove any User Content. Tire Rack takes no responsibility and assumes no liability for any User Content.

## **9. INDEMNIFICATION**

User agrees to defend, indemnify and otherwise hold harmless Tire Rack and its officers, directors, agents, employees and assigns from and against any cause of action or claim, including legal fees, related to User’s use of the site.

## **10. SECURITY**

Users are prohibited from violating or attempting to violate the security of the site. Tire Rack will investigate occurrences of possible violations and will cooperate with all applicable law enforcement authorities in prosecuting violators.

## **11. VIOLATION OF THESE TERMS OF USE**

Tire Rack may disclose any information we have about you (including your identity) if we determine that such disclosure is necessary in connection with any investigation or complaint regarding your use of the site, or to identify, contact or bring legal action against someone who may be causing injury to or interference with (either intentionally or unintentionally) Tire Rack’s rights or property, or the rights or property of visitors to or users of the site, including Tire Rack’s customers. Tire Rack reserves the right at all times to disclose any information that Tire Rack deems necessary to comply with any applicable law, regulation, legal process or

governmental request. Tire Rack also may disclose your information when Tire Rack determines that applicable law requires or permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

You acknowledge and agree that Tire Rack may preserve any transmittal or communication by you with Tire Rack through the site or any service offered on or through the site, and may also disclose such data if required to do so by law, or Tire Rack determines that such preservation or disclosure is reasonably necessary to: (1) comply with legal process, (2) enforce these Terms of Use, (3) respond to claims that any data violates the rights of others, or (4) protect the rights, property or personal safety of Tire Rack, its employees, users of or visitors to the site, and the public.

You agree that Tire Rack may, in its sole discretion and without prior notice, terminate your access to the site and/or block your future access to the site if we determine that you have violated these Terms of Use or other agreements or guidelines which may be associated with your use of the site. You also agree that any violation by you of these Terms of Use will constitute an unlawful and unfair business practice, and will cause irreparable harm to Tire Rack, for which monetary damages would be inadequate, and you consent to Tire Rack obtaining any injunctive or equitable relief that Tire Rack deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies Tire Rack may have at law or in equity.

You agree that Tire Rack may, in its sole discretion and without prior notice, terminate your access to the site, for cause, which includes (but is not limited to): (1) requests by law enforcement or other government agencies, (2) a request by you (self-initiated account deletions), (3) discontinuance or material modification of the site or any service offered on or through the site, or (4) unexpected technical issues or problems.

If Tire Rack does take any legal action against you as a result of your violation of these Terms of Use, Tire Rack will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted to Tire Rack. You agree that Tire Rack will not be liable to you or to any third party for termination of your access to the site as a result of any violation of these Terms of Use.

## **12. TERMINATION OF AGREEMENT**

Either Tire Rack or User may terminate this Agreement at its discretion. In addition to Tire Rack's other rights, Tire Rack may terminate access to this site or cancel membership to any service that Tire Rack provides on the site, if User breaches this Agreement in any way or engages in conduct that Tire Rack deems inappropriate. In the event of termination of this Agreement, the provisions in this paragraph and the provisions found in paragraphs 4, 5, 6, 7, 8, 9 and 11 shall survive.

## **13. LINKS**

User is granted a limited, revocable, and nonexclusive right to create a hyperlink to the home page of the site so long as the link does not portray Tire Rack or its products or services in a false, misleading, derogatory, or otherwise offensive matter. User may not use any Tire Rack logo or other proprietary graphic or trademark as part of the link without express written permission. Tire Rack reserves the right to terminate any link found on the site at any time. User may not utilize framing techniques to enclose any trademark, logo, or other Tire Rack

proprietary information (including images, text, page layout, or form) or use any meta tags or any other “hidden text” utilizing Tire Rack’s name or trademarks without Tire Rack’s express written consent.

#### **14. COPYRIGHT PROTECTION**

Tire Rack honors the intellectual property rights of others and asks the same of Users of the site. Tire Rack may, in its 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 your work has been infringed, please provide Tire Rack with the following information:

- a) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- b) 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;
- c) 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 Tire Rack to identify the material;
- d) Information that is reasonably sufficient to permit Tire Rack to contact the complaining party, such as address, telephone number and, if available, e-mail address;
- e) 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
- f) 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.

Tire Rack can be contacted at:

By mail:  
Tire Rack  
7101 Vorden Parkway  
South Bend, IN 46628  
U.S.A.

By email: [webmaster@TireRackFleet.com](mailto:webmaster@TireRackFleet.com)

#### **15. MISCELLANEOUS**

These Terms of Use constitute the entire agreement between Tire Rack and User regarding the subject matter hereof. Any previous agreement, whether oral or written, between Tire Rack and User dealing with the subject matter hereof is superseded. If any portion of this Agreement is found to be unenforceable for any reason, such portion will be deemed severed and will not affect the enforceability of the remaining terms. Upon User’s breach of this Agreement, Tire Rack may pursue any legal or equitable remedy available, including but not limited to, direct, consequential and punitive damages and injunctive relief. Tire Rack’s remedies are cumulative and not exclusive. Failure of Tire Rack to exercise any remedy or enforce any portion of this Agreement at any time shall not operate as a waiver of any remedy or of the right to enforce any portion of the Agreement at any time thereafter. User agrees that regardless of any statute or law

to the contrary, any claim or action arising out of or regarding this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. Tire Rack makes no representation that the content of the site is appropriate or available for use in all locations. Users of this site are responsible for compliance with all applicable local laws. Any dispute arising out of this Agreement shall be governed by the laws of the State of Indiana, U.S.A, notwithstanding any conflicts of law principles. Any action relating to this Agreement must be filed and maintained in a state or federal court located in St. Joseph County, State of Indiana, U.S.A., and each User consents to exclusive jurisdiction and venue in such courts for such purpose.