



TIRE BUTLER

TIRE BUTLER YORKDALE INC. TERMS AND CONDITIONS

Updated as of April 1, 2023

1. **Customer.** For the purpose of this Agreement, the “Customer” is the person named on the Tire Butler Yorkdale Inc. Yorkdale invoice for seasonal tire storage and may also include any person lawfully entitled to the Tires.
2. **Company.** For the purpose of this Agreement, the “Company” is Tire Butler Yorkdale Inc. having an office at 111 Bridgeland Avenue, Toronto, Ontario, M6A 1Y7
3. **Tires.** “Tires” means the tires, and attached wheels (if applicable), delivered to Tire Butler Yorkdale Inc. by the Customer, and accepted by Tire Butler Yorkdale Inc. from the Customer, for storage by Tire Butler Yorkdale Inc..
4. **Changeover Season.** “Winter Changeover Season” means the time period from September 1 to February 28. “Summer Changeover Season” means the time period. from March 1 to August 31. “Changeover Season” means either a Winter Changeover Season or a Summer Changeover Season.
5. **Storage Location:** The Customer agrees that Tire Butler Yorkdale Inc. may change the storage location of the Tires from time to time at its own discretion with notice to the Customer.
6. **Tire Retrieval.** The Customer acknowledges that Tire Butler Yorkdale Inc. requires reasonable time to retrieve and make the Tires available to the Customer. The Customer agrees to provide not less than twenty four hours advance request to Tire Butler Yorkdale Inc. for the Tires. Upon payment of all amounts owing to Tire Butler Yorkdale Inc. pursuant to this Agreement, Tire Butler Yorkdale Inc. will have the Tires ready for pick up by the Customer.
7. **Payment.** The Customer agrees to pay all charges set forth in the terms of this Agreement immediately when they become due, and all other amounts payable hereunder and all applicable taxes thereon. The Customer will make payment for storage of the Tires for the Initial Term at the time of delivery of the tires to Tire Butler Yorkdale Inc. and at the start of each Renewal Term in accordance with this Agreement until its termination.
8. **No Refund.** No portion of the Customer’s payment for the Initial Term will be refunded once two days have passed after the Customer has delivered the Tires to Tire Butler Yorkdale Inc. for storage, including if this Agreement is terminated prior to the end of the Initial Term.
9. **Initial Term.** The initial term of this Agreement (the “Initial Term”) starts on the date that the Customer delivered the Tires to Tire Butler Yorkdale Inc. and ends on the last date of the second Changeover Season or at the time the Tires are removed from storage, whichever occurs first. The Customer will pay for the Initial Term at the time of delivery of the Tires to Tire Butler Yorkdale Inc.
10. **Renewal Terms.** This Agreement will automatically renew for an additional Changeover Season (“Renewal Term”) starting on the expiry of either the Initial Term or previous Renewal Term, unless: (i) the Tires are or are determined by Tire Butler Yorkdale Inc. to no longer be in Tire Butler Yorkdale Inc.’s possession; or (ii) this Agreement has otherwise been terminated. By leaving the Tires in Tire Butler Yorkdale Inc.’s possession the Customer has agreed to renew this Agreement for each Renewal Term. The Customer will pay to Tire Butler Yorkdale Inc. for each Renewal Term either: (i) the same amount as the previous Term; or (ii) an increased amount equal to not more than 15% of the payment of the previous Term, as Tire Butler Yorkdale Inc. may determine. In addition to any payment for a Renewal Term the Customer will pay any applicable HST or analogous excise or sales tax.

11. Replacement Tires. The Customer agrees that if the Customer replaces the Tires with a different set of tires for storage by Tire Butler Yorkdale Inc. (e.g. replace winter tires with summer tires), then the replacement tires will be the Tires, that the terms and conditions of this Agreement will apply to the replacement tires as though they were the Tires and this Agreement will continue in full force and effect and unamended except in respect of the Tires.

12. Personal Information. The Customer consents to Tire Butler Yorkdale Inc. gathering, storing and using the Customer's personal information for the purpose of Tire Butler Yorkdale Inc. improving customer service and to provide the Customer with promotional materials from time to time. Tire Butler Yorkdale Inc. will follow Tire Butler Yorkdale Inc.'s Privacy Policy found on the Tire Butler Yorkdale Inc. website at: Tirebutler.com/privacy-policy.html. If there is any discrepancy between this Agreement and Tire Butler Yorkdale Inc.'s Privacy Policy as amended from time to time, then Tire Butler Yorkdale Inc.'s Privacy Policy will prevail and this section will be deemed to be amended to the extent of such discrepancy.

13. Insurance. Tire Butler Yorkdale Inc. has an internal and external insurance policy in place that will replace damaged tires with like and kind quality in the event of an insurable loss. The Customer acknowledges and understands that there may be situations in which Tire Butler Yorkdale Inc. does not insure and will not insure or guarantee against the damage or loss of Tires stored by Tire Butler Yorkdale Inc., and Tire Butler Yorkdale Inc.'s liability for loss or damage to the Tires is limited as described in this Agreement. Except as otherwise set out in this Agreement, the Customer hereby waives, releases and indemnifies Tire Butler Yorkdale Inc. from and against any and all claims against Tire Butler Yorkdale Inc.

14. Acts of Default. Acts of default by the Customer include: (i) the Customer's failure to pay any sum when due; (ii) the Customer's failure to perform any covenant, condition or obligation under any agreement between Tire Butler Yorkdale Inc. and the Customer; (iii) the Customer suffering any distress, execution or other legal or statutory process resulting in a lien, claim, judgment or charge on the Tires or Tire Butler Yorkdale Inc.; or (iv) the Customer becoming insolvent, committing an act of bankruptcy or being the subject of any proceedings under any provincial or federal legislation for a protection of debtors.

15. Notice of Default. Upon an act of default by the Customer, Tire Butler Yorkdale Inc. will provide the Customer with notice of the default using the last contact information the Customer provided and, in the event the Customer fails to respond to Tire Butler Yorkdale Inc. within twenty-one (21) days of such notice, the Customer shall be deemed to have abandoned the Tires. In the event of abandonment, without terminating this Agreement (unless so elected by Tire Butler Yorkdale Inc.), Tire Butler Yorkdale Inc. shall be entitled to take possession of such abandoned property and dispose of it in any manner Tire Butler Yorkdale Inc. deems fit, including by public auction.

16. Remedies. Immediately upon any act of default by the Customer, Tire Butler Yorkdale Inc. may, without terminating this Agreement (unless so elected by Tire Butler Yorkdale Inc.), and in addition to any other remedy contained herein, do any or all of the following, at its option: (i) seize and take possession of the Tires and dispose of them by private or public sale whether individually or together and apply the proceeds of such disposition to any outstanding balance payable under this Agreement, as well as to the reasonable expenses incurred by Tire Butler Yorkdale Inc. for seizing, repossessing, holding, repairing or preparing the Tires for sale and any other reasonable expenses incurred by Tire Butler Yorkdale Inc. in enforcing its rights herein; (ii) avail itself of any other remedies available to it under this Agreement, at law or in equity including pursuant to the applicable personal property security act of the province in which the Tires are stored; and (iii) terminate this Agreement.

17. Authorization. If Tire Butler Yorkdale Inc. takes possession of the Tires then the Customer authorizes Tire Butler Yorkdale Inc. to do any of the following until Tire Butler Yorkdale Inc. determines how it wishes to dispose of the Tires: re-place the Tires in storage, dispose of the Tires, or place the Tires unattended on the ground in a location determined by Tire Butler Yorkdale Inc.. In such a situation Tire Butler Yorkdale Inc. is not liable for the care or safekeeping of the Tires, except as otherwise set out in this Agreement, and the Customer will pay Tire Butler Yorkdale Inc. for any storage cost, disposal cost and the cost of moving the Tires.

18. Continuing Obligation. Termination of this Agreement will not relieve the Customer of any liabilities or obligations incurred prior to such termination and the Customer will at all times remain fully liable for all damages, costs and expenses incurred by Tire Butler Yorkdale Inc. on account of the Customer's default under this Agreement, including all costs, legal fees and disbursements.

19. Release. Except as specifically provided in this Agreement, the Customer hereby agrees to waive, release and further discharge all claims against Tire Butler Yorkdale Inc., its affiliates, employees, contractors, agents or others for whom it is responsible at law (the "Company"), that the Customer has or may in the future have against the Company for any loss, damage, expense or injury, including death, that the Customer and/or the Company may suffer as a result of the services provided by the Company and/or the use, storage of the Tires, wheresoever the storage occurs, or the transport of the Tires or damage to the Tires or anything related thereto by the Customer or the Company, including, without limitation, negligence, gross negligence, willful misconduct, breach of this Agreement or any other contract, non-compliance with licencing, or breach of any statutory or other duty of care on the part of the Company and/or the Customer and specifically: (i) waive, release and discharge the Company from any duty of care it may have pursuant to the Occupiers Liability Act (B.C.) or the equivalent legislation in the province in which the Tires are located and any claim for loss or damage the Customer may have thereunder; and (ii) limit the liability of the Company for any claim of the Customer for loss, damage or expense pursuant to the Warehouse Receipt Act (B.C.) or the equivalent legislation in the province in which the Tires are located, to a maximum of \$500CAD.

20. LIMITED LIABILITY. THE LIABILITY OF THE COMPANY FOR ANY ACTUAL AND DIRECT DAMAGES INCURRED BY THE CUSTOMER (OR ANY OTHER PERSON OR COMPANY) AS A RESULT OF TIRE BUTLER YORKDALE INC.'S ACTS OR OMISSIONS, INCLUDING BUT NOT LIMITED TO NEGLIGENCE CAUSING DAMAGE, FAILURE TO DELIVER, LOSS OR THEFT OR DAMAGE, OR LATE OR DELAYED DELIVERY OF THE TIRES, SHALL BE LIMITED AS PROVIDED IN THIS AGREEMENT AND SHALL IN NO EVENT EXCEED A MAXIMUM OF \$500 CAD. UNDER NO CIRCUMSTANCES SHALL TIRE BUTLER YORKDALE INC. BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS AND LOSS OF BUSINESS OPPORTUNITIES, THAT RESULT IN ANY WAY FROM THIS AGREEMENT, INCLUDING FROM ANY OF TIRE BUTLER YORKDALE INC.'S ACTS AND OMISSIONS, SUCH AS THOSE DESCRIBED IN THE FOREGOING SENTENCE.

21. Redelivery Costs. The failure by the Customer to accept delivery of the Tires within the time confirmed shall render the Customer liable for reasonable costs of storing, handling and redelivery charges incurred by Tire Butler Yorkdale Inc. The Customer shall pay Tire Butler Yorkdale Inc. at Tire Butler Yorkdale Inc.'s regular rate for each service caused by any act or default of the Customer or the Customer's agent.

22. Further Costs. The Customer will pay all costs (including legal fees and disbursements) incurred by Tire Butler Yorkdale Inc. in enforcing any of the terms, provisions, covenants and indemnities set out in this Agreement.

23. Security Interest. The Customer grants to Tire Butler Yorkdale Inc. a security interest in the Tires to secure the payment of all indebtedness and liabilities, present or future, absolute or contingent, joint or several, including all advances of current or running accounts and all future advances and readvances, and whether the same is reduced from time to time and thereafter increased or entirely extinguished and thereafter incurred again. Tire Butler Yorkdale Inc. may register the security interest in the appropriate registry at Tire Butler Yorkdale Inc.'s sole discretion.

24. Secured Creditor Remedies. If the Customer defaults under this Agreement, Tire Butler Yorkdale Inc. may enforce its rights as a secured creditor, including any rights to seize and sell the Tires at the time of default.

25. Notice. Any notice required to be given under this Agreement may be given verbally, hand delivered, or sent by mail, electronic text, email or other instantaneous method, except where required by applicable legislation for notice to be given in a prescribed form. Any notices sent by mail will be deemed to be received on the third day after mailing. Any other form of notice given by Tire Butler Yorkdale Inc. to the Customer, whether verbally, by hand delivery, electronic text, email or other instantaneous method will be deemed to be given immediately.

26. Binding Agreement. This Agreement is binding upon the parties, their heirs, executors, legal representatives, successors and permitted assigns and will be construed and interpreted in accordance with the laws of the province in which the Tires are stored.

27. Assignment. Tire Butler Yorkdale Inc. may assign this Agreement to a third party, at its discretion, without notice to the Customer.

28. No Set-Off. The Customer cannot set off for any amounts owing hereunder against any amounts owing or alleged to be owing to the Customer by Tire Butler Yorkdale Inc.

29. Severability. If any part or provision of this Agreement is found to be invalid or unenforceable, the validity or enforceability in such or part or provision may not affect the remaining parts or provisions of this Agreement which will continue in full force and effect.

30. No Waiver of Right. Any forbearance by Tire Butler Yorkdale Inc. in enforcing any of its rights under this Agreement in the event of a default by the Customer will not constitute a waiver of Tire Butler Yorkdale Inc.'s rights, including its right to require the Customer to comply strictly with the terms of this Agreement.