

Epic Cycles Pty Ltd

ACN 100 583 444

Website Terms and Conditions

1. This Agreement

1.1 Accepting this Agreement

- (a) By using the Website, you agree to:
 - (i) comply with and be bound by the terms and conditions of this Agreement.
 - (ii) pay the amounts in relation to the transactions you perform on this site.
- (b) If you do not agree to these terms, you have no right to obtain information, make purchases or otherwise continue using the Website.
- (c) These terms are binding on any use of the Website and apply from the time you first access it.
- (d) It is your obligation to ensure that you have read, understood and agree to the most recent terms available on the Website.
- (e) We may amend this Agreement at any time by posting with 14 days' notice the new terms and conditions on the Website.
- (f) Any terms of this Agreement at the time you conclude the purchase of products via this Website is the version which will apply to that transaction.

1.2 Contacting us

Please email us at sales@epiccycles.com.au if you have any questions relating to these terms and conditions.

2. Use of the Website

2.1 Website not locally available

You acknowledge and agree that the Website will only be accessible using the internet (or other connection to our third party servers), and will not be available "locally" from your own servers.

2.2 Parts of the Website controlled by third parties

You acknowledge and agree that the Website is operated from servers owned and controlled by a third party. As such, you acknowledge that certain functions are out of our control, including data storage and backup.

2.3 We can change the Website at Our Discretion

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove products from, redesign, improve or otherwise alter the Website at our sole and absolute discretion.

2.4 Unintentional inaccessibility

From time to time, without notice, access to all or part of the Website may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to the Website as soon as practicable.

2.5 Intentional inaccessibility

We reserve the right to make some or all of the Website inaccessible from time to time as is required for upgrades, maintenance and updates.

2.6 Errors

- (a) You acknowledge and agree that there may be technical or administrative errors in the information on the Website, including but not limited to errors with respect to product description, pricing and availability.
- (b) We reserve the right to do any of the following, at our absolute discretion, without notice:
 - (i) correct any errors in the Website; or
 - (ii) update the Website.

2.7 Security Responsibilities

We will take reasonable steps to ensure that the Website is secure from unauthorised access consistent with generally accepted industry standards including SSL encryption when passing payment details to the payment gateway provider. However, our security responsibilities to you extend no further than those set out in these terms.

3. User Account

3.1 Accessing the Website

You acknowledge and agree that to receive the benefit of the Website, you may be required to:

- (c) provide us with Personal Information; and
- (d) create an Account with us.

3.2 Provision of information

You agree to provide any information reasonably requested by us for the purpose of setting up your Account and operating the Service. You warrant that:

- (a) all of the information you provide to us is accurate and complete in all respects;
- (b) you will inform us by updating your Account details whenever any such information changes; and
- (c) you will not provide false or misleading information.

3.3 Term

The Term for an Account begins when you sign up to use the Service and continues until:

- (e) you cancel your Account; or
- (f) this Agreement is terminated.

3.4 Declining your Account

We reserve the right to reject any new Account in our absolute discretion.

3.5 Right to suspend

We reserve the right to:

- (g) limit or suspend your access to the Service; and

(h) alter the account information entered by you via the Service,

if in our reasonable opinion:

(i) you are in breach of any of the obligations or undertakings in this Agreement;

(j) your Account is not used for a period of greater than 1 month; or

(k) we suspect a security breach associated with your Account.

3.6 Security responsibilities

(a) We will take reasonable steps to ensure the Service is secure from unauthorised access consistent with generally accepted industry standards.

(b) You must take reasonable steps to ensure usernames and passwords are not inadvertently disclosed.

(c) If you become aware the security of your Account may be compromised, you must immediately notify us.

4. Making Purchases

4.1 Making orders

(a) Prices for products presented on this website are provided as an invitation to treat.

(b) The final price of the products you purchase is calculated at checkout and may include additional costs such as taxes, delivery charges and insurance.

(c) The price shown at the time you enter your payment details is the total price of the order notwithstanding the individual products purchased may have been presented on the Website at a lower price.

(d) By entering your payment details you are making an offer to us on the terms and conditions set out in this Agreement.

(e) We are under no obligation to accept an offer.

(f) Acceptance of your offer is deemed once we confirm your shipment with our fulfilment centres.

(g) If you identify an error in the order you may contact us and if your shipment has not been confirmed, we will wherever possible amend the order.

4.2 Payment

(a) In purchasing products from us, you agree to abide by the terms and conditions imposed by your financial institution (including buy now pay later providers) and pay the amounts in relation to the transactions you authorise on this Website.

(b) While we use only reputable payment gateway providers, we are not liable for any act or omission of the payment gateway provider you select at checkout.

(c) You are responsible for the payment of any goods and services, or value added taxes which are presented to you at the time of making an order.

4.3 **Delivery**

- (a) You authorise us to arrange for delivery through any Delivery Service Provider.
- (b) Where you purchase Goods from us in different transactions you may incur more than one delivery charge.
- (c) We will use our best endeavours to arrange for the delivery of Goods as requested by you to the Shipping Location during the times you select.
- (a) We endeavor to deliver the products you purchase within the time specified when you make an order. However, delays may occur in our delivery and fulfillment services from time to time.
- (b) Should you encounter a delay in delivery you should contact us via the email address set out above before we can investigate the reason for the delay in delivery.
- (d) We reserve the right to arrange for delivery of the Goods in multiple deliveries.
- (e) Delivery of Goods will be deemed to have taken place when the Goods arrive at the Shipping Location.
- (f) You authorise the Delivery Service Provider to leave the Goods at the Shipping Location whether or not any person is present to accept delivery.
- (c) Upon delivery if the courier considers it unsafe to leave the package it will be delivered to the collection point nearest the shipping address on your order.
- (g) The risk in the Goods will pass to you at the earlier of the time:
 - (i) the Goods are provided to be loaded by the Delivery Service Provider; or
 - (ii) when you collect the Goods.

4.4 **Delay in delivery**

The Delivery Service Provider will notify you if it believes the delivery of Goods will be delayed and will advise you of the new delivery date and time.

4.5 **Your delay or prevention of delivery**

If the Delivery Service Provider is unable to deliver the Goods because of an act or omission by you including your failure to provide the correct delivery instructions, then the Goods will be deemed to have been delivered and may be left at the Shipping Location.

4.6 **Products may not be available**

You acknowledge the products advertised via the Website may be unique or available in low stock volumes. If we are unable to fulfil an order, we will contact you and reimburse you for the cost of that product.

4.7 **Gift cards and discount codes**

- (a) From time to time and at our sole discretion we may make available to you the use of discount codes and redeemable gift cards.
- (b) Discount codes and gift cards are redeemable when you place your order and on the conditions upon which those discount codes and gift cards were offered.

4.8 Refunds

- (a) Once a transaction is concluded the products may not be returned other than in accordance with:
 - (i) our [refunds policy \(available on our Website\)](#); or
 - (ii) Consumer Protection Laws.
- (b) Any defects purportedly present in the product must be reported to us in writing within 7 days of the product being delivered.

5. Privacy policy

5.1 Privacy Policy

- (a) You agree and consent to the handling of Personal Information in accordance with our [Privacy Policy](#).
- (b) We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post it on our website.

6. Intellectual Property

6.1 Our intellectual property

We own or have a licence to use all the Intellectual Property Rights in the Website.

6.2 Undertakings regarding intellectual property

You warrant that you will not do any of the following, or permit any person over whom you have effective control to do so:

- (a) copy or reproduce, or create an adaptation or translation of, all or part of the Website in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Website;
- (b) incorporate all or part of the Website in any other webpage, site, application or other digital or non-digital format;
- (c) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Website on any medium; or
- (d) directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in the Website or any documentation associated with them.

7. Warranties

- (a) You warrant you:
 - (i) are over the age of 18;
 - (ii) have the requisite authority to enter into this Agreement; and
 - (iii) have authority to use the payment method you select.

- (b) We warrant the products are:
 - (i) free from material defects;
 - (ii) fit for their intended purpose;
 - (iii) of merchantable quality;
 - (iv) meet the description of the product as set out on the website; and
 - (v) delivered free of liens or encumbrances.
 - (c) We make no warranties or guarantees:
 - (i) the Website is of acceptable quality and fitness for a particular purpose;
 - (ii) regarding your access to, or the results of your access to, the Website including its correctness, accuracy, timeliness, completeness, reliability or otherwise.
 - (d) Subject to the Non-Excludable Conditions, all other conditions and warranties, statutory or otherwise and whether express or implied, are hereby excluded, and no guarantee, other than that expressly contained in this Agreement, applies to the product.
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8. Liability

8.1 Exclusion of liability

Subject to the Non-Excludable Condition and to the maximum extent permissible by law, we exclude all other liability for any costs, including consequential loss, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) the Website being inaccessible for any reason;
- (b) the use of the product for a purpose it was not intended to be used;
- (c) incorrect or corrupt data, lost data, or any inputs or outputs of the Website;
- (d) computer virus, trojan and other malware in connection with the Website;
- (e) security vulnerabilities in the Website or any breach of security that results in unauthorised access to, or corruption of data;
- (f) any negligent act performed by you connected with the Website or the product;
- (g) any unauthorised activity in relation to the Website;
- (h) your breach of this Agreement; or
- (i) any act or omission by you, your personnel or any related body corporate under or in relation to this Agreement.

8.2 Limitation of liability

Where a Non-Excludable Condition is deemed to apply, to the fullest extent possible under the law, we limit our liability for any breach to:

- (a) in the case of goods:

- (i) the re-supply of the goods or payment of the cost of the re-supply of the goods; or
 - (ii) the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and
 - (b) in the case of services:
 - (i) the resupply of the services; or
 - (ii) the payment of the cost of having the services resupplied.
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9. Indemnity

You indemnify us, including our directors, employees, contractors, agents, subsidiaries and related bodies corporate against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this agreement or your use of the Website, including any costs arising from:

- (a) your breach of this Agreement;
 - (b) you or any authorised user infringement of any third party Intellectual Property Rights while using the Website;
 - (c) any harm to, claim or action by a third party arising directly or indirectly from your use of the Website; or
 - (d) your breach of any privacy laws.
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10. Dispute Resolution

10.1 Mediation

- (e) If a dispute arises between the parties in relation to this Agreement, either party may give the other party a written notice that they intend to arrange mediation.
- (f) The parties must refer the dispute to an independent mediator within 21 days of the written notice.
- (g) If the parties cannot agree on a suitable mediator, either party may contact the Queensland Law Society and request they provide a mediator.
- (h) The costs of the mediation must be paid by the parties in equal shares.

10.2 Legal Proceedings

No party may commence court proceedings unless the dispute remains unresolved for 14 days from the date of the mediation anticipated in clause 10.1.

10.3 Dispute resolution not to apply to debts

The dispute resolution procedure set out in this clause 10 will not apply in any instance where we seek to enforce a debt in connection with this Agreement.

11. Termination

We may end this Agreement immediately if in our reasonable opinion you are in breach of this Agreement.

12. Hire Vehicles

12.1 General Provisions

- (a) From time to time, we advertised hire vehicles on the Website.
- (b) Unless otherwise stated on the Website, any hire vehicle advertised cannot be hired directly from the Website. Instead, you must come in store to arrange for hire.
- (c) We make no guarantees as to the availability of hire vehicles. Any hire vehicle advertised on the Website may not be available when you arrive in store. To the best of our ability, we will try and arrange a hire vehicle of the same or similar specifications to your desired vehicle.
- (d) We may choose to discontinue our vehicle hire service at any time with no penalties or obligations to you.

13. General and interpretation

13.1 Assignment

We may assign, encumber, declare a trust over or otherwise create an interest in our rights under this document without your consent, and may disclose to any potential holder of the right or interest any information relating to this document or any party to it.

13.2 Governing law

The laws of Queensland, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

13.3 Inconsistency with other documents

If the terms of this Agreement are inconsistent with any other document, policy or agreement between the parties, these terms prevail to the extent of the inconsistency.

13.4 Operation of these terms

- (a) These terms contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these terms and has no further effect.
- (b) Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of these terms.

13.5 Unforeseen Event

- (a) The obligations of the parties under this Agreement are suspended to the extent that occurrences or conditions beyond its control, including but not limited to acts of terrorism, hacking, acts of God, war, strikes, civil disorder, disasters, earthquake, fire, flood, lockout, embargo, failure of suppliers, equipment failures or changes to government regulations (**Unforeseen Event**) which affects them, as long as the Unforeseen Event continues. However, if an Unforeseen Event continues for more than 40 Business Days, we may terminate this Agreement by notice in writing to the you of not less than 10 Business Days.
- (b) The occurrence of an Unforeseen Event does not suspend your obligation to pay any money under this Agreement.

- (c) A party claiming an Unforeseen Event must use their best endeavors to remove, overcome or minimise the effects of that Unforeseen Event as quickly as possible.

13.6 **Waiver**

Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.

13.7 **Notifications**

We may provide any notification for the purposes of these Website Terms of Use by email.

13.8 **Electronic Transactions**

The parties agree to send, receive and execute documents electronically and be bound by the terms of the *Electronic Transactions Act 1999* (Cth) and the *Electronic Transactions (Queensland) Act 2001* (Qld).

13.9 **Variations**

This Agreement may only be varied in writing by agreement between the parties.

14. **Definitions and interpretation**

14.1 **Definitions**

Unless the terms and conditions of the Agreement explicitly state otherwise, expressions used in the Agreement have the following meanings:

Account means your account to use the Service.

Agreement means this document and any additional policies available on the Website.

Consumer Protection Laws mean the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and other consumer protections laws we are required to comply with.

Delivery Service Provider means any one of the service providers who may deliver the Goods on our behalf, as selected by us in our sole discretion.

Goods means any products purchased via the Website.

Intellectual Property Right means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, circuit layouts, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Non-Excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth) and other Consumer Protection Laws), which cannot by law be excluded.

Personal Information has the meaning given to it by the Privacy Law.

Privacy Law means:

- (a) the *Privacy Act 1988* (Cth); and

(b) any code registered under the Privacy Act or Australian Privacy Principles.

Privacy Policy means the [privacy policy available on the Website](#) as amended by us from time to time.

Shipping Location means the location you enter into the Website when you make a purchase.

You means a person or entity using the Website.

Us, we or **our** means Epic Cycles Pty Ltd ACN 100 583 444.

Website means the website located at <https://www.epiccycles.com.au/>.

14.2 Interpretation

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

- (a) a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;
- (b) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
- (c) "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
- (d) where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
- (e) headings are for convenience and will not affect interpretation;
- (f) words in the singular will be taken to include the plural and also the opposite;
- (g) a reference to a document will be to that document as updated, varied or amended;
- (h) a document referenced by the Agreement will not take precedence over the referencing document;
- (i) when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body in any way;
- (j) where a "URL" is mentioned, the non-operation of the "URL" will not render the rights and obligations associated with it invalid; and
- (k) a reference to a party's conduct includes omissions as well as acts.