



SHIMANO AUSTRALIA CYCLING PTY LTD

A.B.N. 19 056 284 710

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CONDITIONS OF SALE OF GOODS effective 1 January 2019

1. DEFINITIONS

In these conditions:

- a) GST has the meaning in A New Tax System (Goods and Services Tax) Act 1999;
- b) B2B Portal means the online "Shimano Webshop" operated by Shimano and used by a Purchaser to order goods from Shimano; and
- c) Confidential Information means any commercially valuable or sensitive information of Shimano, including any prices, price lists or trade information, whether made available to the Purchaser via the "Shimano Webshop" or otherwise, but does not include information which is lawfully in the public domain, or enters the public domain otherwise than as a result of unauthorised disclosure;
- d) Purchaser means a person or entity being the purchaser of goods from Shimano; and
- e) Shimano means Shimano Australia Cycling Pty Ltd ABN 19 056 284 710.

2. OVERRIDING PROVISION

These conditions will not exclude, restrict or modify any condition, warranty, right or remedy implied by law (including the *Competition and Consumer 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

3. APPLICATION OF PROVISIONS

- a) These conditions supersede all previously agreed terms for the supply of goods by Shimano and Shimano may only alter these terms by notice in writing to the Purchaser.
- b) The placing of an order for goods, after these conditions have been made available to the Purchaser, will constitute acceptance by the Purchaser of these conditions as the terms upon which goods are sold.

4. PRICE

- a) The Purchaser must pay the price for the goods (including any GST) quoted by Shimano, and where no price is quoted, the current price (including any GST) specified in Shimano's wholesale price list at the time of delivery.
- b) Where a price is specifically quoted the price will only be valid if the order is placed and fulfilled within 7 days of the date of the quote. In all other cases, Shimano may alter the price quoted or a list price and will reasonably endeavour to notify the Purchaser of any price alteration or impending alteration and the Purchaser has the right to rescind the agreement within 48 hours of notification & before accepting delivery of goods.
- c) Unless otherwise quoted in writing, all prices are ex-Shimano's premises and exclusive of GST.
- d) Shimano may increase the price to cover the cost to it of complying with any special instruction or any act or failure to act on the part of the Purchaser.

5. PAYMENT

5.1 Where no account exists

Unless the Purchaser has written approval to operate on a 30 day account, all goods must be paid for prior to delivery.

5.2 Where an account exists

Where a 30 day account has been approved payment in full for goods must be received by Shimano before the last day of the month following delivery of the goods.

5.3 Method of payment

All payments to Shimano must be free from all deductions and offsets. Each payment must be made in immediately available funds by 4pm on its due date at Shimano's principal place of business or as Shimano may from time to time advise in writing.

5.4 Enforcement costs and expenses

The Purchaser must reimburse Shimano for all expenses (including but not limited to all reasonable legal costs on a solicitor and own client basis and fees incurred by Shimano in engaging the services of debt collection agencies) incurred by Shimano which arise from a failure by the Purchaser to comply with this agreement.

6. APPLICATION OF MONEYS

All moneys received by Shimano will be applied:

- a) firstly, in payment of all moneys payable under clause 5.4;
- b) secondly, in payment of the price of the goods.

7. BREACH OF CONDITIONS

If the Purchaser fails to comply with clauses 4, 5 or 15 of this agreement, then:

- a) All moneys owing by the Purchaser to Shimano will become immediately due and payable notwithstanding that the time for payment has not otherwise arrived; and
- b) Shimano will not be required to complete any unfulfilled order; and
- c) All goods supplied for which payment has not been made must if required by Shimano, be immediately returned to it.

8. RETURNED GOODS

Unless required by law, Shimano is under no obligation to accept return of goods. Where it agrees to do so, the following conditions will apply:

- a) The Purchaser must contact Shimano within 7 days of receipt of the goods to request a Return Authorisation number;
- b) The goods must be returned within 7 days of Shimano agreeing to accept their return and giving a Return Authorisation number;
- c) The goods must be in new order and condition and, unless defective when supplied, must not have been removed from their packaging. Where the goods consist of a number of components and instructions, all components and instructions must also be returned;
- d) Unless the goods were defective when supplied, the purchaser must pay Shimano a handling fee equal to 20% of the GST inclusive sale price of the goods.
- e) Where goods are determined by Shimano not to be in new order and condition, the Purchaser must collect them within 3 business days of notification by Shimano of its decision not to accept them.

9. RISK AND TITLE IN THE GOODS

- a) All goods remain the property of Shimano until paid for in full.
- b) Payments received by Shimano and not identifiable as relating to the sale of particular goods will be applied towards payment for goods in chronological order of delivery dates.
- c) The Purchaser irrevocably authorises any representatives of Shimano to enter the Purchaser's premises or other premises where the Purchaser has stored the goods, without liability for trespass or resulting damage, and retake possession of the goods. Credit for returned goods will only be given for goods including packaging in new condition.
- d) The risk as regards any loss, damage or deterioration to goods will pass to the Purchaser on delivery.

The Purchaser must maintain insurance to cover goods against loss or damage.

10. LOSS OR DAMAGE IN TRANSIT

Shimano will bear any loss or damage to goods in transit where delivery is by Shimano's nominated carrier and delivery charges are included in the quoted or list price of the goods. In all other cases, the Purchaser is responsible for loss of or damage to goods in transit.

11. LIMITATION OF LIABILITY

- a) Except to the extent required by law, any claim by the Purchaser against Shimano relating to or arising from goods sold may only be commenced or instituted within one year of delivery of the goods.
- b) The maximum liability of Shimano for goods sold by it is limited to making good any defects, by (at the option of Shimano) either repairing or replacing the goods, or refunding the price paid by the Purchaser for the goods.
- c) Except to the extent provided or permitted by law or the previous paragraphs of this clause, the Purchaser will not have any cause of action against Shimano, or bring a claim for, or recover from Shimano, any loss or damage of any kind relating to the supply of goods caused directly or indirectly by any defect in materials or workmanship, or any other defect, or unsuitability of the goods for any purpose, or arising from or attributable to the fault or negligence of any person or entity.

12. CONFIDENTIAL INFORMATION

The Purchaser must keep the Confidential Information confidential and must not disclose any Confidential Information to any other person except:

- a) To its employees on a need to know basis, who are made aware of the obligation to keep the Confidential Information confidential;
- b) With the prior written approval of Shimano; or
- c) If such disclosure is required by law.

13. GOVERNING LAW

This agreement is governed by the laws of New South Wales. The Purchaser agrees to submit all disputes between it and Shimano arising out of or in connection with this agreement to the exclusive jurisdiction of the courts of New South Wales.

14. PERSONAL PROPERTY SECURITIES ACT (PPSA)

The Purchaser acknowledges & agrees that, until Shimano has received payment in full from the Purchaser for the goods:

- a) Shimano's Security Interest in the Goods is effective & attaches to the Goods immediately upon the Purchaser taking delivery of the Goods;
- b) Shimano may take all necessary steps to perfect, record, register, amend or remove the registration of Shimano's interest on the Personal Property Securities Register (PPSR);
- c) The Purchaser must, at its own cost, do anything which Shimano considers reasonable necessary to;
 - i) ensure that Shimano Security Interest in the Goods attached to the Goods is enforceable, perfected & otherwise effective under the PPSA;
 - ii) enable Shimano to exercise or enforce any of its rights in relation to its Security Interest
 - iii) enable Shimano to prepare, and register or renew a financing statement or these Terms on the PPSR;
- d) The Purchaser must not;
 - i) otherwise in accordance with these Terms, create any Security Interest in the Goods, or any property which constitutes 'personal property' under the PPSA & becomes an accession to the Goods, without the prior written consent of Shimano; or
 - ii) change its name without first giving Shimano (15) Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation;

- e) To the extent permitted under the PPSA, Shimano need not give any notice of the receipt of a verification statement to the Purchaser under the PPSA.

15. RESTRICTION OF EXPORTS OUTSIDE OF AUSTRALIA

15.1 Supply of Shimano goods intended for Australia

Any goods supplied by Shimano to the Purchaser are intended for customers in the Australian market. The Purchaser shall undertake all reasonable efforts to ensure that the goods supplied under this agreement are being resold to customers located in Australia only. For the avoidance of doubt, this obligation applies equally to goods resold by the Purchaser in brick-and-mortar stores and online stores.

15.2 Ensuring supply of goods to Australia only

The Purchaser shall, in respect of goods supplied under this agreement:

- a) Implement technical measures on its online points of sale (if any), enabling the Purchaser to automatically determine the current location of potential customer visiting its website;
- b) Only offer delivery to addresses in Australia;
- c) Implement a geo-blocking on the respective website (if applicable) to not show offers available in Australia to site users outside of Australia;
- d) Where the Purchaser has a back-to-back agreement for the resale of goods, include these export restrictions in that agreement;
- e) Undertake all reasonable efforts to prevent the export of goods to locations outside of Australia by its direct or indirect customers.

15.3 Obligation to report to Shimano

If the Purchaser becomes aware of any customers intending to sell goods outside of Australia, it will notify Shimano as soon as practicable.

15.4 Breach of obligations under this clause

If there are any circumstances that suggest the Purchaser may be in breach of this clause, the Purchaser will, at the request of Shimano, provide Shimano with documentation to show that it has not supplied to locations outside of Australia, and/or has stopped the supply of goods to customers that it discovered were reselling to locations outside of Australia. If the Purchaser is unable to provide documentation, Shimano may:

- a) Reduce the quantity of goods supplied to the Purchaser by its own estimate of the amount of goods being resold to locations outside of Australia; and/or
- b) Stop the delivery of goods to the Purchaser.

SIGNATORY SECTION:

In consideration for the mutual promises contained in these terms, the buyer & Shimano acknowledge & agree that these Terms shall apply to any & all existing or future Orders or any other sale of Goods from Shimano to the Buyer unless Shimano & the buyer agree, in writing, to vary these Terms;

Commencement Date: _____

SIGNED for & on behalf of 'Business Name'

ABN _____

Signature of Authorized Person

Name of Authorized Person

**SIGNED for & on behalf of Shimano Australia Cycling Pty Ltd
ABN 19 056 284 710 by its authorized representative**

Signature of Authorized Person

Name of Authorised Person