



# PRINX CHENGSHAN

## PRINX CHENGSHAN TIRE NORTH AMERICA, INC.

100 North Barranca Street  
Suite 1000  
West Covina, California 91791  
310-205-8355

### TERMS AND CONDITIONS OF SALE (U.S. and Canada)

These terms and conditions (“Terms”) apply to all sales by Prinx Chengshan Tire North America, Inc. (“PCTNA”) to you (“Customer”) of tires and any related products and services (collectively, “Products”). These Terms override and replace any conflicting terms or conditions included in any order or other document, unless PCTNA has expressly accepted such terms in writing.

#### **Products**

- The Products are intended solely for resale by Customer in the United States or Canada. These Terms set forth the terms and conditions that will apply if any such sales are made.

#### **Container Ordering**

- Customer shall submit purchase orders by the 15<sup>th</sup> of each month; orders will be processed on a first come first serve basis. Customers shall provide a delivery date or schedule for each container. PCTNA will notify customer of approximate delivery date(s) based upon factory production schedules.
- A separate purchase order form shall be used for each order, and a minimum order shall be one full container 40’ high cube ocean container. Any order may be accepted by PCTNA in whole or in part, at its sole discretion, and PCTNA will provide an order acknowledgement to customer for all accepted orders. Customer authorizes PCTNA to rely on Customer’s list of authorized buyers, if any.
- Orders shall be in multiple of full 40’ high cube container loads and follow the minimum order quantity guidelines:

<b>PCR TIRES</b>	-48 Pieces and not to exceed 24 SKU per container
<b>LT &amp; UHP TIRES</b>	-36 Pieces and not to exceed 18 SKU per container
<b>TBR TIRES</b>	-24 Pieces and not to exceed 12 SKU per container

- Customer shall designate up to 4 fill and reduction sizes for each order. If none is provided, shipment may be delayed and PCTNA will recommend fill and reduction sizes for the order.
- Using the fill and /or reduction sizes, PCTNA will adjust up to 20% of the order quantity to utilize the full container capacity and optimize shipping schedule.
- Customers may not change already accepted and processed orders without obtaining prior written approval from PCTNA.

### **Container delivery and receiving**

- PCTNA will arrange standard ocean freight transportation and provide a standard 2 hour free live-unloading for all container shipments. Customers shall accept and receive container delivery within 24 hours of delivery notification. Customer is responsible for all additional logistic changes, beyond the standard shipping method and procedure stated above.
- Should Customer need special transportation handling or custom delivery arrangements, Customer shall make the requirements known on the purchase order form, and obtain prior written approval from PCTNA. A reasonable effort will be made by PCTNA to meet the requirements, and customer will be advised of, and responsible for, all additional transportation and logistics charges, if any, which will be invoiced to customer.
- Customer is responsible for all costs associated with any changes to a submitted or processed order. PCTNA will advise customer in advance of the charges and if they are acceptable to customer the charges will be invoiced to customer.

### **Payment and Terms**

- Customer shall pay prices and associated charges applicable at the time an order is accepted, in accordance with these Terms and any additional terms and conditions in PCTNA's invoices.
- Unless Customer has been given prior written approval by PCTNA for deferred payment credit terms, standard purchase order payment terms are pre-payment, due upon shipment invoice, with payment before delivery.
- Any late payment will be charged a late payment interest of 1.5% per month, or the maximum permitted by law, whichever is less.
- Customer agrees to pay for all goods delivered as ordered, even in the event that Customer's representative is not present to acknowledge delivery.
- Payment is made when it is received and credited to PCTNA bank account.

### **Returns and Cancellation**

- Customer is not allowed to cancel an order once the container has been shipped from the factory without prior written approval from PCTNA. In the event PCTNA allows Customer to cancel the order after the container has been shipped from factory, there will be a 20% cancellation fee of the invoice amount, plus any freight diversion charges, diversion administrative fees and associated storage costs, as specified by PCTNA.
- Customer is not allowed to return any of the products for exchange or credit without obtaining prior written approval from PCTNA. PCTNA will not accept any returns of discontinued products, specially marked products, or any products not in first class condition. All returns or cancellations shall be freight pre-paid by customer, plus up to 20% of restocking charges as specified by PCTNA.

### **Customer Representations and Warranties**

- By ordering Products from PCTNA after receipt of these Terms and Conditions of Sale, Customer represents and warrants that: (a) Customer is authorized to do business in its state or province of incorporation, organization, or formation and its principal places of business and that all necessary approvals to enter into these Terms have been obtained; (b) Customer is purchasing the Products for resale in the United States or Canada only; (c) Customer is purchasing the Products for resale to regional and local tire dealers and end-users only and Customer will not sell or re-sell the Products to national dealers or chains; and (d) Customer shall comply with all federal, state, provincial, or municipal laws or regulations which are now or may become applicable to Customer's purchase or resale of the Products. Customer agrees to display all required Product warranties and notices in accordance with the manufacturer's or PCTNA's policies and with all applicable laws.

### **Indemnification**

- By ordering Products from PCTNA after receipt of these Terms and Conditions of Sale, Customer agrees to indemnify PCTNA against, and reimburse and pay PCTNA on demand for, all losses, damages, costs, expenses, collection charges and attorney's fees (whether out of court or in litigation, including appeals and bankruptcy proceedings) incurred by PCTNA: (a) in endeavoring to collect any amount payable hereunder, or to enforce, protect or defend PCTNA rights under these Terms; (b) in connection with any Customer checks returned for non-sufficient funds (NSF) or otherwise, including all returned checks fees permitted under applicable law; (c) as a

result of Customer's breach of its representations and warranties made in these Terms; and (d) as a result of the negligent or willful actions or omissions of Customer.

### **Trademarks and Copyrights**

- PCTNA and its affiliates have developed, acquired, and licensed trademarks, trade names, trade dress, copyrights, and other valuable intellectual property ("PCTNA Trademarks and Copyrights") in connection with the manufacture, distribution, marketing, promotion, and sale of PCTNA tires. With each sale of Products to Customer, PCTNA hereby grants to Customer a limited, non-exclusive license to use the PCTNA Trademarks and Copyrights to market, promote, distribute, and sell the Products, subject to the license limitations set forth below.
- Limitation: The non-exclusive right of Customer to use the PCTNA Trademarks and Copyrights is limited, and, among other things, does not give Customer the right to do the following: (a) use the PCTNA Trademarks and Copyrights for any purpose other than specifically permitted herein; (b) sub-license the PCTNA Trademarks and Copyrights except for the purpose of distributing and/or selling the Products to regional and local tire dealers who are customers of Customer; (c) sub-license the PCTNA Trademarks and Copyrights to any national chains or tire dealers; (d) use the PCTNA Trademarks and Copyrights on any website or other internet sales channel other than Customer's own website or internet sales channel; (e) market, promote, distribute, or sell the Products bearing the PCTNA Trademarks and Copyrights through any third-party website or internet sales channel without first obtaining express prior written approval from PCTNA; (f) alter, modify, amend, or otherwise revise the PCTNA Trademarks and Copyrights in any respect for any purpose without first obtaining express prior written approval from PCTNA; (g) use any language or display the PCTNA Trademarks and Copyrights in such a way as to create the impression that the PCTNA Trademarks and Copyrights are property of Customer; and (h) use the PCTNA Trademarks and Copyrights beyond the limited permission to use herein granted.
- Ownership; Infringement. Customer, by taking delivery of the Products acknowledges that the ownership of all right, title and interest in the PCTNA Trademarks and Copyrights is and shall remain solely vested in PCTNA and/or its affiliates. If, upon request of Customer, any of the PCTNA Trademarks and Copyrights are altered, modified, amended, or otherwise revised, Customer acknowledges that PCTNA and/or its affiliates shall be the sole and exclusive owners of all right, title, and interest in the altered, modified, amended, or otherwise revised marks and rights. Customer shall promptly notify PCTNA upon the occurrence of any of the following: (i) any unauthorized use or infringement by any third party of any of the PCTNA Trademarks and Copyrights; or (ii) any assertion by a third party that Customer's use of any of the PCTNA Trademarks and Copyrights constitutes trademark or copyright infringement or any similar claim.

### **Product Warranty; Limitations**

- All Products are subject to applicable standard manufacturer's warranties or PCTNA's written warranty then in effect. **EXCEPT AS EXPLICITLY SET FORTH HEREIN, PCTNA EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE PRODUCTS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL PCTNA OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONTINGENT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST PROFITS, DOWNTIME, OR SUBSTITUTION COSTS, WHETHER OR NOT PCTNA WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.**

### **Miscellaneous**

- Title to the products shall remain with PCTNA until Customer takes physical possession of the Products, unless the parties agreed that title passes at an earlier time. Until PCTNA has received payment in full, PCTNA shall retain a purchase money security interest in the Products in accordance with the applicable provisions of the California Uniform Commercial Code or other applicable law. Until PCTNA has received payment in full, Customer shall keep the Products separate from other products of the Customer and third parties and properly stored, protected, insured and identified.
- Governing Law and Jurisdiction. This purchase order is governed by, and construed in accordance with, the laws of the State of California (USA) (without giving effect to its conflicts of laws principles). All and any claims or disputes pursuant to these Terms shall be brought solely and exclusively in the State or Federal courts of Los Angeles County, California U.S.A.; provided however, that PCTNA may bring legal action to collect any amounts

due in the county in which the Products were sold, any county in which Customer maintains a place of business, or Los Angeles County, California, at PCTNA's election. Customer hereby submits to the jurisdiction of the California courts for purposes of adjudicating any action arising out of the Terms, and hereby waives, to the fullest extent permitted by law, any objection to the laying of venue therein. PCTNA and Customer further agree that the aforementioned choice of venue is to be considered mandatory and not permissive in nature, thereby precluding the possibility of litigation in any jurisdiction other than that specified in this section or by PCTNA. PCTNA and customer, to the extent they may legally do so, hereby waive any right each may have to assert the doctrine of forum non conveniens.

- **Force Majeure.** PCTNA shall not be liable for any delay, damage or non-performance as a result of any cause or event beyond PCTNA's reasonable control, including an act of God, act of Customer, labor disputes or shortages, work restrictions, work stoppages, civil commotion, governmental regulations or controls, unusual delays in deliveries, shortages or delays in transportation or raw materials, inability to obtain any material or service, supply chain interruptions, embargo, war, riot, defaults of common carriers, equipment failures, fire or other casualty, extreme and abnormal adverse weather conditions, such matters related to COVID-19 or a like disease or pandemic, or delays in the performance of suppliers of subcontractors.
- **Term and Termination.** These Terms are effective immediately, and shall become binding on PCTNA and Customer when customer places its next order from PCTNA. These Terms and Conditions shall remain in effect until modified or terminated by PCTNA in writing. These Terms may be terminated by PCTNA at any time by giving at least thirty (30) days' prior written notice to Customer. If Customer fails to make any payment when due or to perform any obligation under these Terms, PCTNA may, at its option and without waiving or limiting any of its other rights or remedies under these Terms or at law, declare all of Customer's indebtedness and obligations to PCTNA to be immediately due and payable and may immediately terminate these Terms by giving written notice to the Customer.
- **Modifications to Terms.** PCTNA may from time to time, in its sole discretion and upon written notice to Customer, modify these Terms.
- **Miscellaneous.** These Terms contain the entire agreement of the parties regarding the subject matter described herein, and supersede all other representations, understandings, arrangements and prior agreements, whether written or verbal. Only PCTNA and Customer have enforceable rights and remedies under these Terms. PCTNA's rights under these Terms are cumulative.
- **Agent.** Nothing in these Terms shall be construed to make either party a partner, employee or agent of the other, and neither party has any authority to bind the other in any respect. The parties are independent contractors as to each other.
- **Confidentiality.** During and after the term of these Terms, Customer will maintain the confidentiality of all documents, confidential information, trade secrets, marketing and operating methods of PCTNA relating to the Products and business of PCTNA ("Trade Secrets") and refrain from using and disclosing Trade Secrets for personal or commercial gain, or for any other purpose not in furtherance or of incidental to the obligation of the Customer hereunder, except with PCTNA's written consent. Customer agrees that a breach of this Confidentiality provision shall cause irreparable harm to PCTNA and that PCTNA is entitled to seek appropriate injunctive relief to prevent or remedy any breach of this Confidentiality provision.
- **Assignment.** Customer may not assign any of its rights or obligations under these Terms without prior written consent of PCTNA, and such consent will not be unreasonably withheld. The Terms shall inure to the benefit and be binding upon the parties, their permitted assigns, heirs, successors, administrators, and executors. If Customer transfers title to the Products to an affiliate or third-party, such transferee shall agree to be bound by these Terms.
- **Waiver.** No change to the Terms shall be effective unless in writing, executed by an authorized representative of PCTNA. Failure to require compliance with a part of the Terms is not a waiver of that part or any other part of these Terms. No term, provision or breach shall be deemed waived, unless such waiver is in writing and signed by PCTNA.
- **Severability.** If any provision of these Terms is deemed invalid or unenforceable, that provision shall be modified, if possible, to the minimum extent necessary to make it valid and enforceable, or if it cannot be so modified, then severed, and the remainder of these Terms shall remain in full force and effect.
- **Waiver of Formal Service of Process.** Customer hereby waives formal service of process as provided by The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965)

and/or The Inter-American Convention on Letters Rogatory (1988) and accepts service by certified mail at Customer's principle place of business as allowable by applicable law. If Customer is unable to waive formal service by applicable law, Customer shall to appoint a United States professional agent, such as CT Corporation, to accept formal service of process.

- Arbitration. At the election of either party, any and all controversies, claims, or disputes between the parties directly or indirectly arising out of or related to the Terms, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitration will be conducted in the English language in Los Angeles County, California, in accordance with the California Arbitration Act, California Code of Civil Procedure §§ 1280-1294.4. There shall be a single arbitrator agreed to by the parties. If the parties cannot agree to an arbitrator, one shall be appointed pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Nothing in this provision precludes PCTNA from seeking injunctive relief, as appropriate, in a State or Federal Court in Los Angeles County, California to enforce PCTNA's rights under these Terms.
- Attorney Fees. In any suit or claim based on any cause of action, regardless of form, arising out of or in any way connected with these Terms, the prevailing party shall be entitled to reasonable costs and attorney's fees.
- Change of Terms/Notice. Any notice from PCTNA of changes to these Terms will be deemed to have been properly given when sent to Customer by email or U.S. mail with first-class postage prepaid. All other notice under these terms shall be submitted to Customer at the address listed on the applicable Order and to PCTNA at Attention: PCTNA Legal, 100 North Barranca Street Suite 1000 West Covina, California 91791 by personal delivery or by registered or certified mail (postage prepaid, return receipt requested).
- Effective Date. Customer's purchase of Products after the date of these Terms and Conditions constitutes its acceptance of these Terms. Customer agrees that each and every sale by PCTNA to Customer from the effective date forward is subject to these Terms. An electronic signature shall have the same validity and binding effect as a handwritten signature. The Customer's representative placing an order with PCTNA represents that he or she is authorized to do so on behalf of Customer.