

GAT TECHNOLOGIES Pty Ltd – Terms and Conditions of Sale

“You” in this agreement means the person ordering Products from us. “We” “us” or “GAT” means GAT Technologies Pty Ltd (and includes its related bodies corporate within the meaning of the *Corporations Act 2001* if such entity is supplying Products to you). “Products” means GAT products, GAT branded products and ancillary items sold by GAT to you and includes any services performed by us.

By placing an order for Products, accepting delivery of Products, making any payment to us or complying with any provision of these terms and conditions of sale (“Conditions of Sale”), you confirm that these Conditions of Sale apply to your order of Products as set out below.

1) TERMS AND CONDITIONS OF SALE

1.1 If we give you a quotation, we are not making you an offer. If we do not withdraw the quotation, it is valid for the period stated. If no period is stated, it is valid for 30 days from the date the quotation was given.

1.2 You acknowledge that each order placed by you on us incorporates these Conditions of Sale to the extent set out below (and prevail over any contrary terms in your order) and is an irrevocable offer by you, subject to acceptance by us. We may decline to accept an order in whole or in part in our absolute discretion. A binding contract for the sale of Products is formed when we acknowledge in writing or otherwise, acceptance of an order from you (“Contract”).

1.3 Any Products you order from us are sold subject to the following:

a) If you already have a signed agreement with us for the sale and purchase of Products (“Sales Agreement”), then any term in that agreement that conflicts with these Conditions of Sale will prevail and will be applied to your purchase; the rest of these Conditions of Sale will otherwise apply.

b) If you do not have a Sales Agreement with us, then these Conditions of Sale in their entirety will form part of the agreement between you and us for the sale and purchase of Products.

1.4 All previous negotiations, representations, warranties, arrangements and statements (if any) whether express or implied, including any collateral agreement or warranty between us and you, are excluded and cancelled. The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) does not apply.

1.5 Unless otherwise agreed expressly in writing by us, all Products are provided solely for use or consumption by you, and any resale or similar transfer of such Products except as part of goods sold by you is prohibited.

2) PRICE

All prices are quoted in Australian Dollars (\$) unless otherwise specified by us in writing. Product prices are determined by the order confirmation you receive from us, or in the absence of such confirmation, by our list prices current at the time the Contract comes into existence. If we purchase based on overseas currencies we reserve the right to vary the price stated in the order confirmation to account for exchange rate variations based on the OANDA official exchange spot rate (available from www.oanda.com). Unless otherwise stated, prices will be exclusive of GST and not including freight. Our standard freight charge will apply to your chosen destination, or a rate previously agreed to in writing by us or we will load Products on your carrier at our facility without charge. Unless otherwise provided by law, you must pay to us all taxes, excises or other charges (other than taxes on our net income) that are based upon or measured by the sale, transportation, delivery or use of the Products.

3) PAYMENT

3.1 Unless we otherwise agree in writing, you must pay us for the Products you order from us upon delivery or, for account customers, within 30 days of the end of the month in respect of which they are invoiced.

3.2 You must not withhold payment of any part of the price because of any set off, dispute or claim.

3.3 If, at any time, we, consider in our discretion that your credit is unsatisfactory or in any way impaired, we may, among other remedies, terminate any incomplete Contract (in whole or in part) and suspend further deliveries, or require payment in advance, on delivery or otherwise as specified by us.

3.4 Upon any default by you under any Contract, all sums due to us on any account of Products (whether invoiced or not) will become immediately due and payable.

3.5 You must pay interest on overdue amounts on demand calculated daily on the amount owed by you to us from the date upon which the money falls due at the maximum overdraft rate charged by our bankers to us.

3.6 You agree that any claim regarding overpayment must be asserted by you within one year from the date the Products concerned were invoiced to you. All claims not asserted within such one year period are irrevocably waived.

3.7 You must pay on demand all expenses incurred by us in enforcing our rights under any Contract.

4) CANCELLATION

4.1 You must not cancel any Contract or order or return any Product unless we first agree in writing, which agreement may be refused in our absolute discretion. If we do so agree, such cancellation or return will be subject to a charge of 25% of the original invoice (or any other amount that we determine, as compensation for our loss arising out of the cancellation). For the avoidance of doubt and without limiting the foregoing, any standard Products that are cut or fabricated to your specifications, any custom Products manufactured to your specifications (in regards to material, colour, texture, size, finish or shape) or any project specific manufactured Products, are non-returnable with payment due as per sub clause 3.1.

4.2 We may cancel all or any part of an order or Contract if

a) amounts owing by you are overdue or if you become insolvent or enter into any form of insolvency administration within the meaning of the *Corporations Act 2001*; or

b) we consider we may be unable to supply you with the Products.

4.3 We will notify you of any such cancellation as soon as reasonably practicable after receipt of your order.

4.4 You have no claim against us and we are not liable to you for any loss, liability, cost or expense which you may incur as a result of a cancellation under this clause.

5) DELIVERY

5.1 Any delivery time we give you is only an estimate. We cannot guarantee delivery on a specific date. We are not liable to you for any loss or damage you suffer or incur as a result of our late delivery. You must still accept and pay for the Products even if we deliver late.

5.2 We may deliver the Products in instalments. Each instalment must be treated as a sale under a separate contract. If you do not pay for an instalment, we may treat the non-payment as a breach of contract relating to the other instalments.

5.3 If you do not wish to take delivery of the Products on the delivery date nominated by us, we may agree to defer delivery at your request. Notwithstanding deferred delivery we may issue an invoice as if delivery occurred on the nominated delivery date for the Products and charge interest on the purchase price, calculated daily from the due date for payment of the invoice at the maximum overdraft rate charged by our bankers to us. We will charge you warehousing costs for storage of the Products at market rates (such rates to be designated by a reputable warehousing provider, as nominated by us).

5.4 If we arrange transportation for you, and there is a general increase in freight costs, a ruling or regulation affecting transportation that results in increased freight costs, or an extraordinary transportation cost which is charged to us, including, but not limited to, fuel surcharges, we may, in our sole discretion, include all those costs on your next invoice following the charge and they are payable accordingly.

5.5 Delivery occurs when we notify you that Products are ready for collection from our premises or, if we have arranged transport at your request, when the Products leave our warehouse to be delivered to you (“Delivery Time”).

5.6 If Products remain uncollected after 14 days from when we tell you that the Products are ready for collection, we may deliver to you and invoice you for the whole or part of an order and/or Contract without giving you notice. If we deliver the Products in these circumstances, you must pay us for any loss, liability, cost or expense we incur as a result.

6) QUANTITY DISCREPANCY

6.1 On any Contract for Products, we may deliver to you, and invoice you for, a quantity of Products which may vary up to 10% over or under the quantity specified on our order confirmation.

6.2 Shortages or errors in quantity of Products must be reported by you, in writing, within 48 hours after from the Delivery Time. If not, you will be deemed to have accepted the Products in the quantity provided.

7) RISK

7.1 Risk of damage to, or loss of, the Products passes to you at the Delivery Time.

7.2 We are not liable for any loss or damage or deterioration of the Products after delivery even if transport is arranged by us.

8) TITLE

8.1 We retain title to and ownership of the Products supplied to you until you have paid all monies you owe us in respect of the Products (“Amount Due”). Payment is only deemed to be made upon our receipt of cleared funds, the date on which these funds are received is the “Relevant Date”.

8.2 To secure payment of the Amount Due and to secure any other monies owed by you to us, you hereby:

a) grant us a security interest for the purposes of the Personal Property Securities Act 2009 (“PPSA”) in:

b) all Products delivered to you, attaching at the Delivery Time;

c) any goods to which the Products are affixed, or which have been manufactured from the Products attaching at the time of affixing; and

d) all other present and future acquired assets of yours, including inventory, attaching upon acquisition; and

e) agree that these Conditions of Sale constitute a security agreement for the purpose of the PPSA.

8.3 Until the Relevant Date, the Products and any goods manufactured from the Products are held by you on trust for us. We retain ownership of any reusable packaging and pallets.

8.4 You may, in the ordinary course of your business, cause the Products to be installed in, affixed to or become part of, other goods or sell Products supplied by us or goods manufactured from those Products for which you have not paid us, on the condition that we have, and continue to have, a security interest in the goods in which the Products supplied by us are installed or to which they are affixed or become part of and in the proceeds of their sale.

8.5 If you

a) fail to pay the price in full for Products supplied by us on the due date for payment; or

b) prior to payment of the price, deal with the Products in a manner inconsistent with the rights granted by clause 8.4;

then

c) your rights to sell the Products in the ordinary course of business and any other rights in respect of the Products immediately cease; and

d) you must immediately deliver or remit to us all Products supplied by us and the proceeds of all Products or goods in which we have a security interest.

8.6 You will allow us to enter your premises (or any other place where the Products are located) to recover any goods which remain our property or otherwise exercise our rights under the PPSA. You agree to indemnify us against, and discharge us from, any liability we may otherwise be under, whether to you or any third party, resulting from damage occasioned by us gaining entry to those premises for this purpose.

8.7 Notwithstanding any provision in these Conditions of Sale, we are entitled to maintain an action against you to recover any losses we incur in retaking possession of the Products or recovering any Amounts Due or balance thereof.

8.8 You agree to:

a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which we may reasonably require to register a financing statement on the Personal Property Securities Register;

b) reimburse us for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register; and

c) give the us not less than 14 days’ prior written notice of any proposed change to your name and/or any other change to your details.

8.9 Both parties agree that neither of them is required to disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.

8.10 Despite any statement to the contrary by you, every payment to us in respect of the Products must be taken as a payment:

a) first, of any debt which is not the subject of a security interest in favour of the Company;

b) secondly, of the amounts held by you in trust for us or subject to a security interest in favour of us, to the extent that the trust or security interest is not a purchase money security interest under the PPSA or was not perfected by registration within the time specified by section 62 of the PPSA;

c) thirdly, of the amounts held by you in trust for us or subject to a security interest in favour of us of amounts, to the extent that the trust or security interest is a purchase money security interest under the PPSA perfected by registration within the time specified by section 62 of the PPSA;

d) fourthly, for any Products or goods that you have sold but for which you have not received the proceeds; and

e) fifthly, for whatever Products or goods you have not sold as we elect.

8.11 You waive any right to receive notice of any verification statement issued under the PPSA.

8.12 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these terms and conditions, both parties agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections 117, 118, 120, 123, 126, 128, 129 and 134(1), do not apply to the enforcement of that security interest.

8.13 We may bring an action for the price of the goods even where ownership of the goods may not have passed to you.

8.14 You will insure and keep insured all goods supplied by us in your possession or control from time to time against risk of loss or damage by hazards normally insured against.

9) SPECIFICATIONS, TECHNICAL ADVICE AND OTHER SERVICES

9.1 Unless stated otherwise, the colour specifications in any quote we provide reference the manufacturer’s standard colour range for that product.

9.2 You are responsible for the design, processing, testing and labelling of any product that you make using Products you order from us. You will test and investigate Products sold by us so as to enable you to form an independent judgment concerning their suitability for the use, conversion or processing intended by you.

9.3 If we agree to perform take-off services, we will use all reasonable endeavours to undertake an accurate take-off on the basis of the documentation or drawings provided by you, but we do not accept any responsibility for the specifications and quantities determined by us. You are wholly responsible for reviewing any marked up drawings we provide to you and reconciling against your own records and assessment, all specifications and quantities stated in any quotation that we provide.

10) WARRANTIES AND INDEMNITIES

10.1 To the extent permitted by law, these Conditions of Sale exclude all warranties, conditions, liabilities or representations in relation to the Products or the correctness of information, advice or other services concerning the Products or otherwise.

10.2 To the extent permitted by law, the liability of us and our officers, employees or agents for a breach of any conditions or warranty not excluded by clause 10.1 is limited, at our option, to any one or more of the following:

a) the replacement (from any source) of those Products or the supply of equivalent Product;

b) the payment of the costs of replacing those Products or of acquiring equivalent goods, by credit to your account, in cash or by cheque at our absolute discretion; or

c) repayment of any part of the purchase price of those Products that has been paid by you, by credit to your account, in cash or by cheque, at our absolute discretion.

10.3 Except to the extent set out in clause 10.2, we and our officers, employees or agents are not liable for any loss or claim of any kind whatsoever, including, without limitation, consequential or economic loss or loss of profit, even if due to the negligence of us, our officers, employees or agents arising out of or in connection with the supply of Products (and any information, data, advice or other services provided in relation to the Products). This exclusion extends to any promotional activities, statements about the Products or their performance or characteristics of us or by you.

10.4 You indemnify us for all liabilities, losses, damages, costs or expenses suffered or incurred by us as a result of any of the following:

a) our compliance with your instructions regarding the Products;

b) your failure to:

(i) provide or display safety information on or relating to the Products, or

(ii) comply with laws relating to the use, sale, marketing, labelling, marking, fixing, application or removal of Products, or

(iii) our instructions in relation to the fixing, application or removal of Products.

c) detect and bring to our attention matters for which we may become liable, whether for negligence, under legislation or otherwise;

d) any statement you make about the Products without our written approval;

e) the use of Products by you or a third party;

f) your negligence, breach or duty or breach of these Conditions of Sale.

11) ACCEPTANCE AND CLAIMS

11.1 You must inspect the Products upon delivery and within 7 days from the Delivery Time notify us in writing providing details of everything you allege about the Products not being in accordance with these Conditions of Sale. If you fail to give such notice then, to the extent permitted by law, the Products will be deemed to have been accepted by you and you must pay for the Products in accordance with these Conditions of Sale.

11.2 Should you subsequently consider that you have any other claim arising from the Products sold to you by us, you must:

a) immediately upon becoming aware of the circumstances giving rise to such a claim, notify us of the nature of the claim; and

b) allow us, our servants or agents full and free access to the Products in relation to which the claim is made (or the place where the Products have been applied or used) for the purpose of conducting such tests and examinations as we may in our absolute discretion consider necessary to determine whether the claim is justified or not.

12) ENVIRONMENT AND HEALTH COMPLIANCE

12.1 We will give you Material Safety Data Sheets (MSDS) and you will provide the MSDS to all those required by law to receive them. In particular, and without limitation, you will communicate relevant safety and health information and warnings to your employees, agents, contractors and customers, and will require such persons to further communicate such information and warnings to all persons that they may reasonably foresee will be exposed to or handles such products. You will take such precautions as may be appropriate for hazards identified in the MSDSs and properly manage and dispose of all wastes and residues resulting from your use of the products in accordance with applicable laws and regulations. You agree to dispose of disposable packaging as required by any applicable disposal or recycling laws.

13) SECURITY OF PAYMENT ACTS

13.1 At our sole discretion, if there are any disputes or claims for unpaid Products then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Vic), Building and Construction Industry Security of Payments Act 1999 (NSW), Construction Contracts Act 2004 (WA), Building and Construction Industry Payments Act 2004 (Qld), Construction Contracts (Security of Payments) Act 2004 (NT), Building and Construction Industry Security of Payments Act 2009 (Tas), Building and Construction Industry Security of Payments Act 2009 (SA) and Building and Construction Industry (Security of Payment) Act 2009 (ACT) may apply.

13.2 You acknowledge and agree that, to the extent that the Acts listed in clause 13.1 allow for a contract to specify the time by which a respondent must respond to a payment claim, this period is 5 Business Days from the date of the payment claim being served.

13.3 Nothing in these Conditions of Sale is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 13.1 (each as applicable), except to the extent permitted by the Act where applicable.

14) PRIVACY ACT AUTHORITY

14.1 You irrevocably authorise us, our employees and our agents to make such enquiries as we deem necessary to investigate your credit worthiness from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, your bankers or any other credit providers (collectively “the information sources”) and you hereby authorises the information sources to disclose to us such information concerning you which is within their possession and which is requested by us.

15) FORCE MAJEURE

15.1 We are not liable for failure to comply with these Conditions of Sale or delay in the performance of all or any part of any Contract caused by acts of God and nature, intervention of government, war or threat of war, acts of terrorism, conditions similar to war, sanctions, blockades, embargoes, strikes, lockouts or any other causes or circumstances beyond our reasonable control (“Force Majeure Events”). We will use commercially reasonable efforts to give you notice whenever such Force Majeure Event occurs or becomes reasonably foreseeable. We do not have to remedy or resolve such Force Majeure Events.

15.2 If there is a shortage of materials we use to make the Products (whether because of price increases or otherwise) or in the event of a Force Majeure Event, we may delay or cancel delivery of the Products, reduce the quantity to be delivered and/or allocate our Products amongst our buyers of those Products (including you), in our sole discretion. You excuse us from any and all liability resulting from such shortages or such allocation decision.

16) INFORMATION AND INTELLECTUAL PROPERTY

16.1 You warrant that any design or instruction given to us will not infringe any third party rights and that by completing the order for Products we will not infringe any third party intellectual property right. We may rely on all information given to us by you in supplying Products to you and we are not to be responsible if any information is incorrect or misleading.

16.2 By purchasing the Products you do not gain any licence or right under any of our intellectual property such as a patent, registered design, trademark or copyright or confidential information. You must not use any trade marks owned or controlled by us or any of our affiliates in any advertising, publicity or promotion of you company or products without our prior consent in each case.

17) WAIVER

17.1 No change, modification or waiver of any provision of these Conditions of Sale shall be valid or binding unless accepted by us. A waiver by either party of any breach or failure to enforce any term or condition of these Conditions of Sale will not in any way affect, limit or waive such party’s right at any time to enforce strict compliance with that or any other term or condition of these Conditions of Sale.

18) SEVERABILITY

18.1 If any term is determined to be invalid or unenforceable by any court of competent jurisdiction or under any statute, regulation, ordinance, executive agreement or other rule of law, such provision shall be deleted or modified, at the election of the parties, but only to the extent necessary to comply with such ruling, statute, regulation, ordinance, agreement or rule, and the remaining provisions of these Conditions of Sale and the contract shall remain in full force and effect.

19) VARIATION

19.1 We are entitled to vary these Conditions of Sale at any time by giving you written notice.

20) GOVERNING LAW AND JURISDICTION

20.1 These Conditions of Sale and any contract are governed by the law in force in the State of Victoria, Australia. We both submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts.