

These are the entire terms and conditions of all goods, merchandise and services (**Goods**) supplied by Gordon Brothers Industries Pty Ltd (ABN 54 160 126 456) (**GBI**) to any person, firm or company placing an order with GBI (**Customer**), or where Goods are used during the provision of a service to the Customer (**Terms and Conditions**). Except as otherwise expressly agreed upon in writing between a duly authorised officer of GBI and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any form or other document issued by the Customer.

## 1. ORDERS

- 1.1. All orders placed with GBI shall only be accepted subject to these Terms and Conditions and such altered Terms and Conditions shall apply after notification by GBI to the Customer.
- 1.2. GBI reserves the right to accept or decline, in whole or in part, any order placed by the Customer.
- 1.3. If a Customer cancels or alters any order or part order at any time after GBI has received the order then without prejudice to any other rights or remedies it may possess GBI reserves the right to charge to the Customer the costs of any Goods or materials already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.
- 1.4. Goods and Services Tax (**GST**), Sales Tax or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to GBI on demand and the Customer shall indemnify and keep indemnified GBI in respect of all taxes and duties including GST arising out of any sale of Goods or the subsequent use of Goods after the sale to the Customer.

## 2. PRICES

All prices shall be those referred to in GBI's price lists and/or arrangements current at the date of invoice and prices shall be subject to change without notice.

## 3. TERMS OF PAYMENT

- 3.1. Unless otherwise stated on the invoice all prices are strictly net. The granting of credit to a Customer shall be at the sole and absolute discretion of GBI and unless otherwise demanded by GBI the Customer shall make payment of all amounts within 30 days of the date of invoice.
- 3.2. Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set-off. The Customer agrees to pay GBI administration and handling fees in respect of any copies of documents required or other processing involved in the conduct of the account and such fees will be charged to the Customer's account.
- 3.3. Without limiting GBI's rights under clause 6.1 and 11, if the Customer fails to make payment in accordance with clauses 3.1 and 3.2, GBI shall be entitled to:
  - 3.3.1. require the payment of cash upon delivery of any further Goods;
  - 3.3.2. charge interest from the due date for payment at the rate of 15% per annum on all overdue unpaid amounts until payment is received, with such interest to be compounded weekly;
  - 3.3.3. be indemnified and kept indemnified by the Customer for all other costs, expenses and charges incurred by GBI as a result of the failure to make payment including but not limited to any mercantile agents' costs and legal costs and disbursements on a solicitor-client basis;
  - 3.3.4. credit any payments received from the Customer first against any interest charges and other costs to which GBI is entitled under this clause and all such charges shall be payable on demand; and
  - 3.3.5. cease all further deliveries to the Customer and terminate the relevant order with the Customer.
- 3.4. Customers having overdue accounts will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programmes until their accounts are no longer overdue.

## 4. DELIVERY

- 4.1. Any date or time quoted for delivery is an estimate only and GBI shall endeavour to effect delivery at the time or times required by the Customer, but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer. To the maximum extent permitted by law, GBI shall not be liable to the Customer for any loss or damage (including Consequential Loss) whatsoever and howsoever arising caused directly or indirectly by any delay or failure in delivery. Any delay in delivery by GBI does not relieve the Customer of its obligation to accept that delivery and any remaining delivery.
- 4.2. If the Customer requests special delivery services (e.g. express post or air freight) which are not part of GBI's standard delivery services (as disclosed at time of ordering), then the charges for such special delivery services may be levied on the Customer.
- 4.3. GBI's obligations to deliver shall be discharged on arrival of the Goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the Goods upon delivery, provided that if the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, GBI shall be entitled to charge a fee for any delay experienced or arrange for the storage of the Goods at the risk and cost of the Customer including all transportation, storage and other consequential costs.

- 4.4. GBI may, at its sole and absolute discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions.

## 5. INSPECTION

- 5.1. The Customer shall examine the Goods immediately after delivery and GBI shall not be liable for any delivery, shortage, defect or damage unless GBI receives details in writing within seven days of the date of delivery of the Goods.

## 6. PROPERTY AND RISK

- 6.1. Notwithstanding delivery of the Goods or their installation, property in any given Goods shall remain with GBI until the Customer has paid and discharged any and all other indebtedness to GBI on any account whatsoever, including all applicable GST and other taxes, levies and duties (**Amount Owing**). Any payment made by or on behalf of a Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer's Amount Owing and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- 6.2. The risk in the Goods shall pass to the Customer upon delivery to the Customer or his agent in accordance with clause 4.3.
- 6.3. The Customer acknowledges that it is in possession of the Goods solely as a bailee for GBI until payment as defined in clause 3 has been made in full to GBI and until such payment:
  - 6.3.1. the Customer shall not use the Goods but shall keep them safe and in their original packaging and shall be fully responsible to GBI for any loss or damage to the Goods whatsoever and howsoever caused following delivery;
  - 6.3.2. the Customer shall store the Goods separately from its own Goods and those of any other party and in a manner which clearly identifies the Goods, whether as separate chattels or as components, as the property of GBI; and
  - 6.3.3. the Customer shall maintain records of Goods owned by GBI identifying them as GBI property, of the persons to whom the Goods are sold or disposed to and of the payments made by such persons for such Goods. The Customer shall allow GBI to inspect these records and the Goods themselves on request.
- 6.4. The Customer hereby irrevocably grants to GBI, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the Goods the property of GBI in accordance with the Terms and Conditions without in any way being liable to the Customer or any person claiming through the Customer. GBI shall have the right to sell or dispose of any such Goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.
- 6.5. If the Goods are affixed to other materials, the totality thereof shall be the sole and exclusive property of GBI until payment as defined in clause 3 has been made in full to GBI unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants-in-common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.
- 6.6. The Customer shall be at liberty to agree to sell the Goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 3, the Customer shall sell as an agent and bailee for GBI and that the entire proceeds from the sale thereof shall be held in a separate account on trust for GBI.
- 6.7. The right to on-sell, deal or otherwise dispose of the Goods in the normal course of trade may be revoked at any time by GBI and shall automatically cease if any of the circumstances in clause 11 apply.

## 7. SECURITY INTEREST

- 7.1. If a term used in this clause has a particular meaning in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) it has the same meaning in this clause.
- 7.2. In respect of any Security Interest created by or contemplated under these Terms and Conditions, the Customer agrees that:
  - 7.2.1. it grants a first ranking security interest and purchase money security interest in the Goods supplied to it for the purposes of the PPSA, as security for all Amounts Owing, which is a continuing security despite any settlement of account or other matter or thing until a final discharge is given to GBI (where applicable);
  - 7.2.2. it will execute such further documents and take steps required by GBI to register a financing statement or financing charge statement in relation to the Goods on the Personal Property Securities Register, or otherwise perfect GBI's interest in the

Goods, including any agreements required from other secured parties, and if requested by GBI, will not take possession of the Goods unless GBI has registered a financing statement designating a purchase money security interest over them;

7.2.3. it waives its right under s157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement; and

7.2.4. GBI may appropriate (or re-appropriate despite any prior appropriation) moneys received in respect of the Customer in its absolute discretion toward any part of the Amount Owning, including in order to maximise the extent to which it can have recourse to its security interest in the Goods held by the Customer.

7.3. Both GBI and the Customer agree that the following provisions of the PPSA do not apply:

7.3.1. to the extent that s115(1) of the PPSA allows them to be excluded: ss95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143; and

7.3.2. to the extent that s115(7) of the PPSA allows them to be excluded ss 127, 129(2) and (3), 132, 134(2), 135, 136(5) and 137.

7.4. The terms of this clause 7 prevail over any other term in these Terms and Conditions or any other agreement between GBI and the Customer to the extent of any inconsistency.

## 8. WARRANTY

Subject to payment in full being made as defined in clause 3, GBI shall use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of Goods or parts thereof supplied to the Customer.

## 9. LIMITATION OF LIABILITY

9.1. These Terms and Conditions do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.

9.2. Notwithstanding anything to the contrary in these Terms and Conditions, to the extent that the Customer acquires Goods from GBI as a consumer within the meaning of the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**) as amended or replaced from time to time, the Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement. Nothing in this clause 9 operates to exclude, restrict or modify this application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:

- (a) contravene that statute; or
- (b) cause any term of these Terms and Conditions to be void, (**Non-excludable Obligations**).

9.3. Except in relation to the Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by custom, under the general law or by statute that impose (or may impose) any liability on GBI are expressly excluded under these Terms and Conditions.

9.4. Except in relation to Non-excludable Obligations and subject to clause 12, to the maximum extent permitted by law, GBI's liability to the Customer (and any party claiming through the Customer against GBI) for any claim for loss or damages (including legal costs and expenses) made in connection with the supply of Goods by GBI and whether arising under contract, by way of indemnity, under statute, in tort (for negligence or otherwise), or on any other basis in law or equity whatsoever is hereby limited and excluded as follows:

9.4.1. GBI will have no liability whatsoever to the Customer for any loss, harm, damage, cost or expense (including legal fees); and

9.4.2. without limiting clause 9.4(a), GBI will have no liability whatsoever to the Customer for special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage, loss of contract, loss of customers, loss of business opportunity or business, loss of goodwill or reputation, loss of value of intellectual property, loss or damage resulting from the loss or damage to Goods other than the Goods or loss of data) (**Consequential Loss**).

9.5. In relation to the Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for Goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which GBI's liability is not limited under these Terms and Conditions), GBI's liability to the Customer (and the Customer's sole and exclusive remedy) for a failure to comply with any Non-excludable Obligation is limited, at GBI's option, to one of the following: replacing the Goods; repairing the Goods;

supplying equivalent Goods; or payment of the cost of replacing the Goods, repairing the Goods or supplying equivalent Goods (subject to the Customer's obligation to mitigate its loss and any betterment); or reimbursement of some or all amounts paid by the Customer in respect of the Goods.

9.6. Unless the claim is by a consumer within the Australian Consumer Law and that law requires a longer period in respect of such a claim, any claim by the Customer in respect of defective Goods or damaged Goods must be made in writing within seven days of the delivery of the Goods, unless a longer period is expressly agreed to by GBI in writing.

9.7. This clause 9 shall survive termination of any contract between the GBI and the Customer for any reason.

## 10. FORCE MAJEURE

GBI shall not be liable for any failure or delay in supply or delivery of the Goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of GBI including, without limitation, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riot, civil commotion or accident of any kind.

## 11. TERMINATION

If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commit any kind of bankruptcy, or being a corporation passes a resolution for winding-up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound-up by reason of insolvency or if any petition is presented for its winding-up, or if a liquidator or administrator is appointed, GBI may, without prejudice to any other right or remedy it may possess at law, terminate the contract between it and the Customer, immediately recover possession of any Goods not already paid for in accordance with these Terms and Conditions and recover from the Customer on an indemnity basis all loss and damage resulting from the termination.

## 12. RETURNS

Other than in respect of GBI's obligations pursuant to clause 9 hereof GBI shall not be liable to accept any returned Goods but may in its absolute discretion accept the return of Goods, provided that such Goods shall only be accepted for return with the prior written approval of a duty authorised representative of GBI. Goods returned for credit pursuant to this clause will be subject to a handling and administration change equivalent to 20% of the invoiced value of the returned Goods. Return freight and other expenses will be paid for by the Customer and no returns of special Goods will be accepted. Any returned Goods must be accompanied with the relevant invoice numbers.

## 13. SEVERANCE

If any provision in these Terms and Conditions is or becomes void or unenforceable, it may be severed without any effect on the validity or enforceability of the remaining Terms and Conditions and GBI's rights, remedies or recourses will not in any way be prejudiced or adversely affected by such severance.

## 14. GOVERNING LAW

All orders to which these Terms and Conditions apply shall be construed according to the laws of Victoria, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria in connection with matters concerning these Terms and Conditions or the transactions contemplated by them.

## 15. SERVICE OF DOCUMENTS

15.1. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by prepaid post, facsimile or email to the last known address, number or email address (as the case may be) of the Customer.

15.2. The Customer must send all notices by pre-paid post to GBI's office at 21 Michael Street, Brunswick VIC 3056. No notice will be taken to have been given until it is received at and acknowledged by that office.

## 16. STATEMENT OF DEBT

A Certificate signed by a director, secretary, financial controller or credit manager of GBI shall be prima facie evidence of the Amount Owning of the Customer to GBI at that time.