

CONDITION OF SALE

1. **GENERAL:** Unless otherwise agreed to in writing by GATOR INTERNATIONAL Pty Limited (the "Company") all orders placed with the Company will be accepted subject only to these Conditions of Sale. Where the Company commences the necessary actions on its part to supply Goods ordered by the Buyer, a contract for the purchase of these Goods comes into existence (the "Contract"). The only terms applying to the Contract are those set out in the relevant invoice and in the Conditions of Sale or otherwise agreed to in writing by the Company. Any terms of the Buyers order deviating from or inconsistent with these Conditions of Sale (including any statement by the Buyer that the Buyers terms shall prevail) are expressly excluded.

2. **PRICES and PAYMENT:** All prices for Goods will be in accordance with the Companies written quoted prices or as per Trading terms stated on this invoice if no prior written quotation has been given. The Buyer agrees to pay, in addition to the price of the Goods, any freight and insurance charges, sales tax, GST, or other taxes required by law to be paid in relation to the Goods. Payment for Goods is due within the Trading terms stated on this invoice unless agreed to in writing by the Company and the Buyer and will not be relieved of any obligation to accept or pay for Goods which have been delayed in delivery or despatch. The Buyer must pay for all the Goods within the stated Trading terms on the Invoice or the Company may withhold further deliveries if the Buyer does not pay by the due date. Acceptable payment method is by Cash, Cheque, and Electronic Funds Transfer. If the Buyer fails to pay by the due date or fails to comply with any other obligation under these Terms: a. the balance of any monies owing by the Buyer to the Company shall immediately become due and payable without demand; b. the Company may suspend credit extended to the Buyer; c. the Company may withhold delivery of goods already ordered; d. the Buyer is liable for all costs which shall be recoverable as a liquidated debt, including but not limited to: (i) legal costs on a solicitor/own client basis); (ii) any other cost and expenses incurred by the Company in exercising or attempting to exercise its rights.

3. **DELIVERY:** Any times quoted for delivery are estimates only. The Company will not be liable if any Goods are not delivered or delayed in delivery for any reason beyond the Company's control. The Company reserves the right to deliver by instalments, and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment shall not entitle the buyer to terminate the contract.

4. **CLAIMS:** Any claims by the Buyer shall be made in writing within 7 days following the delivery of the Goods. The Buyer must give written notice to the Company of any defect, shortfall, discrepancy, dispute or any claim within seven days after receipt of the Goods ("the Claim"). The Company must be given reasonable opportunity to inspect the Goods where there is a Claim. Failure to give a written Claim within seven days of receipt of the Goods will be conclusive evidence that the Goods are in all respects satisfactory, comply with the agreement between the Company and the Buyer, and are accepted by the Buyer. If any item on this invoice is in dispute as a result of giving the Claim to the Company, the Buyer must still pay the balance owing under this Invoice for items not subject to the Claim.

5. **WARRANTIES:** The Company warrants that the Goods have been made with sound materials and workmanship and are limited to the Powder Coating and Machining of the Goods. All other warranties and representations whether statutory or otherwise, expressed or implied, and/or oral or written, as to the state, quality or fitness of the Goods are expressly excluded except any implied conditions and warranties which are expressed to be incapable of exclusion by the Trade Practices Act 1974 (Cth) (as amended) or any other statute. The obligations of the Company shall be limited to the cost of repairing or at the option of the Company replacing the Goods. Under no circumstance will the Company be liable for any direct or indirect incidental or consequential damage or loss (including without limitation, loss or damage caused by negligence or a wilful act or default of any of the Company, its employees or its agents) arising from the use, storage or application of the Goods. The Company will not be liable for normal variations in tolerance, dimensions or quality and is not liable for any claims greater than the sale price of the Goods to the Buyer.

6. **DEFAULT OF BUYER:** If the Buyer makes default in payment, becomes insolvent or bankrupt, calls a meeting of creditors or goes into liquidation (voluntary or otherwise) the Company may, with prejudice to its other rights, suspended delivery, cancel any order or require payment in cash on delivery of good, notwithstanding the terms of payment set out in these Conditions of Sale.

7. **RISK AND TITLE:** Risk in the Goods will pass at the time of delivery to the Buyer, the Buyer agent or to a carrier commissioned by the Buyer and until title passes, the Buyer shall insure (and keep insured) the Goods against all usual risks to full replacement value. Property and ownership in the Goods will not pass to the buyer but will remain in the Company until the purchase price of the Goods (each being considered as a whole) have been paid for in full. Until property in the Goods passes to the Buyer; (i) the buyer shall hold the Goods as fiduciary bailee and agent for the Company. (ii) unless otherwise notified in writing, the Buyer is authorised to sell the Goods in the ordinary course of business. If the Buyer uses the Goods in manufacturing, value added process, or on sells the Goods to a third party, then the Buyer shall hold such part of the proceeds of the manufacturing, value adding or sale to third party as relates to Goods in trust for the Company. Such part shall be deemed to equal in dollar terms the amount owing by the Buyer to the Company for those Goods at the time of the receipt of such proceeds.

8. **WAIVER:** if the Company does not enforce any term or condition set out in these Conditions of Sale, it will not be construed as a release of the Company's rights or to sanction any further breach.

9. **INTELLECTUAL PROPERTY:** The Buyer warrants that no design or instruction furnished to the Company shall not be such as will cause the Company to infringe or use without authorisation and third party's patent, trade mark, design or copyright in the execution of the Buyer's order. The Buyer agrees to indemnify the Company against any claim of a third party for infringement or unauthorised use of any patent, trade mark, design or copyright arising out of the Company's incorporation of a product provided by the Buyer or compliance with an instruction of the Buyer. The Company and the Buyer agree that the sale and purchase of the Goods does not confer on the Buyer any licence or rights in respect of any patent, design, trade mark or copyright which is the property of the Company.

10. **PERFORMANCE:** The Buyer acknowledges it has relied on its own enquires concerning the performance of the Goods and not on any information, services or recommendations given by the Company.

11. **GST:** in these Conditions of Sale, GST means the tax imposed by the A New Tax System (Goods & Services) Act 1999 (Cth) and related imposition Acts of the Commonwealth.

12. **GOVERNING LAW:** These Conditions of Sale will be governed by the law in force in Queensland, and the buyer irrevocably submits to the exclusive jurisdiction of the Courts of Queensland in Brisbane. The Company may nevertheless bring claims in any other court of competent jurisdiction.

13. The rule of Claytons Case does not apply to any money received by the Company at any time from or on behalf of the Buyer. The Company is entitled to apply or appropriate any money received at any time by the Company from or on behalf of the Buyer towards the satisfaction of any liability or obligation of the Buyer on any account including appropriating any payment or part thereof between accounts and/or to a more recent liability instead of an older liability of the Buyer and/or applying any payment or part of it first in satisfaction of any liability or obligation of the Buyer not covered by these Terms.

14. Where the Buyer comprises more than one person, each person is jointly and severally liable under these Conditions of Sale.

15. If any provision in Terms is invalid or unenforceable the Terms will remain otherwise in full force apart from such provision, which will be deemed deleted.

"COMPANY" means GATOR INTERNATIONAL PTY LTD ABN 63 141 152 614 .

"GOODS" means the product referred to in this invoice.

"BUYER" means the party named as customer in this invoice.

"CONDITION of SALE" means these Conditions of Sale.