

## TERMS AND CONDITIONS OF SALE

Effective November 2020

The contract between Galvin Engineering and the customer (its successors and permitted assigns) (**Customer**) relating to any of Galvin Engineering's products (**Products**) or its services including customer service and technical backup (**Services**) or transactions are subject to these terms and conditions of sale (**Terms**). Unless otherwise agreed in writing these Terms apply to and form part of all agreements for the supply of Products and related Services by Galvin Engineering to the Customer (**Contract**).

### 1. Title

1.1 Subject to these Terms, legal and equitable title in the Products shall remain vested in Galvin Engineering and shall not pass to the Customer until the Customer has paid the purchase price and all other moneys owed by the Customer to Galvin Engineering in full. In the event of default by the Customer of any of these Terms, including the payment of monies due under these Terms, the Customer acknowledges and agrees that Galvin Engineering may recover or retake possession of all or any of the Products supplied to the Customer, and the Customer hereby authorises and allows Galvin Engineering or its representative, servant, agent or employee to enter without notice and at any time any premises where any of the Products are housed or stored for the purpose of retaking possession of all or any of the Products. Galvin Engineering shall not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Customer as a result of Galvin Engineering taking possession of the Products.

1.2 Until payment in full the Customer agrees to provide adequate insurance for the Products and only to sell the Products in the ordinary course of its business. The Customer acknowledges and agrees that a sale of any Products for less than its cost price, is not a sale in the "ordinary course of business" and it will sell any such Products as fiduciary agent and Bailee of Galvin Engineering.

1.3 In the event that the Customer uses the Products in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Products in trust for Galvin Engineering. Such parts shall be deemed to be equal in dollar terms to the amount owing by the Customer to Galvin Engineering at the time of the receipt of such proceeds.

1.4 Risk passes to the Customer when Galvin Engineering delivers the Products, either to the Customer's store, or to the specified carrier's depot.

### 2. Cancellation of Orders

Galvin Engineering will generally accept cancellation of an order where;

- a. The Product is a stocked item, and
- b. Written advice of cancellation is received prior to despatch.

Cancellation of orders of Products which have been custom made, custom cut, custom processed or custom acquired or made specifically to suit Customer specifications ("*Made to Order*"), Products not in our standard price list ("*Specials*"), and large quantity orders of Products ("*Project Lots*"), will result in the charging of all relevant costs to the Customer's account. These Products are also made on the undertaking that the Customer will accept delivery of, and effect payment for, any buffer stocks of these Products that Galvin Engineering have held on its premises for the Customer.

### 3. Prices

Prices quoted exclude GST and are for one item (not pairs), unless otherwise specified. Prices listed in our price list are based on current all-inclusive manufacturing costs, and are subject to variation without notice if such costs increase or decrease either before or after acceptance of any order. Galvin Engineering will endeavour to provide 30 days' notice of any price increases. Written quotes and contract prices will stay fixed for the duration of the stated period, unless otherwise negotiated. All orders are accepted for delivery on the condition that Products will be invoiced at the prices ruling at the date of despatch.

Products "*Made to Order*", "*Specials*" and "*Project Lots*" are priced on application via a quotation, however generally a minimum charge of **\$200.00** will be levied.

### 4. Quotations

Unless otherwise specifically stated all Galvin Engineering tenders and quotations: (i) are based on receiving an order; (ii) are effective for that quotation only; (iii) are valid 30 days from the creation date; (iv) exclude GST. Quoted prices apply only if the quantity quoted and ordered is released for shipment within 3 months, or longer if mutually agreed to in writing, from the date of Galvin Engineering's receipt of the Customer's order. Otherwise Galvin Engineering's standard price in effect at the time of release of the Products shall apply to the quantity shipped and the Customer shall pay any difference in price. Galvin Engineering has the right to terminate the tender of quotation at any time, and is not liable for any termination charges.

### 5. GST

Prices quoted do not include GST unless otherwise stated, and where applicable this will be charged as a separate item on the invoice. The GST charged for Products and Services we supply will generally qualify as a recovered input tax credit for our customers who are registered for GST and have an ABN, but your own tax advice should be sought in this regard.

### 6. Pallets

Pallets supplied by Galvin Engineering will be invoiced at a minimum value at **\$70** each. Where exchange or return occurs, a credit will be issued.

## 7. Payment Terms

Terms of sales are **strictly** nett 30 days from the end of the month of purchase, however all pattern and tooling costs are due and payable in advance and upon placement of an order with Galvin Engineering. Any expenses incurred by Galvin Engineering in recovery of debts are to be met by the Customer. This will not apply in cases where non-payment of an account is entirely due to fault on the part of Galvin Engineering. Should the Customer default in the payment of any monies due under the Contract, then all monies due to Galvin Engineering shall immediately fall due and payable and shall be paid by the Customer within 7 days from the date of demand, and Galvin Engineering shall be entitled to charge interest at the rate of 15% per annum on all overdue accounts from the due date to the actual date of payment. Payment via credit card facilities will attract a 1% surcharge.

## 8. Delivery

Prices for standard stock items include free delivery within metropolitan areas to the Customer's stores or specified carrier's depot, when the total of invoices for Products to be delivered on a certain day are greater than **\$300.00** (exc GST), otherwise delivery cost will be charged to the Customer's account. This limitation will not apply to backorders where the original invoices exceeded **\$300.00**. Prices for Products "Made to Order", "Specials" or "Project Lots" are ex-works (Malaga, WA) and any delivery arrangements should be made by the Customer, however Galvin Engineering is happy to provide this service if requested.

Galvin Engineering reserves the right to withhold any delivery if the Customer is subject to any insolvency proceedings, or if Galvin Engineering forms the opinion that the customer credit worthiness or credit standing has deteriorated significantly.

Galvin Engineering will strive to ensure deliveries are made on time, however any times quoted for delivery are to be treated as estimates only and involving no contractual obligations.

## 9. Minimum Order Charge

Orders under **\$300.00** (exc GST) will generally attract a minimum order charge of **\$30.00** (exc GST).

## 10. Stocks

Galvin Engineering will endeavour to keep adequate stocks to handle general order quantities in each of its warehouses in Perth, Sydney, Melbourne and Brisbane. "Made to Order", "Specials" or "Project Lots", will be supplied as per the relevant quotation delivery schedule.

## 11. Designs

Where the Customer asks Galvin Engineering to follow any designs or instructions, the Customer hereby indemnifies Galvin Engineering against all damages, penalties, costs and expenses arising from any infringement of a patent, trademark, registered design, copyright or common law right with respect to those designs or instructions. The Customer warrants that any designs or instructions given to Galvin Engineering will not cause Galvin Engineering to infringe any patent, registered design, trademark, copyright or common law right.

## 12. Intellectual Property

The Customer acknowledges that Galvin Engineering is the owner and holds all rights, title and interest in the various patents, inventions, designs, copyright, trademarks, trade names, business names, corporate names, logos, get up, circuit layouts, know-how, trade secrets and confidential information held by Galvin Engineering ("Galvin Engineering's IP"). The Customer will not attempt to seek or claim any interest in Galvin Engineering's IP, or assist any other party to assert any interest in Galvin Engineering's IP. The Customer acknowledges that any improvement or enhancement of Galvin Engineering's IP which may result from work performed by the Customer shall remain the exclusive property of Galvin Engineering and the Customer irrevocably assigns to Galvin Engineering all right, title and interest the Customer may have in any improvements or enhancements, to Galvin Engineering's IP. The Customer will not hinder Galvin Engineering in any application or other measure taken by Galvin Engineering to protect or exploit improvements to Galvin Engineering's IP.

## 13. Customer Supplied Patterns, Dies, Jigs, Tools etc.

Galvin Engineering will endeavour to take good care of any Customer supplied patterns, dies, jigs, tools etc, but Galvin Engineering accepts no liability for damage or destruction of patterns that may occur whilst these are on our premises.

## 14. Quality

Prices are for Products, which are manufactured to the appropriate Australian Standards. Galvin Engineering is a Quality Endorsed Company, which meets the requirements of ISO 9001, and holds a number of Australian Standards and WaterMarks.

## 15. Competition and Consumer Act 2010 (Cth) ("CCA")

- a. Where the provisions of the CCA apply, the provisions of these Terms will be read subject to the application of the CCA and in the case of any conflict, the provisions of the CCA will apply.
- b. Nothing in these Terms is intended to limit or replace any rights of "consumers" as that term is defined under the CCA.
- c. The Customer agrees that if the Customer buys any Products for the purposes of re-supply, manufacture or repair of other goods, the CCA will not apply to such supplies.
- d. If the Customer on sells any Products it agrees that it will not make any representations in relation to the Products which are not:
  - (i) contained on the packaging of the Products;
  - (ii) contained in any materials supplied by Galvin Engineering;
  - (iii) set out in any applicable manufacturer's warranty; or
  - (iv) approved in writing by Galvin Engineering. If the Customer on sells the Products to consumers who purchase them for the purposes of re-supply, manufacture or repair of other goods, the Customer agrees to contract out of the CCA in writing with those consumers.
- e. The Customer agrees that it will indemnify Galvin Engineering against any claim, liability or cost incurred by Galvin Engineering as a result of any breach by the Customer of its obligations in clause 15d above.

## 16. Warranty Claims

16.1 Except to the extent required by law, all consumer guarantees, representations, warranties, terms and conditions in relation to the Products and Services (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law. The Customer agrees that if it is aware (or should be aware) that the Products or Services, the subject of any order, are for any particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly identify and disclose that purpose or those characteristics in any order for the Products or Services.

16.2 To the maximum extent permitted by law:

- a. Galvin Engineering shall not be liable in respect of any defective Products unless the Customer notifies Galvin Engineering in writing of its claim within 7 days from delivery and gives Galvin Engineering reasonable opportunity to investigate the claim. Failure to so notify Galvin Engineering in this timeframe shall be deemed to be unqualified acceptance of the delivery;
- b. despite clause 16.2a, Galvin Engineering shall have no liability for, and will not accept any claims for Products which, after delivery pursuant to clause 1.4 of these Terms:
  - (i) are not intact and in original condition;
  - (ii) have been altered, improperly stored or handled or suffered damage or deterioration; or
  - (iii) have been affixed, used or applied in any way;
- c. except as stated in these Terms, Galvin Engineering shall not be liable for any losses or damages incurred by the Customer or any third party in relation to the Products or these Terms including any damage to property;
- d. except as set out in these Terms, no other term, condition, warranty, representation and/or understanding whether express or implied, in any way extending to, or otherwise relating to or binding upon Galvin Engineering, is made or given by or on behalf of Galvin Engineering in respect of the Products.
- e. Galvin Engineering's liability to the Customer (and any party claiming through the Customer against Galvin Engineering) for any claim for loss or damage (including legal expenses) made in connection with the Contract for breach of contract, tort (including negligence), under statute, in equity, at common law or otherwise shall be limited at Galvin Engineering's discretion, to the following:
  - (i) Where Galvin Engineering has supplied Products, Galvin Engineering's liability shall be limited to replacement of the Products or supply of equivalent Products, or repairing the Products, or crediting the Customer for the price of the Products as at the date of delivery, or paying the Customer the cost of repairing of the Products (with such cost having prior approval by Galvin Engineering).
  - (ii) Where Galvin Engineering has supplied Services, Galvin Engineering's liability is limited to the provision of the Services again or payment of the costs of having the relevant Services provided again at Galvin Engineering's option.
- f. Galvin Engineering will not be liable for any loss or damaged caused by the negligence of the Customer or any third party acting on behalf of the Customer. This includes any loss or damage caused by the supply by the Customer or third party acting on behalf of the Customer of incorrect manufacturing instructions, drawings or material specifications, and faulty installation or misuse of the Product by the Customer or a third party.
- g. Galvin Engineering will not be liable for any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise, and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly. Where it eventuates that the fault to be serviced by our staff arises from an initial faulty installation or Products from another brand, a service charge of **\$150.00** per hour, including travelling time, and a minimum fee of **\$180.00** will apply. Proof of purchase may be required before work commences, and a "Service Call Agreement Form" needs to be completed, signed and returned to Galvin Engineering prior to the service call being made.

## 17. Exclusions

Except if and to the extent applicable law requires otherwise the Customer agrees that:

- a. without limiting or affecting clause 16.2d, no dealing between Galvin Engineering and the Customer shall be or deemed to be a sale by sample;
- b. it shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance given by or on behalf of Galvin Engineering shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or adviser nor to have been relied upon;
- c. Galvin Engineering shall not be liable under these Terms in respect of any Products to the extent that any third party manufacturer is liable under a manufacturer's warranty for such Products (the benefit of which Galvin Engineering will, to the extent possible, extend to the Customer); and
- d. Galvin Engineering shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Products and/or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at Galvin Engineering and accepted in writing by Galvin Engineering prior to delivery of the Products under these Terms.

## 18. Returns

18.1 Galvin Engineering will always endeavour to accept returns in order to offer the best service, however, except in the case of defective Products (in which case clause 16 of these Terms will apply) standard stocked items will only be accepted for return with our prior agreement, and only if the Products and packaging are in original condition, and free from damage and blemishes, and no more than 3 weeks have passed since the delivery date.

18.2 To process any claims or returns relating to standard stocked items, Galvin Engineering needs to be advised of the original invoice number and the reason for the credit request, within 30 days from the date of invoice. Products ordered in error by the client will be subject to a minimum handling charge of **20%** of the value of the Products, or **\$100.00**, whichever is the greater. Despite any other provisions of these Terms (and except in the case of defective Products, in which case clause 16 of these Terms will apply) Products "Made to Order" or "Specials" not listed in our standard price list are not returnable.

## 19. Default

19.1 The Customer will be in default if any of the following occurs:

- a. Customer breaches these Terms; and/or
- b. payments for the Products or Services has not been received by Galvin Engineering by the due date of payment; and/or
- c. the Customer is subject to any insolvency proceedings.

19.2 If the Customer defaults, Galvin Engineering may:

- a. treat the whole of the Contract and any other agreement with the Customer as repudiated and sue for breach of contract; and/or
- b. claim the return of any Products in the Customer's possession where title has not passed to the Customer, and/or
- c. refuse to supply any Products or Services to the Customer; and/or
- d. without notice to the Customer withdraw or vary any credit Galvin Engineering has provided to the Customer; and/or
- e. without notice to the Customer make all monies owing by the Customer to Galvin Engineering on any account immediately due and payable.

## 20. Personal Property Securities Act 2009 (Cth) ("PPSA")

- a. The Customer acknowledges and agrees that, by accepting these Terms, the Customer grants Galvin Engineering a security interest over the Products and their proceeds (by virtue of the retention of title in these Terms).
- b. The Customer undertakes:
  - (i) to provide to Galvin Engineering on request all information reasonably required by Galvin Engineering to register a financing statement or financing change statement on the Personal Property Securities Register; and
  - (ii) to advise Galvin Engineering in writing of any proposed change to its name or address at least 7 days before the change takes effect.
- c. The Customer:
  - (i) waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;
  - (ii) waives its rights and, with Galvin Engineering's agreement, contracts out of Customers rights under paragraphs (a), and (l) to (q) inclusive of section 115(1) of the PPSA; and
  - (iii) agrees that where Galvin Engineering has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.
- d. The Customer must pay the costs, charges and expenses of and incidental to the need for or desirability of registration of a financing statement or financing change statement or any action taken by Galvin Engineering to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA. The Customer must pay any costs incurred by Galvin Engineering including all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any Products supplied to the Customer.
- e. Unless the context requires otherwise, the terms and expressions used in this clause have the meanings given to them in, or by virtue of, the PPSA.

## 21. No Reliance

The Customer acknowledges and agrees that it has not relied on any prior representation or promises made by Galvin Engineering except as set forth herein.

## 22. Force Majeure

Galvin Engineering shall not be responsible for any delay or failure of performance occasioned or caused by strikes, riots, fire, insurrection, embargoes, failure of carriers, inability to obtain materials or transportation facilities, acts of God or of the public enemy, government tariffs and quotas, compliance with any law, regulation or other governmental or court order whether or not valid, or other causes beyond the control of Galvin Engineering, irrespective of whether the cause could be alleviated by the payment of money, or the performance is prevented or delayed because of the failure of Galvin Engineering's machinery, or failure of a supplier to Galvin Engineering.

## 23. No Waiver

No failure or delay by Galvin Engineering in exercising any right, power or privilege to which it is entitled shall operate as a waiver, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. These Terms and obligations and acknowledgments hereunder may only be waived or modified by Galvin Engineering by an agreement in writing between the parties hereto.

## 24. Severance

In the event of any part of these Terms becoming void or unenforceable, then that part shall be severed from and the remaining terms and provisions hereof shall remain in full force and effect.

## 25. Applicable Law

These Terms shall be governed by and construed in accordance with the laws of the State of Western Australia, Australia. The parties hereby agree to submit to the non-exclusive jurisdiction of the Western Australian Courts and any court which may hear appeals there from.

## 26. Survival

The clauses in these Terms headed Designs, Intellectual Property, Warranty Claims, Competition and Consumer Act 2010 (Cth), Personal Property Securities Act 2009 (Cth), No Reliance, and Force Majeure shall survive the termination or expiration of the Contract.