



## TERMS AND CONDITIONS OF SALE

### **1. DEFINITIONS**

In these Terms and Conditions the "Company" shall mean GripFactory Australia whose registered office is at 308 Fitzgerald street, Perth 6000 WA, Australia and the "Buyer" shall mean the other contracting party.

### **2. MAKING THE CONTRACT**

2.1 Any quotation given by the Company is an invitation to treat. A contract will only be formed when the Company accepts the Buyer's order. Any offer made by the Buyer orally must be confirmed in writing by the Buyer.

2.2 All orders are accepted under these terms and conditions alone. These conditions supersede all previous agreements between the parties and exclude any purported terms and conditions in the Buyer's order.

2.3 No variation of these terms and conditions is permitted unless expressly requested in writing by the Buyer and agreed to in writing by a Director of the Company.

2.4 The Buyer shall not assign or transfer or purport to assign or transfer the contract or the benefits thereof to any other party without the prior written consent of the Company.

2.5 Samples, brochures and other literature issued by the Company are for the Buyer's general guidance only and shall not constitute representations by the Company and the Company shall not be bound thereby.

2.6 Any special offer or discount offered by the Company or its agents shall not be construed by the Buyer as an inducement to buy nor be used to nullify these conditions.

2.7 No servant or agent of the Company has authority to make any representation or give any warranty in relation to the goods or services supplied by the Company. If any statement or representation has been made by the Company, its servants or agents on which the Buyer relies other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Buyer must set out that statement or representation in a document to be attached to or endorsed on the Buyer's order and in any such case the Company may confirm, reject or clarify the point.

### **3. VARIATION/CANCELLATION OF ORDER**

3.1 No cancellation by the Buyer is permitted except where expressly agreed by a Director of the Company in writing.

3.2 Any variation in an order, which is accepted by the Company, shall entitle the Company to make an appropriate variation in prices and estimated delivery times, which shall bind the Buyer.

3.3 The Buyer will in the event of agreed cancellation by the Buyer indemnify the Company fully against all expense and loss incurred up to the time of such cancellation and until such time as the Buyer's liability to the Company is discharged in full.

### **4. PRICE**

4.1 Unless otherwise stated, all prices quoted are ex works and exclusive of GST. Carriage, packing and/or postage will be charged extra.

4.2 Quotations are valid for 45 days unless otherwise stated.

### **5. DELIVERY**

5.1 Delivery will be deemed to have been effected when either:

5.1.1 The goods are delivered to the Buyer or order of the Buyer or its agents or:

5.1.2 The goods are ready for despatch and delivery or collection is delayed or refused by the Buyer.

5.2 Time and dates quoted by the Company for delivery of the goods are estimates only and time will not be of the essence of the contract in this respect.

5.3 The Company shall not be liable in any way for any loss, damage or expenses (whether direct, indirect consequential or otherwise, including without limitation, loss of profits and liability to third parties) suffered or incurred by the Buyer as a consequence of any delay, howsoever caused in delivering the goods.

5.4 Unless otherwise agreed in writing, the Company shall be entitled to make partial delivery of the goods and to tender a separate invoice in respect of each instalment.

5.5 In the case of partial deliveries of goods, the Buyer will not be entitled to treat the delivery of faulty goods in any one instalment, or the late delivery of any one instalment, as a repudiation of the whole contract.

5.6 The Buyer shall be responsible for unloading the delivered goods and shall provide proper unloading facilities (including adequate plant and labour) and storage facilities.

### **6. ACCEPTANCE OF GOODS**

6.1 The Buyer will be deemed to have accepted the goods unless rejected by the Buyer within seven days of their receipt at the delivery address.

6.2 The Company shall have no liability for goods delivered in a damaged condition or lost in transit or for shortages unless:

6.2.1 In the case of damage or shortage, details are endorsed on the Company's and/or the carrier's delivery note or receipt and notice in



writing giving full particulars of the damage or shortage is received by the Company and the carrier within three working days after receipt of the goods at the delivery address, and

6.2.2 In the case of goods lost in transit, notice in writing of the non-delivery is received by the Company and by the carrier within seven days after the date of the despatch advice note or invoice (as the case may be) issued by the Company, and

6.2.3 In the case of damage, the goods are returned to the Company.

6.3 Subject to the Buyer complying with clauses 6.1 or 6.2 above (as the case may be) and subject to condition 7 below, the Company shall replace or make good any goods rejected by the Buyer or delivered in a damaged condition or lost in transit (or in lieu thereof, at the option of the Company, shall allow credit to the Buyer of the amount of the price of goods lost or rejected or a proportionate amount thereof in the case of goods damaged) but the Company shall have no other liability whatsoever including subsequential loss in respect of goods rejected by the Buyer or delivered in a damaged condition or lost in transit.

6.4 The Company shall have no obligation to replace goods upon which work has been carried out by others or which are damaged due to the Buyer's neglect or misuse.

## **7. SPECIFICATIONS**

7.1 Where dimensions are quoted or ordered in Imperial measurements, the Company reserves the right to convert such measurements to their nearest metric equivalent.

7.2 References to sheet or cut size and thickness are approximate only. Whilst every effort is made for these figures to be accurate, the Buyer shall accept that the specification of goods manufactured and supplied by the Company is subject to normal trade tolerances.

## **8. RISK AND THE PASSING OF TITLE**

8.1 Risk in the goods shall pass to the Buyer on delivery.

8.2 Property and ownership in the goods, notwithstanding delivery of the goods to the Buyer, will not pass from the Company until the Buyer has paid the Company unconditionally and in full for all goods supplied by the Company to the Buyer on all contracts whether due for payment or not.

8.3 If any goods supplied by the Company are processed into, incorporated in, used as materials for or mixed with other goods or materials prior to payment to the Company the title to but not the risk in the whole of such other goods shall pass to the Company at the moment of such processing, incorporation, use or admixture and shall remain with the Company until payment of all such monies as specified above.

8.4 Until title passes from the Company:

8.4.1 The Buyer will hold, as fiduciary agent and bailee, all goods to which the Company holds title and shall keep any unsold goods separate and in good condition and clearly identifiable as being the property of the Company.

8.4.2 The Buyer irrevocably assigns to the Company all rights and claims which the Buyer may have against its own customers arising from sales to its own customers of goods to which the Company holds title.

8.4.3 The entire proceeds of any sale by the Buyer of goods to which the Company holds title shall be held in trust for the Company and not mixed with other monies or paid into an overdrawn bank account and shall at all times be identifiable as the Company's money.

8.4.4 The Company or its representatives may at any time without notice and without prejudice to its other rights and remedies enter any premises of the Buyer and take possession of any goods to which the Company holds title if the Buyer is in default for longer than fourteen days in the payment of any sum whatsoever due to the Company or if the Company has bona fide doubts as to the solvency or creditworthiness of the Buyer.

## **9. QUALITY AND PURPOSE**

9.1 All fire tests referred to in the Company's literature have been conducted by approved fire research centres using samples manufactured by the Company and which are typical of the Company's everyday manufacturing techniques.

9.2 Any recommendation or suggestion relating to the use of the goods made by the Company is given in good faith but it is for the Buyer to satisfy itself of the suitability of the goods for its own particular purpose including use with other materials and it shall be deemed to so have done prior to placing any order.

9.3 The Company's liability in respect of the quality or fitness for purpose of the goods shall not extend to the Buyer's loss of profits, increased cost of working or any other consequential financial losses.

## **10. PAYMENT**

10.1 Except where otherwise stated herein, payment shall be due in full no later than seven (7) days past date of delivery or deemed delivery, unless otherwise agreed in writing by the Company.

10.3 Should any payment be overdue then all payments become due immediately.

10.3 The Company reserves the right at any time at its discretion to demand security or payment before continuing with or delivering any order.

10.4 Unless agreed in writing, the Buyer shall not be entitled to exercise any right of set-off or counterclaim against monies owed to the Company for goods invoiced and delivered to the Company by the Buyer.

10.5 Payment will not be effected until clearance of cheque or bill of exchange.



## **11. PROTECTION OF INTELLECTUAL PROPERTY**

11.1 The trademarks, trade names, know-how, copyright, design, rights, goodwill and patents (“the Intellectual Property”) arising out of or existing in or upon the goods or the Company’s literature or communications are the property of the Company.

11.2 The Buyer shall not cause or permit anything which may damage or endanger the Intellectual Property of the Company or the Company’s title to it nor assist nor allow others to do so.

11.3 The Buyer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may be liable as a result of work done in accordance with the Buyer’s specification which involves the infringement of any letters patent or registered design.

## **12. FORCE MAJEURE**

12.1 The Company shall not be liable for its failure to perform any contract if such failure arises wholly or partly from circumstances outside the Company’s control, non-exhaustive illustrations of which include industrial action, labour shortage, war, civil disturbance, action or regulation by any duly constituted authority, non-availability of materials, act of God, fire, flood or drought.

12.2 Should the Company be prevented from performing any contract in the above circumstances, it shall give the Buyer written notice of this fact as soon as is reasonably practical to do so.

12.3 If the circumstances still continue four weeks after the Buyer receives the Company’s notice then either party may give written notice to the other cancelling the contract.

12.4 If the contract is cancelled in this way the Company will refund any payment which the Buyer has already made on account of the price (subject to deduction to any amount the Company is entitled to claim from the Buyer) but the Company will not be liable to compensate the Buyer for any further loss or damage caused by the failure to perform the contract.

## **13. WAIVER**

No waiver or forbearance by the Company whether express or implied in enforcing any of its rights under these Conditions will prejudice its right to do so in the future.

## **14. LAW AND JURISDICTION**

The contract shall be governed by and construed in accordance with Western Australian Law and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the Western Australian Courts with the provision that the Company may at its discretion utilise the offices and facilities of any Australian court when seeking redress.

## **15. LIMITATION OF LIABILITY AND INDEMNITY**

15.1 In cases where the Buyer does not qualify as a 'Consumer' under the Australian Consumer Law, the Company is not to be held accountable under any circumstances for:

15.1.1 Any damages inflicted on any type of property located in, or adjacent to the premises resulting from the delivery or execution of Goods and Services in accordance with this Agreement.

15.1.2 Any flaws in the Goods and Services, unless the Buyer submits written notice to the Company within seven (7) days from the pick-up or delivery date, clearly detailing the defect. This notice serves as a pre-condition for any recovery rights of the Buyer.

15.2 If the Buyer is classed as a Consumer and any of the Goods or Services supplied by the Company are not of a kind ordinarily acquired for personal, domestic, or household use or consumption, the Buyer agrees that the Company’s liability for a failure to comply with a consumer guarantee under the Australian Consumer Law in relation to those Goods or Services (other than a guarantee under sections 51, 52, and 53), is limited to, at the Company’s option:

15.2.1 For Goods:

15.2.1.1 the replacement of the Goods or the supply of equivalent goods;

15.2.1.2 the repair of the Goods;

15.2.1.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

15.2.1.4 the payment of the cost of having the Goods repaired;

15.2.2 For Services:

15.2.2.1 the supply of the Services again; or

15.2.2.2 the payment of the cost of having the Services supplied again.

15.3 To the maximum extent permitted by law, the Buyer agrees to indemnify and forever holds the Company harmless from all losses triggered or intensified by any negligent and/or intentional act or omission or any contract breach by the Buyer, or by the Company, in relation to the Goods and Services as per this contract.

## **16. SEVERANCE**

16.1 If any Condition or part thereof is held by any court or other competent authority to be void or unenforceable in whole or in part these Conditions will continue to be valid as to all other provisions and the remainder of the affected provision.

16.2 The Company reserves the right to amend its Terms and Conditions of Sale as deemed necessary by the Company and to incorporate such amendments into any relevant document pertinent to and binding on the Buyer.