

GAMECO (NSW) PTY LTD

ABN 93 001 367 862

GENERAL TERMS & CONDITIONS OF SALE

These General Terms & Conditions of Sale (**terms**) govern the supply of all Goods by us or any of our related bodies corporate.

1. Australian Consumer Law. These terms do not exclude, restrict or modify:

- (a) the application of any provision of the Australian Consumer Law;
- (b) the exercise of any right or remedy conferred by the Australian Consumer Law; or
- (c) our liability for a failure to comply with any applicable consumer guarantees

where to do so would:

- (d) contravene the Australian Consumer Law; or
- (e) cause any part of these terms to be void.

2. Limitation of Liability and Indemnity. Subject to clause 1 and to the extent permitted by law:

- (a) our maximum liability to the Customer for failure to comply with any applicable consumer guarantee in respect of the supply of Goods that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited at our option and sole discretion to:
 - (A) in the case of Goods to any one or more of the following:-
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of Goods;
 - (iii) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired; or
 - (B) in the case of services to:-
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again;
- (b) we do not accept any responsibility to replace the Goods at the price, or according to the terms originally quoted, or at all, in the event of loss, damage or seizure of the Goods once risk in those Goods has passed to the Customer;
- (c) the Customer warrants that it has not relied on any representation made by us, or any person on our behalf, in relation to the Goods, which has not been expressly recorded in these terms;
- (d) all representations, conditions, warranties or terms, that would otherwise be implied in these terms by general law, statute or custom are expressly excluded;
- (e) the Customer acknowledges that we will not be liable to the Customer, or any of the Customer's own customers, in respect of any direct, indirect, special or consequential damages, loss of opportunity, loss of anticipated profits or other economic loss in connection with or arising out of:
 - (A) the existence, functioning or the Customer's use of the Goods provided by us;
 - (B) any inability, failure or delay on our part to supply or deliver arising out of events beyond our control, including without limitation in whole or part a strike, industrial dispute, lock-out, accident, fire, absence or delay in transportation, embargo, Act of God, government requirement, or shortage of materials or labor;
- (f) the Customer agrees to indemnify us and our officers, employees, agents and related bodies corporate, against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) howsoever arising (including in respect of death or personal injury) that may be brought against us or which we may pay, sustain or incur as a direct or indirect result of any one or more of the following:
 - (A) any breach or non-performance of these terms by the Customer, including any breach of a warranty;
 - (B) failure to comply with the Product Warning;
 - (C) any wrongful, willful or negligent act or omission of the Customer or any of its employees, agents or contractors;
 - (D) the storage, handling or use of any of the Goods sold under or in connection with these terms, except to the extent that the relevant action, claim, proceeding, demand, liability, loss, damage, expense or cost was caused by the wrongful, willful or negligent act or omission of ours or any of our employees, agents or contractors.

3. Customer Acknowledgement. The Customer acknowledges that prior to submitting an order, it has read the Product Warning and agrees to comply with all aspects of the Product Warning.

4. Quotes Subject to Confirmation. Any quotation or estimate is subject to our confirmation on receipt of an order and any agreement or statement by us is contingent on our ability to secure the Goods and/or the materials for the manufacture of the Goods referred to in the order.

5. Inability to Supply. Subject to clauses 1 and 2, if we discover that we are unable to supply the Goods in accordance with any accepted order, we shall be entitled at our option to either give notice to the Customer in writing to terminate the agreement to supply and return to the Customer any monies paid by the Customer or to extend the time for performance of the agreement.

6. Time an Estimate Only. In the case of Goods not expressed to be offered from stock, the time of delivery is an estimate only of when Goods may be available for delivery and is based either upon estimated time necessary to obtain the Goods from manufacturers and/ or suppliers or, the estimated time necessary to obtain the requisite raw materials or component parts for manufacturing or assembling the Goods offered and we do not accept any responsibility for failure to deliver within the time stated. The Customer acknowledges that our failure to deliver the Goods strictly in accordance with the agreement shall not entitle the Customer to treat the contract as repudiated.

7. Claims. The Customer must inspect all Goods on delivery under clause 13 and notify us within 7 days of delivery of any short supply, fault, damage, customer complaints or other issues arising in relation to the Goods. The Customer must comply with all of our reasonable directions in

relation to issues that arise under this clause 7 and not, without our prior written consent, admit liability on behalf of us regarding any complaint or claim, or attempt to resolve or settle any complaint or claim, made by a customer in relation to any Goods. Subject to clause 1, if the Customer fails to give notice to us in accordance with this clause, the Goods are deemed to be in all respects in accordance with the order and the Customer is bound to accept and pay for the same without set-off.

8. **Price Subject to Adjustment.** Prices quoted are subject to withdrawal or revision at any time before the order for the Goods covered by such quotation is accepted by us. Prices quoted are based on manufacturers and/or suppliers present prices to us, and also in the case of Goods to be imported from overseas or procured from elsewhere in the Commonwealth on the prevailing Customs Tariff (classifications, rates and bases of computation) rates of exchange, freights, insurance premiums, shipping expenses, wharfage, stacking charges, customs agency and attendance and cartage and in the event of any increase in any such prices or rates either before or after the acceptance of an order, an amount commensurate with the increased cost thereby incurred by us shall be added to and form part of the purchase price and be payable by the Customer accordingly. The rate of exchange to be included in the purchase price for any of the Goods will be the rate actually paid by us when making settlement with the overseas supplier or buying agent. The foregoing shall not apply to Goods that are the subject of price lists and orders accepted by us for Goods the subject of price lists will be invoiced at prices ruling at the date of order.
9. **Taxes and Imposts.** Prices quoted are subject to sales tax (if applicable) and to any tax imposed by government authority upon the Goods quoted or upon the production, sale, distribution, delivery, or upon any feature thereof. All such taxes shall be payable by the Customer and may also be added to and treated as part of the purchase price by us.
10. **Goods and Services Tax (GST).**
 - (a) In this clause 10 the expressions **Consideration, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act and **Supplier** means any party treated by the GST Act as making a Supply under these terms.
 - (b) Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these terms are exclusive of GST.
 - (c) If GST is imposed on any Supply made under or in accordance with these terms, the GST will be shown separately in the Tax Invoice for the sale of the Goods and the amount of GST payable in respect of the Taxable Supply will be payable by the Customer. The Customer must indemnify us in respect of GST paid and payable by us for the supply of the Goods.
 - (d) Payment of the additional amount representing the GST component must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with these terms.
11. **Extraneous Information/ Inaccuracies.** Subject to clause 1, all illustrations, drawings, catalogues, advertisements etc. shall be regarded as information only and shall not form part of any agreement governed by these terms. All specified weights measurements, powers, capacities and other particular goods offered are stated in good faith but inaccuracies shall not vitiate any agreement or, except to the extent provided by non-excludable statutory right be made the basis of any claim against us or justify rejection of the Goods.
12. **No Liability for Infringement.** In the case of Goods manufactured in accordance with the design and/ or specification of the Customer, the Customer guarantees that in manufacturing such Goods to the Customer's design/ or specifications we will not be infringing any letters patent, trade marks or corresponding protection granted by the Commonwealth of Australia or by any other country, and the Customer further agrees to indemnify and hereby hold us indemnified against all costs, claims, demands, suits, actions or other liability arising out of any such infringement.
13. **Delivery.**
 - (a) Delivery may be made in one or more parcels and at different times and by separate shipments or deliveries. Each shall form a separate contract on delivery and be accepted and paid for accordingly not withstanding late delivery or non-delivery of any other parcel.
 - (b) The Customer agrees to accept delivery at our factory unless otherwise agreed in writing and in the event that no provision is made as to freight, the Customer acknowledges that the cost of delivery shall be borne by Customer.
 - (c) Our responsibility (if any) for loss caused by fire, theft, or injury shall cease once risk in the Goods has passed to the Customer.
 - (d) The times quoted for delivery are estimates only and we accept no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by installments at our discretion.
 - (e) All additional charges are payable by the Customer in addition to the purchase price of the Goods.
 - (f) Subject to clause 1, return of Goods will not be accepted by us except if we agree to it beforehand in writing, and Goods returned will be subject to a restocking charge of 10% of the purchase price of those Goods.
14. **Supply of Goods.**
 - (a) An order, once submitted, is irrevocable and may only be cancelled with our written consent. If we agree to cancel an order, the Customer must pay for all work done and materials ordered in connection with such order prior to the date of cancellation, together with a cancellation fee advised by us in writing equal to the costs reasonably incurred by us in connection with such a cancellation.
 - (b) We are not bound by an order unless and until we accept the order, either by providing written confirmation to the Customer, confirming acceptance of the order, or by commencing performance of the order.
 - (c) To the fullest extent permitted by law, we are not obliged to accept any order.
 - (d) Once we accept an order, the parties must comply with that order in accordance with these terms, which cannot be modified or varied without our written consent.
 - (e) If there is any inconsistency between the terms set out in an order and these terms, these terms prevail to the extent of the inconsistency.
15. **Terms of Payment.**
 - 15.1 Terms of payment are prompt nett cash on delivery or dispatch unless otherwise agreed in writing.
 - 15.2 All payments should be paid in cash at our office at 161 Parramatta Road, Auburn, NSW, Australia or such other place as we may advise the Customer from time to time.
 - 15.3 The Customer acknowledges that it shall not be entitled to withhold payment of the purchase price or any part of the purchase price or make any deduction from the purchase price in respect of any alleged set off or counter-claim.
 - 15.5 Where we agree to terms other than cash on delivery or dispatch, all payments are due within 30 days of the date of invoice. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date we receive payment.

16. **Default and termination.** If the Customer defaults in making any payment in accordance with our terms of payment referred to in Clause 15, or refuses to accept delivery of any Goods in accordance with these terms, or if the Customer:
- stops payment on any cheque payable to us or our suppliers;
 - is in default under any agreement governed by these terms;
 - being a natural person is declared bankrupt or enters into a composition with its creditors pursuant to Part 5 of the Bankruptcy Act or has a judgment entered against him in any court of competent jurisdiction which judgment is not satisfied within fourteen days; or
 - being a corporation is placed under official management or enters into any arrangement with its creditors or others (except for the purpose of reconstruction or amalgamation), has receivers or receivers and managers appointed to any of its assets, hands a petition presented against it for its winding up or an effective resolution for its winding up is passed,
 - or if there is any event similar or analogous to any of the above, we may without prejudice to any other rights we have against the Customer, at our election, terminate any agreement governed by these terms in which case our obligations to the Customer shall cease at the date of such termination and/or withhold supply of any Goods.
17. **Entire Agreement.** The parties agree that any accepted order and these terms (including any applicable price list and/or terms and conditions contained in a Customer's Application for Credit) constitute the entire agreement between the parties and upon our acceptance of the Customer's order any other terms and conditions whether notified to us by the Customer or otherwise are expressly negated.
18. **Title and Risk.**
- 18.1 The Goods will remain our sole and absolute property (as legal and equitable owner) and the Customer shall hold the same as bailee until such time as the Customer has paid us the purchase price together with any other amounts at the time of such payment owing to us in respect of the Goods by the Customer provided that the Customer shall be able to pass title in the Goods to third parties in the ordinary course of business and for valuable consideration and the Customer acknowledges that it shall be liable to us in respect of any loss or damage to the Goods incurred during such bailment.
- 18.2 Notwithstanding anything contained in clause 18.1 if the Customer fails to pay us for the Goods in accordance with these terms, we shall be entitled to repossess the Goods at any time and in the event that the Goods have been sold to a third party, we shall be the owner of the proceeds of such sale and the Customer agrees to open a separate bank account in the name of Gameco (NSW) Pty Ltd, or as directed by us and pay such proceeds of sale into that account.
- 18.3 The Goods are at the Customer's risk upon the occurrence of the first in time of the following events:-
- physical passing of the property and the Goods to the Customer, **or**
 - the delivery of the Goods to the Customer.
- 18.4 Unless otherwise set out in these terms, defined terms in this clause 18.4 have the meaning given in the PPS Law.
- If in our opinion:
 - these terms contains or any of the transactions contemplated by these terms is, a Security Interest for the purposes of the PPS Act; or
 - the PPS Law does or could adversely affect our rights or obligations under or in connection with any agreement governed by these terms or any of the transactions contemplated by them ("Transactions"),
 then we may give notice to the Customer requiring it to do anything (including amending any part of these terms or executing any new document or agreement) that we require or consider necessary to ensure that our rights and obligations are not adversely affected, including:
 - ensuring that any Security Interest is enforceable, perfected and otherwise effective;
 - registering, or giving any notification in connection with, any Security Interest in order to confer the priority we require; or
 - exercising rights in connection with the Security Interest.
 - The Customer must comply with any notice received pursuant to clause 18.4(a) within the time stipulated in the notice.
 - If:
 - clause 18.4(a) applies; and
 - we determine that (after doing all things reasonably practicable under clause 18.4(a) to avoid or overcome the adverse effect referred to in clause 18.4(a)) that our rights or obligations under or in connection with these terms or any other document in connection with the Transactions have been or will be materially adversely affected,
 we may give notice to the Customer cancelling any agreement or any other document in connection with the Transactions and requiring full repayment of all outstanding monies in full within 30 days after the date of notification.
 - The Customer agrees to pay or reimburse our costs in connection with anything the Customer is required to do under this clause 18.4.
- 18.5 Contracting out
- The following provisions of the PPS Law do not apply and, for the purposes of section 115 are "contracted out" of these terms, namely sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
 - The parties agree that the Gameco has the power to retain, deal with or dispose of any property seized by it in the manner specified in sections 123, 125, 126, 128, 129 and 134(1) and in any other manner it deems fit.
19. **Confidentiality**
- 19.1 Obligations of Confidentiality
- Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to or a trade secret of the Disclosing Party. Subject to clause 19.2, the Receiving Party must:
- keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
 - take all reasonable steps to secure and keep secure all Disclosing Party's Confidential Information coming into its possession or control; and
 - not deliberately memorise, use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under these terms.
- 19.2 Exceptions
- The obligations of confidentiality under clause 19.1 do not apply to any information that:
- is generally available to the public (other than by reason of a breach of these terms); or
 - is required to be disclosed by any applicable law.

20. **Insurance.** The Customer agrees that it shall insure and keep insured the Goods against theft, damage and destruction (and if the Customer fails to insure the Goods, we may do so and the Customer must reimburse us for the cost of insurance) from the date of passing of risk to the Customer until the date of payment.
21. **Storage.** Until title in the Goods passes to the Customer under clause 18, the Customer shall store the Goods separately from the Customer's own goods and those of third parties so that they are clearly identifiable as our property.
22. **Notices.**
- 21.1 A party shall give notice required by these terms in the English language and in writing.
- 21.2 A party may address a notice to the other party at its address set out in the order and may serve the notice at this address.
- 21.3 A party may deliver the notice by hand or post or by telex or facsimile transmission.
- 21.4 If, before 4.00pm local time in the place of delivery, a party delivers a notice-
- (1) By hand:
- (2) By facsimile and the sending party completes the transmission, the notice will be taken as given on the day of delivery or transmission, and in any other case, on the next day.
- 21.5 If a party gives the notice by post the notice will be taken as given on the second business day in the place of delivery after the notice is posted.
- 21.6 If a party gives notice by telex or facsimile transmission and the transmission is not fully intelligible, or if the sending party, at the time of transmission, has reason to believe that the facsimile transmission is not fully intelligible, the party may not rely upon this clause to prove giving of notice.
- 21.7 The receiving party shall not object to a telex or facsimile transmission as not being fully intelligible unless the receiving party requests re-transmission within 2 hours.
- 21.8 If a telex or facsimile is completed within 2 hours of 5.00 pm on a day and is unintelligible, the receiving party has until 10.00 am the next business day to request re-transmission.
- 21.9 The party giving the notice or its agent authorized in writing or its solicitors shall sign the notice. The appearance of the name of the person signing at the end of a telex or facsimile transmission is sufficient evidence of signing.
- 21.10 The parties may give notice of another address, telex or facsimile number (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause 22.
23. **Applicable Law.** Any agreement governed by these terms is to be construed in accordance with the laws applicable from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and that any proceedings commenced by either party in respect of these terms may only be commenced outside New South Wales with our expressed written consent.
24. **Severance.** The invalidity or unenforceability for any reason of any part of these terms shall not prejudice or affect the validity or enforceability of the remainder of these terms. Any provisions found to be void, unenforceable or illegal may, to that extent, be severed from these terms.
25. **General.**
- 24.1 Except as expressly stated otherwise in these terms, these terms may only be varied by agreement in writing between the parties.
- 24.2 A failure, delay, relaxation or indulgence by us in exercising any power or right conferred on us does not operate as a waiver of the power or right. A waiver of a breach does not operate as a waiver of any other breach.
- 24.3 A party cannot assign or otherwise transfer the benefit of any agreement governed by these terms without the prior written consent of the other parties (such consent not to be unreasonably withheld).
26. **Definitions.** In these terms:
- Applicant or Customer** means the person described as the "Applicant" in the Customer's Application for Credit (if applicable);
- Australian Consumer Law** means the law reproduced in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* (whether applied as a law of the Commonwealth or any State or Territory of Australia) or other equivalent State or Territory Legislation, as amended, consolidated, or replaced from time to time;
- Confidential Information** means these terms and all information belonging or relating to a party to these terms, whether oral, graphic, electronic, written or in any other form, that is:
- (a) or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or
- (b) not generally available to the public at the time of disclosure other than by reason of a breach of these terms,
- and includes information of the kind mentioned in section 275(1) of the PPS Law.
- Goods** means the products manufactured or supplied by or at the request of us or any of our related bodies corporate;
- PPS Law** means the *Personal Property Securities Act 2009 (Cth)* (including any amendments to that Act) ("**PPS Act**") and any amendment made at any time to any other law as a consequence of the PPS Act;
- Product Warning** means the product warning that relates to the Goods, including that which may be displayed on the product packaging, the product, in store, in catalogues, on warning labels attached or supplied with the product, on invoices, and /or found at: gameco.com.au
- Purchase Order** means an order for Goods that complies with the form specified by us from time to time, whether written, verbal or otherwise;
- Us, we, our** means Gameco (NSW) Pty Ltd ABN 93 001 367 862.

19 April 2012