

Gavan Products Pty Ltd Terms and conditions

These Terms and conditions shall apply to the establishment, operation and use of the Account opened by the Seller in the Purchaser's name and to all transactions effected by the Purchaser on such Account.

In these Terms and Conditions:

"Account" means the account maintained by the Seller in the name of the Purchaser to facilitate the purchase of goods from the Seller. **"Seller"** means any one or more of the companies and or divisions of Gavan Products Pty Ltd (Gavan) ABN49 060 204 391, or any Related Corporation of Gavan Products Pty Ltd such as Secure A Load and or any of the companies that maintain the account or accounts in the name of the Purchaser and/or who sells goods and/or services to the Purchaser from time to time. **"Purchaser"** means the company, firm or person identified as the **"Applicant"** on the Credit Application Form and/or in whose name an account or accounts are maintained by the Seller and/or who acquire goods and/or services from the Seller or any associated person of the purchaser. **"Associated person"** shall have the same meaning as ascribed to it by the Australian Corporations Act 2001 or future amendments to this Act.

All Price Quotations are valid for a period of thirty (30) days only. All Prices quoted are in Australian Dollars. All prices are exclusive of GST. The price of Goods will be Gavan's current price at the time of delivery, subject to any contrary agreement (if any) between Gavan and the Purchaser regarding price.

Orders are accepted only upon and subject to these Gavan Products Pty Ltd Terms and Conditions which shall have force and effect as if incorporated into the Purchaser's orders and no variation shall apply unless with the written agreement of the Seller.

A formal contract shall be deemed to have been entered into upon receipt by the Seller of an order, either written or verbal, from the Purchaser or any Associated Person at any of the Seller's places of business and the acceptance by the Seller of that order either in writing or verbally or by the performance either in whole or in part by the Seller of the order (**"the contract"**).

All prices quoted in the Sellers price lists and catalogues are subject to change without notice and the Seller reserves the right to invoice the goods sold at the revised prices.

All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of Gavan's or elsewhere is approximations only. They are intended by Gavan to be a general description for information and identification purposes and do not create a sale by description. All colours, measurements and dimensions supplied by the Seller to the Purchaser are given in good faith but are subject to change without notice.

All prices quoted in the Seller's price lists are exclusive of sales tax and duties and are exclusive of any amounts the Seller is obliged to charge under the tax system (Goods and Services Tax) Act 1999 or future amendments to this Act.

Business Day means Monday to Friday (inclusive) excluding public holidays at the place of delivery. Working Hours means between 8.00am and 4.30pm, Monday to Friday (inclusive) excluding public holidays at the place of delivery.

If for any reason beyond the control of the Seller, orders cannot be filled at the time stipulated by the Purchaser, the Seller shall be entitled to terminate the Contract and Purchaser shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of the Seller to recover all sums owing to it in respect of the deliveries made or services provided prior to the date of such determination. Delivery and Risk, unless otherwise agreed, Gavan shall deliver Goods to the Purchaser as follows: Gavan reserves the right to arrange transport by any means in its absolute discretion; delivery will be made during Working Hours to the location agreed by the Seller and the Purchaser ("Delivery Point"); Gavan or its transport contractor will deliver the Goods so close ("Drop Spot") to the Delivery Point as, in the opinion of Gavan or its transport contractor, it is safe or prudent to do so and delivery occurs and risk in the Goods passes to the Purchaser when Gavan's or its transport contractor's delivery vehicle arrives at the Drop Spot; Gavan reserves the right to charge the Purchaser any costs which it incurs as a result of any delay by the Purchaser in unloading the Goods or where unloading of the Goods cannot be effected, including, if applicable, a return delivery fee at the prevailing freight rates; the unloading of Goods at a Drop Spot is the Purchaser's responsibility at its own cost and risk but Gavan or its transport contractor may, without liability to the Purchaser, unload the Goods at the Drop Spot if the Purchaser requests Gavan to do so or is absent from the Drop Spot at the time Gavan or its transport contractor wishes to unload and, the Purchaser releases and forever discharges Gavan and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot; where the Purchaser attends Gavan's premises to acquire the Goods, Gavan may, in its absolute discretion; deliver the Goods into or onto or on the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down in or on the Purchaser's vehicle; or deliver the Goods by setting them down alongside the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down alongside the Purchaser's vehicle notwithstanding that Gavan's staff may, on request, assist the Purchaser to load the Goods into or onto the Purchaser's vehicle. Goods ordered for collection will be held for a maximum period of 10 business days. Handling Safety – Gavan product's may be sharp, heavy or hazardous, therefore it is recommended that protective clothing, heavy-duty cut resistant gloves and appropriate manual handling techniques or a lifting plan be used when handling material. Material

Safety Data Sheets are available on request from Gavan. Where Gavan or its transport contractor enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as a delivery point, the Purchaser releases Gavan from any claim the Purchaser may at any time have had against Gavan but for this release in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by Gavan or its transport contractor of Goods to such premises; and indemnifies and holds Gavan harmless from and against any loss, damage or liability suffered or incurred by Gavan in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by Gavan or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by Gavan arises out of the negligence or wilful misconduct of Gavan or its transport contractor. Days after the specific collection date. If the Goods are not collected by that time, they may be delivered to (at Gavan's option) the Purchaser's warehouse location or store or to a store selected by Gavan and all costs incurred by Gavan in relation to the holding and delivery of the Goods shall be charged to and be paid by the Purchaser. The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee. the Purchaser shall not have any claim against Gavan for damages or any other remedy for breach of contract. "Force Majeure" shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, government, interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond Gavan's control. Non stock items are not returnable by the Purchaser to Gavan. Gavan may in its discretion accept the return of stock items and in so doing may charge the Purchaser a restocking charge

The Purchaser shall not cancel any order received by the Seller without the consent of the Seller first being obtained. In the event of the Seller agreeing to accept a return of the goods, these shall be returned to the Seller at the expense of the Purchaser, and the Seller shall credit the Purchaser's account with an amount equal to ninety (90) per centum of the invoiced value of the returned goods, less any expense incurred in having the goods returned or effecting and repairing any damaged goods.

Unless otherwise agreed in writing by the Seller, the Purchaser shall pay the Seller the amount owed for goods supplied to the Purchaser as set out on the Seller's invoice within twenty (20) days from the end of the month in which the goods are supplied (**"the Due Date"**). The Seller extends no credit to the Purchaser beyond the Due Date. In the event that the Purchaser fails to pay the total amount owing in respect to goods supplied by the Due Date, the seller may require the Purchaser to pay the Seller by way of liquidated damages a default charge being a sum which is calculated by the application of a daily percentage rate of 12% compounded daily on the unpaid balance of the amount due from the Due Date until the total is paid in full. Gavan and the Purchaser may conduct business by Electronic Data Interchange (EDI). The Purchaser agrees that if it has EDI capability with Gavan's EDI is the preferred method of conducting business. Gavan and the Purchaser agree that EDI will be conducted in accordance with the terms of any Electronic Trading Partner Agreement to which they are parties and into which these Conditions of sale are incorporated.

In the event of the Purchasers defaults under these Terms and Conditions, the Purchaser shall pay to the Seller upon demand all costs and expenses including all recovery and legal costs (assessed on a solicitor and own client basis) incurred by the Seller in the enforcement of its rights hereunder.

The liability of the Seller for damages out of the contract shall be limited to the costs of rectification of any faulty workmanship or material other replacement of any faulty goods and the Seller accepts no responsibility or liability whatsoever including liability for negligence, goods that do not correspond with the description on the Seller's invoice and/or on the packaging of the goods sold or any liability for consequential loss however arising. All conditions and warranties contained in or implied by any statute or rule of law are hereby expressly excluded and negated provided that nothing in these Terms and Condition shall

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exclude, restrict or modify and condition, warranty, or liability which may at the time by implied where to do so is illegal or would render any provision of the contract void. Payments made by credit card may be subject to a surcharge. Gavan is committed to ensuring that credit card details collected from the Purchaser are stored in a secure manner. Gavan will take reasonable steps to protect the credit card details it holds from misuse and loss and from unauthorised access, modifications and disclosure during the sale and payment of products and services to Gavan.

In cases where the Seller accepts the responsibility for delivery by rail, ship, aircraft or other vehicle, the Purchaser will be responsible for the immediate examination of the goods supplied after the arrival at their destination and in the event of any goods arriving in a damaged condition, the Purchaser must notify the Seller in writing within seven (7) days of the delivery and all queries regarding goods supplied, invoicing or shortages must be advised within seven (7) days of delivery. Where the Seller accepts responsibility for delivery of the goods, the Seller shall not be liable to the Purchaser in relation to any defective goods unless notice of such defectiveness has been given within seven (7) days of receipt of the goods by the Purchaser. In the event of the Seller delivering the goods to the Purchaser's nominated carrier the Purchaser shall be responsible for the expense of that carrier, and the Seller shall be liable only to replace defective or faulty goods and not goods damaged in transit.

Goods ordered shall be supplied ex-stock of the Seller but should the Seller be out of stock at the time required for that delivery, any undelivered stock shall be placed on back order and delivered when they become available, unless the Purchaser within two (2) working days of the receipt of the invoice showing the back order, notifies the Seller that the Purchaser no longer requires such goods. No claim for short deliveries will be accepted unless notified within seven (7) days of receipt of the goods.

Notwithstanding anything to the contrary express or implied in these Terms and Conditions:-

Retention of Title; The Purchaser agrees that legal and equitable title to the Goods is retained by Gavan until Gavan receives payment in full from the Purchaser for the Goods and all other monies owing by the Purchaser to Gavan at any time. Property in all goods supplied by the Seller to the Purchaser shall remain with the Seller and shall not pass to the Purchaser until the Seller has received payment in full for the goods and until all outstanding debits owed by the Purchaser to the Seller arising from the operation of the Account have been paid; Until such time as the Seller has received payment in full for all the goods and until all outstanding debits owed by the Purchaser to the Seller arising from the operation of the Account have been paid the Purchaser shall hold all the goods bailee for the Seller and shall store and identify all the goods in a manner which enables them to be clearly identified as goods to the Seller; In the event that the Purchaser commits an act of bankruptcy, or where the Purchaser is a company has a receiver appointed to it or goes into liquidation, the Seller shall be entitled to immediate possession of all the goods supplied by it to the Purchaser remaining at the time in possession of the Purchase and is authorised to enter upon the Purchaser's premises to collect such goods without prejudice to any other rights of the Seller; If the Seller retakes possession of any of the goods pursuant to the clause above mentioned, the Seller shall have the right to sell the goods to any other party; If the Purchaser fails to make full payment for any goods supplied the cost of recovering the full payment shall be borne by the Purchaser.

The Purchaser agrees to notify the Seller in writing of any change in ownership of the Purchaser within seven (7) days from the date of such change and indemnifies the Seller against any loss or damage incurred by it as a result of the Purchaser's failure to notify the Seller of any change the Purchaser and any associated person shall remain responsible to the Seller for the payment in full of any amount due under the Contract for any goods or services ordered in the name of the Purchaser or in the name of such associated person. All International ISO Container products supplied by the Seller to the Purchaser shall be for use on internationally owned and operated shipping containers temporarily imported into Australia, the Purchaser agrees to advise at the time of placing an order for goods if they are to be used on containers which are not internationally owned and operated and indemnifies the seller from and against any and all claims, suits, actions or demands, including, but without limitation, demands for payment of excises, duties, taxes and charges, arising from the use of the goods supplied on containers within Australia. Nothing in these Conditions shall constitute Gavan as a subcontractor of the Purchaser. Gavan's obligations are limited to those of a material supplier.

The law applicable to the agreement between Gavan and the Purchaser is the law of the State or Territory in which the Goods are delivered. Gavan and the Purchaser submit to the jurisdiction of the relevant State or Territory courts.

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