

GS Engineering Terms & Conditions

1. Jurisdiction

These Terms and Conditions and related agreements shall be governed by the laws of Queensland and dealt with by the appropriate court for Hervey Bay.

2. Definitions

The following words have the following meanings in these terms and conditions unless the contrary intention appears:

- a. "GS Engineering" means Thermotek Pty Ltd (ABN 980 578 755 91) its successors, assignees, employees, servants and agents.
- b. "Client" means the entity to whom GS Engineering has supplied goods, either in its own right or as agent under these terms.
- c. "Event of Termination" means when the Client is served with any originating process in any proceedings under the Bankruptcy Act 1966 or the winding-up provisions of the Corporations Act 2001 or similar or replacement legislation or has an Administrator, Provisional Liquidator, Receiver or Receiver and Manager appointed to it.
- d. "Goods" means all products or services agreed to be supplied by the Company to the Client.
- e. "PPSA" means the Personal Property Securities Act 2009.
- f. "Privacy Policy" means GS Engineering's written policy in relation to privacy.

3. Orders and Price

- a. All Orders are subject to these Terms and Conditions and the Client shall be bound by these Terms and Conditions on placing an Order or when an Accepted Order occurs. These Terms and Conditions shall, in the absence of a specific separate written contract to vary these terms and conditions, override any terms that the Client may seek to impose on the Supplier.
- b. Any Order is an offer by the Client and is not binding on the GS Engineering until it is accepted in writing by the GS Engineering or an Accepted Order has occurred.
- c. GS Engineering may vary the Price if:
 - i. the Client varies the Order;
 - ii. where additional Works become necessary due to matters that are only discovered on the commencement of the Works, such as but not limited to not complying with the standards, latent Worksite defects like structural impediments, errors in the Work Specifications, sizing issues caused by Materials provided by the Client, delays or problems caused by third parties on the Worksite, access to the Worksite or the like; or
 - iii. there is an increase in the costs of the GS Engineering's Personnel or Materials specifically purchased for the Works.

4. Title

- a. GS Engineering and the Client agree that ownership of the Goods shall not pass until:
 - i. the Client has paid GS Engineering all amounts owing to GS Engineering; and
 - ii. the Client has met all of its other obligations to GS Engineering.
- b. Receipt by GS Engineering of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- c. It is further agreed that:
 - i. until ownership of the Goods passes to the Client in accordance with clause 4.a that the Client is only a bailee of the Goods and must return the Goods to GS Engineering on request.
 - ii. the Client holds the benefit of the Client's insurance of the Goods on trust for GS Engineering and must pay to GS Engineering the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - iii. The Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for GS Engineering and must pay or deliver the proceeds to GS Engineering on demand.
 - iv. The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of GS Engineering and must sell, dispose of or return the resulting product to GS Engineering as it so directs.
 - v. The Client irrevocably authorises GS Engineering to enter any premises where GS Engineering believes the Goods are kept and recover possession of the Goods.
 - vi. GS Engineering may recover possession of any Goods in transit whether or not delivery has occurred.
 - vii. The Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of GS Engineering.
 - viii. GS Engineering may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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5. Risk

- a. Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- b. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, GS Engineering is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by GS Engineering is sufficient evidence of GS Engineering's rights to receive the insurance proceeds without the need for any person dealing with GS Engineering to make further enquiries.
- c. If the Client requests GS Engineering to leave Goods outside GS Engineering's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

6. Delivery

- a. "Delivery" of the Goods is taken to occur at the time that:
 - i. the Client or the Client's nominated carrier takes possession of the Goods at GS Engineering's address; or
 - ii. GS Engineering (or GS Engineering's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- b. At GS Engineering's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- c. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then GS Engineering shall be entitled to charge a reasonable fee for redelivery and/or storage.
- d. GS Engineering may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- e. Any time or date given by GS Engineering to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and GS Engineering will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Cancellation

- a. GS Engineering may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice GS Engineering shall repay to the Client any money paid by the Client for the Goods. GS Engineering shall not be liable for any loss or damage whatsoever arising from such cancellation.
- b. In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by GS Engineering as a direct result of the cancellation (including, but not limited to, any loss of profits).
- c. Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

8. Personal Property Securities Act 2009

- a. Upon agreeing to these Terms and Conditions in writing the Client acknowledges and agrees that these Terms and Conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials or collateral being a monetary obligation of the Client to GS Engineering for Services that have previously been supplied and that will be supplied in the future by GS Engineering to the Client.
- b. The Client undertakes to:
 - i. Promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which GS Engineering may reasonably require to;
 1. register a financing statement or financing change statement in relation to a security interest on the PPSR;
 2. register any other document required to be registered by the PPSA; or
 3. correct a defect in a statement referred to in this sub-Clause;
 - ii. indemnify, and upon demand reimburse, GS Engineering for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Security Register ("PPSR") or releasing any Materials so charged;
 - iii. Not register a financing change statement in respect of a security interest without the prior written consent of GS Engineering;
 - iv. Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or collateral in favour of a third party without the prior written consent of GS Engineering; and
 - v. Immediately advise GS Engineering of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- c. GS Engineering and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions.

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- d. The client waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- e. The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- f. Unless otherwise agreed to in writing by GS Engineering, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- g. The Client must unconditionally ratify any actions taken by GS Engineering under Clauses 3, 7 and 10 of this agreement.
- h. Subject to any express provisions to the contrary nothing in these Terms and Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

9. Warranty of Goods

- a. Repairs not covered under warranty will be charged accordingly and are payable by the Client.

10. Claim for Payment

- a. If applicable a claim for monies owed under these Terms and Conditions is a claim for payment under the Building Constructions and Payments Act 2004 (QLD) and upon assent the Building Industry Fairness (Security of Payment) Act 2017 (QLD).
- b. Any costs involved in recovering unpaid moneys will be payable by Client.

11. Description Errors

- a. All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained on the website are approximate and are only intended by GS Engineering to be a general description.

12. General Terms

- a. The failure of GS Engineering to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect GS Engineering's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- b. Subject to clause 10 GS Engineering shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by GS Engineering of these terms and conditions (alternatively GS Engineering's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- c. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by GS Engineering nor to withhold payment of any invoice because part of that invoice is in dispute.
- d. GS Engineering may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- e. The Client agrees that GS Engineering may amend these terms and conditions at any time. If GS Engineering makes a change to these terms and conditions, then that change will take effect from the date on which GS Engineering notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for GS Engineering to provide Goods to the Client.
- f. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- g. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- a. The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify GS Engineering in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow GS Engineering to inspect the Goods.
- b. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- c. GS Engineering acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- d. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, GS Engineering makes no warranties or other representations under these terms and conditions including but not

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- limited to the quality or suitability of the Goods. GS Engineering's liability in respect of these warranties is limited to the fullest extent permitted by law.
- e. If the Client is a consumer within the meaning of the CCA, GS Engineering's liability is limited to the extent permitted by section 64A of Schedule 2.
 - f. If GS Engineering is required to replace the Goods under this clause or the CCA, but is unable to do so, GS Engineering may refund any money the Client has paid for the Goods.
 - g. If the Client is not a consumer within the meaning of the CCA, GS Engineering's liability for any defect or damage in the Goods is:
 - i. limited to the value of any express warranty or warranty card provided to the Client by GS Engineering at GS Engineering's sole discretion;
 - ii. limited to any warranty to which GS Engineering is entitled, if GS Engineering did not manufacture the Goods;
 - iii. otherwise negated absolutely.
 - h. Subject to this clause 13, returns will only be accepted provided that:
 - i. the Client has complied with the provisions of clause 13.a.; and
 - ii. GS Engineering has agreed that the Goods are defective; and
 - iii. the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - iv. the Goods are returned in as close a condition to that in which they were delivered as is possible.
 - i. Notwithstanding clauses 13.a to 13.h. but subject to the CCA, GS Engineering shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - i. the Client failing to properly maintain or store any Goods;
 - ii. the Client using the Goods for any purpose other than that for which they were designed;
 - iii. the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - iv. the Client failing to follow any instructions or guidelines provided by GS Engineering;
 - v. fair wear and tear, any accident, or act of God.
 - j. In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by GS Engineering as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that GS Engineering has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 13.j.
 - k. GS Engineering may in its absolute discretion accept non-defective Goods for return in which case GS Engineering may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
 - l. Notwithstanding anything contained in this clause if GS Engineering is required by a law to accept a return then GS Engineering will only accept a return on the conditions imposed by that law.