

Gamma Gurus – Terms and Conditions of Quotation, Sale & Service

1. Definitions

Except where expressly indicated otherwise, the terms below have the following meaning in the context of these Terms and Conditions of Quotation, Sale & Service:

Agreement	the agreement for the provision of Goods and/or Services by the Seller to the Buyer comprising of each Quotation, these Terms and the relevant purchase order accepted by the Seller.
Buyer	the person or entity who buys Goods and/or Services from the Seller as identified in the Quotation.
Buyer Materials	any documents or materials, including specifications, which are provided by the Buyer to the Seller.
Confidential Information	any information provided by a party to the other which is, or can be inferred to be, provided in commercial confidence or of a confidential nature, whether or not expressly marked “Confidential”, including any information relating to the commercial activities, technologies, business processes, client relationships, strategic information, know-how and any other information regarding the business of that party which is not already in the public domain.
Delivery	the time when delivery of the Goods to the Buyer is taken to occur pursuant to clause 7.4 (<i>Delivery</i>).
Delivery Place	the place where the Goods will be delivered to as described in the Quotation or purchase order.
Dispute	any dispute arising under or in connection with these Terms or the provision of Goods and Services under the Agreement.
Dispute Notice	a notice of Dispute given by a party to the other pursuant to clause 20.2 (<i>Dispute</i>).
Force Majeure Event	any of the events referred to in clause 17.1 (<i>Force Majeure</i>).
Terms	these Terms and Conditions of Quotation, Sale & Service.
Goods	the Goods in the applicable quantity to be provided to the Buyer by the Seller as described in the Quotation or requested in the purchase order.
Intellectual Property Rights	any intellectual and industrial property rights or entitlements throughout the world including those in connection with any confidential information, copyright (including rights analogous to copyright), moral rights, inventions (including patents), trademarks and designs, whether now existing, future, registered or registrable, as well as any right to apply for the registration, renewal and extension of those rights.
Price	any and all fees, rates and prices, including packing and delivery costs, set out in the Quotation as applicable to the Goods and Services requested in a purchase order.
Seller	Gamma Gurus Pty Ltd.
Seller Materials	any presentations, designs, drawings, which are created or developed by the Seller in relation to the Goods and Services, whether or not as part of the Services and jointly with the Buyer, and includes the Goods, but excludes any Buyer Materials.
Quotation	the document issued by the Seller setting out the Services and/or Goods and applicable Price offered to the Buyer.
Loss	all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses (including any special, indirect, incidental, exemplary or consequential damages or losses of any kind such as loss of profit, loss

of goodwill, loss of savings, loss of inventory, cost of capital, loss of revenue or loss of business opportunity).

Warranties of Title the warranties regarding title of the Goods given under clause 14.1 (*Warranties*).

2. Applicability of Terms

- 2.1 These Terms apply to all Goods and Services supplied or to be supplied by the Seller to the Buyer.
- 2.2 The Buyer is deemed to have accepted and becomes bound by these Terms by placing a purchase order or otherwise instructing the Seller to provide Goods and/or Services.
- 2.3 Unless expressly agreed otherwise by the Seller in writing, these Terms override and supersede any agreement or understanding between the parties and any other documents, including any terms and conditions contained in a purchase order.
- 2.4 This Agreement, including any attachments, exhibits or other written documents that are explicitly incorporated by reference by the text of this Agreement, constitutes the entire agreement between Buyer and Seller regarding the subject matter of this Agreement and may not be modified except in writing signed by a duly authorised employee of Buyer and Seller.

3. Quotation and purchase orders

- 3.1 A Quotation is an offer valid for 30 days, or such other period as stated in the Quotation.
- 3.2 purchase orders are subject to approval of the Seller's credit department. The Seller may at any time alter or suspend credit, refuse shipment or cancel unfilled purchase orders, when in the Seller's opinion, the Buyer is not creditworthy.
- 3.3 Changes to, or cancellations of, purchase orders will not be effective unless accepted in writing by the Seller. The Buyer is liable for any costs, expenses and liabilities incurred by the Seller in connection with any change to, or cancellation of, a purchase order by the Buyer.

4. Agreement

Notwithstanding the applicability of these Terms to the Buyer pursuant to clause 2.2 (*Applicability of Terms*) above, no agreement arises from, and the Seller has no obligation to provide Goods and Services to the Buyer under, a Quotation or purchase order unless and until the Seller expressly approves the purchase order pursuant to clause 3.2 (*Quotation and purchase orders*).

5. Performance of Services

- 5.1 The Seller or its Personnel will provide the Services to the Buyer in accordance with the Agreement and with due care and skill.
- 5.2 The Buyer will provide such assistance and information to the Seller as reasonably required by the Seller from time to time to assist in the provision of the Goods and Services.
- 5.3 If the Seller fails to provide any Services, such as installation, maintenance or training, on any estimated date, the Seller will provide the Services within a reasonable time.
- 5.4 Where the Seller is to provide Services or any part of it at Buyer's premises, the Buyer must:
 - (a) provide proper and safe access to and at the place where the Services are to be provided;
 - (b) ensure the premises are clean, safe and properly prepared for the provision of Services; and
 - (c) comply with any occupational, health and safety laws.
- 5.5 The Seller may decide not to provide or suspend the Services at any time if the conditions are, in the Seller's opinion, not work safe.
- 5.6 While on the other party's premises, a party must comply, and require its Personnel to comply, with the other party's policies, procedures and other site instructions.
- 5.7 The Buyer indemnifies the Seller against any Loss caused to the Seller and its Personnel, or their equipment, within the Seller's premises, except to the extent where the Loss was caused or contributed to by an act or omission of the Seller.

6. Goods and Specifications

- 6.1 It is the responsibility of the Buyer to determine whether the Goods are consistent with and suitable for their intended purpose and use.
- 6.2 Although the Seller takes all reasonable steps to ensure that descriptions, specifications, drawings and other information regarding the Goods in catalogues and other promotional materials are correct and accurate, that information does not constitute representations or warranties by the Seller in respect of the Goods, and the Seller is not liable for any such error.

7. Delivery

- 7.1 Unless expressly stated otherwise, delivery dates set out in a Quotation or otherwise agreed in writing between the parties are calculated from the date of the purchase order as an estimate only. Although the Seller will use commercially reasonable efforts to keep the delivery date stated or agreed:
- (a) the Buyer will take delivery of the Goods whenever they are tendered for Delivery;
 - (b) late delivery does not entitle the Buyer to cancel a purchase order or any part of it; and
 - (c) the Seller will not be liable for any Loss resulting from a change of the delivery date(s) or late delivery.
- 7.2 Delivery ex-stock is subject to confirmation by the Seller on receipt of purchase order.
- 7.3 The Seller determines the route and manner of delivery of the Goods.
- 7.4 Delivery of the Goods will occur at the Delivery Place, and Goods are taken to have been delivered at the time when:
- (a) In the case of collection by the Buyer, when the Buyer or Buyer's carrier takes possession of the Goods; or
 - (b) In the case of delivery by the Seller, when the Goods are delivered to the Delivery Place, even if the premises are unattended by the Buyer at the time of delivery.
- 7.5 The Seller may deliver the Goods in instalments. Each instalment will be invoiced upon Delivery.
- 7.6 The Seller's delivery records will be *prima facie* proof of Delivery of the Goods to the Buyer.
- 7.7 The Buyer will inspect the Goods upon Delivery and notify the Seller within seven (7) days of Delivery if the Buyer alleges a defect or short delivery. Upon such notification, the Buyer will allow the Seller to inspect the Goods.
- 7.8 Goods compliant with the applicable specifications are deemed fit for their manufactured purpose and accepted by the Buyer upon Delivery.
- 7.9 If the Buyer is unable to take Delivery for any reason, or cancels a purchase order, the Seller will be entitled to charge a reasonable fee for the storage, restocking, insurance and redelivery of the Goods plus a 10% administration fee.

8. Passing of Risk and Title

- 8.1 Risk of damage to and loss of the Goods passes to the Buyer on Delivery.
- 8.2 Title to the Goods passes to the Buyer only when the Buyer has paid the Seller all amounts owing to the Seller. Where Goods are delivered by instalments, title does not pass in any Goods until payment has been made to the Seller for all the Goods delivered under the relevant purchase order.
- 8.3 Until title passes to the Buyer, the Buyer:
- (a) is a bailee of the Goods;
 - (b) will not remove or change the manner in which the Goods have been labelled by the Seller;
 - (c) will store the Goods in a manner which shows clearly that they are the property of the Seller;
 - (d) will not modify, change, intermix or attach the Goods to any other goods or property in any way that cannot be promptly reversed without causing damage to the Goods;
 - (e) holds the benefit of any insurance of the Goods on trust for the Seller and in the event the Goods are lost, damaged or destroyed, will pay the proceeds of such insurance to the Seller up to any outstanding amount owed by the Buyer under the Agreement;

- (f) will not sell, dispose or otherwise part with possession of the Goods;
 - (g) irrevocably authorises the Seller to enter any premises where the Goods are kept to inspect and/or recover possession of the Goods; and
 - (h) will not encumber or grant any interest in the Goods, by means of security or otherwise, in breach of this clause 8.3 and clause 11 (*Personal Property Security*).
- 8.4 In the event of a default by the Buyer, the Seller may without limiting any other rights of the Seller, demand the immediate return of the Goods to the Seller at the Buyer's expense.
- 9. Price and Taxes**
- 9.1 In consideration for the provision of the Goods and/or Services under the Agreement, the Seller will invoice the Buyer for the Price, which the Buyer must pay.
- 9.2 At the Seller's discretion, a deposit of part or all of the Price may be required from the Buyer before provision of Goods and/or Services commences. If a deposit is requested by the Seller, the amount of the deposit will become immediately due and payable by the Buyer.
- 9.3 The Seller reserves the right to vary the Price if:
- (a) the Buyer requests, and the parties agree to, any variation to the Goods and Services;
 - (b) the cost to the Seller is increased due to a request by the Buyer that the Goods and/or Services be provided outside normal working hours or delivered to an address other than that originally specified by the Buyer;
 - (c) in respect of imported Goods, the exchange rate used in the Quotation shifts by more than 2.5% between the date of the Quotation and the date of the applicable invoice; and/or
 - (d) any additional charges, fees or taxes apply to the Goods and Services at Delivery.
- 9.4 Where special packing is required to deliver the Goods, it will be charged to the Buyer at cost price. Some packing material is charged with a deposit, which is refundable on return of this material to the applicable supplier.
- 9.5 Unless otherwise stated in the Quotation, Prices are exclusive of GST. If a supply under the Agreement is a taxable supply, the Buyer must pay the applicable amount of GST in addition to the Price. This clause is to be interpreted and applied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 9.6 Any other tax, fee, levy or duty imposed by any competent authority on any of the Goods or Services supplied by the Seller, including withholding tax and stamp duty, will be to the Buyer's account and calculated using the rates and methods of assessment in force at the time of Delivery.
- 10. Payment**
- 10.1 Where the Buyer has a credit account with the Seller, each invoice must be paid in full within fourteen (14) days of the end of the month during which the invoice was issued. In all other cases, payment must be made on or before Delivery. Time for payment is of the essence.
- 10.2 Payment will be deemed made when any form of payment, other than cash, is received by the Seller in cleared funds.
- 10.3 The Buyer is not entitled to set-off against, deduct from, or withhold any amounts owed to the Seller under the Agreement.
- 10.4 If Buyer fails to pay any amounts in accordance with this clause 10:
- (a) the Seller may, in its discretion and without prejudice to any other remedy it may have, postpone the fulfilment of the relevant, or any other, purchase order until payment is made;
 - (b) interest accrues daily on any outstanding amount, compounding monthly, at a rate of two percent (2%) per annum above the cash rate last published by the Reserve Bank of Australia, from the date payment becomes due until the date of payment;
 - (c) any outstanding amount and interest applicable pursuant to this clause 10 become a debt immediately owed and due; and

- (d) the Buyer indemnifies the Seller for any costs, fees or expenses (including legal costs on an indemnity basis) incurred by the Seller as a result of a failure to pay an invoice by the due date and in the recovery of the debt.
- 10.5 The Seller has the right to set-off amounts owing by the Buyer to the Seller against amounts owed by any related or associated entity of the Buyer.
- 11. Personal Property Security**
- 11.1 This clause is to be interpreted and applied in accordance with the *Personal Property Securities Act 2000* (Cth) (**PPSA**).
- 11.2 The Buyer acknowledges and agrees that:
- (a) the Agreement constitutes a security agreement for the purposes of the PPSA, and as such, creates a security interest in the nature of a purchase money security interest to the benefit of the Seller as a secured party in all Goods provided or to be provided to the Buyer under the Agreement, to secure the payment of the Price and of any other monies which may become due and owing as a result of the supply of Goods by the Seller to the Buyer from time to time; and
 - (b) the Seller has given value for the security interest, and the Seller's security interest is effective and attaches to the Goods (including future Goods supplied by the Seller to the Buyer) immediately upon the Buyer taking Delivery of the Goods.
- 11.3 The Seller is entitled to take all steps necessary to protect and register the purchase money security interest in the Goods under the PPSA.
- 11.4 Upon request by the Seller, the Buyer will promptly sign any documents and provide any information which the Seller may request, including agreement or waivers from third parties, as necessary to register, perfect or otherwise protect and enforce the Seller's security interest in the Goods.
- 11.5 The Buyer will:
- (a) not register, or permit to be registered, any security interest in the Goods without the prior written consent of the Seller;
 - (b) at its own cost, do anything which the Buyer considers reasonably necessary to ensure that the Seller's security interest attaches to the Goods, is enforceable, perfected and otherwise effective and has the priority required by the Seller;
 - (c) perform any of its obligations under the PPSA, and enable the Seller to exercise or enforce any of its rights in relation to its security interest and/or proceeds resulting from the Goods;
 - (d) give the Seller not less than fifteen (15) days written notice of any proposed change in the Buyer's name or any other changes in the Buyer's details (including changes in the Buyer's address, email address, trading name or business practice); and
 - (e) be responsible for the full costs incurred by the Seller (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to s.182 of the PPSA.
- 11.6 To the extent permitted under the PPSA:
- (a) Sections 96 and 125 of the PPSA do not apply to the Agreement;
 - (b) the Buyer waives its rights to receive notices, including a financing statement or financing change statement, under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA;
 - (c) for purposes of s.157(7) of the PPSA, the Seller need not to comply with ss.132 and 137(3); and
 - (d) neither the Seller nor the Buyer will disclose information of the kind mentioned in s.275(1) of the PPSA, and the Buyer will not authorise, and will ensure that no other party authorises, the disclosure of such information.

12. Privacy

- 12.1 The Seller will comply with the Australian Privacy Principles in all dealings with the Buyer.

- 12.2 The Seller may obtain from and exchange with a credit reporting body information of the Buyer, which may include personal and credit information (such as name, address, date of birth, credit applications and history) to assess Buyer's creditworthiness and ensuring compliance with the Agreement.
- 12.3 The Buyer authorises the Seller to use the personal information of the Buyer for purposes of direct marketing until such time as the Buyer revokes that authorisation by notice to the Seller.
- 12.4 The Buyer will have the right to request from the Seller a copy of any personal or credit information that the Seller retains. The Seller will comply with any request to destroy information of the Buyer except if retention of that information is required by law or otherwise.

13. Confidentiality

- 13.1 Without limiting clause 12 (*Privacy*), neither party will use or disclose the Confidential Information of the other party other than as expressly permitted in this clause 13.
- 13.2 A party may disclose the Confidential Information of the other party:
- (a) with the prior written consent of the other party;
 - (b) on a need to know basis to its Personnel for the purpose of performance under the Agreement;
- or
- (c) as required by law, a court order or any stock exchange, provided the other party is given notice and opportunity to prevent the disclosure.
- 13.3 A party disclosing Confidential Information to its Personnel must ensure the recipient is made aware of the nature of that information and agrees to abide by the terms of this clause.
- 13.4 Each party will protect and appropriately secure the Confidential Information of the other party in a manner consistent with the first party's methods of protecting its own Confidential Information.
- 13.5 The Confidential Information of a party is the property of that party. A party obtains no right, title, interest or licence in or to the Confidential Information of the other party.

14. Warranty

- 14.1 The Seller warrants that:
- (a) it has the right to dispose of and transfer title to the Buyer;
 - (b) upon transfer of title, the Buyer will have undisturbed possession of the Goods; and
 - (c) other than required under these Terms, the Goods are free from security, charges or encumbrances.
- 14.2 Subject to clause 15 (*Consumer Guarantees*) and except for the Warranties of Title, where the Seller is a distributor of the Goods which are manufactured by others, the Goods are sold only with such warranties as may be given by their manufacturer.
- 14.3 To the extent that Goods supplied are covered by a manufacturer's warranty, the Seller passes on to the Buyer the benefit of the manufacturer's warranty.
- 14.4 The Buyer is responsible for installation and use of the Goods in accordance with manufacturer's instructions as necessary to ensure those warranties will remain valid and applicable.
- 14.5 The Seller will provide all reasonable assistance to the Buyer in obtaining the benefits of applicable manufacturer's warranties.

15. Consumer Guarantees

- 15.1 The *Competition and Consumer Act 2010* (Cth) and similar State legislation establish consumer guarantees or warranties which cannot be excluded, including those regarding the Warranties of Title. Nothing in this Agreement operates to exclude those guarantees or warranties, but all other warranties, express or implied, are excluded.
- 15.2 Except in respect of Goods which are for personal, domestic or household use and the Warranties of Title, Seller's liability for any breach of consumer guarantees or warranties is limited, at Seller's option:
- (a) in case of Goods, to re-supply the Goods, or pay the cost to repair or re-supply the Goods; and
 - (b) in case of Services, to re-supply the Services, or pay the cost to re-supply the Services.

16. Limitation of Liability

Subject and except to the extent clause 15 (*Consumer Guarantees*) applies:

- (a) Seller's total aggregate liability for claims relating to the provision of the Services or Goods, whether based on contract, statute, tort (including negligence) or otherwise, will not exceed the amount paid by the Buyer for the Services and/or Goods in relation to which liability arose;
- (b) Seller's liability is reduced to the extent that the Buyer or its Personnel causes or contributes to the loss or damage;
- (c) the Seller will not be liable, in any circumstance, for:
 - (i) any Loss arising from or in connection with any service or advice which may be offered by the Seller or its Personnel to the Buyer regarding the supply of the Goods and Services; and
 - (ii) any indirect, special, exemplary, incidental, exemplary or consequential loss or damages of any kind, including loss of profit or revenue (whether direct or indirect), loss of business opportunity, loss of savings, loss of inventory.

17. Force Majeure

17.1 Despite any other provision of these Terms, if and to the extent Seller's performance of any obligations under the Agreement is prevented or affected due to any act of God, strikes, lockouts, trade or workplace relations disputes, fire, breakdown, interruption of transport, governmental action or any other event or cause beyond the Seller's reasonable control, the Seller will be under no liability for non-performance of those obligations or any Loss to the Buyer arising therefrom.

17.2 If a Force Majeure Event continues for more than 15 days, the Seller will be entitled, at its option, to terminate the Agreement upon notice to the Buyer.

18. Term and Termination

18.1 The Agreement is formed and becomes effective in accordance with clause 4 (*Agreement*) and remains so until all Goods and Services have been provided and paid for in full, or until all obligations under the Agreement have been complied with, unless terminated earlier in accordance with this clause 18 (*Term and Termination*).

18.2 The Seller may terminate the Agreement and cancel performance of Services or delivery of Goods at any time by giving written notice to the Buyer. On giving such notice, the Seller will refund to the Buyer any amounts paid by the Buyer in respect of undelivered Goods or Services.

18.3 Either party may terminate the Agreement:

- (a) for a breach which is not capable of being remedied, immediately upon notice to the other party;
- (b) for a breach which is capable of being remedied and which the other party fails to remedy within 15 days (or such longer period as specified in the termination notice) after notice to do so; or
- (c) if the other party becomes insolvent, undergoes receivership, administration or liquidation, or if an individual, becomes bankrupt.

18.4 Unless the Seller terminates the Agreement under clause 18.2, the Buyer will pay the Seller for all Goods and Services which have been provided up to the date of termination.

18.5 Termination does not affect a party's rights and liabilities accrued up to and including the date of termination.

18.6 Any indemnity is a continuing obligation, independent from the other obligations of the parties under the Agreement and survives termination of the Agreement. It is not necessary for a party to incur expense or to make payment before enforcing a right of indemnity.

18.7 Clauses 7 (*Delivery*), 8 (*Passing of Risk and Title*), 10 (*Payment*), 11 (*Personal Property Security*), 13 (*Confidentiality*), 15 (*Consumer Guarantees*), 16 (*Limitation of Liability*), and 18.4 to 18.7 (*Term and Termination*) survive termination of the Agreement.

19. Intellectual Property

- 19.1 The Seller acknowledges that nothing in these Terms or the Agreement transfers any ownership in any Buyer Materials to the Seller.
- 19.2 The Buyer acknowledges that all Intellectual Property Rights in the Seller Materials vest automatically in the Seller; the Seller owns all Intellectual Property Rights in the Seller Materials; and nothing in this Agreement transfers any ownership in Seller Materials to the Buyer.
- 19.3 To the extent specifications or other information provided by the Buyer are embedded into Seller Materials, the Buyer grants the Seller a perpetual, royalty-free and irrevocable licence to use that part of the Buyer Materials and waives, and will procure that its relevant Personnel waive, any moral rights (including attribution of authorship and integrity).

20. Dispute Resolution

- 20.1 Each party will use their reasonable endeavours to co-operatively resolve a Dispute.
- 20.2 If a Dispute arises, then either party may give notice to the other party specifying the Dispute, and referring it for resolution under this clause.
- 20.3 Within 10 days after a Dispute Notice is given, each party must nominate in writing to the other party a representative authorised to settle the Dispute on its behalf.
- 20.4 During the 20 day period after a Dispute Notice is given (or such longer period as agreed between the parties), each party's nominee must use best efforts to resolve the Dispute.
- 20.5 If a Dispute is not resolved within that time, the Dispute must be referred for mediation, in accordance with the Australian Commercial Disputes Centre (**ACDC**) Mediation Guidelines. The mediator and place of mediation will be agreed by the parties, or if the parties fail to agree on a mediator or a place within 5 days, determined by the ACDC. If no such person is available or willing to nominate a mediator or a place, by the then President of the Law Society of NSW.
- 20.6 Neither party may start legal proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause, and the Dispute has not been resolved.

21. Notice

- 21.1 Any notice must be:
- (a) in writing; and
 - (b) left at or sent by post to the other party's current address.
- 21.2 A notice may be sent via email to an electronic address notified by the parties.
- 21.3 A notice will be deemed received:
- (a) if delivered by hand to the recipient's address, on the date of delivery;
 - (b) if sent by post within Australia, 3 days after the posting;
 - (c) if sent by post outside Australia, 7 days after posting; and
 - (d) if sent by email on a working day at the recipient's address, on the date of transmission, or if sent on a non-working day at the recipient's address, on the next working day (in both cases as long as the sender's email system records a successful transmission and/or receipt of delivery).

22. Variation

- 22.1 The Seller may vary these Terms from time to time upon notice to the Buyer, and such variations will apply to the Buyer, and any purchase order or Agreement between the parties, after the date of the notice.
- 22.2 Otherwise, an Agreement may only be varied by agreement in writing by both parties.

23. Assignment

The Seller may assign, transfer or novate the Agreement, or any of its rights or obligations under the Agreement, to a third party without the prior written consent of the Buyer.

24. Subcontracting

The Seller may license or subcontract all or any part of its rights and obligations under the Agreement.

25. No Waiver

A failure or omission by either party to exercise any of its rights under the Agreement is not a waiver of those rights, unless such a waiver is formalised in writing, in which case it is to be interpreted restrictively.

26. Severance

If any provision of these Terms or the Agreement becomes illegal, invalid or unenforceable, then such provision will be read down or severed as necessary for the other provisions to remain valid and enforceable.

27. Governing Law

These Terms and the Agreement are governed by the laws of New South Wales, and the parties submit to the exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from these courts.