

1. DEFINITIONS

- 1.1 **Contract** means the agreement between GTS and the Customer, consisting of the following documents:
 - a. these terms and conditions;
 - b. any Quotation; and
 - c. any annexure to the above documents.
- 1.2 **Credit Limit** means the aggregate value of Product(s) which the Customer may order under a commercial credit arrangement, as contemplated under clause 7.4, and which GTS may vary from time to time, in its sole discretion.
- 1.3 **Customer** means the person, firm, organisation or corporation specified in the Quotation, and includes the Customer's agents, officers, employees and subcontractors.
- 1.4 **Delivery Location** means the location specified in the Quotation or otherwise as notified in writing by the Customer to GTS, to which GTS shall deliver the Product(s) ordered by the Customer.
- 1.5 **GTS** means GTS Gauges Transmitters Switches Pty Ltd (ACN 009 230 166), and includes its successors and assigns or any person acting on behalf of and with the express authority of GTS.
- 1.6 **Loss** means any claim, action, damage, loss, liability, cost, charge or expense.
- 1.7 **Manufacturer** means the respective manufacturer of any of the Product(s) supplied by GTS.
- 1.8 **Manufacturer's Specifications** means all and any specifications contained in manuals, guides and any other materials produced by the Manufacturer from time to time.
- 1.9 **Order** means any request, order or purchase order provided by the Customer to GTS from time to time.
- 1.10 **Other Fees** includes any other fees which may apply, as agreed between GTS and the Customer, and for the avoidance of doubt includes any transportation costs incurred by GTS (as contemplated in clause 5.1) and any costs incurred with respect to the Customer's cancellation of its order (as contemplated in clause 7.3).
- 1.11 **Price** means the price for supplying the Product(s) set out in the Quotation, or as otherwise confirmed in writing by GTS from time to time.
- 1.12 **Product** means any industrial instrumentation, including, pressure gauges, flowmeters, switches, transmitters, tachometers, chart recorders, gas detectors and any other product supplied by GTS, as specified in the Quotation or in writing by GTS or as set out in an Order by the Customer.
- 1.13 **Quotation** means any quotation provided by GTS to the Customer from time to time, setting out details of Product(s), Price(s), quantity and any other relevant information.
- 1.14 **Variation** means a variation of an Order or Product specifications in accordance with clause 6.

2. ACCEPTANCE

- 2.1 The terms of the Contract shall be deemed to have been accepted by the Customer on the earlier of:
 - a. the Customer's acceptance of the Quotation in writing;
 - b. the Customer submitting an Order to GTS, or instructing GTS to proceed with an Order; or
 - c. GTS issuing an invoice to the Customer for payment.
- 2.1 GTS will only supply Products to the Customer on the terms and conditions of this Contract to the exclusion of any other agreement or understanding, whether subsisting or entered into before or after the date of this Contract and for the avoidance of doubt shall take precedence to any terms and conditions notwithstanding any terms stated in any other document to the contrary.

3. RELATIONSHIP OF THE PARTIES

- 3.1 The parties acknowledge and agree that this Contract is not intended to create, nor will it be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the parties.
- 3.2 The Customer acknowledges and agrees that it shall not make any representations to any party that the Customer is either

affiliated or part of GTS or acts for or represents GTS in any capacity.

4. SUPPLY OF PRODUCT

- 4.1 Subject to the terms of this Contract, GTS shall supply the Product(s) to the Customer.
- 4.2 Subject to clause 4.3 and this Contract, the Customer acknowledges and agrees that the Product(s) shall be supplied within the timeframes and on the dates stated in the Quotation (if any) but if not stated then in a reasonable timeframe having regard to GTS' supply chains and the courier which may be engaged (**Timeframe**).
- 4.3 GTS shall not be liable for any delay to the Timeframe as a consequence of any delay caused either directly or indirectly by the Customer, delayed access to the Delivery Location or for any other reason out of the direct control of GTS.
- 4.4 GTS shall not be liable for any direct or indirect Loss incurred by the Customer due to any delays in supplying the Product(s) unless caused by the negligence of GTS and the Customer shall indemnify GTS against any such costs, expenses or other Loss associated with any delay.

5. COLLECTION AND DELIVERY

- 5.1 Unless otherwise agreed, transportation costs to and from the Delivery Location are at the cost of the Customer.
- 5.2 At its sole discretion, GTS may require the Customer to arrange and book its own freight carrier to attend to collection of the Product(s) from GTS to the Delivery Location.
- 5.2 If GTS agrees to deliver the Product(s) to the Delivery Location, the Customer agrees to:
 - a. provide any assistance and information GTS may reasonably require for the purpose of supplying the Product(s);
 - b. use its best endeavours to provide all reasonable clear access to the Delivery Location.
- 5.3 Any time or date provided by GTS to the Customer for the purposes of delivery of the Product(s) is an estimate only. The Customer must still accept delivery of the Product(s) even if late and GTS will not be liable for any Loss incurred by the Customer as a result of the delivery being late.
- 5.4 GTS shall not be liable for any Loss suffered or incurred by the Customer as a result of any act, failure or omission of any freight carrier delivering the Product(s) to the Customer.

6. VARIATION

- 6.1 The Product(s) being supplied and the contents of an Order may be varied by:
 - a. a request by GTS to the Customer where the Order or the Product(s) supplied require variation due to:
 - i. circumstances or events that GTS could not reasonably have foreseen; or
 - ii. any relevant law, regulation or by any legal authority; or
 - b. request from the Customer to GTS,
- 6.2 **(Variation Request)**. With respect to clause 6.1(a), where a Variation Request is accepted by the Customer, the following terms shall apply:
 - a. GTS will provide the Customer with an estimate of the costs and expenses required to undertake the Variation;
 - b. upon acceptance of the estimated costs, the Customer shall be obliged to pay all additional costs and expenses required to undertake the Variation charged in accordance with the Price;
 - c. GTS shall not be liable for any Loss suffered or incurred by the Customer with respect to any Variation.
- 6.3 For the purposes of clause 6.2 above, the Customer acknowledges and agrees that:
 - a. GTS will use its reasonable endeavours to provide the Customer with an estimate of the costs and expenses required to undertake the Variation; but
 - b. GTS is not under any obligation to provide such estimate and the Customer acknowledges that it may not be reasonably

achievable for GTS to provide an estimate for each Variation Request.

7. PRICE AND PAYMENT

7.1 The Customer shall pay the Price and any Other Fees to GTS, without set-off or deduction, within the payment terms set out on the relevant invoice(s) issued by GTS to the Customer, or if there are no payment terms included on the invoice(s), then 30 days from the date of issue of an invoice to the Customer by GTS.

7.2 At GTS' sole discretion, a non-refundable deposit may be required and, where applicable, GTS reserves the right not to supply the Product(s) until such deposit has been paid in full.

7.3 The Customer acknowledges and agrees that if it cancels its Order or delivery of the Product(s) at any time prior to delivery, the Customer shall be liable for any and all Loss suffered or incurred (whether direct or indirect) by GTS in connection with that cancellation.

7.4 At its sole discretion, GTS may agree in writing to the Customer being subject to a commercial credit arrangement, under which:

- a. the Customer may make one or more Orders for any Product(s), provided that the aggregate value of the unpaid Orders does not exceed the Credit Limit at any given time;
- b. the Customer must provide GTS all and any information GTS may require, from time to time, for the purposes of the commercial credit arrangement
- c. GTS reserves its right to:
 - i. refuse to supply any Product(s) if the Credit Limit has been exceeded; and
 - ii. refuse to continue to offer the commercial credit arrangement if GTS believes any of the events set out in clause 10.1 may occur, or has occurred, or otherwise believes GTS may be at risk if it continues to supply Product(s) on the basis of a commercial credit arrangement; and
- d. the Customer acknowledges and agrees that it must immediately notify GTS in writing of any change in its financial position, including any change in Control (as that term is defined in the *Corporations Act 2001* (Cth)), which may impact GTS' decision to offer a commercial credit arrangement.

7.5 The Customer shall pay interest at the rate of 10% per annum on all outstanding monies owing to GTS calculated on a daily basis from the due date for actual payment until the date of actual payment.

7.6 Unless expressly included, the price excludes all GST payable in respect of the supply. If GST is applicable, then the Customer shall be liable to pay all GST payable in respect of a taxable supply.

7.7 If the Customer defaults in payment of the Price when due, the Customer shall indemnify GTS from and against all costs and disbursements incurred by GTS in pursuing the debt including all legal costs on a full indemnity basis and collection agency costs.

7.8 For the avoidance of any doubt, the Price and any Other Fees paid by the Customer are all non-refundable.

8. LIMITATION OF LIABILITY

8.1 Except as expressly provided in this Contract, any terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the subject matter of this Contract are excluded to the maximum extent permitted by the law.

8.2 The Customer acknowledges and agrees that:

- a. all Product(s) must be installed and used strictly in accordance with the Manufacturer's Specifications; and
- b. GTS shall not be liable for any Product not functioning or damaged as a direct or indirect result of the Customer dropping the Product, driving over the Product or any act or omission of the Customer, as determined in GTS' sole discretion; and

c. if GTS has certified a Product, in accordance with its National Association of Testing Authorities accreditation, then that certification shall be prima facie evidence that the Product is fit for purpose and free of any defects; and

d. GTS shall not be liable for any Loss incurred or suffered by the Customer arising directly or indirectly from the Customer's failure to strictly comply with the Manufacturer's Specifications.

8.3 For the avoidance of doubt and without limitation to any other provision of this Contract, GTS shall in no way be liable for the Customer's use of any Product(s) or any Loss suffered or incurred, either directly or indirectly, by the Customer with respect to that use.

8.4 If the Customer is a consumer within the meaning of the *Competition and Consumer Act 2010* (Cth) (**CCA**), GTS' liability to the Customer is limited to those remedies set out in section 64A(1) of Schedule 2 to the CCA.

8.5 The Customer acknowledges that it has not relied on any representation or warranty made by GTS which has not been stated expressly in the Contract or upon any descriptions or specifications contained in any document published or provided by GTS, including the Manufacturer's Specifications.

8.6 The provisions of this clause 8 shall survive the expiry or termination of this Contract.

9. INDEMNITY

9.1 The Customer shall indemnify (and keep indemnified) GTS from and against any and all Loss (including all legal costs on a full indemnity basis) whatsoever or howsoever arising which may be incurred or suffered by GTS, either directly or indirectly, arising from or in connection with any one or more of the following:

- a. the breach by the Customer of a material term or any of the Customer's obligations under this Contract;
- b. any use of a Product by the Customer;
- c. any Order placed by the Customer;
- d. the termination of this Contract;
- e. the recovery of any amount owing by the Customer to GTS under this Contract;
- f. any claims or demands made by GTS by reason of any such Loss which may be suffered by any person from the use of the Product(s).

9.2 The provisions of this clause 9 shall survive the expiry or termination of this Contract.

10. TERMINATION

10.1 Without prejudice to any other remedies GTS may have, GTS may terminate this Contract:

- a. at any time GTS believes that the Customer may breach any obligation (including those relating to payment) or the Customer is in breach of any obligation (including those relating to payment); or
- b. the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or becomes a bankrupt; or
- c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; or
- d. at any time by GTS giving 14 days' notice in writing, without any requirement to provide a reason to the Customer.

10.2 GTS will not be liable to the Customer for any Loss whatsoever or howsoever the Customer suffers because GTS has exercised its rights under this clause.

11. CHARGE

Despite anything to the contrary contained herein or any other rights which GTS may have, the Customer charges its interest in any property in the name of the Customer with the due payment of any monies and interest owing to GTS by the Customer, and consents to GTS registering an absolute caveat against the interest in any such property or properties

- to further secure the repayment of those monies and interest payable to GTS pursuant to this Contract.
- 12. RISK AND TITLE**
- 12.1 The Customer acknowledges and agrees that all risk in the Product(s) passes to the Customer upon the Product(s) being collected by the Customer, or GTS causing the delivery of the Product(s) to the Delivery Location.
- 12.2 Until payment of the Price and Other Fees is made in full and without deduction to GTS:
- the Customer acknowledges and agrees that GTS retains title to the Product(s); and
 - the Customer shall not lease, hire, lend or part with possession of the Product(s) without the express written consent of GTS, in its absolute discretion.
- 13. PPSA**
- 13.1 For the purposes of this clause 13, “PPSA” means the *Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Regulations 2010* (Cth), as may be in force from time to time.
- 13.2 If the Product(s) may be subject to the PPSA, then GTS may effect and maintain registration of a “security interest” (as that term is defined in the PPSA) in the Product(s) and the proceeds arising in respect of any dealing in the Product(s). The Customer must do anything required by GTS (such as obtaining consents and signing documents) for the purpose of:
- creating and registering GTS’ security interest including (but not limited to) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the PPSA;
 - ensuring that GTS’ security interest is and remains enforceable, perfected and otherwise effective under the PPSA;
 - enabling GTS to gain first priority (or any other priority agreed to by GTS in writing) for its security interest;
 - enabling GTS to exercise its rights in connection with the security interest or the PPSA.
- 13.3 GTS’ rights under this Contract are in addition to and not in substitution for GTS’ rights under any other law (including the PPSA) and GTS may choose whether to exercise rights under this Contract, and/or under such other law, in its discretion. For the avoidance of doubt, any security interest that GTS may have in the Product(s) will attach to “proceeds” in accordance with the PPSA.
- 13.4 To the extent that the law permits:
- for the purposes of section 115(1) and 115(7) of the PPSA:
 - GTS need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - sections 142 and 143 are excluded;
 - for the purposes of section 115(7) of the PPSA, GTS need not comply with sections 132 and 137(3); and
 - if the PPSA is amended after the date of this document to permit the Customer and GTS to agree not to comply with or to exclude other provisions of the PPSA, GTS may notify the Customer that any of these provisions are excluded or that GTS need not comply with any of those provisions as notified to the Customer by GTS.
- 13.5 In addition to any rights conferred upon GTS under the PPSA, the Customer acknowledges and agrees that GTS shall, if the Customer is in default of this Contract, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods (including the Product(s)), not only under those provisions under the PPSA but also, as additional and independent rights under this Contract. The Customer agrees that GTS may exercise any of its rights under this clause 13.5 in any way it deems fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 13.6 Pursuant to section 157(3) of the PPSA, the Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property pursuant to section 157(1) of the PPSA.
- 13.7 GTS and the Customer agree not to disclose information of the kind that can be requested under section 257(1) of the PPSA.
- 13.8 The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created in any “security interest” in the Product(s) without the express written consent of GTS.
- 13.9 The Customer must not lease, hire, bail, lend or part with possession of the Product(s) (**Lease**) without the express written consent of GTS, in its absolute discretion. In the instance that GTS consents to a Lease in writing, the Lease must be in writing and in a form acceptable to GTS and must be expressed to be subject to the rights of GTS under this Contract. The Customer must not vary the Lease arrangement or terms without GTS’ consent in writing.
- 13.10 To assure the Customer’s performance of its obligations under this clause 13 of this Contract, the Customer hereby grants to GTS an irrevocable power of attorney to do anything GTS considers the Customer should do under this Contract. GTS may recover from the Customer the cost of doing anything under this clause 13, including registration fees.
- 13.11 The provisions of this clause 13 shall survive the expiry or termination of this Contract.
- 14. INTELLECTUAL PROPERTY**
- 14.1 The Customer acknowledges and agrees that it does not acquire any rights, including registered and unregistered intellectual property rights, in any Product.
- 14.2 The Customer must not:
- register or apply to register any rights in respect of the intellectual property related to the Product; or
 - seek to reproduce the Product in any way.
- 14.3 This clause 14 shall survive the expiry or termination of this Contract.
- 15. GENERAL**
- 15.1 If any provision of this Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 A party to this Contract includes the party’s executors, administrators, successors and permitted transferees and assigns.
- 15.3 This Contract shall be governed by the laws of Western Australia and GTS and the Customer agree to submit to the exclusive jurisdiction of the courts of Western Australia.
- 15.4 The Customer agrees that GTS may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect 14 days from the date on which GTS notifies the Customer of such change. Should the Customer not wish to accept any changes made by GTS, then they can terminate this Contract by notice in writing, upon which all of the Price, interest (as contemplated in clause 7.5) and Other Fees become immediately payable to GTS without deduction or set-off.
- 15.5 GTS may apply all amounts received by it from the Customer under this Contract in such manner and against such of the liabilities of the Customer to GTS and in such sequence as GTS may decide.
- 15.6 The failure by GTS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect GTS’ right to subsequently enforce that provision.
- 15.7 Any special conditions stated in the Quotation or otherwise in writing by GTS shall apply to this Contract and in the event of any inconsistency with the terms of this Contract, the special conditions shall prevail.

- 15.8 This Contract may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.
- 15.9 This Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter.
- 15.10 A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.
- 15.11 A reference to money is to Australian dollars, unless otherwise expressly stated.
- 15.12 If a party consists of more than 1 person, this Contract binds each of them separately and any 2 or more of them jointly.
- 15.13 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- 15.14 A party which is a trustee is bound both personally and in its capacity as a trustee.
- 15.15 The Customer irrevocably authorises GTS to rely on a certificate by a person purporting to be its director or secretary or authorised person as to the identity and signature of the officers. The Customer warrants that those persons have been authorised to give notices and communications under or in connection with this Contract.
- 15.16 The application of the *Sale of Goods (Vienna Convention) Act 1986* (WA) is excluded.