

# Terms and Conditions

## 1. Definitions

In these terms and conditions, “**Gainsborough**” shall mean Gainsborough Hardware Industries Limited ACN 004 792 269 and the “**Customer**” shall mean the person or entity purchasing Gainsborough products (“**Products**”) being the subject of these terms and conditions.

## 2. General

Unless otherwise agreed in writing, these conditions shall be deemed incorporated in any order placed by the Customer and any acceptance of a Customer’s order by Gainsborough shall be deemed acceptance by the Customer of these terms. In the event of any conflict arising between these terms and any terms which the Customer may additionally seek to impose in relation to an order for Products by the Customer, then these terms shall prevail.

## 3. Prices

The prices for the Products displayed in this price book are the recommended retail prices as at the date of this price book and are inclusive of Goods and Services Tax (“**GST**”). Unless, Gainsborough has accepted an order by a Customer it may alter the prices for Products at any time without notice.

## 4. Indemnity

4.1 The Customer shall pay any GST assessed on Products and any services supplied to it by Gainsborough.

4.2 The Customer shall indemnify Gainsborough against any:

- (a) GST payable on Products and services that Gainsborough may supply to it; and
- (b) expenses Gainsborough may reasonably incur in recovering or attempting to recover the Products or any payment which may from time to time be overdue.

## 5. Terms of Payment

The payment terms for the Products supplied by Gainsborough are strictly nett 30 days from end of month in which Products are delivered to the Customer.

## 6. Retention of Title

Title of the Products supplied by Gainsborough to the Customer shall not pass to the Customer until Gainsborough has received payment in full. If any payment is not received once it is due, Gainsborough may enter any premises where the goods are, or are reasonably thought to be, and repossess them. Until payment of all monies owed by the Customer to Gainsborough, the Customer holds the Products as fiduciary, bailee and agent for Gainsborough and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by Gainsborough.

## 7. Personal Property Securities Act 2009 (“PPSA”)

For the purposes of the PPSA:

7.1 Purchase money security interest

The Customer acknowledges that Gainsborough holds a purchase money security interest in the following:

- (a) any Products supplied by Gainsborough;
- (b) any new products into which the Products supplied have been manufactured, processed, assembled or commingled such that their original identity is lost;
- (c) all proceeds in relation to the products referred to in (a) and (b) including without limitation money, accounts receivable and insurance proceeds; and

- (d) any products for which any of the products referred to in (a) and (b) have been exchanged or traded or that have been acquired in lieu of the Products,

as security for the price payable by the Customer to Gainsborough at any time for the Products.

## 7.2 Security Interest

The Customer acknowledges that Gainsborough also holds a security interest all of the Customer's present and after-acquired property (including without limitation all freehold and leasehold real estate).

## 7.3 Customer to do all necessary for "perfection"

- (a) If requested by Gainsborough, the Customer shall promptly and without undue delay execute any documents (including any new contracts or mortgages over real estate), provide all information required in order to complete a Financing Statement (as defined under the PPSA) and comply with any other reasonable requests by the Company to ensure that the Company's purchase money security interest(s) and general security interest are perfected.
- (b) The Customer shall immediately notify Gainsborough in writing of any change in the Customer's name and shall also provide all information required in order to complete a financing change statement.

## 7.4 Customer waives right to receive verification statement

The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to Gainsborough's security interests.

## 7.5 Customer to pay all filing fees for financing statement

The Customer shall be responsible for all costs, expenses and other charges incurred, expended or payable by Gainsborough in relation to the filing of a financing statement or a financing change statement.

## 7.6 Opt-out of enforcement provisions

The Customer waives its rights under sections 95 (notice of removal of accession) , 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to these terms or any supply of the Products pursuant to these terms.

## 8. **Orders**

Any Product ordered by a Customer which is not in stock as at the date of the order will automatically be back-ordered and processed when stock becomes available, unless the Customer specifically marks the order "DO NOT BACK ORDER". Deliveries of the Products at all times are subject to stock availability and Gainsborough will not be liable to the Customer in any way due to unavailability of Product.

## 9. **Minimum Orders**

For any order placed by the Customer which is for less than \$75.00 (inclusive of GST), Gainsborough will charge a \$10.00 surcharge which will automatically be applied to each order (other than back orders)

## 10. **Delivery**

- 10.1 Delivery will be to the Customer's place of business or as nominated on an order, the Products are then at the Customer's risk and the Customer is responsible for any loss, damage or deterioration to them

- 10.2 Unless otherwise agreed in writing Gainsborough reserves the right to charge the Customer the cost of transportation of the Products to the destination which appears on the Customer's order. Gainsborough will inform the Customer of any applicable delivery costs on receipt of an order from the Customer.
- 10.3 Whilst every effort is made to deliver the Products on the dates or within the periods set out in an order, such dates or periods shall be deemed to be for information purposes only and shall not form part of the terms. Gainsborough accepts no liability for any loss or damage of whatsoever nature and howsoever arising which may be suffered by the Customer as a result of any failure on the part of Gainsborough to deliver goods on or within such dates or periods.

## 11. Credits/Re-stocking Fees

- 11.1 The Products are not supplied on a sale or return basis. Subject to these terms and any extended warranty provided by Gainsborough, once Gainsborough accepts the Customer's order, the Customer is obliged to take the Products although title is yet to pass. No goods may be returned to Gainsborough for credit unless prior agreement has been given by Gainsborough and will only be accepted under the following conditions:
- (a) claims must be made in writing within 30 days of receipt of the Products and the original invoice number must be quoted;
  - (b) freight and packaging are prepaid by the Customer;
  - (c) Products are to be accompanied by an authority number provided by Gainsborough, Customer details and nature of the claim;
  - (d) Products must be in as new condition and be subject to approval by Gainsborough;
  - (e) credit will only be allowed on the original invoiced price less a re-stocking fee of twenty (20) percent on the value of the Products unless otherwise agreed in writing by Gainsborough;
  - (f) no credit will be allowed for non-standard or specially procured Products (for example sash balances and specially keyed locks).

## 12. Warranties

- 12.1 Subject to the terms of any specific extended warranty provided by Gainsborough in respect of the Products, to the extent permitted by law, Gainsborough's liability is limited to :
- (a) the cost of replacing the Products;
  - (b) the cost of obtaining the equivalent Products; or
  - (c) the cost of having the Products repaired.

## 13. Electroplated and Coated Finishes

Every effort is made to use the most durable coatings to the metal surface of Gainsborough's Products, however over a period of time deterioration may take place due to climate, frequent usage, perspiration, acids, exposure to weather or other factors. Such deterioration is not a defect but a normal process which is unavoidable, and as such, Products cannot be unconditionally warranted, nor automatically replaced.

## 12. Product Development

Gainsborough's policy is one of continuous product improvement, therefore changes to specifications of the Products in this price book may be made at any time without notice and Gainsborough will not be liable to the Customer for any such changes.