

These Terms and Conditions of Sale (“Terms”) apply to all quotations, proposals, purchase orders, and agreements for the supply of software, systems, and services by GAMMA ENGINEERING Pty Ltd (“Gamma Engineering”, “we”, “us”, “our”) to the purchasing party (“Client”, “you”, “your”). By accepting a quotation, issuing a purchase order, or engaging Gamma Engineering to perform any work, the Client agrees to be bound by these Terms.

These Terms supersede any terms or conditions contained in the Client’s purchase order or other documentation, regardless of when such documentation is provided. No terms or conditions endorsed upon, delivered with, or contained in any Client documentation shall form part of the agreement unless expressly agreed in writing by a director of Gamma Engineering.

1. Definitions

“Agreement” means the accepted Quotation together with these Terms and any Schedules or Statements of Work.

“Deliverables” means any software, documentation, reports, configurations, or other materials produced by Gamma Engineering under the Agreement.

“Intellectual Property” means all copyright, patents, trade marks, designs, trade secrets, know-how, algorithms, source code, compiled code, data schemas, interface specifications, and all other intellectual property rights of any kind, whether registered or unregistered, anywhere in the world.

“Quotation” means the written quotation, proposal, or statement of work provided by Gamma Engineering to the Client, specifying the scope, Deliverables, timeline, and pricing.

“Services” means the professional services, including but not limited to software development, system integration, installation, commissioning, configuration, training, maintenance, and support services described in the Quotation.

“Software” means any software supplied by Gamma Engineering, whether pre-existing or developed under the Agreement, in compiled or executable form.

“Specifications” means the technical requirements and functional specifications for the Deliverables as set out in the Quotation or as otherwise agreed in writing.

2. Quotations and Acceptance

2.1 All Quotations are valid for thirty (30) days from the date of issue unless otherwise stated in the Quotation.

2.2 A Quotation is accepted when the Client: (a) signs and returns the Quotation; (b) issues a purchase order referencing the Quotation; or (c) instructs Gamma Engineering to commence work. Acceptance of a Quotation constitutes acceptance of these Terms.

2.3 Any terms or conditions on the Client's purchase order or other documentation that differ from or add to these Terms are expressly rejected and shall have no effect.

2.4 Gamma Engineering reserves the right to correct any clerical or computational errors in a Quotation at any time prior to acceptance.

3. Pricing and Payment

3.1 Fixed Price Work. Where the Quotation specifies a fixed price, that price is firm for the scope described. Work outside the agreed scope will be quoted separately.

3.2 Time and Materials Work. Where the Quotation specifies time and materials rates, Gamma Engineering will invoice for actual time and expenses incurred. Time is recorded in fifteen (15) minute increments.

3.3 Payment Schedule. Unless otherwise specified in the Quotation:

- (a) For fixed price engagements exceeding \$10,000: 30% upon acceptance, 40% at agreed milestone(s), 30% upon completion and delivery.
- (b) For time and materials engagements: invoiced monthly in arrears.
- (c) For software licences: invoiced upon delivery of the Licence Key.
- (d) For annual subscriptions and maintenance: invoiced annually in advance.

3.4 Payment Terms. Invoices are due within fifteen (15) days of the date of invoice. All amounts are in Australian Dollars (AUD) and exclusive of GST unless stated otherwise. GST will be added to all taxable supplies.

3.5 Late Payment. Gamma Engineering reserves the right to charge interest on overdue amounts at the rate of 1.5% per month (or the maximum rate permitted by law, whichever is less), calculated daily from the due date until payment is received in full.

3.6 Suspension. If payment is overdue by more than fourteen (14) days, Gamma Engineering may, upon seven (7) days' written notice, suspend all work under the Agreement until payment is received. Gamma Engineering shall not be liable for any delay or consequence arising from such suspension.

3.7 Expenses. Travel, accommodation, and other out-of-pocket expenses incurred in the performance of Services are charged at cost and are additional to the quoted price unless the Quotation expressly states they are included.

4. Intellectual Property

4.1 Ownership. All Intellectual Property in the Software and Deliverables is and remains the sole and exclusive property of Gamma Engineering Pty Ltd. Nothing in this Agreement operates to transfer, assign, or convey any Intellectual Property rights from Gamma Engineering to the Client.

4.2 Licence. Upon full payment, the Client is granted a licence to use the Software in accordance with the End-User Licence Agreement ("EULA") provided with the Software. The EULA governs all rights and restrictions relating to the use of the Software.

4.3 Pre-Existing IP. All Intellectual Property owned by or licensed to Gamma Engineering prior to the commencement of the Agreement ("Pre-Existing IP"), including but not limited to software frameworks, libraries, algorithms, tools, and methodologies, remains the property of Gamma Engineering. Where Pre-Existing IP is incorporated into Deliverables, the Client receives only a licence to use it as part of the Deliverables, not ownership.

4.4 Developed IP. All Intellectual Property created, developed, or first reduced to practice by Gamma Engineering in the course of performing the Agreement ("Developed IP") is owned by Gamma Engineering. The Client receives a licence to use the Developed IP as part of the Deliverables under the terms of the EULA.

4.5 Client Data. All data provided by the Client, and all measurement data, output data, reports, and results generated by the Software during the Client's use ("Client Data"), is owned by the Client. Gamma Engineering claims no ownership of Client Data.

4.6 No Assignment by Implication. Payment for Services or Deliverables does not constitute payment for, and does not transfer, any Intellectual Property rights. The Client acknowledges that it is paying for the right to use the Deliverables, not for ownership of the underlying Intellectual Property.

4.7 Moral Rights. To the extent permitted by the Copyright Act 1968 (Cth), Gamma Engineering's personnel do not consent to any act or omission that would otherwise infringe their moral rights in the Deliverables.

5. Confidentiality

5.1 Each party agrees to keep confidential all information received from the other party that is designated as confidential or that a reasonable person would consider confidential ("Confidential Information").

5.2 Confidential Information does not include information that: (a) is or becomes publicly available through no fault of the receiving party; (b) was known to the receiving party before disclosure; (c) is independently developed by the receiving party; or (d) is required to be disclosed by law, regulation, or court order, provided the receiving party gives reasonable prior notice to the disclosing party.

5.3 The Client acknowledges that the Software, its compiled code, algorithms, architecture, and all related technical information are Confidential Information of Gamma Engineering.

5.4 Obligations under this Section survive termination of the Agreement for a period of five (5) years.

6. Delivery and Acceptance

6.1 Delivery. Gamma Engineering will deliver the Deliverables in accordance with the timeline set out in the Quotation. Delivery dates are estimates and are not guaranteed unless the Quotation expressly states they are firm commitments.

6.2 Acceptance Testing. Where the Quotation specifies acceptance criteria, the Client will have fourteen (14) days from delivery to test the Deliverables against those criteria ("Acceptance Period"). The Client must notify Gamma Engineering in writing of any deficiencies within the Acceptance Period, specifying in reasonable detail how the Deliverables fail to meet the Specifications.

6.3 Deemed Acceptance. If the Client does not notify Gamma Engineering of deficiencies within the Acceptance Period, or if the Client puts the Deliverables into productive use, the Deliverables are deemed accepted.

6.4 Remediation. If the Client notifies Gamma Engineering of deficiencies within the Acceptance Period, Gamma Engineering will use reasonable endeavours to remedy the deficiencies and resubmit for acceptance. The Client will have a further seven (7) days to re-test.

7. Warranty

7.1 Services Warranty. Gamma Engineering warrants that Services will be performed with reasonable care and skill by appropriately qualified personnel. If Services are found to be defective within ninety (90) days of completion, Gamma Engineering will re-perform the defective Services at no additional charge.

7.2 Software Warranty. Software is provided under the warranty terms set out in the EULA. To the extent of any conflict between this Section and the EULA regarding Software, the EULA prevails.

7.3 Exclusions. The warranty in Section 7.1 does not apply to defects arising from: (a) the Client's misuse, modification, or alteration of the Deliverables; (b) use of the Deliverables in a manner not contemplated by the Specifications; (c) hardware failures, third-party software, or environmental conditions outside Gamma Engineering's control; or (d) the Client's failure to install Updates recommended by Gamma Engineering.

7.4 Australian Consumer Law. Nothing in this Agreement excludes, restricts, or modifies any consumer guarantee under the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)) that cannot be excluded by law.

8. Limitation of Liability

8.1 To the maximum extent permitted by law, Gamma Engineering's total aggregate liability under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total amount paid by the Client under the Agreement in the twelve (12) months preceding the event giving rise to the claim.

8.2 Gamma Engineering shall not be liable for any: (a) loss of profit, revenue, or anticipated savings; (b) loss of data (other than through Gamma Engineering's negligence); (c) loss of business or contracts; (d) business interruption; (e) consequential, indirect, incidental, or special damages; whether or not such losses were foreseeable or Gamma Engineering was advised of their possibility.

8.3 Measurement Disclaimer. The Client acknowledges that measurement systems involve inherent uncertainties. Gamma Engineering does not warrant that measurements produced by the Software will be error-free. The Client is responsible for independently verifying measurement results before relying on them for safety-critical decisions, maintenance planning, or regulatory compliance. Gamma Engineering shall not be liable for any loss or damage arising from decisions made in reliance on measurement data produced by the Software.

8.4 The limitations in this Section apply to the fullest extent permitted by law and do not limit any liability that cannot be excluded or limited under applicable law, including liability for death or personal injury caused by negligence.

9. Site Access and Safety

9.1 Where Services require Gamma Engineering personnel to attend a Client site or work on Client equipment, the Client will provide safe access and a safe working environment in compliance with applicable workplace health and safety legislation.

9.2 The Client will inform Gamma Engineering of all relevant site safety requirements, induction processes, and access restrictions before Gamma Engineering personnel attend the site.

9.3 For work on or near railway infrastructure, the Client is responsible for obtaining all necessary track access permits, rail safety worker certifications, and protection officer arrangements. Gamma Engineering personnel will comply with all site safety rules and procedures.

9.4 The Client will provide Gamma Engineering with reasonable access to the equipment and systems necessary to perform the Services, including access to data acquisition hardware, industrial computers, and network infrastructure.

10. Variations

10.1 Either party may request a variation to the scope, Specifications, or timeline of the Agreement by written notice to the other party.

10.2 No variation is binding unless agreed in writing by both parties. Gamma Engineering will provide a written quotation for any variation that affects the price or timeline before commencing the varied work.

10.3 If the Client requests work that is outside the scope of the Quotation without a formal variation, Gamma Engineering may perform the work and invoice it at the applicable time and materials rate.

11. Termination

11.1 Termination for Convenience. Either party may terminate the Agreement by providing thirty (30) days' written notice to the other party. In the event of termination for convenience, the Client will pay for all Services performed and expenses incurred up to the effective date of termination, plus any non-cancellable commitments made by Gamma Engineering on the Client's behalf.

11.2 Termination for Cause. Either party may terminate the Agreement immediately by written notice if the other party: (a) commits a material breach of the Agreement and fails to remedy the breach within fourteen (14) days of receiving written notice specifying the breach; or (b) becomes insolvent, goes into liquidation, has a receiver appointed, or enters into any arrangement with creditors.

11.3 Effect of Termination. Upon termination: (a) all licences granted under the Agreement are governed by the EULA; (b) the Client must pay all amounts due for work performed to the date of termination; (c) each party must return or destroy all Confidential Information of the other party; and (d) Sections 4 (Intellectual Property), 5 (Confidentiality), 8 (Limitation of Liability), and 13 (Governing Law) survive termination.

12. Insurance

12.1 Gamma Engineering maintains and will continue to maintain for the duration of the Agreement: (a) public liability insurance of not less than \$10,000,000; (b) professional indemnity insurance of not less than \$2,000,000; and (c) workers' compensation insurance as required by law.

12.2 Gamma Engineering will provide evidence of insurance upon the Client's reasonable request.

13. Governing Law and Dispute Resolution

13.1 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Victoria, Australia.

13.2 Dispute Resolution. Any dispute arising under or in connection with this Agreement will be resolved as follows: (a) the parties will first attempt to resolve the dispute by negotiation in good faith within fourteen (14) days of written notice of the dispute; (b) if not resolved by negotiation, the dispute will be referred to mediation administered by the Resolution Institute (or its successor) in Melbourne; (c) if not resolved by mediation within twenty-eight (28) days, either party may commence proceedings in the courts of the State of Victoria or the Federal Court of Australia sitting in Melbourne.

13.3 Nothing in this Section prevents a party from seeking urgent interlocutory relief from a court of competent jurisdiction.

14. General

14.1 Entire Agreement. These Terms, together with the accepted Quotation and any Schedules, constitute the entire agreement between the parties in relation to the subject matter and supersede all prior negotiations, representations, understandings, and agreements.

14.2 Precedence. In the event of any conflict between these Terms and the Quotation, the Quotation prevails to the extent of the inconsistency. In the event of any conflict between these Terms and the EULA regarding the use of Software, the EULA prevails.

14.3 Severability. If any provision of these Terms is found to be void, invalid, or unenforceable, that provision is severed and the remaining provisions continue in full force and effect.

14.4 Waiver. A failure or delay by a party to exercise a right under these Terms does not constitute a waiver of that right.

14.5 Assignment. The Client may not assign or transfer its rights or obligations under the Agreement without the prior written consent of Gamma Engineering. Gamma Engineering may assign or subcontract any part of the Agreement without the Client's consent.

14.6 Force Majeure. Neither party is liable for any failure or delay in performing its obligations where such failure or delay results from circumstances beyond the reasonable control of that party, including but not limited to natural disasters, pandemics, acts of government, strikes, or failures of third-party infrastructure.

14.7 Notices. All notices under this Agreement must be in writing and sent to the address specified in the Quotation. Notices may be sent by email, registered post, or hand delivery.

14.8 GST. All amounts stated in a Quotation are exclusive of GST unless expressly stated otherwise. Where GST is payable on a supply made under this Agreement, the Client will pay the GST amount in addition to the stated price.

GAMMA ENGINEERING Pty Ltd

ABN: 15 628 934 912

Web: gammaengineering.com.au

These Terms and Conditions of Sale are linked with every Quotation issued by Gamma Engineering. Acceptance of a Quotation constitutes acceptance of these Terms.

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