



**Gatan Inc.**  
**Purchase Order Terms and Conditions**

1. **PARTIES.** Gatan, Inc. (including its subsidiaries and affiliates) will be referred to as "Buyer" and the supplier identified on the purchase order or in the agreement governed by these Terms and Conditions will be referred to as "Seller". Such order or agreement and these Terms and Conditions shall be referred to as the "Order". The Order may be used to purchase supplies, machinery, equipment and other goods, and may also be used to contract for services, including maintenance and construction work performed on any premises specified by Buyer. All goods or services covered by the Order will be referred to as "Products".

2. **WARRANTIES.** Seller warrants that the goods and services ("Products") furnished hereunder will conform to agreed upon specifications, if any, and will be merchantable, new and free from defects in material and workmanship, including latent defects, and fit and sufficient for the particular purpose intended. Seller also warrants that the Products shall strictly conform to all drawings, literature, descriptions and samples furnished or specified by Seller to Buyer, and shall be packaged in accordance with Buyer's instructions and normal industry standards, and in a manner to withstand transportation hazards without damage. Unless otherwise instructed by Buyer, Seller shall promptly repair or replace any Product which does not comply with any of the foregoing warranties and return such repaired or replaced Product to Buyer at Seller's expense. Unless otherwise specified in writing in the Order, the foregoing warranties shall run for a period of one year from the date of shipment. Seller further warrants that none of the Products furnished hereunder nor Buyer's use or resale of any of them will infringe any U.S. or foreign patent, trademark or copyright or constitute the unlawful appropriation of a trade secret of a third party. Seller also warrants that it has good title to all Products, free and clear of all liens and encumbrances, and shall transfer such title to Buyer. All express and implied in law warranties will survive inspection, testing, acceptance and payment. Seller warrants that its performance and the Products furnished hereunder will comply with all applicable federal, state, local and foreign laws, rules and regulations. If the Order indicates that it is placed under a government contract, Seller and all Products shall be bound by and comply with all government requirements and regulations.

3. **INDEMNITY.** Seller shall defend, indemnify and hold harmless Buyer, its directors, officers, employees, agents and successors and assigns, from and against any and all costs, suits, claims, losses, damages, liens and expenses (including reasonable attorneys' fees) arising out of any breach of any of Seller's warranties, breach of contract, tort (including negligence and strict liability) or any other act or omission of Seller, or any of its employees, agents, subcontractors or other representatives.

4. **INSURANCE.** Seller has and will keep in force adequate workmen's compensation, automotive liability, comprehensive general liability, including products/completed operations and contractual liability, and property damage insurance



coverage; and that it will furnish to Buyer certificates evidencing such coverages and naming Buyer as an additional insured if so requested by Buyer. Such insurance coverages shall provide primary coverage, and be in minimum amounts and with carriers satisfactory to Buyer, and shall not be cancelable except upon at least ten (10) days' prior written notice to Buyer. Seller hereby waives, and shall cause each of its insurers to waive, all rights of subrogation against Buyer.

5. **PRICING.** If a price for a Product is stated on the Order, the price for such Product shall be fixed for the term of the Order at the lower of (i) such stated price, or (ii) Seller's prevailing market price for such Product. If no price is stated on the Order, the price for each Product shall be fixed for the term of the Order at the lower of (i) the price (if any) last charged or quoted to Buyer for such Product, or (ii) Seller's prevailing market price for such Product. As used in this Section 5, "prevailing market price" shall mean the lowest price at which goods or services the same as or substantially similar to the Product are offered or sold by Seller to any customer, under similar circumstances, in quantities similar to those being purchased hereunder, within the period beginning 30 days before the date of the Order and ending 30 days after delivery of the Product to Buyer. If the Order is not made on a fixed price basis, Buyer reserves the right to reject price increases by canceling at any time all or part of the Order, unless otherwise specified in the Order. All charges for packing, storage, transportation to point of delivery, insurance and all taxes imposed upon or in connection with the Order are included in the purchase price shown in the Order. Unless otherwise stated in the Order, all Products are for remanufacture or resale and therefore exempt from sales tax. Seller is responsible for obtaining any required tax exempt certificate.

6. **DELIVERY.** Delivery of Products on the required delivery date is an essential part of the Order. Seller will immediately notify Buyer of any delay in shipment. Buyer may, at its option, retain any partial delivery of Products received in advance of the required delivery date or return them to Seller at Seller's risk and expense. If Buyer retains such Products, the obligation to pay and the time for payment and any applicable discounts will begin to run only upon the later of receipt in full of all Products ordered and otherwise conforming to the Order or receipt of a correct invoice. If Seller fails to deliver any Product as of the delivery date required hereunder, Buyer may, at its option, in addition to any other rights which Buyer may have hereunder, require delivery by the fastest method and all charges for any such method shall be prepaid in full by Seller.

7. **CHANGES.** Buyer may, by written notice to Seller, make changes to the Order relating to quantities, place of delivery, method of shipping or packing, delivery schedule, specifications, drawings or designs. If such change causes an increase or decrease in either cost or time required for performance, an equitable adjustment will be made to the price and/or delivery schedule, and the parties will modify the Order accordingly. Adjustment claims must be made by Seller within 30 days of receipt of Buyer's notice of change. Seller must immediately proceed, with all normal and reasonable efforts, to fill the Order in accordance with its terms, including any such



changes, during the period that any such potential adjustment is under consideration or discussion.

**8. USE OF PROPERTY AND INFORMATION.** Seller will keep confidential all features of any equipment, tool or pattern, and any design, drawing, data or other confidential proprietary information furnished, or paid for, by Buyer, and will use such items only in the production of Products under the Order or other orders from Buyer. Title to such items shall remain in Buyer at all times, and Seller shall return or otherwise dispose of such items as directed by Buyer. All drawings, tools, equipment, inventory and any other materials furnished to Seller by Buyer or specifically paid for by Buyer are the property of Buyer, and while in Seller's custody all such items shall be plainly marked as Buyer's property and kept segregated from Seller's property. Seller shall not substitute its own property for Buyer's and shall use Buyer's property only in filling Buyer's orders. While in Seller's custody and control, Buyer's property is held at Seller's risk, and Seller, at its expense, shall maintain adequate insurance to cover replacement cost with loss payable to Buyer. Upon notice to Seller, Buyer may inspect any such property located at any Seller's premises. At Buyer's request, Seller shall prepare such property for shipment and deliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Buyer hereby reserves, and Seller hereby grants to Buyer, a security interest in such items, and Seller hereby authorizes Buyer to file, and will assist Buyer in filing, a financing statement or any other document necessary to enable Buyer to perfect and continue such security interest in such items.

**9. CANCELLATION.** Buyer may cancel the Order, in whole or in part, by written notice to Seller if Seller fails to perform strictly in accordance with the required delivery date or any other provision of the Order. Buyer may also cancel the Order if Seller: (a) becomes insolvent; (b) files a voluntary petition in bankruptcy; (c) has an involuntary petition in bankruptcy filed against it; (d) has a receiver or trustee appointed for it; (e) makes an assignment for the benefit of creditors; (f) ceases production; or (g) ceases to function as a going concern or goes out of business. In the event of any cancellation under this Section 9 and without prejudice to any other rights or remedies available under the Order or applicable law, Buyer may at its option, (a) refuse to accept delivery of Products; (b) return to Seller any Products already accepted, recover any payments made for same and for freight, storage, handling and other expenses incurred, and be relieved of liability for any future payments to Seller; (c) recover any payments made to Seller for undelivered or returned Products or work to be performed; and (d) take possession of Products from Seller in whatever stage of completion without pursuing any judicial process or remedy, and complete performance hereunder or contract for such performance elsewhere and charge Seller with any additional costs incurred. Buyer may also, at its convenience, upon written notice to Seller, cancel the Order, in whole or in part. Upon Seller's receipt of notice of cancellation of the Order from Buyer, Seller shall immediately stop work on the Order or the cancelled portions hereof and all obligations of Buyer with respect to any cancelled portion of the Order will cease. Buyer will not be liable for any loss of prospective profits, or for any other consequential, incidental or other damages related to any action taken by Buyer under this Section 9 or otherwise related to the Order.



10. **REMEDIES.** The rights and remedies provided Buyer herein are cumulative and in addition to any other rights or remedies provided by law or in equity.

11. **RISK OF LOSS.** Regardless of the F.O.B. point, Seller will hold title to Products and bear any risk of loss, damage or deterioration to Products until receipt by Buyer of Products conforming to all requirements of the Order at the delivery point specified in the Order.

12. **RIGHT OF SETOFF.** Buyer's obligation to make payment to Seller hereunder is subject to any unsettled claims Buyer may have against Seller in connection with the Order or otherwise.

13. **ASSIGNMENT.** Seller shall not assign or subcontract all or any part of the Order or delegate any rights or duties hereunder without the prior written consent of Buyer.

14. **REVOCATION AND REJECTION.** In case any Product furnished hereunder is found at any time to be defective or otherwise fails to comply with any of Seller's warranties, Buyer will have the right, notwithstanding payment or acceptance, to reject or revoke, to require replacement or correction, or to cancel any unshipped or unperformed portion of the Order, at Seller's expense. Buyer may hold any Product pending instructions from Seller, or Buyer may return such Product to Seller at Seller's expense for refund to Buyer.

15. **SEVERABILITY AND REFORMATION.** Any holding that any term or condition hereof is void or unenforceable will not render void or unenforceable any other term or condition. Seller and Buyer intend that any term or condition held to be overly broad or to any extent void or unenforceable be enforced in any less broad manner that the court may find appropriate.

16. **NO WAIVER.** Neither the failure of Buyer to exercise any right or to insist upon strict compliance by Seller with any obligation under the Order, nor custom or practice of the parties at variance with the terms herein, will constitute a waiver of any right of Buyer to demand strict compliance with any such terms. Any such waiver must be in writing, signed by an authorized representative of Buyer.

17. **APPLICABLE LAW.** Any question, dispute or action arising in connection with the Order will be governed by the laws of the State of Pennsylvania including, but not limited to, the Electronic Transactions Act and the Uniform Commercial Code as adopted in Pennsylvania, but excluding Pennsylvania's conflict of laws principles and excluding the United Nations Convention for the International Sale of Goods. All disputes will be resolved in a court of competent jurisdiction in Pennsylvania and Seller hereby irrevocably consents to the jurisdiction and exclusive venue of the state and federal courts in Pennsylvania and appoints the Secretary of the State of Pennsylvania as its agent for service of process and agrees to appear in any action filed by Buyer upon written notice thereof sent by registered mail to Seller's place of business set forth on the face hereof.



**18. FORCE MAJEURE.** Neither party shall be liable for any delay in the performance of, or any failure to perform, any of its obligations under the Order if such delay or failure is caused by any Event of Force Majeure. As used herein, "Event of Force Majeure" means any strike, lockout or other labor dispute; boycott; sabotage; accident; fire, flood, earthquake or other natural disaster; riot or civil commotion; war, embargo or other governmental action; failure, delay or cancellation of any order by any customer of Buyer for which Products are to be purchased or any other cause beyond the control of such party initially occurring after the date of the Order. Upon the occurrence of any Event of Force Majeure, the party affected thereby (the "Affected Party") shall give written notice of such Event to the other party, such notice to include a description of such Event and an estimate of the impact of such Event on the Affected Party's performance. If the Event of Force Majeure renders the Affected Party unable to perform any material obligation in the Order, then the Order may be terminated by the other party immediately upon notice to the Affected Party. As long as the Order remains in effect, the Affected Party shall (i) use its best efforts to eliminate such Event of Force Majeure; (ii) promptly give written notice to the other party when such Event of Force Majeure has been eliminated or has ceased to prevent the Affected Party from fulfilling any such obligation, and (iii) proceed to fulfill such obligation as soon as reasonably possible after such Event of Force Majeure no longer prevents the Affected Party from fulfilling such obligation.

**19. INSPECTION.** Buyer and, whenever agreed by Buyer and Buyer's customer or required by applicable law, Buyer's customer may inspect and test Products, including any raw materials, components or intermediate assemblies, documents or records related thereto, during manufacture, construction or preparation at Seller's premises, and each of them shall have the right to inspect and test such Products at the time of their delivery and/or completion. Despite any such previous inspection or acceptance, if any defect or nonconformity for which Seller is responsible under the terms of the Order is revealed by subsequent inspection, analysis, manufacturing operation, use or otherwise, Buyer may reject or revoke acceptance of any affected Product within a reasonable time after such defect or nonconformity is discovered. Title to any rejected Product shall remain with, and title to any Product for which Buyer has revoked acceptance shall revert to, Seller, and Seller shall bear all responsibility and risk of loss for such item(s) as well as any related liabilities including, but not limited to, any liability for handling, transportation, storage and disposal. Failure by Buyer to inspect and accept or reject any Products neither relieves Seller of responsibility for such Products which are not in compliance with any requirements under the Order, nor imposes any liability on Buyer. Unless otherwise stated in the Order, copies of all inspection records prepared by Seller related to any Products must be supplied to Buyer at the time such Products are delivered to Buyer. Seller shall be responsible for, and Buyer may charge back to Seller, all out-of-pocket inspection costs incurred by Buyer in inspecting any items which are rejected or not accepted.

**20. WORK ON THE PREMISES.** If work is to be performed hereunder on any premises specified by Buyer, Seller shall examine and satisfy itself as to the condition of such premises. No allowance shall be made for Seller in respect of any error by Seller



related to such examination. Seller shall at all times keep the premises free from any waste material or rubbish. Upon completion of the Products, Seller shall leave the premises, including any attached Products, broom-clean. Risk of loss or damage to Seller's materials or equipment while on such premises shall remain in Seller, and Buyer shall have no responsibility or liability to Seller or anyone claiming through Seller in respect of any loss or damage thereto, despite the fact that Buyer provides storage space on such premises. Seller shall abide by all plant safety regulations of Buyer in performing any work hereunder on such premises. Except to the extent due solely and directly to Buyer's negligence, Seller shall indemnify and hold harmless Buyer against all losses, damages, claims and actions which may result from any act or omission of Seller or any of its agents, employees, subcontractors or anyone else acting under Seller's supervision and control while working on such premises. Seller shall maintain such public liability property damage and employees' liability and compensation insurance as will protect Buyer from such risks and from any claims under any applicable workers' compensation or occupational disease law or regulation, and as required by Section 4 hereof.

**21. SELLER NOTICE AND DOCUMENTS.** Seller shall notify Buyer whenever it is aware, or has reason to be aware, of any harmful ingredients or defects contained within any of the Products. Whenever required by applicable law or regulation, Seller shall provide Buyer with material safety data sheets covering the Products. Whenever Buyer requests or whenever normally provided by Seller, Seller shall provide certificates of analysis covering the Products.

**22. COMPLIANCE WITH LAWS.** Seller warrants that all Products and their production and completion shall not violate, or cause the Buyer to be in violation of, any federal, state or local law, regulation or order. Without limiting the foregoing Seller certifies and guarantees that all Products (a) will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, including all regulations and orders of the U.S. Department of Labor issued under Section 14 thereof; (b) will conform to all applicable consumer product safety standards under the Federal Consumer Product Safety Act; (c) will not be a misbranded or banned hazardous substance within the meaning of the Federal Hazardous Substances Act; (d) will not be in violation of, or cause the Buyer to be in violation of, the Occupational Safety and Health Act of 1970 and the standards, rules and regulations promulgated thereunder; (e) will not be in violation of, or cause, Buyer to be in violation of, any regulation concerning minority business enterprises; (f) will not be in violation of, or cause the Buyer to be in violation of, the provisions of 41 C.F.R. Parts 60-2 and 60-20, concerning affirmative action programs and discrimination guidelines. All of the foregoing regulations are incorporated hereunder as if fully set forth herein unless the Order is exempted from such regulations by rules, regulations or orders of the Secretary of Labor. Seller shall furnish Buyer with such evidence of compliance as Buyer may request at any time. Specifically, Seller certifies that any and all chemical substances contained in Products sold hereunder have been and shall be reported in compliance with any applicable present or future inventory reporting requirement under the Toxic Substances Control Act.



**23. EQUAL OPPORTUNITY.** This clause applies only in the event that the Products are to be used in whole or in part for the performance of government contracts and where the dollar value of Products exceeds, or may exceed, \$10,000. During the performance of the Order, Seller will not discriminate against any employee or applicant for employment because of sex, age, race, color, religion or national origin. Seller will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to age, race, color, religion, sex or national origin. Such action shall include, but not be limited to, hiring, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The provisions of the Equal Employment Opportunities clause in Section 202 of Executive Order 11246, as amended by Executive Order 11375 and the regulations thereunder, and the provisions of 41 C.F.R. 60-1.1 through 60-1.47, as amended, are incorporated herein by reference.

**24. EMPLOYMENT OF VETERANS.** This clause applies only in the event that the Products herein are to be used in whole or in part for the performance of government contracts and where the dollar value of Products exceeds, or may in any one year exceed, \$10,000.00. Seller will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which such employee or applicant for employment is qualified. Seller shall take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veterans status in all employment practices such as the following: hiring, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The regulations issued under the Vietnam Era Veterans Readjustment Act of 1974 in Title 41, Chapter 60, Part 60-250 of the Code of Federal Regulations, as amended, are incorporated herein by reference.

**25. EMPLOYMENT OF HANDICAPPED.** This clause applies only in the event that Products are to be used in whole or in part for the performance of government contracts and where the dollar value of Products exceeds \$2,500. Seller will not discriminate against any employee or applicant for employment because of any physical or mental handicap in regard to any position for which such employee or applicant for employment is qualified. Seller shall take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, including apprenticeship. The provisions of the Rehabilitation Act of 1973 and the regulations set forth in Chapter 60, part 60-741 of the Code of Federal Regulations, as amended, are incorporated herein by reference.



**26. ADDITIONAL REQUIREMENTS FOR PRODUCTS SUBJECT TO ANY FEDERAL GOVERNMENT CONTRACT.** If Products are to be used by Buyer in whole or in part for the performance of any federal government contract, all applicable provisions of such contract and of the Federal Acquisition Regulations, 48 C.F.R. Chapter 1 (Parts 1-99), or if such federal government contract relates to the Department of Defense, of the Defense Federal Regulations, 48 C.F.R. Chapter 2 (Parts 201-299), are incorporated herein by reference. Seller shall execute certificates of compliance as requested by Buyer. For three years after the final payment under the Order, authorized representatives of the federal government shall be given access to and allowed to examine any of Seller's documents and records directly pertinent to any transaction involving \$1,000 or more and related to the Order. Seller shall safeguard all matters classified "top secret," "secret," "confidential," or "restricted" and comply with all requests of the government or Buyer with respect to employees or persons having access to Seller's premises, drawings or specifications. The Order is subject to the Renegotiation Act of 1951, and any amendments or additions thereto or reenactments thereof. Seller shall insert a provision to this effect in all of its subcontracts under the Order for materials or services defined in § 103(g) of such Act, except materials or services described in § 106(a) of such Act. In conformity with the policy of the federal government, Seller shall use small business concerns when subcontracting under the Order to the greatest extent consistent with efficient performance of the Order.

**27. OTHER REGULATIONS.** Seller shall comply with the Federal Clean Air Act in regard to ozone depleting chemicals. This Act requires, among other things, marking of any part of any Product in which CFC Class I ozone depleting chemicals are used.

**28. INCONSISTENT TERMS.** In the event any term of the Order is inconsistent with any other term of the Order, such inconsistency shall be resolved as provided in this Section 28. Handwritten terms govern over typed or printed terms. Typed terms govern over printed terms. Terms on Buyer's purchase order form or in the agreement governed by these Terms and Conditions govern over the printed Gatan, Inc. Purchase Order Terms and Conditions. Specifications govern over drawings, literature, descriptions and samples.