

DEALER DIRECT - Portal

Terms & Condition

PROPRIETARY RIGHTS

1.1 Use of Company Name and Company's Intellectual Property. Company expressly prohibits any direct or indirect use, reference to, or other employment of its name, trademarks, or trade name, or any of the foregoing exclusively licensed to Company, except as specified in this Agreement or as expressly authorized by Company in writing. All advertising and other promotional material must be submitted to Company at least two weeks in advance and shall only be used if Company consents thereto in writing, which consent shall not be unreasonably withheld.

1.2 Use of Trademarks. Company hereby grants to Dealer a limited, non-transferable, non-exclusive, revocable, royalty-free license to use Company's trademarks ("**Trademarks**") in accordance with the terms set forth on Appendix B attached hereto solely in conjunction with its sales of the Products and in Distributor/Dealer's advertising and printed materials for the Products, provided Distributor/Dealer complies with the terms herein. Distributor/Dealer acknowledges that its use of the Trademarks will not create in it, nor will it represent it has any right, title, or interest in or to the Trademarks. Distributor/Dealer acknowledges Company's exclusive right to the use of the Trademarks and agrees not to do anything impairing Company's rights in or to the Trademarks. Distributor/Dealer agrees to use the Trademarks so that each of such Trademarks creates a separate and distinct commercial impression from any other trademark that may be used or affixed by Distributor/Dealer on any advertising for the Products or for other promotional purposes. Distributor/Dealer shall not use any names, marks, terms, graphics, or other materials on printed materials, or on its website, that are likely to cause confusion with, or dilute the distinctiveness of Company's trademarks, service marks, or trade dress, or to damage the reputation or commercial image of Company, or any of its products or services. Distributor/Dealer's use of the Trademarks shall be in accordance with applicable law and Company's policies regarding advertising and trademark usage as established from time to time.

1.3 Drawings and Data. Company normally supplies all necessary data for the proper installation, test, operation and maintenance of its Products. Portions of this data are proprietary in nature and will be so marked. Distributor/Dealer agrees to abide by the terms of such markings and to be liable for all loss or damage incurred by Company as a result of the improper or unauthorized use of such data. Company retains for itself all proprietary rights in and to all designs, engineering details, and other data pertaining to any Products and to all discoveries inventions, patent rights, etc., arising out of work done in connection with the Agreement and to any and all products developed as a result thereof, including the sole right to manufacture any and all such products. Distributor/Dealer shall not contact Company's suppliers, or any other person, for the purpose of manufacture.

1.4 Internet & Linking.

(a) Unless authorized by GTO LLC, Dealer is NOT authorized to distribute Products via the internet.

ARTICLE 2

(a) Misuse of Products. Any tampering, misuse or negligence in handling or use of Products renders the warranty void. Further, the warranty is void if, at any time: (i) Distributor/Dealer attempts to make any internal changes to any of the components of the Products; (ii) the power supplied to any part of the Products exceeds the rated tolerance; (iii) any external device attached by Distributor/Dealer creates conditions exceeding the tolerance of the Products; or (iv) the serial number plate is removed or defaced. OPERATION OF THE PRODUCTS THAT RENDERS THIS WARRANTY VOID WILL BE DEFINED TO INCLUDE ALL OF THE POSSIBILITIES DESCRIBED IN THIS PARAGRAPH, TOGETHER WITH ANY PRACTICE WHICH RESULTS IN CONDITIONS EXCEEDING THE DESIGN TOLERANCE OF THE PRODUCTS.

(b) Consequential Damages Waiver. COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, OR SERVICES, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Appendix A (Dealer)

1. Products.

Dealer is authorized to distribute only the following Company product lines: a) GTO/PRO; b) Mighty Mule Anniversary Series.

2. Internet Distribution.

Dealer is not authorized to distribute Products via the internet, unless agreed to by Company by written notice.

3. Terms.

Terms are credit card, check or bank wire transfer upon placement of order.

Appendix B (Trademarks and Trademark Usage Guidelines)

GTO's TRADEMARKS USAGE GUIDELINES

GTO's Philosophy on Trademarks and Brands

GTO's trademarks, service marks, logos, and brands are GTO Intellectual property and are important and valuable assets of the corporation. Trademarks must be used properly. Follow these Guidelines for using GTO's trademarks, service marks, logos, and brands properly in internal and external communications, documents, advertisements, promotional materials, and electronic messages. GTO's Trademarks are listed in Exhibit "B" of Appendix C (Internet Usage Guidelines).

Who Do These Guidelines Apply To?

These Guidelines apply to GTO employees, customers, licensees, consultants, outside vendors, affiliates and other third parties.

If you are a LICENSEE of an GTO trademark or logo, your license agreement that you signed with GTO may have special trademark and logo usage guidelines different than the Guidelines set forth herein. If so, please follow the special guidelines provided to you pursuant to your license agreement. If you are a Licensee, but have been provided no special guidelines, then follow these.

ARTICLE 3 Using GTO's Trademarks & Logos

You may refer to GTO products and services by their associated GTO trademarks and service marks, so long as such references (a) are truthful, fair, and not misleading, and (b) comply with these Guidelines, which may be modified by GTO from time to time in GTO's sole discretion.

Specifically:

- Follow the GTO Rules.
- Use the appropriate trademark symbol and trademark acknowledgment of GTO's ownership of the marks and/or logos in question.
- Do not incorporate GTO trademarks or logos into your own product names, service names, trademarks, logos, or company names, and do not adopt marks or logos that are confusingly similar to GTO's marks and logos.
- Do not use any GTO mark or logo in conjunction with the advertisement, promotion, or sale of any non-GTO product or service.
- Do not incorporate any GTO mark or logo, or any substantially similar mark or logo, into a domain name

Do not make unlicensed use of GTO's licensed marks or logos. Third party use of GTO trademarks, service marks, or logos requires a license or written permission from GTO. If you are interested in obtaining a license to use a GTO mark or logo, contact GTO directly.

ARTICLE 4 The GTO Rules

1. **ALWAYS use a trademark as an adjective, accompanied by an APPROPRIATE noun.** Do not use a trademark as a noun. Do not pluralize a trademark or make it possessive. Do not join a trademark to other words, symbols, or numbers, either as one word or with a hyphen. Do not abbreviate a trademark or create phonetic equivalents, e.g., "EASY GATE" for "E-Z GATE".
2. **ALWAYS use the proper spelling and the proper trademark symbol.** Do not create derivatives (e.g., MIGHTY MULES) or abbreviations (MTY MULE). For the trademark symbol, the superscript or subscript mode is preferred, but if it is not available, use parentheses: (TM), (SM). Federally Registered marks must always be accompanied by the ® symbol.

3. **ALWAYS use trademarks and brand names in the ways they were intended to be used.** Do not use them for goods or services for which they were not originally intended. Do not alter them in any way. Do not make puns out of them or portray them in a negative light.

4.1 GTO's RESALE POLICY OF PRODUCTS RELATED TO U.L325 SAFETY STANDARDS

Excerpts of this policy were originally released to Distributors on record as of January 2, 2001.

The purpose of this notification is to advise you of important information regarding the installation of certain automatic gate openers manufactured by Gates That Open, LLC ("GTO"), and to suggest that you provide warning notices to certain end user purchasers. Please review this notice carefully and govern yourself accordingly.

Accordingly to a recent study conducted by the Consumer Product Safety Commission ("CPSC"), it appears that the number of injuries and deaths associated with automatic gate openers is increasing. An estimated 19,600 automatic gate related injuries were treated in U.S. hospital emergency rooms between 1990 and 1998. A total of 28 automatic gate related deaths were reported to the CPSC between January 1, 1985 and June 30, 1999.

We have entered a new era in the gate opener industry. In response to the number of injuries and deaths associated with automatic gate openers, Underwriter Laboratories Standard 325, 4th Edition ("UL 325"), went into effect on March 1, 2000. Under federal law (29 C.F.R. Section 1920.399), the Occupational Safety and Health Administration requires that gate openers and gate operating equipment destined for "employee workplaces" be tested and certified to the specifications of UL 325. The CPSC may adopt UL 325 for residential applications in the near future. Be aware that under certain conditions some residential applications can currently be categorized as "employee workplaces." All gate operators and gate operating equipment manufactured by Gates That Open, LLC, have been certified to be in compliance with UL 325, 4th edition, by a nationally recognized testing laboratory.

As you know, GTO advises that all of its AC gate openers be installed by a professional installer and wired by a licensed electrician. The AC gate openers **MUST** be wired by a licensed electrician due to the risk of injury or death from electrical shock associated with installation by a non-licensed electrician. The need for installation by a professional installer and wiring by a licensed electrician is explained by Gates That Open, LLC, in the instructions to the products themselves. GTO has provided further warning of risk of electrical shock or electrocution on the inside of the control box on advanced AC openers.

GTO also advises that its AC/DC Slider product be installed by a professional installer due to the mechanical hazards that arise during installation by an unqualified installer. Specifically, contact with the drive, idler sprockets, and other pinch points can cause serious injury to an unqualified installer.

It has come to our attention that some of our dealers may be selling some of these products via telephone and/or the Internet or other types of electronic commerce. In such cases, it may be difficult to determine whether the purchaser is qualified to install the products. This letter is a reminder that all AC gate openers and the DC Slider products discussed above should only be sold to persons who will use professional installers and licensed electricians to install the products. GTO requests that you ensure that all persons who purchase these products from you will be using qualified installers. In addition to the instructions and warnings provided by GTO, we recommend and request that you notify each purchaser that:

1. All AC openers and the DC slider should only be installed by a qualified installer and should not be installed by the purchaser unless the purchaser is qualified to install complex electrical/mechanical equipment.
2. All AC openers should be wired by a licensed electrician ONLY and other persons should not attempt to connect the AC opener to an electric current.
3. Installation of AC openers and the DC slider by a non-qualified person could result in injury or death.

These warning notices should be given both verbally at the time of sale and via written notice to the purchaser at the time of sale. If possible, the written notice should be by hand delivery at the time of sale. If hand delivery is not possible, then these warning notices should be given by some other effective method, such as an e-mail message or United States Mail, Certified, Return Receipt Requested. If possible, GTO suggests that you obtain a written acknowledgment that notice was given to and received by the customer, and urges you to document in your records the fact that notice was given to the purchaser in accordance with this letter.

GTO has expended considerable effort to make its products safe for their intended purposes and has been certified to be in compliance with UL 325, 4th edition, for all of its products. GTO is counting on you to help ensure that its products are installed and wired in a safe manner by persons qualified to do so.

LIMITATION OF LIABILITY

6.1. DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GTO DISCLAIMS ALL WARRANTIES TO THIRD PARTY OR ANY THIRD PARTY WITH RESPECT TO ANY PRODUCT OR SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS DOCUMENT, ANY SERVICES PROVIDED BY GTO OR OTHERWISE REGARDING THIS DOCUMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. GTO DOES NOT WARRANT THAT THE GTO WEB SITE WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION. ALL MATERIALS ON GTO WEB SITES ARE “AS IS” AND WITHOUT AN EXPRESS OR IMPLIED WARRANTY OF ANY KIND, INCLUDING FREEDOM FROM ERRORS, VIRUSES, BUGS, OR OTHER HARMFUL COMPONENTS.

6.2. IN NO EVENT SHALL GTO BE LIABLE TO THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA, LOSS OF BUSINESS OR OTHER LOSS ARISING OUT OR RESULTING FROM THIS DOCUMENT EVEN IF THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL APPLY REGARDLESS OF THE NEGLIGENCE OR OTHER FAULT OF GTO AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT OR ANY OTHER THEORY OF LIABILITY.

EXHIBIT “A”

Content and Location

1. Gates That Open, LLC Home Page URL: www.gtoinc.com
2. GTO/PRO Home Page URL: www.gtopro.com
3. Mighty Mule Home Page URL: www.mightymule.com
4. Mighty Mule Gates Home Page URL: www.mightymulegates.com

EXHIBIT “B”

Trademarks shown below may not be inclusive of all GTO Trademark names and logos.

1. Word Marks:
 - a. MIGHTY MULE
 - b. E-Z GATE
 - c. GTO/PRO
 - d. BULLDOG

- e. UL 325 Series
- f. GTO/PRO SLIDE GATE OPENER
- g. GATES THAT OPEN
- h. GTO
- i. WWW.GTOINC.COM
- j. GTO Access Systems

2. Design Marks (Logos):

- a. Design for no-manual gate opening



- b. GTO/PRO SLIDE GATE OPENER



- c. GTO



- d. BULLDOG



- e. MIGHTY MULE



f. GTO Access Systems



g. Authorized Internet Distributor/Dealer



Appendix D (Standard Compliance Representations)

1. Compliance Policy: Distributor acknowledges and agrees that it is the written and established policy of Company and its affiliates (collectively herein, “**Company**”) to comply fully with all applicable laws and regulations of the United States and all jurisdictions in which it does business. Distributor warrants and represents that it will not take any action that would constitute a violation, or implicate Company in a violation, of any law of any jurisdiction in which it performs business, or of the United States of America, including without limitation, the Foreign Corrupt Practices Act of 1977, as amended (“**FCPA**”) and where applicable, any anti-bribery/corruption legislation (“**Anti-Bribery Act**”) enacted by countries in which Distributor provides services to Company.

2. FCPA Compliance: The FCPA prohibits every U.S. company and its employees and representatives from giving, loaning, paying, promising, offering, or authorizing the payments, directly or indirectly through a third party, of anything of value (“**Payments**”) to any “foreign official,” as defined in the FCPA, to persuade that official to help the company, or any other person, obtain or keep business or to secure some other improper advantage. The FCPA also requires companies to make and keep books, records, and accounts that accurately and fairly reflect transactions and the distribution of the company’s assets, and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are taken in accordance with management’s directives and are properly recorded. Distributor shall immediately notify Company of any violation or potential violation of the FCPA or any applicable Anti-Bribery Act by sending notice in writing to Company, c/o Nortek, Inc., 50 Kennedy Plaza, Providence, Rhode Island, USA 02903, Attention: General Counsel, and shall also be responsible for indemnifying Company for any damages, including attorney fees, based upon Distributor’s or its agents’ violation or potential violation of the FCPA or any Anti-Bribery Act. In furtherance of Company’s FCPA Compliance Policy, Distributor represents, warrants, and agrees that:

a. neither Distributor, nor any of its officers, owners, agents or employees (“**Distributor and its Agents**”), is currently an officer, agent or employee of a non-U.S. government or government-owned enterprise or any agency, department or instrumentality thereof or political party or public international organization or a candidate for non-U.S. government or political office or is an agent, officer, or employee of any entity owned by the non-U.S. government (“**Non-US Official**”), as set forth in the FCPA. If Distributor or its Agents become a Non-U.S. Official during the Term of the Agreement, Distributor shall notify Company immediately so Company may, and hereby reserves the right to, take whatever precautions and actions may be appropriate to assure FCPA compliance, including cancelation of this Agreement;

b. as of the date of execution of this Agreement, no Non-U.S. Official is associated with, or presently owns an interest, whether direct or indirect, in Distributor or has any legal or beneficial interest in the proposed agreement/relationship between Distributor and Company or the payments to be

made by Company to Distributor under such agreement. In addition, Distributor warrants that if a Non-U.S. Official obtains such an interest in Distributor, Distributor shall notify Company immediately so Company may, and hereby reserves the right to, take whatever precautions and actions may be appropriate to assure FCPA compliance, including cancelation of this Agreement;

c. any compensation paid or discounts provided by Company are for Distributor's sole benefit and will not be transferred or assigned to any other party and Distributor shall make no Payments to other third parties on behalf of Company;

d. neither Distributor nor its Agents has made a promise to make, will offer to make, or will cause to be made, in connection with this Agreement, and the course of action contemplated by it, any Payments (i) to or for the use or benefit of any Non-U.S. Official; (ii) to any other person either for an advance or reimbursement, if it knows or has reason to know that any part of such Payment will be directly or indirectly given or paid by such other person, or will reimburse such other person for Payments previously made, to any Non-U.S. Official; or (iii) to any other person or entity, the payment of which would violate the laws or regulations of the United States or any other governmental entity having jurisdiction over the activities being carried out by Distributor that involve Company or its goods and/or services; and

e. Distributor consents to Company's review of Distributor's books and records and agrees to cooperate with any Company compliance audit or investigation.

3. Non-Compliance: Distributor understands and acknowledges that any non-compliance with the above representations will constitute grounds for termination of the Agreement and any subsequent agreement Distributor may enter into with Company or any of its affiliated companies.