



## **GIW INDUSTRIES, INC. - TERMS AND CONDITIONS OF SALE OF GOODS**

### **1. APPLICABILITY.**

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by GIW Industries, Inc., ("**Seller**") to [NAME OF BUYER] ("**Buyer**"). Notwithstanding anything herein to the contrary, where a written contract signed by both parties exists for the sale of these Goods, the terms and conditions of said contract shall govern.

(b) The accompanying quotation or order confirmation as applicable (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise or will comprise the entire agreement between the parties as to the subject matter herein, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Only Seller's signature on Buyer's Purchase Order or return by Seller of its Sales Confirmation shall constitute acceptance of any terms and conditions and will not modify or amend these Terms unless specifically agreed by the parties in writing.

### **2. DELIVERY.**

(a) Unless otherwise agreed by the parties, the Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order. Subject to 2b, Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless negotiated otherwise, all export shipments are FCA (International Incoterms 2020), point of manufacture and domestic shipments are FOB (U.S. UCC), loaded, Seller shipping point (Origin) (each a "**Delivery Point**"). If the Buyer asserts a claim against the transportation company, Seller will cooperate in attempting to resolve such claim. Goods are deemed delivered and title transfers on the day the shipment is loaded on the carrier ("**Delivery Date**"). Buyer shall take delivery of the Goods within ten (10) business days of Seller's written notice that the Goods have been delivered to the Delivery Point.

(c) Seller may, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### **3. TITLE AND RISK OF LOSS.**

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Georgia Uniform Commercial Code.

### **4. AMENDMENT AND MODIFICATION.**

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

### **5. INSPECTION AND REJECTION OF NONCONFORMING GOODS.**

(a) Buyer shall inspect the Goods within ten (10) business days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, repair or replace such Nonconforming Goods with conforming Goods. At Seller's instruction, Buyer shall ship the Nonconforming Goods to Seller's facility as directed by Seller. Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, the repaired or replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 5(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 5(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

## 6. PRICE.

(a) Except as otherwise specifically negotiated by the parties, Seller's prices, (the "**Prices**") are firm for 30 days from date of quotation after which Seller reserves the right to adjust all prices (i) applicable to Goods not released to production within 30 days of receipt of Buyer's order; and (ii) applicable Goods where Buyer requests delivery other than within the quoted lead time.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

## 7. PAYMENT TERMS.

(a) Buyer shall pay all invoiced amounts due to Seller net 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by ACH or wire transfer and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues following written notice thereof.

(c) Seller may require cash payment or satisfactory security before shipment of Goods, when Seller, in its sole discretion, determines Buyer's financial condition renders it necessary.

(d) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

## 8. WARRANTY.

(a) Seller warrants to Buyer that for a period of twelve (12) months from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will conform to the description on the Seller's sales order acknowledgement and the Seller's written specifications for the Goods including but not limited to Seller's standard manufacturing variances and practices and will be free from defects in material and workmanship.

**(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY; OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party, ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Unless specifically agreed by Seller, Third Party products are not included in the warranty in section 8(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 8(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller during the Warranty Period within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in Section 8(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; (iii) Buyer alters or repairs such Goods without the prior written consent of Seller; or wear and tear.

(f) Subject to Section 8(d) and Section 8(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, repair or replace such Goods (or the defective part). The warranty period for repaired or replaced Goods shall extend for six (6) months beyond the date the repair or replaced work was completed or to the end of the original Warranty Period, whichever occurs later.

**(g) THE REMEDIES SET FORTH IN SECTION 8(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(A).**

## **9. LIMITATION OF LIABILITY.**

(a) **SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF USE, REVENUE OR PROFIT, COST OF CAPITAL, COMMERCIAL LOSS, COSTS CONNECTED WITH THE INTERRUPTION OF OPERATION, OR LOSS OF DATA, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, BREACH OF WARRANTY, OR BY WAY OF INDEMNITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, INDEMNITY, STRICT LIABILITY OR OTHERWISE, TOTAL ORDER VALUE OR \$3,000,000, WHICHEVER IS LESS.**

(c) The limitation of liability set forth in Section 12(b) above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) liability for third party claims for death or bodily injury resulting from Seller's negligent acts or omissions.

(d) With respect to any claims or suits against Seller by Buyer's employees, Buyer agrees to expressly waive its immunity as an employer under applicable worker's compensation laws, but only to the extent that such immunity would bar or effect recovery or enforcement of such claim or suit.

## **10. COMPLIANCE WITH LAW.**

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

## **11. TERMINATION.**

In addition to any remedies that may be provided under these Terms and in law and equity including but not limited to cost of collection and reasonable attorney's fees, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy,

receivership, reorganization or assignment for the benefit of creditors. Notwithstanding anything in this Agreement to the contrary, termination does not relieve Buyer's payment obligations that accrue prior to the date of termination. Payment to Seller under this Section shall be calculated pursuant to the attached compensation schedule attached as Appendix A hereto and incorporated by reference.

## **12. WAIVER.**

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## **13. CONFIDENTIAL INFORMATION.**

All non-public, confidential or proprietary and trade secret information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed, used (including, but not limited to, reverse engineering of any intellectual property) or copied unless authorized in advance by Seller in writing. Upon Seller's request or termination of the Agreement, Buyer shall promptly return all documents and other materials received from Seller. Buyer shall not retain said information or any copies thereof and shall purge all of its electronic data or files relating to such trade secrets and confidential information of Seller. Seller shall be entitled to injunctive relief for any breach or threatened breach of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party; (d) is required to be disclosed by court order or law.

## **14. INTELLECTUAL PROPERTY.**

(a) Seller shall defend any suits or proceedings brought against Buyer, based on a claim that any part of Seller's standard line offered by it in the usual course of Seller's business ("**Standard Goods**") violate any United States or foreign patent, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense thereof. Seller shall pay all damages and costs awarded therein against Buyer, provided that this agreement shall not extend to any infringement based upon the manufacture, use or sale of any of said Standard Goods or any part thereof in combination with Standard Goods or things not furnished hereunder. In case the Standard Goods, or any part thereof, are deemed to infringe and their use enjoined, Seller shall, at its own expense, either (i) procure for Buyer the right to continue using said Standard Goods, or (ii) modify Standard Goods so it becomes non-

infringing. The foregoing states the entire liability of Seller with respect to patent infringement by said Standard Goods or any part thereof.

(b) If any Goods shall be manufactured and/or sold by Seller to meet Buyer's particular specifications or requirements and is not part of Seller's Standard Goods, Buyer shall defend, protect and save harmless Seller against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any United States or foreign patent, and shall defend any suit or action which may be brought against Seller for any alleged infringement because of the manufacture and/or sale of the Goods covered thereby. Buyer shall at its sole expense defend all claims or suits in respect of the foregoing, but Seller may participate in the defense thereof without relieving Buyer of any of its obligations under this paragraph. Any modifications to Goods necessary to render Goods non-infringing, or costs or expenses necessary for continued use of infringing Goods shall be at Buyer's expense.

## **15. FORCE MAJEURE.**

Each Party shall not be liable or responsible to the other Party, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any terms of this Agreement solely to the extent such failure is caused by or results from acts or circumstances beyond the reasonable control of Seller. Such events shall include, without limitation, acts of God, epidemic or pandemic, including resulting from known or unknown viruses and their variants, flood, fire, earthquake, governmental actions, trade and other sanctions, war, invasion or hostilities (whether war is declared or not), explosion, terrorist threats or acts, including cyber-attacks, or riot or other civil unrest, national or state emergency, revolution, insurrections, lockouts, strikes or other labor disputes (whether or not solely relating to either Party's workforce), or restraints or delays affecting carriers, or inability in obtaining supplies of adequate or suitable materials or power, telecommunication breakdown, or power outage. The affected Party shall give the other Party written notice of an event of force majeure within three (3) business days of affected Party's knowledge of such event. Unless otherwise prohibited by law, court or executive order, or regulations ("Applicable Law"), the Parties agree that the affected Party shall be entitled to equitable adjustments of price, and time equal to the duration of the event of force majeure, to perform any term of this Agreement. Without penalty or liability to Seller, Buyer may seek alternate supply of goods or services if a Seller event of force majeure lasts longer than ninety (90) consecutive days. Without penalty or liability to either Party, either non-affected Party may terminate this Order in whole or part where the affected Party's force majeure event lasts longer than one-hundred eighty (180) consecutive days. Solely as permitted by Applicable Law, an event of force majeure does not excuse Buyer's payment obligations nor Seller's delivery obligations that accrue prior to the event of force majeure. Notwithstanding anything in this Agreement to the contrary, payment to Seller in the event of termination shall be calculated pursuant to the attached compensation schedule attached as Appendix A hereto and incorporated by reference.

**16. ASSIGNMENT.**

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**17. RELATIONSHIP OF THE PARTIES.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**18. NO THIRD-PARTY BENEFICIARIES.**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**19. GOVERNING LAW.**

All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia.

**20. SUBMISSION TO JURISDICTION.**

If any dispute or difference arises out of or in connection with the Purchase Order which the parties are unable to resolve by negotiation the parties shall with the assistance of (i) where Georgia law applies, the American Arbitration Association, Commercial Mediation Rules, Augusta, Georgia (ii) where English law applies, the Center for Dispute Resolution in London, England, and (iii) where foreign law applies, the foreign Mediation Centre, seek to resolve the dispute or difference amicably using an alternative dispute resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them.

If either party fails or refuses to agree to or participate in the ADR process or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen, then either party shall have the right to initiate legal proceedings against the other but only in a court located in Georgia, England, or Germany, as applicable, it being the intent of the parties that such court shall have exclusive jurisdiction over any legal proceedings initiated by either party against the other in connection with the Purchase Order.



**21. LIMITATION UPON ACTIONS.**

Any lawsuit or action brought by Buyer against Seller for breach of this Agreement including breach of warranty, shall be commenced within one (1) year from date of shipment of Goods to Buyer. This reduced statute of limitations period is established by mutual agreement of the parties. Seller's right of action shall remain as set forth under §11-2-725 of the Official Code of Georgia.

**22. NOTICES.**

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), email with read receipt (no unattended email addresses or boxes) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**23. SEVERABILITY.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**24. SURVIVAL.**

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information, Intellectual Property, Governing Law, Submission to Jurisdiction/Arbitration and Survival.

**25. FEDERAL CONTRACTOR.**

To the extent not exempt, Buyer and Seller will comply with the requirements of 41 CFR §§ 60-4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or status as a qualified individual with a disability. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or status as a qualified individual with a disability. In addition, Buyer and Seller will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. To the extent not exempt, Buyer and Seller will also comply with the requirements of 29 CFR Part 471, Appendix A. Except to the

extent exempt, Buyer and Seller will comply with applicable requirements issued under FAR 52.204-27, Prohibition on a ByteDance Covered Application, or referenced by Section 102 of Public Law 117-328 or OMB Memorandum M-23-13, that prohibits contractors from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the contractor under a contract, including equipment provided by the contractor's employees. The rule applies to devices regardless of whether the device is owned by the Government, the contractor, or the contractor's employees (e.g., employee-owned devices that are used as part of an employer bring your own device (BYOD) program), to the extent a device is used in the performance of a contract.