

GIW INDUSTRIES, INC. - Terms and Conditions of Purchase

1. ACCEPTANCE:

(a) THIS ORDER IS BUYER'S OFFER TO SELLER AND DOES NOT CONSTITUTE AN ACCEPTANCE BY BUYER OF ANY OFFER TO SELL, QUOTATION OR PROPOSAL OF SELLER. ANY REFERENCE TO SUCH OFFER TO SELL, QUOTATION OR PROPOSAL IS SOLELY FOR THE PURPOSE OF INCORPORATING THE DESCRIPTION AND SPECIFICATIONS OF THE GOODS AND SERVICES CONTAINED THEREIN TO THE EXTENT THAT SUCH DESCRIPTION AND SPECIFICATIONS APPEAR ON THE FACE OF THIS ORDER. THIS ORDER CONSISTS ONLY OF THE TERMS CONTAINED HEREIN AND ON THE FACE OF THIS ORDER AND ANY SUPPLEMENTS, SPECIFICATION OR OTHER DOCUMENTS EXPRESSLY INCORPORATED HEREIN BY REFERENCE. SELLER'S ACCEPTANCE OF THIS OFFER IS EXPRESSLY LIMITED TO THE TERMS HEREIN.

(b) BY ACKNOWLEDGING RECEIPT OF THIS ORDER OR BY SHIPPING THE GOODS OR PERFORMING THE SERVICES CALLED FOR BY THIS ORDER, SELLER AGREES TO THE TERMS AND CONDITIONS OF SALE CONTAINED IN THIS ORDER. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN ANY ACKNOWLEDGMENT OF THIS ORDER BY SELLER SHALL BE DEEMED OBJECTED TO BY BUYER WITHOUT NEED OF FURTHER NOTICE OF OBJECTION AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCE BINDING UPON BUYER UNLESS ACCEPTED BY BUYER IN WRITING. ACCEPTANCE OR REJECTION BY BUYER OF ANY SUCH ADDITIONAL TERMS OR CONDITIONS SHALL NOT CONSTITUTE AN ACCEPTANCE OF ANY OTHER ADDITIONAL TERM OR CONDITION.

2. NON-ASSIGNMENT:

Assignment by Seller of this Order or any part thereof without the written consent of Buyer shall be void. Otherwise, this Agreement shall inure to the benefit of the successors and assigns of the Buyer.

3. TIME OF PERFORMANCE:

Time of performance is of the essence.

4. TERMINATION:

Buyer may at any time terminate this Order in whole or in part for its convenience upon written notice to Seller at no cost to Buyer.

5. MODIFICATION OF AGREEMENT:

This Purchase Agreement may not be modified except by writing signed by both Buyer and Seller.

6. WARRANTY:

Seller expressly warrants that all goods and services covered by this order shall conform to the specifications, drawings, samples or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good materials and workmanship and free from defect and that goods and services of Seller's design will be free from defect in design. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranty shall survive inspection, test, acceptance and use. This warranty shall run to Buyer, its successors, assigns and customers and the users of its products. Seller agrees to replace or correct defects in any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such non-conformity by Buyer. In the event of failure

by Seller to correct defects in or replace non-conforming goods, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the costs incurred by Buyer thereby.

7. INSPECTION AND RIGHT OF REJECTION:

Buyer shall have the right to inspect the goods upon receipt. Within a reasonable time, Buyer may give notice to Seller of any claim for damages on account of the condition, quality or grade of the goods.

8. GOVERNING LAW:

The terms and conditions stated herein and the rights, remedies, and duties of Buyer and Seller are governed by the laws of the State of Georgia.

9. STATUTE OF LIMITATIONS:

If Seller desires to bring an action against Buyer for breach of this Agreement, the time within which the action shall be commenced shall be one (1) year after the accrual of the cause of action. This reduced statute of limitations period is established by mutual agreement of the parties. Buyer's right of action shall remain as set forth under §11-2-725 of the Official Code of Georgia.

10. PATENTS:

Seller agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the goods or services covered by this order for alleged infringement of patents or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expense arising out of compliance by Seller with specifications furnished by Buyer. Seller shall at its sole expense defend all claims or suits in respect to the foregoing, but Buyer may participate in the defense thereof without relieving Seller of any of its obligation hereunder.

11. TITLE AND RISK OF LOSS:

Risk of loss or damage to the product shall pass to Buyer only upon delivery to Buyer's place of business or destination designated by Buyer.

If Buyer makes progress payments to Seller under this order, title to the goods ordered hereunder shall pass to Buyer at the time Seller identifies the goods as being a part of this order. Seller shall clearly identify the goods as property of Buyer by visibly marking or tagging, and Buyer shall have the right, at Buyer's option, to inspect and verify that said goods have been identified as Buyer's property. Care, custody and control of such goods remain with Seller until such time as Buyer takes physical possession of the goods or otherwise agrees in writing. In any event, title shall pass to Buyer upon delivery of the goods to Buyer's place of business or destination designated by Buyer.

12. DEFAULT BY SELLER:

On default by Seller, Buyer shall be under no obligation to accept further shipments and may elect at any time to cancel all or any part of Buyer's order with Seller and return goods already delivered for a full refund of amount paid to Seller to date. Upon such default and cancellation, Buyer shall only be responsible for payment to Seller for the cost of goods received by Buyer in good condition prior to cancellation less Buyer's damages caused by such default or breach by Seller if Buyer so elects to keep such goods.

13. ATTORNEY'S FEES:

If a suit or claim is brought by Buyer against Seller for any breach, non-conformity or warranty hereunder, Seller agrees to pay all Buyer's costs in connection with such suit or claim, including reasonable attorney's fees.

14. INDEMNITY:

Seller shall be liable for, and shall defend, indemnify and hold harmless Buyer, its directors, officers and agents from and against all losses, damages, liquidated damages, injuries, fines, penalties, costs, expenses (including legal and other professional fees and expenses) and claims of any kind whatsoever awarded against or incurred or paid by Buyer as a result of or in connection with: deficient or defective workmanship, late delivery of product, goods, materials, supplies or services; the injury to, disease or death of all persons whomsoever; the damage to, loss or destruction of property (including environmental damage), whether sustained by Buyer, its customers or third parties; and any claim made against Buyer, its directors, officers, employees and agents by any customer of Buyer or a third party to the extent that such claim relates to or arises in connection with the goods or services sold under this order or the acts or admissions of Seller. Provided, however, Seller's obligation to indemnify Buyer hereunder shall not apply in the event that such losses are caused by the sole act or negligence of Buyer.

With respect to any claims or suits against Buyer by Seller's employees, Seller agrees to expressly waive its immunity as an employer under applicable workers' compensation laws, but only to the extent that such immunity would bar or effect recovery or enforcement under this indemnification provision.

Seller shall at its sole expense defend all claims or suits in respect of the foregoing, but Buyer may participate in the defense thereof without relieving Seller of any of its obligations under the terms of this order.

15. INSURANCE:

Seller shall maintain and cause its subcontractors to maintain at least the following insurance coverage:

(a) Workers' Compensation insurance as required by applicable law;

(b) "Employers Liability Insurance" covering each worker to the extent of One Million and 00/100 Dollars (\$1,000,000.00) where such worker is not covered by Workers' Compensation or where Workers' Compensation is not an exclusive remedy;

(c) "Automobile Liability Insurance" covering all vehicles owned, leased, or operated or licensed by Seller with combined single limits of One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence of bodily injury, death or property damage;

(d) “Commercial General Liability Insurance” written on an “occurrence” basis including coverage for all non-owned vehicles, products, completed operations liability, contractual liability, cross-liability and personal injury with a combined single limit of One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence of bodily injury, death or property damage. Buyer shall be added as an “additional insured” under this policy with respect to incidents arising in connection with this Purchase Order;

(e) “Umbrella Liability Insurance” as excess coverage for (c) and (d) above in the amount of Five Million and 00/100 Dollars (\$5,000,000.00).

(f) Transit insurance for all goods shipped hereunder for the full value of the purchase order.

Seller shall insure that the insurance policies maintained above shall include a waiver of the insurer’s right to subrogation against Buyer and provisions requiring the insurer to give Buyer at least 30 days prior written notice of cancellation or material change. Such insurance policies shall name Buyer as a loss payee. At Buyer’s request, Seller shall provide certificates of insurance evidencing that such policies are in effect; however, delivery to Buyer of any evidence of insurance shall in no way relieve Seller of its obligations hereunder. Seller shall be solely liable to pay any deductible associated with any claim by Seller or Buyer under the foregoing insurance policies.

16. SETOFF:

Buyer may withhold any sum due to Seller under this order and apply such sum against Seller’s obligations to third parties connected with this order or as a setoff against Seller’s indebtedness to Buyer under this order or under any other contract or agreement between the parties.

17. RESOLUTION OF DISPUTES:

17.1 Arbitration. Except as provided in paragraph 17.8 any dispute, controversy or claim arising out of or relating to this agreement or any contract or agreement entered into pursuant hereto or the performance by the parties of its terms shall be settled by binding arbitration held in Augusta, Georgia, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. This paragraph shall not apply to actions for Injunctive relief and related damages brought by Buyer against Seller and its agents for actual or threatened misappropriation of Buyer’s trade secrets or other confidential information disclosed to Seller in which case Buyer may bring such action in any appropriate forum and jurisdiction of its choosing.

17.2 Arbitrators. If the matter in controversy (exclusive of attorney fees and expenses) shall appear, as at the time of the demand for arbitration, to exceed \$50,000.00, then the panel to be appointed shall consist of three neutral arbitrators; otherwise, one neutral arbitrator.

17.3 Procedures; No Appeal. The arbitrator(s) shall allow such discovery as the arbitrator(s) determine appropriate under the circumstances and shall resolve the dispute as expeditiously as practicable, and if reasonably practicable, within 120 days after the selection of the arbitrator(s). The arbitrator(s) shall give the parties written notice of the decision, with the reasons therefore set out, and shall have 30 days thereafter to reconsider and modify such decision if any party so requests within 10 days after the decision. Thereafter, the decision of the arbitrator(s) shall be final, binding, and nonappealable with respect to all persons, including (without limitation) persons who have failed or refused to participate in the arbitration process.

17.4 Authority. The arbitrator(s) shall have authority to award relief under legal or equitable principles, including interim or preliminary relief, and to allocate responsibility for the costs of the arbitration and to award recovery of attorney's fees and expenses in such manner as is determined to be appropriate by the arbitrator(s); provided, however, that the arbitrator(s) shall not award punitive damages to either party.

17.5 Entry of Judgment. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having in personam and subject matter jurisdiction. Buyer and Seller hereby submit to the in personam jurisdiction of the Federal and State courts in Augusta, Georgia, for the purpose of confirming any such award and entering judgment thereon.

17.6 Confidentiality. All arbitration proceedings, and all evidence given or discovered pursuant to such arbitration, shall be maintained in confidence by all parties.

17.7 Continued Performance. The fact that the dispute resolution procedures specified herein shall have been or may be invoked shall not excuse any party from performing its obligations under this agreement, and during the pendency of any such procedure all parties shall continue to perform their respective obligations in good faith, subject to any rights to terminate this agreement that may be available to any party.

17.8 Exceptions to Arbitration. The arbitration provisions of this paragraph shall not apply to the following: Buyer may bring any action for temporary restraining order, preliminary or permanent injunction or for other claims against Seller arising out of or related to Seller's agreement to indemnify Buyer under paragraph 14 hereunder, Seller's violation of Buyer's patents rights or for Seller's misappropriation of Buyer's trade secrets or confidential information. In addition to bringing any such actions or claims against Seller in any court of competent jurisdiction, Buyer may bring said claims in the appropriate federal or state court in Richmond or Columbia Counties, Georgia and Seller hereby waives any objection to jurisdiction or venue in any proceeding under this clause before said courts.

18. TRADE SECRETS AND CONFIDENTIAL INFORMATION.

18.1 Disclosure. Seller acknowledges that Buyer may provide to Seller certain specifications, drawings, designs, manufacturing data and other trade secret and confidential information in connection with this order which shall remain the sole property of Buyer. Seller agrees it will aid in maintaining said information of Buyer as secret and confidential and use all reasonable efforts to prevent disclosure to third parties. Seller agrees it will not, for any reason, use, copy, or apply any of the trade secrets or confidential information of Buyer for its own use, nor for any reason divulge, distribute, or disclose any trade secrets or confidential information of Buyer to any person, corporation or other entity, whatsoever, including but not limited to those persons who are the Seller's manufacturers, suppliers, parent companies, subsidiaries, affiliates, or their employees, without prior written consent of Buyer and shall take steps to ensure that all employees of such parties who have access to such information shall be informed of the trade secret or confidential nature of said information. In the event such information of the other party is revealed to the Seller's manufacturers, suppliers, parent companies, subsidiaries, affiliates, or their employees, or any other person or entity, Seller agrees it will obtain signed agreements from said persons or entities to treat the same as confidential and as the trade secret of Buyer.

18.2 Survival. The confidentiality and trade secret agreement under this paragraph shall survive any expiration of this agreement and shall remain in full force and effect as follows:

(a) Five (5) years from the termination or expiration of this agreement or any renewal thereof as it regards confidential information; or

(b) Until revoked in writing by Buyer as it regards trade secrets.

Seller agrees the confidential and trade secret obligations assumed herein will remain fully applicable after this order is filled or terminated.

18.3 Return of Information. Upon the expiration or termination of this agreement, it shall be Seller's responsibility to return to Buyer all confidential information and trade secrets of Buyer, and provide all copies of said information to Buyer no later than ten (10) days after the fulfillment of this order or its termination. Seller 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 Buyer.

19. ACTS.

Seller warrants that all goods sold hereunder comply with the Occupational Safety and Health Act, the Mine Safety and Health Act, and all other state and federal laws and regulations governing the manufacturer and sale of such goods.

20. WAIVER.

The Buyer, at its option may upon completion and delivery by Seller, require receipt of a lien waiver guaranteeing that the Seller's obligations to subcontractors have been settled and Seller waives any liens against the delivered goods. The form of such waiver is subject to acceptance by Buyer.

21. AGENT.

Seller acts as an agent for Buyer in securing designated carrier for transportation of goods to Buyer on shipments FOB Shipping Point.

22. COMPLIANCE.

GIW, KSB and their employees commit themselves to professional and honest behavior in worldwide competition, including compliance with legal regulations and ethical standards and expect same from their business partners. Specifically no corruption or fraudulent practices will be tolerated. The Supplier, therefore, confirms to be familiar with the respective Code of Conduct as well as the Corporate Directive on Prevention of Corruption of KSB and guarantees on behalf of its employees and sub-suppliers to act in conformity with these guidelines. In the event of Supplier's breach of this clause, GIW may immediately terminate this contract and Supplier will be liable to GIW in the amount of \$65,000 as liquidated damages as well as any other damages suffered by GIW or KSB as a result of the breach. Supplier agrees that the stated liquidated damages provision is a reasonable pre-estimation of the probable loss to GIW and KSB and it in no way constitutes a penalty. The KSB Code of Conduct as well as the Corporate Directive on Prevention of Corruption is available at:

<https://www.ksb.com/blob/121766/95809a037cefad939e64635955f91546/ksb-code-of-conduct-download-data.pdf>

23. NOTIFICATIONS.

Price increases - Seller shall inform Buyer in writing of any price increase and such communication shall be not less than 120 days prior to the effective date of such increase.

AGREED and SIGNED:

Signature of Seller's authorized representative

Date

Printed Full Name

Company Name

Seller Representative's Title