

## **GIW INDUSTRIES, INC. - Terms and Conditions of Sale**

### **1. ACCEPTANCE.**

NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS THAT MAY BE EMBODIED IN BUYER'S ORDER, GIW'S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON BUYER'S ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SET FORTH BELOW. BUYER ASSENTS TO ALL THE BELOW DESCRIBED TERMS AND CONDITIONS BY FAILING TO OBJECT TO THE TERMS AND CONDITIONS PRIOR TO ACCEPTANCE OF GIW'S GOODS OR PRIOR TO GIW'S SHIPMENTS OF GOODS UNDER GIW'S CONFIRMATION, IF ANY. GIW shall not be responsible for any contracts or agreements by its sales agents or representatives which are not affirmed by GIW's written confirmation. GIW's sales agents and representatives have no authority to alter these terms either orally or in writing.

### **2. PAYMENT TERMS.**

Unless negotiated otherwise, payment is due in full no later than 30 days from date of invoice. Should Buyer default in the full payment of said purchase price after the 30 day period, Buyer shall pay interest to GIW on the unpaid balance due at the rate of one and one-half percent (1.5%) per month on any unpaid balance.

### **3. TAXES.**

Unless otherwise stated, the prices stated herein for the products covered by this invoice are exclusive of all local, state and federal taxes, including, without limitation, taxes on manufacture, excise, sales, receipts, gross income, occupation, use and similar taxes. Whenever applicable, any tax or taxes have been added to the invoice as a separate charge to be paid by Buyer.

### **4. FORCE MAJEURE.**

GIW shall not be liable for any delay in delivery or failure to deliver any or all of the goods where the delay or failure is caused by labor troubles, strikes, lock-outs, war, riots, insurrection, civil commotion, failure of supplies from ordinary sources, earthquake, fire, flood, storm, accident, any act of God or any other cause beyond the control of GIW. Buyer shall not be liable for failure to take delivery of the goods purchased under this agreement where any of the above causes prevent carrier of Buyer from accepting delivery on behalf of Buyer. But, in any case, the party claiming the benefit of this provision shall use due diligence to remove any such causes and to resume performance under this agreement as soon as is feasible. Performance by the other party shall be suspended and excused during the period of any such delay or failure.

of ninety (90) days or longer, either party shall have the right to cancel this agreement upon written notice to the other party at any time thereafter; provided however, Buyer shall pay purchase price for any completed product and GIW's incurred costs with regard to in process work and raw materials specific to Buyer's order.

### **5. SHIPMENT, TITLE AND RISK OF LOSS.**

5.1 Unless negotiated otherwise, all export shipments are FCA (International Incoterms 2010), point of manufacture and domestic shipments are FOB (U.S. UCC), loaded, GIW shipping point (Origin) at which point title and risk also transfers. If the Buyer asserts a claim against the transportation company, GIW will cooperate in attempting to resolve such claim. Goods are deemed delivered on the day the shipment is loaded on the carrier ("Delivery Date").

5.2 If Buyer delays shipment on due date, GIW will invoice Buyer for the order on the scheduled shipping date, whereupon, Buyer accepts title and risk of loss of the goods at such time. GIW will store the shipment on behalf of the Buyer with the Buyer reimbursing GIW for all costs incurred in connection with such delay including the cost of maintenance.

#### **6. INSPECTION AND RIGHT OF REJECTION.**

Buyer shall have the right to inspect the goods upon receipt. Within five (5) business days after the delivery, Buyer must give notice to GIW of any claim for damages on account of the condition, quality or grade of the goods. Buyer shall report complaints in writing to GIW. Buyer must specify in detail the basis of such claim. No claims will be allowed unless Buyer holds the material in question for GIW's inspection. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by the Buyer.

#### **7. LIMITATION OF DAMAGES.**

Upon notice of claim duly given as required by this contract, and acceptance of said claim by GIW of any deficiency or breach of contract, GIW will, at GIW's option, either repair or replace goods upon return of the defective or unsatisfactory goods by Buyer FCA GIW, Grovetown, Georgia, as term is defined in Incoterms 2010, or pay damages not greater than the purchase price of the goods returned to GIW in respect of which such damages are claimed. Under no circumstances shall GIW be liable for incidental, consequential or other damages, loss of profits, or expenses in connection with or by reason of the use of or the inability to use the goods purchased for any purpose. It is further provided that any claim by Buyer against GIW for breach of warranty, breach of contract or any other claim against GIW, either in tort or contract, is limited to the cost of repair or replacement of the goods sold hereunder in the case of warranty. In the case of breach of contract or any other claim against GIW, either in tort or contract, liability is limited to the lesser of: actual damages and \$3,000,000. Liability limitation for orders over \$3,000,000 will be negotiated on an order-by-order basis.

With respect to any claims or suits against GIW 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.

#### **8. CONDITIONS.**

All orders are accepted with the understanding that they are subject to GIW's ability to obtain the necessary materials to produce the goods ordered by Buyer.

#### **9. WARRANTY.**

NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES (WHETHER EXPRESS, IMPLIED OR STATUTORY) ARE MADE BY GIW, except that the goods shall be in conformity with the description on GIW's Sales Order Acknowledgement, and with the written specifications for the goods. GIW's sole liability under this warranty is expressly limited to repair or replacement of the goods within one year from date of shipment. The use of parts by Buyer not manufactured by GIW, unauthorized modifications of the goods by Buyer or misuse, neglect, abuse, improper installation, operation or maintenance, or abnormal conditions of temperature, moisture, dirt, or corrosive matter or improper storage, if not installed upon delivery, voids any warranties given hereunder. Providing working access to the defect, including the removal, disassembly, replacement or reinstallation of any equipment, materials or structures to the extent necessary to permit GIW to perform its warranty obligations

is the responsibility of the Buyer. Under no circumstances shall GIW be liable for incidental, consequential or other damages, losses or expenses in connection with or by reason of the use of or the inability to use the goods purchased for any purpose.

**10. PATENTS.**

10.1 If any goods shall be manufactured and/or sold by GIW to meet Buyer's particular specifications or requirements and is not part of GIW's standard line offered by it in the usual course of GIW's business, Buyer shall defend, protect and save harmless GIW 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 GIW 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 GIW may under this paragraph.

10.2 If goods sold are a part of GIW's standard line offered by it in the usual course of GIW's business, GIW shall defend, protect and save harmless Buyer against all suits at law or in equity and from all damages, claims and demands for actual infringement of any United States or foreign patent, and shall defend any suit or action which may be brought against Buyer for any alleged infringement because of the manufacture and/or sale of the goods covered but Buyer may participate in the defense thereof without relieving GIW of any of its obligations under this paragraph.

**11. MODIFICATION.**

These Terms and Conditions of Sale may be modified only with the written consent of GIW.

**12. GOVERNING LAW.**

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

**13. DEFAULT BY BUYER.**

On default by Buyer (failure to accept delivery, failure to make payment for delivery, failure to fulfill the terms and conditions of this agreement), GIW shall be under no obligation to make further shipments, and may elect at any time to cancel all or any part of the unfulfilled orders of Buyer with GIW, and proceed for the collection of the amount owed to GIW in accordance with GIW's standard cancellation schedule. The remedies set forth herein are cumulative of any and all rights or remedies of GIW as provided by law. The rights and remedies of GIW may be enforced successively or cumulatively and the adoption of one or more rights or remedies shall not operate to prevent GIW from exercising any other or further right or remedy.

**14. INSECURITY OF GIW.**

In the event GIW deems itself insecure, GIW may refuse delivery of the goods covered by this agreement except for cash, including payment of all goods theretofore delivered under the contract.

"Insecurity" in this context shall mean a good faith belief that the prospect of payment is impaired. GIW shall provide Buyer with notice whereupon Buyer shall pay for future deliveries in cash and upon failure of Buyer to do so, GIW may cancel this agreement and hold Buyer liable for the breach.

**15. STATUTE OF LIMITATIONS.**

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

**16. ASSIGNMENT.**

Buyer shall not, without GIW's prior written consent, assign this contract or any claim arising under it. GIW's consent to any assignment shall not relieve Buyer from its obligation under this invoice including but not limited to payment.

**17. ATTORNEY FEES.**

If a suit or claim is brought by GIW for the recovery of any payment due under this invoice or for the breach of any provision of any agreement between the parties, Buyer agrees to pay GIW all costs in connection with such suit or claim, including an additional fifteen (15%) percent of any amount owed as attorney's fees, whether or not the suit or claim proceeds to an award or judgment.

**18. TIME.**

Time of performance of the parties, and their principals and agents, is of the essence.

**19. TERMINATION.**

Except as otherwise provided herein, this agreement shall continue indefinitely, and may not be terminated by the action of either party unilaterally. Both parties must act together to terminate this agreement, and a termination may be accomplished only by a writing signed by both parties.

**20. SEVERABILITY.**

Should any provision of this invoice be declared void, invalid or unconscionable, for any reason, by any court or other tribunal, the remaining provisions of the agreement shall not be affected thereby and shall remain in full force and effect.

**21. PRICING.**

Prices are in U.S. dollars. Payment is to be made in U.S. dollars.

**22. WAIVER.**

GIW's failure or delay in asserting any right or remedy available shall not constitute waiver of any right or remedy available to it.

GIW shall not be responsible for the correctness of structural or system designs or details prepared by others.

## **24. RESOLUTION OF DISPUTES.**

24.1 Arbitration. Except as provided in paragraph 24.8, 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.

24.2 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.

24.3 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.

24.4 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.

24.5 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. GIW and Buyer 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.

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

24.7 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.

24.8 Exceptions to Arbitration. The arbitration provisions of this paragraph shall not apply to the following: GIW may bring any action for temporary restraining order, preliminary or permanent injunction or for other claims against Buyer arising out of or related to Buyer's agreement to indemnify GIW under paragraph 10 hereunder, Buyer's violation of GIW's patents rights or for Buyer's misappropriation of GIW's trade secrets or confidential information. In addition to bringing any such actions or claims against Buyer in any court of competent jurisdiction, GIW may bring said claims in the appropriate federal or state court in Richmond or Columbia Counties, Georgia and Buyer hereby waives any objection to jurisdiction or venue in any proceeding under this clause before said courts.

**25. PATTERNS.**

When Buyer's patterns are in GIW's possession, Buyer assumes all risk of damage and loss. Such patterns are not covered by GIW's insurance. Buyer furnishes suitable pattern equipment and bears the cost of maintaining patterns in good working order and any alterations, except those made by GIW for its own convenience. Buyer is responsible for all crating and shipping charges to and from GIW.

**26. INSPECTION TOLERANCES.**

All goods sold hereunder are subject to GIW's standard manufacturing variations and practices.

**27. TRADE SECRETS AND CONFIDENTIAL INFORMATION.**

27.1 Disclosure. Buyer acknowledges that GIW may provide to Buyer 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 GIW. Buyer agrees it will aid in maintaining said information of GIW as secret and confidential and use all reasonable efforts to prevent disclosure to third parties. Buyer agrees it will not, for any reason, use, copy, or apply any of the trade secrets or confidential information of GIW for its own use, nor for any reason divulge, distribute, or disclose any trade secrets or confidential information of GIW to any person, corporation or other entity, whatsoever, including but not limited to those persons who are the Buyer's customers, manufacturers, suppliers, parent companies, subsidiaries, affiliates, or their employees, without prior written consent of GIW 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 Buyer's customers, manufacturers, suppliers, parent companies, subsidiaries, affiliates, or their employees, or any other person or entity, Buyer agrees it will obtain signed agreements from said persons or entities to treat the same as confidential and as the trade secret of GIW.

**27.2 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 GIW as it regards trade secrets.

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

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

**28. EXPORT.**

Buyer shall not re-export the Products or any goods or items which incorporate the Products if the re-export would violate United States export laws.