



# TERMS AND CONDITIONS OF SALE

**1. Applicability.** These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") by GVM, INC. ("Seller") to the buyer whose name and address is set forth on reverse side of these Terms and/or accompanying invoice or, as applicable, Seller's accompanying quotation or sales order ("Buyer"). These Terms prevail over any of Buyer's general terms and conditions of purchase and 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 of Seller and Buyer.

**2. Delivery; Title; Risk of Loss.** The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Unless otherwise agreed in writing by the parties, delivery shall be made ExWorks Seller's facility in Adams County, Pennsylvania (the "Delivery Point"), in accordance with Incoterms 2010. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. Seller may, in its sole discretion, without liability or penalty, make partial shipments of the Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Goods shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

**3. Non-delivery.** The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Seller shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Seller of the non-delivery within seven (7) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to, in Seller's sole discretion, replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

**4. Inspection and Rejection of Nonconforming Goods.** Buyer shall inspect the Goods upon receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as hereinafter defined) during the Inspection Period and furnishes such written evidence or other documentation as 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. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller at the Delivery Point. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this Section 5 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 5, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased to Seller.

**5. Price.** Unless otherwise agreed in writing by the parties, or unless otherwise contained in Seller's quotation, sales order or invoice, Buyer shall purchase the Goods from Seller at the price(s) (the "Price(s)") set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed 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.

**6. Payment Terms.** Unless otherwise specified in Seller's quotation or invoice, Buyer shall pay all invoiced amounts due to Seller on receipt of

Seller's invoice. Seller reserves the right to require a deposit or payment on order. Buyer shall make all payments hereunder in US dollars. 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 for 30 days following written notice thereof. 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. Overdue invoices shall carry interest at the lower of 1 ½% per month or the maximum permitted by law. Buyer shall pay all Seller's costs of collection, including Seller's attorneys' fees.

**7. Limited Warranty.** In the event that Buyer is an authorized GVM Dealer, Buyer's warranty is set forth in the GVM Warranty Manual applicable to GVM Dealers. For all other Buyers, 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 specifications set forth in Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. However, if Seller is not the manufacturer of the Goods, Seller's warranty shall be further subject to and limited by the manufacturer's standard warranty in effect with respect to such Goods.

FOR ALL BUYERS, REGARDLESS OF STATUS AS A GVM DEALER, THE FOLLOWING APPLIES: EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 7, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) 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.

Seller shall not be liable for a breach of the warranty set forth in this Section 7 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within seven (7) 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 at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

Seller shall not be liable for a breach of the warranty set forth in this Section 7 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect or claim 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) the defect or claim arises because of Buyer's misuse or unauthorized use of the Goods; or (iv) Buyer alters or repairs such Goods without the prior written consent of Seller. Moreover, the warranty shall not apply to any wear parts or consumables, or conditions occasioned by reasonable wear and tear.

Subject to this Section 7, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

THE REMEDIES SET FORTH IN THIS SECTION 7 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 7, INCLUDING THOSE WHICH MAY BE SUBJECT TO THE WARRANTY SET FORTH IN GVM'S WARRANTY MANUAL.

## **8. Limitation of Liability.**

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES



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HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY HEREUNDER (INCLUDING UNDER GVM'S WARRANTY MANUAL), WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

**9. Indemnification.** Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, relating to/arising out of or resulting from any claim of a third party or Seller for any damage, whether in tort, contract or otherwise, relating to Buyer's breach of these Terms or resulting from the negligence or other wrongful conduct, whether sole or concurrent, of Buyer.

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

**11. Export Controls.** This Agreement is subject to United States export laws and regulations controlling the export, re-export, diversion and resale of the products the subject of this Agreement, including any software, documentation, technical data, and confidential information (collectively, "U.S. Export Controls"). These U.S. Export Controls include, but are not limited to, the United States International Traffic in Arms Regulations (ITAR), the United States Export Administration Act and the United States Department of Commerce Export Administration Regulations. Buyer acknowledges and agrees to be responsible for compliance with these U.S. Export Controls and to not engage in any course of conduct that would be in violation of the U.S. Export Controls. Not by way of limitation of the foregoing, Buyer shall not export, re-export, divert or resell the products the subject of this Agreement, including any documentation, technical data, or confidential information, in violation of U.S. Export Controls.

**12. Confidential Information.** All non-public, confidential or proprietary 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 herewith is confidential, solely for the use of performing hereunder and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation 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.

**13. Force Majeure.** The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**14. Governing Law; Jurisdiction; Venue.** These Terms, and the application and interpretation hereof, shall be subject to and governed exclusively by its terms and by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. The parties agree that proper jurisdiction and venue for resolution of any and all disputes hereunder shall be exclusively in the Court of Common Pleas for Adams County, Pennsylvania, and/or the United States District Court serving such County, and the parties hereby consent to such jurisdiction.

**15. 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 set forth on reverse side of these Terms 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), electronic mail, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, 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.

**16. Seller's Quotation or Sales Order.** In the event that these Terms accompany a quotation or sales order issued by Seller to Buyer, the additional terms and conditions of this Section 16 shall apply. Buyer may cancel its order prior to tender of delivery of the Goods only as follows: (i) If Seller has not commenced production of the Goods, including the ordering of parts and raw materials in connection with such production, Buyer may cancel its order without liability. (ii) If Seller has commenced production of the Goods and/or ordered parts or raw materials which Seller, in its sole discretion, deems not readily cancellable or returnable at no cost to Seller, then Buyer may only cancel its order by paying Seller for all costs and expenses incurred by Seller up to the time of cancellation, including all costs of Seller's labor at Seller's internal rates, plus an amount equal to 15% of all such costs and expenses. **Custom-made, made-to-order, or non-stock orders of Goods may not be cancelled under any circumstances whatsoever.** Any cancellation must be in writing, and Seller's invoice rendered in the case set forth in "(ii)" above must be paid by Buyer within ten (10) days.