



## SELLER'S TERMS AND CONDITIONS OF QUOTATION/SALE

GMS International Corporation's ("Seller") quotation, sale and/or acceptance of Buyer's Purchase Order ("Order") for Seller's goods and/or services (individually a "Good" or "Service" and collectively "Good and Services") is expressly conditioned upon Buyer's assent to these terms and conditions ("Terms and Conditions"). Buyer's acceptance of Seller's Goods and/or Services is also deemed by the Parties to be Buyer's assent to such terms. Buyer and Seller are collectively referred to herein as the "Parties".

1. GENERAL. Unless otherwise notified to Buyer by Seller, the following terms and conditions shall apply to all provisions of Goods and Services by Seller.

2. DELIVERY, DELAYS AND PERFORMANCE. Other than with respect to payment, no liability shall result from delay in performance or non-performance of these Terms and Conditions directly or indirectly caused by fire, explosion, accidents, flood, labor trouble or shortage, war, act of regulation or any government, inability to obtain suitable material, equipment, fuel power, or transportation or act of God; or arising from contingencies, happenings, or causes beyond the control of the parties affected. Quantities of Goods and Services so affected by any such circumstances may be eliminated from any Order without liability, but these Terms and Conditions shall otherwise remain unaffected.

3. F.O.B./EX WORKS POINT. All sales are made F.O.B. (and for foreign Buyer's, EX WORKS, per Incoterms 2000) at Seller's facility, Reston, VA, U.S.A. Seller's liability ceases as to delivery and risk of loss ceases upon making delivery of the Goods and Services purchased hereunder to carrier at said shipping point in good condition; the carrier acting as Buyer's agent.

4. ASSIGNMENT. The Buyer shall not assign its Order or any obligation or any rights thereunder or hereunder without the prior written consent of Seller.

5. TAXES. Buyer shall reimburse the Seller for all taxes, excises, export or other charges which the Seller may be required to pay upon the sale, production or transportation of the Goods or Services sold hereunder. Additionally, all taxes, licenses, duties, and governmental exactions by whatever name known which may be levied or assessed on or account of the Goods or Services sold hereunder, or their documents.

6. PAYMENTS. Payments shall be made to Seller in strict accordance with the agreed upon payment terms. Each shipment shall be considered a separate and independent transaction. If performance by Seller or shipments are delayed by the Buyer, payments shall become due on the date when the Seller is prepared to make shipment and such payments shall be made based on the purchase price and the percentage of completion. The Seller reserves the right to ship its Goods and Services and make collection by sight draft with a bill of lading or similar document attached hereto or thereto.

7. PRICE. Prices and terms are not subject to verbal changes or other agreements unless approved in writing by the Seller. Prices are based on costs and conditions existing on the date of quotation and are subject to change by the Seller before final acceptance. Prices do not include export or special packaging, compliance testing or inspection charges. Buyer shall have no right to access to Seller's



cost or pricing data or other book and records.

8. NON-WAIVER-CONFLICTING TERMS AND CONDITIONS. Any failure at any time of Buyer or Seller to enforce any provision hereof shall not constitute a waiver of such provision nor prejudice the right of Buyer or Seller to enforce such provisions at any subsequent time. Insofar as any terms and conditions of the Buyer's Order conflict with the Terms and Conditions contained herein, these Terms and Conditions shall govern, irrespective of whether the Buyer accepts these Terms and Conditions by written acknowledgement, by implication, or acceptance and payment of Goods or Services ordered hereunder. Terms and conditions proposed by Buyer are not valid unless agreed to in writing by Seller.

9. PROPRIETARY RIGHTS. Any of Seller's intellectual property delivered to Buyer providing confidential or proprietary information and/or concerning Seller's trade secrets, such as, but not limited to, any formula, design, engineering drawings, device or compilation of information, including Seller's manufacturing methods or processes, treatment and chemical composition of materials and tooling shall be kept confidential by Buyer, and not disclosed to third parties without Seller's express written permission. Such intellectual property shall, at all times, remained owned by Seller and Buyer shall acquire no rights thereto. Buyer shall not use such data, in whole or in part, or the Goods or Services, to copy, redesign, reverse engineer, replicate or manufacture (or enable manufacture by itself or any third party) the Goods and Services, products similar thereto or products derived therefrom without Seller's express written permission. The price for the Goods and Services do not include any such data or information or any other intellectual property.

10. PATENT DATA. (a) Seller warrants that the use or sale of its Goods or Services produced by Seller will not infringe the claims or any United States patent governing the Goods or Services themselves for a period of twelve months after the delivery to Buyer, when used as described by Seller. Seller does not warrant against patent infringement by reason of the use of its Goods in combination with others or in the operation of any process. Buyer assumes liability for patent and copyright infringement when Goods and Services are made to Buyer's specifications. Buyer shall indemnify and hold Seller harmless from all damages and costs related to such infringement. Seller shall have no obligation with regard to any liability incurred for goods or services procured by Seller through a third party. Buyer's sole remedy in such event is with such third-party.

(b) All technical advice, specification data, recommendations and services are rendered by the Seller free of charge and while based on data believed to be reliable, they are provided on an "as is" basis and are intended for use by skilled persons at their own risk and without any warranty. Seller assumes no responsibility to Buyer for events resulting or damages incurred from improper use. They are not to be taken as a license to operate under or intended to suggest infringement of any existing patent.

11. DISPUTES/COLLECTION. Should Seller initiate collection (in court or otherwise) against the Buyer by reason of Buyer's failure to make payment in accordance with Seller's payment terms or other disputed contract interpretation, then the Seller shall be paid all costs (including its reasonable attorney fees) actually incurred in connection with such action, or any appeal therefrom, from the other party regardless of any otherwise applicable court schedule used in connection with the



determination thereof. In any such action the laws of the Commonwealth of Virginia, U.S.A. shall apply, except for its internal conflict of laws provision. These Terms and Conditions and the Order excludes the application of the 1980 United Nations Convention for the International Sale of Goods. Any dispute between Buyer and Seller over these Terms and Conditions, any Order or otherwise shall exclusively be brought in the federal courts located in the Eastern District of Virginia or the State courts sitting therein and each Party consent to personal jurisdiction in such courts and shall not make any claim of an inconvenient forum.

12. ACCEPTANCE. Final acceptance or rejection of the Goods and Services shall be made promptly as practical after the delivery to Buyer; however, unless earlier rejected, the Goods and Services shall be deemed by the Parties to be accepted upon the earlier of fifteen (15) days after delivery to Buyer or upon first use by the Buyer. Upon acceptance of each unit of Goods and Services, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Any defect or nonconformance becoming apparent in the Goods after such acceptance shall be corrected under and subject to, the conditions of the Article herein entitled Warranty.

13. CANCELLATION, STOP WORK ORDERS. Cancellations of an Order may be accepted only upon the written approval of the Seller, which may be withheld in its sole discretion, and shall be subject to cancellation charges which will include all expenditures made and committed for the Order with a reasonable allowance for prorated overhead expenses, profit and cost for preparing, submitting and negotiation of Seller's termination claim.

14. WARRANTY. (a) Seller warrants all Goods to be furnished under an Order to be free from defects due to faulty workmanship or material for the period of ninety (90) from the date of delivery to the Buyer. Services shall be warranted to work upon delivery.

(b) Seller neither expressly nor impliedly warrants against defects in design, workmanship and materials of parts or materials supplied by others and utilized by the Seller in such Goods and Services. Seller shall give the Buyer (insofar as it is assignable) the benefits of any express written warranties given to Seller by such manufacturer or other vendors. Seller shall have no obligation to process any warranty claim against such manufacturer and supplier for the benefit of the Buyer.

(c) Seller neither expressly nor impliedly warrants, or makes any representation whatsoever, as to service life of such Goods or Services since conditions of usage and experienced service life are neither within the control of nor knowledge of Seller.

(d) This warranty will apply only on the condition that: (1) Buyer delivers written notice of its claim under this clause to Seller within such warranty period, but not later than fifteen (15) days after the earlier of the discovery of the defect or when such defect should have been discovered by Buyer with reasonable diligence, which is the basis for its claim;

(2) Buyer delivers such Goods to Seller at its plant, FOB or EX WORKS, as applicable, to Reston, VA, USA within thirty (30) days after such written notice;

(3) Seller determines (in its sole discretion) that such Goods and Services are defective and have not



been subject to accident, abuse or misuse, and have been operated and maintained in accordance with the manufacturer's recommendations and specifications and have met the applicable time limits set forth herein; and

(4) The Goods and Services have not been the subject of a replication (i.e., reverse engineering) program, either formal or informal.

(e) The obligations and liabilities of Seller under this warranty are expressly limited to the replacement or the repair by Seller of such Goods or Services, and shall not include any removal, disassembly, failure analyzing fault isolation, inspection, retrofit or reinstallation costs incident to such correction or replacement.

(f) THE WARRANTY PROVIDED IN THIS ARTICLE 14, AND THE OBLIGATIONS AND LIABILITIES OF SELLER AND THE RIGHTS AND REMIDIES OF BUYER HEREUNDER, ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL WARRANTIES AND LIABILITIES OF SELLER AND ALL CLAIMS AND REMIDIES OF THE BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN ANY GOODS OR SERVICES, INCLUDING WITHOUT LIMITATION, ANY (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, (C) RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE, AND (D) ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER IS ADVISED IN ADVANCE OF THE LIKELIHOOD OF SUCH DAMAGES. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER. IN THE EVENT THAT AN PROVISIONS HEREOF SHOULD FOR ANY REASON BE HELD INEFFECTIVE, THE REMAINDER OF THIS WARRANTY SHALL REMAIN IN FULL FORCE AND EFFECT.

15. EXTENT OF SELLER'S LIABILITY. Seller will not have any liability or liquidated damages, penalties, fees, or for collateral, indirect, incidental, consequential or special damages, including loss of profits or loss of use, even if advised of the likelihood of such loss in advance, and the aggregate total liability of any damages under an Order under any theory of law shall in no event exceed its contract price of the Goods or Services giving rise to the claim (or claims) or liability, whether resulting from delays in delivery or performance, breach of warranty, claims of negligent manufacturing, patent or copyright infringement, or otherwise. Buyer agrees to indemnify and hold harmless Seller from all claims by third parties which extend beyond the foregoing limitations of Seller's liability.

16. BUYER FURNISHED MATERIAL. When a quotation or Order specifies that material is to be furnished by the Buyer, ample allowances shall be made by the Buyer for reasonable spoilage or scrap of the material so as to facilitate efficient, timely production by Seller.

17. EXPORT AND IMPORT COMPLIANCE. Buyer and Seller (hereafter also known collectively as "Parties") shall comply with the laws and regulations of the USA relating to exports and foreign transactions, including but not limited to, the International Traffic in Arms Regulations (ITAR) (22



C.F.R. Parts 120-130), the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Regulation (EAR) (15 C.F.R. Parts 730-774) and the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et. Seq.). In particular, the Parties shall not disclose any technical data nor deliver, export, re-export or re-transfer any Goods or Services out of the USA, or to foreign persons or entities within or outside the USA, without the proper written authorization and/or licenses from the U.S. Government. Buyer hereby indemnifies and agrees to hold Seller harmless from any costs, damages, penalties, attorney's fees and similar expenses of Seller due to Buyer's breach (or threatened breach) of such obligation. The parties shall reasonably cooperate with each other in obtaining all required export and import licenses, approvals and/or notifications pursuant to such U.S. laws.

18. PACKAGING. Good commercial practice and standard marking is included.