

# GULF COAST INTERNATIONAL, LLC

## GENERAL TERMS AND CONDITIONS

1. **General.** The terms and conditions contained herein, together with any additional or different terms contained in any Proposal submitted to the Purchaser by GCI, LLC. ("GCI"), (which Proposal shall control over these terms and conditions to the extent it contains any conflicting terms and conditions), constitute the entire agreement between the parties with respect to this order and supersede all prior communications and agreements. Acceptance by GCI of Purchaser's order or Purchaser's acceptance of GCI's Proposal is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions which may not be changed or waived except in a writing signed by both parties. Any additional, inconsistency or different terms and conditions contained in Purchaser's purchase order or other documents supplied by Purchaser are hereby expressly rejected. Unless the context otherwise requires, the term "Equipment" as used herein includes all equipment, parts, and accessories sold, and all software and application software licensed to Purchaser by GCI under the order. Unless the context otherwise indicates, the term "Services" as used herein shall mean labor, supervision and project services provided by GCI under the Proposal or other order by Purchaser of Services from GCI. As used herein, the term "Purchaser" shall include the initial end user of the Equipment and/or Services; provided, however, that Paragraph 14 (a) shall apply exclusively to the initial end user.
2. **Prices, Taxes, Customs Duties.**
  - (a) Unless otherwise specified in writing, all written quotations expire thirty (30) days from the date thereof.
  - (b) Unless otherwise stated herein, service prices are per GCI's published rate sheet in effect at time of service.
  - (c) The price does not include any Federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment, its sale, its value or its use, or any services performed in connection herewith. Purchaser agrees to pay or reimburse any such taxes which GCI or its suppliers are required to pay or collect. If Purchaser is exempt from the payment of any tax or holds a direct payment permit, Purchaser shall, upon order placement, provide GCI a copy, acceptable to the relevant governmental authorities of any such certificate or permit.
  - (d) GCI's prices herein may not include customs duties and other importation or exportation fees applicable to GCI's importation into the United States and the rates thereof in effect on the date hereof. Any such duties, fees, or rates shall be charged by GCI to the Purchaser for payment to GCI.
3. **Payment.**
  - (a) Unless specified to the contrary in writing by GCI, payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice payable by wire transfer to the account designated by GCI in the Proposal.
  - (b) If, in the judgment of GCI, the financial condition of Purchaser at any time prior to delivery does not justify the terms of payment specified, then GCI shall be entitled to receive payment in advance for the subject Equipment or, alternatively, to cancel the order and receive GCI's reasonable cancellation charges from Purchaser. If delivery is delayed by Purchaser, payment shall become due on the date GCI is prepared to make delivery. Delays in delivery or non-conformities in any installments delivered shall not relieve Purchaser of its obligation to accept and pay for remaining installments.
  - (c) Purchaser agrees that interest shall accrue upon GCI invoice balances unpaid after 30 days at the rate of eighteen percent (18%) per annum, or at the maximum lawful interest rate, whichever is greater, until such invoice balances are fully and finally paid.
4. **Changes.**
  - (a) Any changes requested by Purchaser affecting the ordered scope of work must be accepted by GCI and resulting adjustments to affected provisions including price, schedule, and guarantees, mutually agreed in writing prior to implementation of the changes.
  - (b) GCI may, at its expense, make sure changes in the Equipment or Services as it deems necessary in the sole discretion of GCI necessary to meet any performance guarantees provided for in the Proposal. If Purchaser refuses to approve any such changes, GCI shall be relieved of its obligations to meet such guarantees to the extent to which GCI may be affected by such refusal.
5. **Delivery.** All Equipment manufactured, assembled or warehoused in the continental United States is delivered F.O.B. point of shipment. Equipment shipped from outside the continental United States is delivered F.O.B. port of entry. Where the scheduled delivery of Equipment is delayed by Purchaser or by Force Majeure, GCI may deliver the equipment by moving it to storage for the account of and at risk of Purchaser. Shipping and delivery dates are contingent upon Purchaser's timely approvals and delivery by Purchaser of any documentation required for GCI's performance hereunder. Claims for shortages or other errors in delivery must be made in writing to GCI within ten days of delivery.
6. **Risk of Loss.** Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Purchaser and delivery shall be deemed to be complete upon delivery to a private or common carrier or upon moving into storage, whichever occurs first, at the point of shipment.
7. **Title.** Except with respect to licensed software (for which title does not pass; use being licensed), title to the Equipment sold shall remain in GCI until fully paid for.
8. **Inspection, Testing and Acceptance.**
  - (a) Any inspections by Purchaser of Equipment on GCI's premises shall be scheduled in advance and during normal working hours.
  - (b) When factory acceptance testing is included in the Agreement, GCI shall notify Purchaser when GCI will conduct a standard acceptance test for Purchaser prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of the test, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and authorizes shipment.

- (c) When on-site acceptance testing is included in the Agreement, a standard GCI on-site acceptance test will be performed by GCI's personnel to verify that all Equipment supplied hereunder has arrived at site complete, without physical damage, and is ready for the use specified in the Proposal. Completion of the on-site acceptance shall be deemed made.

9. **Warranty.**

- (a) General. GCI warrants GCI manufactured Equipment (excluding software) against defects in material and workmanship for a period of twelve (12) months from the date of GCI's invoice to the Purchaser.
- (b) Services. GCI warrants GCI Services against defects in workmanship for a period of thirty (30) days from the date of completion of such Services.
- (c) Parts/Equipment. GCI warrants in-stock parts and equipment sold by GCI against defects in material and workmanship for a period of twelve (12) months from the date of GCI's invoice to the Purchaser. For parts and equipment specially ordered by GCI for the Purchaser, GCI assigns and transfers the original manufacturer's warranty to Purchaser; which shall be the only warranty provided by GCI.
- (d) Repairs. GCI warrants in-house repairs made to the Purchaser's equipment for a period of six (6) months from the date of the repair.
- (e) Software. GCI assigns and transfers the software developer/owner's warranty to Purchaser; which shall be the only warranty provided by GCI.
- (f) Parts/Equipment/Service Warranty Claims. Should any Parts or Equipment fail to conform to the applicable warranties during the specified periods under normal and proper use, and provided the Parts and Equipment have been properly stored, installed, operated and maintained, and if given prompt written notice by Purchaser, GCI shall correct such nonconformity by, at its option, (1) repair or replacement of the nonconforming Equipment or Parts thereof, or (2) refund of the purchase price of the nonconforming Equipment or Parts thereof, or (3) in the case of nonconforming Services, provide equivalent Services at the job site or refund the price therefore. Repairs or replacements pursuant to warranty shall not renew or extend the applicable original warranty period, provided however, that any such repairs or replacement of Equipment or Parts thereof shall be warranted for the time remaining of the original warranty period or 30 days, whichever is longer. GCI shall not be responsible for providing working access to the defect, including disassembly and re-assembly of equipment or for providing transportation to and from repair or facility, all of which shall be at Purchaser's cost and expense.
- (g) The above warranties shall not apply to any Equipment or Parts thereof which (1) have been improperly repaired or altered; (2) have been subjected to misuse, negligence or accident; (3) have been used in a manner contrary to GCI's instructions; (4) are comprised of materials provided, or of a design stipulated by, Purchaser; (5) are used Equipment or Parts; or (6) result from normal wear and tear.
- (h) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, OR USAGE OF TRADE ARE HEREBY DISCLAIMED BY GCI AND ALL EQUIPMENT MANUFACTURERS.
- (i) Correction of nonconformities in the manner and for the period of time provided above shall be Purchaser's sole and exclusive remedy for any failure of GCI to comply with its obligations and shall constitute fulfillment of all liabilities of GCI and any Equipment or Parts manufacturer (including any liability for direct, indirect, special, incidental or consequential damages) whether in warranty, contract, tort (including negligence) or otherwise with respect to or arising out of the work performed hereunder.

10. **Patent Indemnity.**

- (a) GCI shall defend at its own expense any actions brought against Purchaser alleging that the Equipment furnished hereunder by GCI, or the use of said Equipment to perform any process supplied hereunder by GCI, directly infringes any claim of a patent of the United States of America and to pay all damages and costs finally awarded in said actions. GCI shall have the right to settle or otherwise terminate said actions on behalf of Purchaser.
- (b) GCI shall have no obligations hereunder and this provision shall not apply: (1) to any other equipment or processes, including Equipment or processes supplied hereunder by GCI which have been modified or combined with other equipment or processes; (2) to any products or articles manufactured by any equipment or processes; (3) to any patent issued after the date hereof; and (4) in the event any of said actions are settled or otherwise terminated without the prior written consent of GCI.
- (c) If, in any action hereunder, the Equipment is held to constitute infringement, or the practice of any process using the Equipment is finally enjoined, GCI shall, at the option and its own expense, either procure for Purchaser the right to continue using said Equipment; or, modify or replace it with non-infringing equipment; or, with Purchaser's assistance, modify the process so that it becomes non-infringing; or remove it and refund the purchase price allocable to the infringing equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF GCI AND ITS EQUIPMENT MANUFACTURERS WITH RESPECT TO PATENT INFRINGEMENT.
- (d) To the extent that said Equipment or any part thereof is modified by Purchaser, or combined by Purchaser with equipment or processes not furnished hereunder (except to the extent that GCI is a contributory infringer) or said Equipment or any part thereof is used by Purchaser to perform a process not furnished hereunder by GCI, or to produce an article, and by reason of said modification, combination, performance or production, an action is brought against GCI, Purchaser agrees to defend and indemnify GCI in the same manner and to the same extent that GCI indemnifies Purchaser in this "Patent Indemnity" paragraph.

11. **Limitation of Liability.**

- (a) In no event shall GCI, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or

any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, or claims of customers of the Purchaser or other third parties for such or other damages. GCI's liability for any claim whether in contract, warranty, negligence, tort, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from GCI's Equipment or Services or the performance or breach thereof, shall in no case (except as provided in the section entitled "Patent Indemnity") exceed one-half (1/2) of the purchase price allocable to the Equipment or part thereof or from the Services which gives rise to the claim.

- (b) All causes of action against GCI arising out of or relating to GCI's Equipment or Services, or the performance or breach hereof, shall expire unless brought within one year of the time of accrual thereof.
- (c) In no event, regardless of cause, shall GCI assume responsibility for or be liable for penalties or penalty clauses of any description, or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to GCI's Equipment or Services.

- 12. **Laws and Regulations.** GCI does not assume any responsibility for compliance with Federal, state or local laws and regulations relating to the operation or use of the Equipment, which is the sole responsibility of the Purchaser. All laws and regulations expressly incorporated herein shall be those in effect as of the date hereof. In the event of any subsequent revisions or changes thereto, GCI assumes no responsibility for compliance therewith. If Purchaser desires a modification as a result of any such change or revision, it shall be treated as a change order. Nothing contained herein shall be construed as imposing responsibility or liability upon GCI for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Equipment.
- 13. **Inventions and Information.** Unless otherwise agreed in writing by GCI and Purchaser, all right, title and interest in any inventions, developments, improvements or modifications of or for the Equipment and Services shall remain with GCI. Any design, manufacturing drawings or other information submitted to the Purchaser remain the exclusive property of GCI. Purchaser shall not, without GCI's prior written consent, copy or disclose such information to a third party. Such information shall be used solely for the operation or maintenance of the Equipment and not for any other purpose, including the duplication thereof in whole or in part.
- 14. **Force Majeure.** GCI shall not be liable for loss, damage, detention, or delay, nor be deemed to be in default from causes beyond GCI's reasonable control including, but not limited to, acts of war (declared or undeclared) fire, strike, labor difficulties, Acts of God, inclement weather, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of GCI's suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of a Force Majeure occurrence, the date of delivery will be extended by period equal to the delay, plus a reasonable time to resume production and the contract price will be adjusted to compensate GCI for such delay.
- 15. **Cancellation.** Any order or contract may be cancelled by Purchaser only upon prior written notice and payment of termination charges including, but not limited to, all costs identified and relating to the order or contract incurred prior to the effective date or notice of termination, and all expenses incurred by GCI attributable to the termination, plus a fixed sum of ten (10) percent of the final total selling price to compensate GCI for disruption in scheduling, planned production and other indirect costs.
- 16. **Termination.** No termination by Purchaser for any alleged GCI default shall be effective unless, within thirty (30) days after receipt by GCI of Purchaser's written notice specifying such default, GCI shall have failed to initiate and pursue with due diligence correction of such specified default.
- 17. **Export Control.** Purchaser represents and warrants that the Equipment and Services provided hereunder and the "direct product" thereof is intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. Purchaser agrees not to disclose, use, export or re-export, directly or indirectly, any information provided by GCI or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such regulations.
- 18. **Assignment.** Any assignment of this contract or any rights or obligations hereunder without the prior written consent of GCI shall be void.
- 19. **Choice of Law.** This agreement shall be governed by the laws of the State of Louisiana and all causes of action hereunder and relating thereto shall be brought in the State Courts of Iberia Parish in the State of Louisiana, or the U.S. District Court for the Western District of Louisiana-Lafayette Division. If any provision hereof, partly or completely, shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision or portion hereof and these terms shall be construed as if such invalid or unenforceable provision or portion thereof had never existed.
- 20. **Entire Agreement.** This Agreement constitutes the entire agreement between GCI and Purchaser, and there are no agreements, understandings, restrictions, warranties, or representations between GCI and Purchaser other than those set forth herein or herein provided for.