



## Terms and Conditions of Sales

- 1. Applicability.** GAI-Tronics Corporation ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products or services listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if these terms and conditions differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of these terms and conditions. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.
- 2. Prices.** Prices in written quotations issued by Seller are valid for thirty (30) days. All other prices are subject to change at any time, unless otherwise expressly agreed by Seller. Any prices shown in published literature are maintained as a general source of information and are not quotations or offers to sell. Seller reserves the right to make corrections due to typographical, clerical or engineering errors or due to incomplete or inaccurate information from Buyer. Prices for accepted orders may change due to customer order, quantity, material or engineering changes.
- 3. Taxes.** Prices do not include any state, local, use or excise taxes, duties or other charges now or hereafter imposed for which Seller may be liable as a result of the sale, use or delivery of the Products ("Taxes"). In the absence of proper evidence of exemption supplied by Buyer to Seller, Buyer will be responsible for any and all such Taxes.
- 4. Minimum Order Value. Minimum Order Quantity.** The minimum order value shall be \$100.00. Orders are subject to standard package sizes.
- 5. Payment Terms.** Subject to credit approval, unless otherwise specified on the quotation or invoice, payment terms shall be Net 30 days from the date of invoice. All payment shall be in US dollars. If Buyer fails to pay any amounts when due, Buyer agrees to pay Seller interest thereon at a periodic rate of the greater of the maximum percentage allowed by law or 1% per month. Buyer will also be responsible for all costs and expenses, including attorneys' fees incurred by Seller in collecting any overdue amounts or otherwise enforcing Seller's rights hereunder.
- 6. Shipping and Delivery.** Estimated delivery dates are provided in the quotation or acknowledgment, and shall not represent a fixed or guaranteed ship date. Unless otherwise agreed to by Seller, Seller reserves the right to ship at its convenience and/or ship and invoice for partial orders. All deliveries are FCA Seller's location (INCOTERMS 2010); freight may be pre-paid and added to invoice. Seller may stop delivery of Products in transit and/or withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform under these terms. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Seller shall not be responsible for any damages resulting from delay. If delivery is delayed due to any cause within Buyer's control, Seller may place the Products in storage at Buyer's risk and expense and for Buyer's account.
- 7. Title and Risk of Loss.** Title and risk of loss to the Products shall pass to Buyer upon delivery by Seller to the carrier in accordance with INCOTERMS 2010
- 8. Cancellations. Returns.** Orders may not be cancelled or modified once accepted by Seller unless agreed upon in writing by Seller. Any cancellation or return of Products shall be subject to Seller's return policies, and may be subject to Seller's cancellation or restocking fee. Seller's restocking policy is available upon request. Non-stock or special order items are non-cancellable and non-returnable. No returns shall be permitted without a Return Material Authorization (RMA).
- 9. Packaging. Allocation.** All Products are packaged in accordance with Seller's standard packaging, unless otherwise agreed upon by the parties. Additional or modified packaging requirements may result in an increase in price. In the event of inability for any reason to supply the total demand for the materials or Products specified, Seller may allocate its available supply among any or all purchasers, at its discretion and without liability for failure of performance that may result therefrom.
- 10. Tooling.** Any tooling required for an initial order will be billed to Buyer. Any Non-Recurring Engineering (NRE) charges invoiced by Seller shall not be deemed to grant any right, title or interest in any tools, dies, jigs, fixtures and items of like nature, or in any design, engineering, trade secret, patent or other proprietary rights embodied in the tooling, upon Buyer's payment of such charges and such items shall at all times be, and remain, the property of Seller.

**11. Warranty. Services.** Seller warrants that any services provided hereunder shall be performed in accordance with the standard of care with which such services are normally provided in the industry. If the services fail to meet the applicable industry standards, Seller will re-perform the services, provided that any and all issues are identified prior to Seller demobilizing from the work site. **Products.** Seller warrants that the Products will perform substantially in accordance with Seller's published specifications (or other applicable specifications as agreed upon in writing by Seller) and will be free from defects in material and workmanship, when subject to normal, proper and intended usage by properly trained personnel, for a period as specified in the Product's literature or, if none is specified therein, a period of one (1) year from the date of shipment (the "Warranty Period"). **Remedies.** During the Warranty Period, Seller agrees, at Seller's option, to repair or replace Products in order to ensure that the Products perform in accordance with the applicable specifications provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with a RMA. Buyer may then return the defective Products to Seller, with all costs prepaid by Buyer. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions herein. The warranty period on any repaired or replacement Products shall be the greater of the ninety (90) day repair warranty or one (1) year from the date the original Product was shipped. Any consumables, including but not limited to, bulbs and batteries, are excluded from warranty. Seller will have no obligation to re-perform services, and/or make repairs, replacements or corrections which are defective as a result of: (i) normal wear and tear, (ii) Buyer's misuse, fault or negligence, (iii) use of the Products in a manner for which they were not designed, or (iv) improper storage, maintenance and handling of the Products. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. REPAIR, SERVICE, OR ALTERATION OF THE PRODUCTS PERFORMED BY ANYONE OTHER THAN A SELLER AUTHORIZED PARTY, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS. THE OBLIGATIONS CREATED BY THIS WARRANTY TO REPAIR OR REPLACE A DEFECTIVE PRODUCT AND/OR RE-PERFORM SERVICES SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT OR SERVICE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. In no event will Seller's aggregate liability under warranty exceed the price paid by Buyer for the defective Product or Service. Products supplied by Seller that are obtained by Seller from a third party supplier are not warranted by Seller. At its discretion and to the extent Seller is permitted, Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the third party supplier.

**12. Intellectual Property.** Seller's specifications and design of the Products and any developments, improvements and intellectual property created under this order, whether made solely by a party or jointly by Buyer and Seller ("Intellectual Property") shall be owned by Seller. Buyer is not granted any interest, right or license with respect to any such intellectual property, except to the extent required to use the Products for the purpose for which it is specifically provided to Buyer in accordance with these terms and conditions.

**13. Software.** With respect to any software incorporated in or forming a part of the Products hereunder ("Software"), Seller and Buyer intend and agree that such Software is being licensed and not sold. Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in Software. Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use Software provided hereunder solely in connection with the Products and to use the related documentation solely for Buyer's own internal business purposes. This license will terminate when Buyer's lawful possession of the Products ceases, unless earlier terminated as provided herein. Buyer agrees to not sell, transfer, license, loan or otherwise make available in any form the Software to any third party. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the Software without Seller's prior written consent. Seller may terminate this license if Buyer fails to comply with any term or condition herein.

**14. Indemnity. By Seller.** Seller agrees to indemnify, defend and save Buyer from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Claims") for (i) personal injury or death or damage to real property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives in connection with the performance of services at Buyer's premises and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret. Notwithstanding the foregoing, Seller shall have no liability to the extent any such Claims are caused by either (i) the negligence or willful misconduct of Buyer or third party, (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) Seller's compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) service, installation or modification of any Product except by Seller. Buyer shall provide Seller prompt written notice of any Claims and Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section. Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b)

replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product or (c) if neither of the preceding is reasonably practicable, refund the purchase price for the Product. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN. **By Buyer.** Buyer shall indemnify, defend and hold harmless Seller from and against any and all Claims to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller.

**15. Limitation of Liability.** Notwithstanding anything to the contrary contained herein, Seller's aggregate liability for any claim of any kind shall not exceed the price paid by Buyer for the products giving rise to such claim. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, LIQUIDATED, OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING OUT OF SELLER'S PERFORMANCE (OR NON- PERFORMANCE) OF THE CONTRACT AND NOTWITHSTANDING WHETHER BUYER MAY HAVE BEEN ADVISED OR IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**16. Compliance with Laws. Export Laws.** Seller agrees to observe and comply with all applicable federal, state and local laws, rules, regulations, including but not limited to all applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Product or part of Product. Buyer shall not, without first obtaining any required license to do so from the appropriate U.S. government agency; (i) export or re-export any Product or part of a Product, or (ii) export, re-export, distribute or supply any Product or part of a Product to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. At Seller's request, Buyer will provide information on the end user and end use of any Product or part thereof exported or to be exported by Buyer. Buyer shall cooperate fully with Seller in any audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this section by Buyer or its employees, consultants, or agents.

**17. Custom Equipment or Systems.** Buyer acknowledges that any approvals and/or listings specified in Seller's proposal are limited to the specific scope and application set forth in the proposal, and may not cover or apply to any custom or special products or services which are outside the scope of Seller's proposal. Seller shall retain all proprietary rights in any and all technical data, designs or other information developed by Seller in the course of designing, developing and/or manufacturing custom products or systems.

**18. Radio Frequency-Based Equipment/Systems.** With respect to any Product or systems which incorporate radio frequency technology or applications, Buyer acknowledges the following: (a) Seller shall not be responsible for any communications path degradation caused by undisclosed obstacles or any other undefined RF restrictions; and (b) communications licenses are issued by the Federal Communications Commission and are granted based on a frequency recommendation determined and submitted by a frequency coordinator by industry class. Seller shall not be responsible for any RF interference from co-channel users or other foreign sources; and (c) Seller shall not be responsible for any failure or damage attributed to lightning, power surges, or other causes beyond its reasonable control.

**19. Miscellaneous.** (a) Any legal claim shall be controlled under the laws of the state of the Seller's primary place of business. Seller and Buyer agree to accept and be bound by the exclusive jurisdiction of the federal and state courts thereof. The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (b) In the event that any one or more provisions contained in these terms shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect. (c) Seller's failure to enforce or waiver of a breach of any provision contained herein shall not constitute a waiver of any other breach or of such provision. (d) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other. (e) Buyer may not assign or delegate any rights or obligations without Seller's prior written consent. (f) Seller reserves the right to place a Lien and notifications of liens should Seller not be paid for equipment and or services provided hereunder. (g) Buyer agrees that all pricing, discounts, data, design and technical information, operations/maintenance manuals, testing procedures, drawings, schematics and any other information regarding the Products or Seller's processes provided by Seller to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (a) keep such information confidential and not disclose such information to any third party, and (b) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public.

