



TERMS AND CONDITIONS

1. **QUOTATIONS AND ACCEPTANCE OF PURCHASE ORDERS.** The application presented with these Terms and Conditions is void unless accepted by Purchaser within 30 days from the date hereof, and it is subject to change upon notice and supersedes all previous quotations and agreements. All purchase orders are subject to written acceptance and confirmation by GBM Laser Cutting Services, LLC ("Seller"). Issuance of a purchase order by Purchaser or acceptance of the Products by Purchaser constitutes acceptance of the terms and conditions of this agreement, and any additional or different terms or modifications to this Contract proposed by Purchaser, whether in a purchase order or otherwise, are expressly rejected by Seller except for those terms and conditions related to Seller's Product prices, quantity, specifications, delivery schedules, and locations (collectively referred to as "this Contract"). Prior to our acceptance of your purchase order, quoted prices & delivery are subject to change without notice. All quotations, unless otherwise stated, are for immediate acceptance. Pricing on all reorders may be adjusted in accordance with prevailing economic conditions. All quotations are based upon your acceptance of over-run or under-run of each individual item not exceeding ten percent of quantities ordered - applies to laser cut parts only.

2. **DELIVERY.** Delivery shall be made F.O.B. Shipping point of shipment or Ex Works (Incoterms 2000) with respect to sales to international locations. Purchaser will take title and risk of loss to the Products upon delivery, and expenses shall thereafter rest upon Purchaser including without limitation all risks and expenses incurred in the storage and transportation of the Products as well as all insurance, fees, charges, taxes, customs duties and other governmental charges or levies and all other expenses whatsoever thereafter incurred with respect to the products. Delivery dates are estimated only and are subject to change. Seller may make delivery in installments, each of which may be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept remaining installments. Seller will use reasonable efforts to perform and deliver Products on time but is not liable for any expenses or damages incurred as a result of late delivery.

CANCELLATION: Orders may be canceled, only upon the condition that you assume immediate liability for, and make payment to us, for all charges incurred up to the time of cancellation by us including, but not limited to; materials, labor, and administrative costs associated with your order.

3. **PRICE.** Payment shall be made in U.S. dollars, net 30 days from the date of Seller's invoice. Prices do not include sales, use, excise, or similar taxes. All such taxes shall be paid by the Purchaser. Overdue payments shall bear interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law. Seller shall have the right, among other remedies, including the right of setoff, either to terminate this Contract or to suspend further deliveries under this Contract and/or other agreements with Purchaser in the event Purchaser fails to make any payment when due. Purchaser shall be liable for all expenses related to the collection of past due amounts, including attorneys' fees. Seller may require full or partial payment in advance of shipment or change credit or payment terms if, in Seller's opinion, the credit or financial condition of Purchaser is, or is about to become, impaired. If Purchaser requests delayed shipment, Seller may bill for Products when ready for shipment and charge reasonable daily storage fees. Seller retains a security interest in Products, equipment, and tooling until payment, and Purchaser will execute any paperwork required by Seller to perfect any such security interest.

4. LIMITED WARRANTY.

Seller warrants to Purchaser that on the date of delivery, the Products will (1) be free from defects in workmanship and material; (2) conform to the Seller's standard specifications and/or descriptions; and (c) be transferred to Purchaser with good title free of all liens and encumbrances. Seller will repair or replace free of charge, any Products which are defective and are returned to Seller at the expense of Purchaser provided that written notice of claim of defects is received within 30 days (1) month from the date of shipment. Accessories or products supplied by Seller but manufactured by others carry whatever warranty such manufacturers have conveyed to Seller.

5. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THE OBLIGATIONS UNDER THIS CONTRACT. THE TERM "CONSEQUENTIAL DAMAGES" INCLUDES, BUT IS NOT LIMITED TO, LOSS OF USE, LOSS OF REVENUE, AND COST OF CAPITAL. EXCEPT FOR PERSONAL INJURY OR DEATH DUE TO THE SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL DAMAGES THAT CAN BE AWARDED IN ANY CLAIM BY THE PURCHASER RELATING TO SELLER'S OBLIGATIONS UNDER THIS CONTRACT (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE), SHALL NOT EXCEED THE COMBINED TOTAL OF AMOUNTS PAID BY PURCHASER TO SELLER UNDER THIS CONTRACT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE PARTIES EXPRESSLY AGREE THAT THE ABOVE LIMITATIONS ON LIABILITY PROVISION SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IF IT IS FOUND THAT THE PURCHASER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

6. **FORCE MAJEURE.** Neither party will be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, civil commotion, terrorism, military authority, war, riot, fire, labor trouble or strikes, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, laws, regulations, order or actions, unforeseen circumstances, or causes beyond such party's reasonable control.

7. **GOVERNING LAW, JURISDICTION, AND VENUE.** THIS CONTRACT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REFERENCE TO THE CHOICE OF LAW PRINCIPLES THEREOF. THE CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED. SUBJECT TO THE PROVISIONS OF DISPUTE RESOLUTION BELOW, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS AND THE UNITED STATES DISTRICT COURT IN HOUSTON, TEXAS, AND HEREBY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING.

8. **DISPUTE RESOLUTION.** IN THE EVENT OF ANY DISPUTE OR DISAGREEMENT BETWEEN SELLER AND PURCHASER ARISING OUT OF OR RELATING TO THIS CONTRACT OR A PRODUCT ("DISPUTE"), SUCH DISPUTE, UPON THE WRITTEN REQUEST OF SELLER OR PURCHASER, SHALL BE REFERRED TO THE CHIEF FINANCIAL OFFICERS OF EACH PARTY OR THEIR RESPECTIVE DESIGNEES. THE CHIEF FINANCIAL OFFICERS OR THEIR RESPECTIVE DESIGNEES SHALL PROMPTLY MEET IN GOOD FAITH TO RESOLVE THE DISPUTE AND IF THEY DO NOT AGREE UPON A RESOLUTION WITHIN THIRTY (30) CALENDAR DAYS AFTER THE REFERENCE OF THE DISPUTE TO THEM, THEN SUCH DISPUTE, UPON WRITTEN NOTICE FROM ONE PARTY TO THE OTHER OF ITS INTENT TO ARBITRATE ("ARBITRATION NOTICE"), SHALL BE SUBMITTED TO AND SETTLED EXCLUSIVELY BY FINAL AND BINDING ARBITRATION IN LIEU OF ANY JUDICIAL PROCEEDING; PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS SECTION SHALL PRECLUDE ANY PARTY FROM SEEKING OR OBTAINING FROM A COURT OF COMPETENT JURISDICTION: (A) INJUNCTIVE RELIEF, OR (B) EQUITABLE OR OTHER JUDICIAL RELIEF TO SPECIFICALLY ENFORCE THE PROVISIONS OF THIS CONTRACT OR TO PRESERVE THE STATUS QUO PRIOR TO THE EVENT(S) LEADING TO THE DISPUTE. ARBITRATION SHALL BE CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION IN HOUSTON, TEXAS BEFORE A SINGLE ARBITRATOR IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION EXISTING AT THE DATE OF SUBMISSION OF THE DISPUTE TO ARBITRATION. ANY ARBITRATION AWARD SHALL BE BINDING AND ENFORCEABLE AGAINST THE SELLER AND PURCHASER AND JUDGMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

9. **WAIVER, ENTIRE AGREEMENT, SEVERABILITY.** THE FAILURE OF EITHER PARTY TO ENFORCE ANY RIGHT OR REMEDY PROVIDED IN THIS CONTRACT OR BY LAW ON A PARTICULAR OCCASION WILL NOT BE DEEMED A WAIVER OF THAT RIGHT OR REMEDY ON A SUBSEQUENT OCCASION OR A WAIVER OF ANY OTHER RIGHT OR REMEDY. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO ITS SUBJECT MATTER AND SUPERSEDES ALL PRIOR ORAL OR WRITTEN REPRESENTATIONS OR AGREEMENTS BY THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF THIS CONTRACT. THIS CONTRACT MAY NOT BE MODIFIED UNLESS IN WRITING AND SIGNED BY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES. ANY PROVISION FOUND INVALID OR UNENFORCEABLE WILL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISION AND THE INVALID PROVISION MAY BE JUDICIALLY MODIFIED TO THE EXTENT ENFORCEABLE.

10. **PATENT INFRINGEMENT:** If any of the goods are to be manufactured to your specifications, you agree to indemnify us and our successors and assigns, against all liabilities and expenses resulting from any claim of infringement of any patent in connection with the production of such goods.

11. **ONE-YEAR LIMITATION.** Neither party may bring a claim or action arising out of or related to this Contract, including any claim of fraud or misrepresentation, more than one (1) year after the cause of action accrues.