



GIC COMPANIES

12575 US-31 North, Charlevoix, MI 49720

Phone: 231.237.7000

Fax: 231.437.3301

GIC COMPANIES Terms and Conditions of Sale

Custom Fabrication Terms and Conditions of Sale

All sales of products and services by GIC Manufacturing, LLC and GIC, LLC, and any of their subsidiaries or affiliates ("Seller") are conditional on acceptance of these terms and condition by the buyer named on Seller's quotation, acknowledgement, shipper or invoice ("Buyer"). In these Terms and Conditions of Sale ("Terms"), any products built and/or sold by Seller to Buyer are referred to below as "goods," and any services sold by Seller to Buyer are called "services."

- 1. Controlling Terms; Modification of Terms.** If Buyer has not otherwise expressly agreed to these Terms, then Buyer's acceptance of delivery of, or payment for, goods or services shall constitute Buyer's agreement to these Terms in their entirety. These Terms shall govern all sales of goods and/or services by Seller to Buyer and, except as expressly provided herein, shall supersede the terms and conditions contained on any purchase order or other document submitted to Seller by Buyer. All other terms and conditions contained in any other communication between Buyer and Seller, oral or written, including, without limitation, Buyer's purchase order, other than the identity of and quantity of the item(s) being purchased, are null and void and are hereby rejected and shall not be binding upon Seller. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon Seller unless made in writing and signed on its behalf by an officer of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement, purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. Any proposed modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein.
- 2. Pricing.** Seller shall have the right to increase its prices at any time without notice, subject to any other written agreement between Seller and Buyer concerning pricing. Stenographical and clerical errors are subject to correction.

3. **Payment Terms.** Payment terms are as specified in Seller's quotation, acknowledgement, or invoice. If Buyer fails to make any payment to Seller when due, Buyer's account(s) with Seller shall become immediately due and payable without notice or demand. Buyer acknowledges and agrees that it will be charged one and one-half percent (1½%) per month as a service charge on any unpaid balance that has not been paid by the date due, and Buyer agrees to promptly pay said service charge and interest. Buyer is responsible for any and all fees, costs, and expenses incurred by Seller associated with the collection of any delinquent invoices or monies due to Seller. If at any time Seller determines that Buyer's financial condition or credit rating does not justify a sale on credit or if Buyer is at any time in default in any indebtedness or obligation that Buyer owes to Seller, then Seller may require advance payment or may ship goods C.O.D. Unless otherwise agreed in a writing signed by Buyer and Seller, all payments shall be in U.S. Dollars.
4. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Buyer grants to Seller a security interest in and the right of repossession of the goods, including a purchase money security interest, until full and final payment for the goods and services (including collection costs) has been made. In the event of default in any payment due from Buyer to Seller, the full amount unpaid shall be due and payable on demand, and Seller may at Seller's option either (i) recover the full amount unpaid or repossess the goods and all additions thereto, wherever found, free from all claims whatsoever; or (ii) treat this contract as void and retain all payments made as rent for the use of goods. The goods or any part thereof, shall not be considered a fixture, or be incorporated into any real property by reason of its attachment thereto, and may be separated from any real property, as well as personal property, for the purpose of repossession. Seller shall not be liable to Buyer nor shall Seller be subject to any legal proceedings, criminal or civil, for Seller's acts in such repossession. Seller shall not be liable to Buyer for the repayment of any money paid as part payment for the goods. Buyer shall not grant any right or security interest in or to the goods prior to payment in full to Seller for all goods and services without prior written consent of Seller. Except as otherwise provided herein or required by law, pursuit of any right reserved herein or granted by law shall not preclude or waive the pursuit of any other such right.
5. **Delivery and Risk of Loss.** Unless Seller agrees otherwise in writing, Seller or the manufacturer of the goods ("Manufacturer") shall deliver the goods EXW (Incoterms 2010) Seller's facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped, except that if Seller's facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, and Buyer's facility are both located in the United States, then Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Seller's facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped. The risk of loss of the goods shall pass to Buyer upon identification of the goods to the contract between Buyer and Seller, whether such identification occurs at Seller's facility or a point of origin other than Seller's facility. Shipping, delivery, and performance dates are estimates only, and time is not of the essence. Seller or Manufacturer may ship all the goods at one time or in portions from time to time. Seller shall have the right, but no obligation, to determine the method of

shipment and routing of the goods, unless otherwise agreed to by Seller in writing. If Seller is not able to finish or deliver the goods to Buyer, or to perform the services, on time because of anything Seller cannot control (such as casualty, labor trouble, accidents or unavailability of goods, supplies or transportation), then the estimated delivery or performance time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay. Back orders will be shipped as received unless Buyer and Seller agree to different terms.

6. **Taxes.** Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not Seller invoices Buyer for them. If Buyer does not provide Seller an appropriate sales and use tax exemption certificate with respect to Buyer's purchase of the goods and if Seller is required by a governmental entity to collect and remit sales or use tax with respect to Seller's sale of the goods to Buyer, then Seller's invoice to Buyer for the purchase price shall include, and Buyer shall pay to Seller, the full amount of that tax.

7. **Warranties.**

- a) There is no warranties for custom fabrication. Custom items are sold as is.
- b) Seller will not pay for any of Buyer's labor costs or charges for correcting defects or making additions nor will Seller accept any returned goods for credit. Seller shall furnish to Buyer instructions for the Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the Products. Any statements to the contrary are hereby rendered null and void unless expressly agreed to in writing by an authorized officer of Seller.
- c) Seller makes no warranties, express or implied, for any goods not manufactured or developed by Seller. Seller shall assign to Buyer any warranty for such goods extended to Seller by the Manufacturer and Buyer shall look solely to such warranty in the event of a claim or action relating to such goods.

8. **Limitation of Liability.**

- a) **SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES ON ANY CUSTOM BUILD GOODS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO THE SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS.**
- b) **SELLER SHALL NOT HAVE ANY TORT LIABILITY WITH RESPECT TO ANY OF THE GOODS AND/OR SERVICES SUPPLIED UNDER THESE TERMS AND SHALL NOT BE LIABLE TO BUYER OR ANY OTHER THIRD PARTY FOR SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR OTHER SPECIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO LABOR BACKCHARGES, LOST PROFITS OR OTHER FINANCIAL DAMAGE, THAT ARISE FROM ANY DEFECT IN THE GOODS AND/OR SERVICES PROVIDED HEREUNDER, OR DELAY, NON-DELIVERY OR OTHER BREACH OF THIS**

AGREEMENT. Buyer expressly agrees that Seller has No Liability to Buyer and/or any third party once the Product has been taken possession of the goods from the Seller.

- c) **BEFORE USE OF THE PRODUCT IN ANY APPLICATION. BUYER IS SOLELY RESPONSIBLE FOR HAVING THE FITNESS OF DESIGN AND ALL MATERIALS PLUS MANUFACTURING METHODS USED IN THE GOODS APPROVED FOR THE INTENDED APPLICATION AND USE OF THE GOODS. BEFORE USE IN ANY APPLICATION WHERE PRODUCT FAILURE COULD CAUSE DEATH, PERSONAL INJURY OR PROPERTY DAMAGE, THE GOODS SHOULD BE INSPECTED AND APPROVED FOR USE BY APPROPRIATE APPROVAL AGENCIES BEFORE USE IN SAID APPLICATION.**
9. **Permits and Compliance.** Seller is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the goods. Seller does not make any promise or representation that the goods will conform to any law, ordinance, regulation, code or standard.
10. **Safety Features.** Buyer shall install and operate the goods properly and according to Seller's or Manufacturer's operating instructions, if any, and shall not remove or change any safety device, warning or operating instructions that Seller or Manufacturer placed on the goods. **Buyer shall place/install on the goods all safety devices and warnings that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.**
11. **Toxic Chemicals in Goods.** Some of the goods sold by Seller may contain chemicals and materials deemed potentially harmful under federal and state law. Whether or not such good complies with the law may depend on how and where the good is ultimately used. Seller does not represent that its goods meet all legal requirements for all uses in all places. If Buyer intends to use a good in such a manner that its chemical makeup is regulated by law, then Buyer agrees to notify Seller in writing of that intended use and the law that applies and request that Seller supply a compliant good. Seller shall not be responsible or liable for any losses or damages sustained by Buyer or any other party as a result of the misuse, misapplication, or mislabeling of the goods by Buyer or such other party in violation of applicable law. This paragraph shall survive the termination of the agreement created by these Terms indefinitely.
12. **Components of Another Product.** If any of the goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer or for a third party, then Buyer shall (a) obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (b) cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (c) place on the product all safety devices and warnings, and furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

- 13. Intellectual Property and Confidentiality.** Unless Seller agrees otherwise in writing, All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller or Seller's supplier creates or develops in the course of Seller's or Seller's supplier's design, development or manufacture of the goods or performance of the services and all drawings and specifications that Seller provides to Buyer ("Intellectual Property") shall be Seller's sole property, and Buyer assigns, and agrees to assign, to Seller or Seller's supplier all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller's business, operations or activities, except to the extent necessary for Buyer to use the goods or services.
- 14. Cancellation.** Buyer does not have any right to cancel its agreement to buy the goods or services from Seller. If, however, Seller agrees in writing to permit cancellation, Buyer agrees that such cancellation will be subject to restocking fees, if any. If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller, then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell goods or services to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.
- 15. Indemnity and Reimbursement.** Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including consequential and incidental damages and actual attorney fees, that Seller incurs as a result of Buyer's breach of any of Buyer's obligations under these Terms, any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from or in connection with the sale, transport, installation or use of the goods or Seller's supplier's manufacture of the goods, or performance of the services, to Buyer's specifications. Further, Buyer shall flow through to Seller any and all indemnity offered by Buyer's customer(s), if any, including any nuclear indemnity afforded under the Price-Anderson Act, 42 U.S.C. §2210 *et seq.* If Buyer brings a claim against Seller arising out of or relating to this Agreement or the goods or services, and Seller ultimately prevails or Buyer eventually elects not to further pursue the claim, then Buyer shall reimburse Seller for all expenses incurred by Seller in connection with such claim, including but not limited to actual attorney fees.
- 16. Seller's Rights.** Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right. No waiver of any term or condition hereunder shall be valid unless in writing and signed by an authorized representative of Seller.
- 17. Time For Bringing Action.** Any action that Buyer brings against Seller for breach of this Agreement or for any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery or the services must be brought within one year after the cause of action accrues.

18. **Applicable Law.** This agreement between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in either Charlevoix or Traverse City, Michigan, that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.
19. **Complete Agreement; Amendment.** Seller's quotation, acknowledgment, and/or invoice, and these Terms, contain the entire agreement between Buyer and Seller as to the subject matter hereof. Any change in this agreement must be in a writing signed by an authorized officer of Seller.

GIC, LLC

GIC Manufacturing, LLC

12575 US 31 N

Charlevoix, MI 49720

231-237-7000

Custom Fabrication Terms and Conditions of Sale

Rev. 4/2016