

# GT Controls LLC

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. Applicability

These terms and conditions of sale (the “**Terms**”), together with any terms in the relevant quotation, are the sole and exclusive terms and conditions which shall apply to the sale of the goods or services (collectively “**Goods**”) referenced in any quotation, proposal, order acknowledgement or purchase order from the Seller to Buyer unless a written contract signed by both parties concerning the Goods exists, in which case the terms of such contract shall govern in the event of any conflict. “**Seller**” means GT Controls LLC and/or its affiliates and “**Buyer**” means the purchaser of Goods from Seller. In the event of any conflict between terms in a quotation by Seller and these Terms, the conflicting terms in the quotation shall prevail. The relevant quotation and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties, communications and any of Buyer’s general terms and conditions of purchase, both written and oral. The sale of Goods by Seller is expressly conditioned on assent by Buyer to this Agreement and any additional or different terms or conditions in documents provided by Buyer relating to such sale shall not apply to such sale, are hereby objected to by Seller and shall be of no force or effect. **Your placement of a purchase order or acceptance of Goods shall constitute your acceptance of this Agreement.**

### 2. Delivery Terms

Any dates or schedules which may be specified for the delivery of the Goods are only estimates. The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order and any information requested by Seller, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit. Seller shall deliver the Goods to Seller’s location (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 30 days of notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading and shipping costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. All prices are, and Seller shall make delivery, as per Incoterm Ex Works (Delivery Point), Incoterms 2010.

### 3. Title and Risk of Loss

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on, and security interest in, and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions, thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Arizona Uniform Commercial Code.

#### 4. Inspection and Rejection of Nonconforming Goods

Buyer shall inspect the Goods and notify Seller in writing of any Nonconforming Goods within 10 days of receipt at the Delivery Point (the “**Inspection Period**”). “**Nonconforming Goods**” means only the following: product shipped is different than identified in Buyer’s purchase order. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion: (i) replace such Nonconforming Goods, or (ii) credit or refund the Price, together with any reasonable shipping expenses incurred by Buyer. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility designated by Seller. Buyer agrees that the remedies in this Section are Buyer’s exclusive remedies for Nonconforming Goods. With the exception of Nonconforming Goods, Buyer has no right to return any Goods to Seller for exchange or credit.

#### 5. Price

Buyer shall purchase the Goods from Seller at the prices (the “**Prices**”) set forth in the relevant quotation to Buyer. Any Price(s) and delivery schedule(s) quoted only apply to quantities quoted. All Prices are exclusive of all taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes. Seller reserves the right to invoice for Goods at completion of assembly and testing.

#### 6. Payment Terms

Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller’s invoice or delivery, whichever is earliest. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any payments, including, without limitation, reasonable attorneys’ fees and costs. In addition to all other remedies available under these Terms or at law, Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder.

#### 7. Changes in Design

Seller and/or its suppliers, in their sole discretion, shall be entitled to make any changes in the design and fabrication of the Goods.

#### 8. Products Made to Buyer’s Specifications

With respect to Goods manufactured, and/or designed to Buyer’s own specifications or made with parts supplied by Buyer (collectively, “**Buyer Goods**”), Seller makes NO WARRANTY WHATSOEVER, and Buyer shall, at its own expense, defend and save Seller harmless from and against any claim, suit, expense or otherwise, including, without limitation, claims for infringement, which shall be asserted or brought against Seller by reason of its manufacture or sale of such Goods.

#### 9. Limited Warranty

With respect to Goods manufactured by Seller which are not: (i) Buyer Goods or (ii) Third Party Products (defined below), Seller warrants that such Goods will materially: (a) conform to the relevant drawings and specifications accepted by Seller, provided however, that product dimensions and quantities are excepted; and (b) be free from significant defects in Seller’s

workmanship for twelve (12) months from date of delivery (collectively, the “**Warranty Period**”). Seller’s liability hereunder, for breach of warranty, negligence or otherwise is limited, at the sole discretion of Seller, to: (a) the replacement at the Point of Delivery of any Goods found to be defective or not to conform to the specifications set forth herein; (b) to the repair of such Goods; or (c) to the refund or crediting to the Buyer of the price of such Goods.

10. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9 SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY: (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

#### 11. Third Party Parts or Goods

Products manufactured by a third party (“**Third Party Products**”) may constitute, contain, be contained in, be attached to, be incorporated into or sold with the Goods and Seller makes no representations or warranties with regard to any Third Party Products. Third Party Products are NOT covered by the warranty in Section 9. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO ANY THIRD PARTY PRODUCTS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. For Third Party Products Seller will: (a) use commercially reasonable efforts to obtain assignable warranties for such parts from such third party suppliers, which it will pass-through or assign to Buyer; and (b) Seller will cooperate with Buyer in the enforcement of such warranties.

#### 12. Warranty Limitations

Seller shall not be liable for a breach of the warranty set forth in Section 9 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 30 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer returns such Goods to Seller’s place of business at Seller’s cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the Goods are defective. Seller shall not be liable for a breach of the warranty set forth in Section 9 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

#### 13. Liability Limitation

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS OR SALES OF GOODS

HEREUNDER, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER. FURTHERMORE, IN NO EVENT SHALL SELLER'S LIABILITY ARISING OUT OF OR RELATED TO THE SALE OF A GOOD HEREUNDER EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER IN RESPECT OF SUCH GOOD.

#### 14. Indemnification

Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, shareholders, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by an Indemnified Party, relating to any claim of a third party or Seller arising out of or occurring in connection with the products or services purchased from Seller or Buyer's negligence, willful misconduct or breach of this Agreement. Buyer shall not enter into any settlement without Seller's or Indemnified Party's prior written consent.

#### 15. Compliance with Law

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

#### 16. Intellectual Property Rights

Buyer acknowledges and agrees that: (a) any and all of Seller's Intellectual Property Rights are the sole and exclusive property of Seller or its licensors; (b) Buyer shall not acquire any ownership interest in any of Seller's Intellectual Property Rights under this Agreement; (c) Buyer shall use Seller's Intellectual Property Rights solely for purposes of using the Goods under this Agreement and only in accordance with this Agreement and the instructions of Seller. "**Intellectual Property Rights**" means all industrial and other intellectual property rights comprising or relating to: (i) patents; (ii) trademarks; (iii) internet domain names; (iv) works of authorship, expressions, designs and design registrations, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (v) trade secrets; (vi) semiconductor chips, mask works and the like; and (vii) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising anywhere in the world. Further, Buyer shall not: (a) take any action that might interfere with any of Seller's rights in or to Seller's Intellectual Property Rights, including Seller's ownership or exercise thereof; (b) challenge any right, title or interest of Seller in or to Seller's Intellectual Property Rights; (c)

misappropriate any of Seller's trademarks for use as a domain name without prior written consent from Seller. Buyer shall also comply with any restrictions concerning any third party software provided by Seller to Buyer as part of the Goods or services.

#### 17. Amendment & Waiver

These Terms may only be amended in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party. Seller's authorized representatives are limited to branch managers and c-level executives. No single or partial exercise of any right, remedy, power or privilege ("**Right**") hereunder precludes any other or further exercise thereof or the exercise of any other such Right.

#### 18. Force Majeure

The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller.

#### 19. Governing Law & Jurisdiction

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction). Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Arizona in each case located in the City of Phoenix, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

#### 20. Severability

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

#### 21. Miscellaneous

Any claim or action arising hereunder or in connection with the sale evidenced hereby, whether in contract, tort or otherwise, other than an action for failure to make payment must be commenced within one (1) year from the date the claim arises or the cause of action accrues.

#### 22. No Third-Party Beneficiaries

This Agreement benefits solely the parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

### 23. Confidential Information

All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party.