GS SYSTEMS, Inc. and Swan-Black ("GS") Terms and Conditions of Sale

PLEASE READ THESE TERMS AND CONDITIONS OF SALE VERY CAREFULLY.

THE TERMS AND CONDITIONS OF SALE ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY FORMS DELIVERED BY CUSTOMER ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS AND SERVICES DESCRIBED IN GS'S INVOICE OR OTHER GS DOCUMENTATION, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS OF SALE UNLESS CUSTOMER AND GS HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

Important Information about These Terms and Conditions of Sale

These terms and conditions of sale constitute a binding contract between Customer and GS. Customer accepts these terms and conditions of sale by making a purchase, placing an order or otherwise shopping (if applicable) on GS's Website (the "Site"). These terms and conditions of sale are subject to change without prior notice, except that the terms and conditions of sale posted on the Site at the time Customer initially places or modifies an order will govern the order in question.

These terms and conditions of sale constitute the entire agreement between Customer and GS relating to the terms and conditions of sale of products and services on the Site or via purchase order, verbal instruction or electronic instructions via e-mail. Customer consents to receiving electronic records or e-mail, which may be provided via a Web browser or e-mail application connected to the Internet.

Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. Customer agrees that the terms and conditions of sale contained hererin and in GS's invoice or other documentation will control. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these terms and conditions of sale or any purchase order or invoice related thereto.

Governing Law

THESE TERMS AND CONDTIONS OF SALE AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT IN WAUKESHA COUNTY, WISCONSIN AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN WAUKESHA AND/OR MILWAUKEE COUNTY, WISCONSIN AND SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING.

Title; Risk of Loss

If Customer provides GS with Customer's carrier account number or selects a carrier other than a carrier that regularly ships for GS, title to products and risk of loss or damage during shipment passes from GS to Customer upon shipment from GS's facility. For all other shipments, title to products and risk of loss or damage during shipment passes from GS to Customer upon receipt by customer. Title to software will remain with the applicable licensor(s). GS retains a security interest in the products until payment in full is received. Customer will be responsible for all shipping and related charges. Unless otherwise provided for, delivery shall be made F.O.B. GS or shipping point of origin in the case of direct shipment from manufacturer.

Export Sales

If this transaction involves an export under the Export Administration Regulations, the commodities, technology and/or software sold or distributed under these terms and conditions of sale exported from the United States by GS were exported in accordance with the Export Administration Regulations. Diversion, use, export or re-export contrary to United States Law is prohibited. The commodities, technology and/or software sold or distributed under these terms and conditions of sale my not be exported or re-exported to Cuba, Iran, Iraq, Libya, Sudan, North Korea or Syria or to entities and persons that are ineligible under United States law to receive United States commodities, technology and/or software. In addition, manufacturers' warranties for exported products may vary or may be null in void for products exported outside the United States.

Warranties

Customer understands that GS is not the manufacturer of the products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not GS. In purchasing the products, Customer is relying on the manufacturer's specifications only and is not relying on any statements, specifications in brochures, photographs or other illustrations representing the products that may be provided by GS. In connection with services, neither affiliates of GS nor third party service providers are agents of GS and GS has no obligation or liability arising from any services performed by or any warranty, if any, made by, such service providers. GS AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS SOLD OR SERVICES PROVIDED BY THIRD PARTIES OR AFFILIATES OF GS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER DOES NOT AFFECT THE TERMS OF THE MANUFACTURER'S WARRANTY, IF ANY.

Limitation of Liability

NEITHER GS NOR ITS AFFILIATES WILL BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES. EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. NEITHER GS NOR ITS AFFILIATES WILL BE LIABLE FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE FOR THE PROVISION OF SERVICES BY THIRD PARTIES. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES PROVIDED DIRECTLY BY GS OR ITS AFFILIATES, NEITHER GS NOR ITS AFFILIATES ARE LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE DOLLAR AMOUNT PAID BY THE CUSTOMER FOR THE PRODUCT(S) OR SERVICE(S) GIVING RISE TO THE CLAIM.

GS will not be responsible for any delays in delivery which result from any circumstances beyond its control, including without limitation, product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, general insurrection, acts of God or acts of any government or agency.

Third Party Services

Customer acknowledges and agrees that, in some instances, GS SYSTEMS, LP and its affiliates are resellers of services and are not the provider of those services. In those cases, the third party service provider is the only party responsible for providing services to Customer. In those cases, Customer will look solely to the third party service provider for any loss, claims or damages arising from or relating to the purchase or provision of such services. Customer hereby releases GS and its affiliates from any and all claims arising from or relating to the purchase or provision of any such services by third party service providers. Services may be subject to tax. All amounts, including taxes, associated with third party services are being collected by GS or its affiliates solely in the capacity as an independent sales agent.

GS Employees Engaged in Performing Contracted Services

Customer of GS billable service acknowledges that GS employees are critical to the ongoing delivery of the support and service needs of our customers and represent a significant investment on the part of GS. Client agrees not to solicit, employ or otherwise engage GS employees. If the client fails to comply with this provision, the client further agrees that remedial compensation in the amount of one hundred percent (100%) of the former employee's annual compensation will be paid to GS under the Terms and Conditions contained herein.

Orders; Payment Terms; Interest; Taxes

Orders are not binding upon GS until accepted by GS. Terms of payment are within GS's sole discretion. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice. GS may invoice parts of an order separately. Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1 1/2%) per month or at the highest rate allowed by law. Customer is responsible for, and will indemnify and hold GS harmless from, any applicable sales, use or other taxes associated with the order. Customer must claim any exemption from tax at the time of purchase and provide the necessary supporting documentation. Any sales, use or other applicable tax is based on the location to which the order is shipped. In the event of a payment default, Customer will be responsible for all of GS's costs of collection, including court costs, filing fees and attorney's fees.

Cancellation, Modification of Order or Return of Product

Product orders canceled or modified prior to shipment to the Customer may be subject to re-stock or modification charges at both the GS level and the manufacturer level. Customer agrees to pay any and all re-stock or modification charges passed through, without mark-up from the manufacturer level to GS, plus GS charges of $ 150 per line item.

Returns of product are generally not permitted under any circumstance except when received in a damaged state, at which time the Customer should refuse delivery, damage should be noted on the carrier delivery record and contact with GS be made immediately for a carrier inspection and pick up of damaged products. Notification to GS of damaged products WITHIN THE FIRST 10 DAYS of receipt is required. Timely receipt of this information is necessary for GS to file a damage claim.

If the Customer has a valid and legitimate reason for wishing to return a product after taking delivery, contact GS Customer Service and request a Return Merchandise Authorization (RMA). If granted, customer is responsible for all shipping charges for product being returned to GS. Product must be returned 100% complete, including all packing materials, blank warranty cards, accessories and any other documentation included with the original shipment. RMA approval at inspection is contingent upon, among other things, the products being returned 100% complete in their original form. If returned product is being replaced or exchanged for different product, products will be shipped by GS to Customer using the same shipping method as was used by Customer to ship the original products back to GS. PRODUCT RETURNED TO GS WITHOUT PROPER RMA AUTHORIZATION WILL BE REFUSED AT DELIVERY.

Reschedule of Training, Cancellation of Technical Services Agreements in Excess of $ 20,000

Customer is responsible and will be billed in full for training class reservations as of 7 days prior to the first day of class. If the Customer is unable to attend class, they may reschedule in a future class without penalty.

Signed Technical Services agreements greater than $ 20,000 are only cancel-able up to 50% of their original agreed to valuation if and only if canceled prior to the delivery of any performance against the agreement.

Miscellaneous

This agreement may not be assigned or otherwise transferred by Purchaser without prior consent of GS and any such assignment of transfer without such prior written consent shall be null and void and no force or effect whatsoever. GS failure to insist in one of more instances, upon the performance of any terms of this agreement shall not be construed as a waiver, or relinquishment of its right to such performance or the future performance of such term or terms and Customer's obligation with respect thereto shall continue in full force and effect.

LAST UPDATE: 2/2022