



## **Commercial Notes – Terms and Conditions**

- 1. Stock levels must be maintained at all times as agreed in this business plan in order to be able to be eligible for the discount as stated in the plan.**
- 2. For orders less than \$500.00 net, eligible discount will be reduced by 10% from the discount as stated in the business plan.**
- 3. Standard Incoterms are FOB (Free on Board) Shipping Point with freight terms of: Collect, Third Party Bill, or Prepay and Add.**
- 4. For drop shipments, eligible discount will be reduced by 10% from the discount as stated in the business plan.**
- 5. Standard payment terms are Net 30.**
- 6. Expedited requests for standard stock product will be charged a premium of \$50 which will expedite the order from PO receipt to 'ready to ship', as soon as possible, within 24 hours. The expedite fee excludes freight term changes or freight charges.**
- 7. Minimum order value is \$100 net, plus any premium charges, if applicable.**
- 8. Any special pricing needs will be subject to review and require the approval of the National Sales Manager or General Manager.**

**Confirmation of Terms of Sale - Gestra USA, Inc. - June 2016**

**GESTRA USA, INC. TERMS OF SALE**

**[NOTICE: THIS AGREEMENT IS SUBJECT TO THE SOUTH CAROLINA ARBITRATION ACT]**

**1. Applicability.** These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") by Gestra USA, Inc. ("Seller") to a person or firm who purchases Goods from the Seller ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The accompanying confirmation of sale ("Confirmation") and these Terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order ("Order") or such terms. Fulfillment of an Order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Materially different or additional terms contained in an Order are rejected and not binding on Seller unless accepted in writing by Seller. Orders must be sent to the Seller's designated office and are valid only after receipt of this Confirmation.

**2. Payment.** The price, taxes, and charges as stated on the Confirmation and/or invoice shall be paid before shipment or according to Buyer's account credit established with Seller. Title and possession are delivered Ex Works with packing list, and related documentation. Payments may be made only to Seller's designated address and account and not to company representatives. Any other invoices subsequently rendered by Seller that are paid after due date will be assessed a late payment charge of 1.5% per month. Offsets are not allowed. Orders are subject to a \$100 minimum charge. Returns must be processed with a Return Material Authorization number ("RMA#") procedure in effect at time of the return.

**3. Taxes and Assessments.** Prices quoted exclude assessments, sales, use, value added or excise taxes, freight, duties, imposts, and other charges which are the sole liability of Buyer. If Buyer asserts no sales tax is due, Buyer shall furnish Seller before shipment a tax exemption certificate for the jurisdiction where the sale deemed made.

**4. Delivery, Title, Shipment and Risk or Loss.** Date of delivery requested in the Order may be modified by the Acknowledgment or by occurrence of a Force Majeure event. Risk of loss passes on delivery Ex Works. Unless otherwise stated in writing by Buyer: (i) Seller may select packing, shipment, routing and carrier; (ii) goods will be packaged according to industry standards and special packaging or designated carriers will be subject to additional charges; (iii) Buyer shall inspect goods before packing and within 15 days of receipt; and (iv) quantities which do not vary more than 10% shall be deemed to comply with the Order (excludes engineered package solutions). If Buyer wrongfully fails to accept a shipment after placing an order, Buyer shall be deemed in default of the Terms and the goods may be held at Buyer's expense in a third party facility and disposed per applicable law without prejudice to Seller's remedies. Special Packaging requested by Buyer remains the property of Seller and is recoverable by Seller at Seller's expense. Buyer shall notify Seller of ship arrival at the port of debarkation and entry and goods must be inspected in 30 days thereafter.

**5. Force Majeure.** Seller shall not be responsible for any delays or non-performance caused by strikes, accidents, embargoes, fire, floods, inability to obtain materials, labor or services, conditions arising from government orders or regulations, war or national emergency, Acts of God, and any other similar events which are deemed beyond Seller's reasonable control as events of Force Majeure. Buyer may not refuse delivery on grounds of commercial frustration of purpose or impracticability.

**6. Security Interest.** 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 (including in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessories 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. Buyer agrees Seller may record its interest on public records evidencing such interest of Seller. Buyer shall, on request of Seller, execute any instrument required to perfect, maintain or enforce such security interest. Seller shall release such security interest upon payment of the purchase price in full by the Buyer.

**7. LIMITED WARRANTY AND REMEDY. SELLER WARRANTS TO THE BUYER THAT FOR A PERIOD OF 12 MONTHS FROM THE DATE OF SHIPMENT, ITS GOODS WILL MATERIALLY CONFORM TO SELLER'S SPECIFICATIONS FOR SUCH GOODS AND SUCH GOODS WILL BE FREE FROM MATERIAL DEFECTS IN WORKMANSHIP AND MATERIALS. WARRANTY CLAIMS MUST BE MADE IN WRITING AND WITHIN 20 DAYS AFTER DELIVERY BY THE CARRIER OR DISCOVERY OF THE DEFECT AND WITHIN THE WARRANTY TERM ACCORDING TO SELLER PROCEDURES EXISTING AT THE TIME OF THE CLAIM. THE WARRANTY PERIOD CAN BE EXTENDED FOR A FEE. ANY AGREED EXTENSION SHALL BE CONFIRMED IN THE SELLER'S CONFIRMATION. WARRANTY CLAIMS SHOULD BE SENT TO SELLER'S ADDRESS TO OBTAIN A RMA #. IN EVENT OF A VALID WARRANTY CLAIM, SELLER MAY, IN ITS SOLE DISCRETION, EITHER (i) REPAIR OR REPLACE THE RETURNED GOODS (OR THE DEFECTIVE PART) OR (ii) CREDIT OR REFUND THE PRICE OF SUCH GOODS AT THE PRO RATA CONTRACT RATE PROVIDED THAT, IF SELLER SO REQUESTS, BUYER SHALL, AT SELLER'S EXPENSE, RETURN SUCH GOODS TO SELLER. [PRODUCTS MANUFACTURED BY A THIRD PARTY MAY BE CONTAINED IN, INCORPORATED INTO ATTACHED TO OR PACKAGED TOGETHER WITH THE GOODS. SUCH THIRD PARTY PRODUCTS ARE NOT COVERED BY THE WARRANTY SET OUT IN THIS SECTION 7.] EXCEPT FOR THE WARRANTY SET OUT IN THIS SECTION 7, ALL OTHER WARRANTIES AND REMEDIES, EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS OR MERCHANTABILITY. SELLER SHALL NOT BE LIABLE FOR A BREACH OF WARRANTY IF: (i) BUYER MAKES ANY FURTHER USE OF THE GOODS AFTER GIVING NOTICE TO SELLER OF AN ALLEGED DEFECT OR (ii) THE DEFECT ARISE 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 THE SELLER. THE REMEDIES SET FORTH IN THIS SECTION 7 ARE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.**

**8. LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, 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, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HERUNDER. The limitation of liability set forth in this Section 8 shall not apply to (i) liability resulting from Seller's willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.**

**9. Intellectual Property.** The Buyer acknowledges that the intellectual property rights in the Goods and any materials prepared by the Seller or on its behalf which relate to the Goods and their development (including, without limitation, drawings, designs, samples, models and similar items) (the "Goods Materials") are the property of the Seller or the third party manufacturers of the Goods (as applicable). The Buyer shall not use or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trade mark or trade name which the Seller owns or claims rights in anywhere in the world. In the event Buyer supplies designs, specifications or instructions which are incorporated into the goods sold hereunder, or modifies any goods or combines them with other products, Buyer warrants that such goods will not infringe any patent, trademark, copyright or other intellectual property of another, and Buyer agrees to indemnify, hold harmless and defend Seller, its affiliates, successors, assigns, customers and users from and against any and all such losses, damages, liabilities, claims and demands (including attorney's fees) and lawsuits at law or equity for infringement of any patents, trademarks, copyrights or other intellectual property rights pertaining to the goods arising from Buyer's designs, specifications or instructions. Buyer shall claim no interest in the intellectual property rights, drawings, marks, patents of Seller.

**10. Postponement and Cancellation.** No Order shall be cancelled by the Buyer except with the Seller's prior consent in writing. In the event of the Seller agreeing to the Buyer cancelling all or any part of the Order, the Seller may, without prejudice to any other rights against the Buyer which it may have, require the Buyer to pay a cancellation charge. Any cancellation charge will correspond to the type of contract being cancelled and will be notified in writing to the Buyer within 7 days of its request for cancellation. Contracts for specialist or tailored Goods may be subject to a cancellation charge of 100% of the price of the Order after the Confirmation has been sent. Seller may refuse an Order if an account is in arrears. Seller may terminate an Order with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under an Order and such failure continues for 7 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**11. Arbitration.** Except as provided below, the parties agree to submit disputes to an arbitrator in Columbia, South Carolina, U.S.A. applying the American Arbitration Association Rules. The proceeding shall be in English and enforceable in any court of competent jurisdiction according to the South Carolina Arbitration Act and the United Nations Convention for the Enforcement and Recognition of Arbitral Awards unless the dispute is suitable to injunctive relief thereby affording a right to pursue redress in court without proceeding to arbitration. Submission to arbitration shall be made within 60 days after a default and conducted under South Carolina Civil Rules of Procedure and completed in 120 days.

**12. Law.** The parties incorporate the South Carolina Uniform Commercial Code trade terms and definitions and exclude the United Nations Convention on the International Sale of Goods. The parties submit to the exclusive personal and exclusive subject matter jurisdiction of the laws and courts of South Carolina and the forum of Columbia, SC and adopt the Confirmation of Terms of Sale - Gestra USA, Inc., June 2016 laws of South Carolina as the governing law without regard to its conflict of laws rules.

**13. Default and Remedies.** If Buyer commits or suffers an act of bankruptcy, reorganization, merger, change in ownership control, dissolution, bulk sale of assets, composition for creditors or violates any Terms within or other agreement with Seller, Seller may declare itself insecure, suspend performance until receiving adequate assurance of performance or treat such event as a default of the Terms. Seller may exercise all remedies available at law or in equity cumulatively, without election, at any time and combination allowable by law. If Seller believes the financial condition of Buyer does not justify shipment on the within Terms, Seller may make a written demand for full or partial payment in advance, suspend its performance until such payment is received or cancel any Order. Late payments are subject to service charge of 1.5% month on overdue balance. Customer must pay reasonable attorney fees, costs and expenses of collection for default of these Terms. A late payment is cause to accelerate the due date of all other payments obligated to become due.

**14. General.** This document represents the integrated agreement of the parties. No modification shall be effected by any receipt or acknowledgment of Seller of any Order containing additional or different terms. If any provision herein shall be held to be invalid, illegal or unenforceable, these Terms shall be construed as if such provision is not contained herein, and such offending provision shall be stricken. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order.

**15. 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 an Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized in advance 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 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) right fully obtained by Buyer on a non-confidential basis from a third party.

**16. Returns.** Excluding custom goods or non-stock items which are non-returnable, returns may be allowed up to 90 days after shipment if with the original invoice, RMA#, in saleable condition in sealed original packages and conform to current catalogue description, freight prepaid. Excluding valid warranty claims, credits issued on returns will be less original freight costs and return freight costs plus a 25% stocking charge of the invoice value. A warranty claim made against a single shipment under an installment sale shall not be deemed to impair the value of the total shipments which Buyer agreed to purchase under its Order.

**17. Anti-Corruption.** The Buyer warrants that its directors, employees, agents and other representatives have not and will not, directly or indirectly, offer, promise, give, pay any compensation, kickback, bribe, corrupt payment, or rebate any article of monetary value as a condition to induce the placement of an Order to Seller or otherwise provide financial value to Seller, its employees, or agents as an inducement to acceptance or perform the Order by Seller.

**18. Trade Prohibitions.** The Buyer undertakes to the Seller that the Buyer shall not re-sell or otherwise supply the Goods to a third party which is the subject of any statutory trade prohibition of the United States of America or a member state of the European Union ("Sanctioned Third Party") without prejudice to the foregoing, if the Seller shall have notice of or reasonable grounds to believe that the Buyer intends to re-sell or otherwise supply the Goods to a Sanctioned Third Party (Seller may upon giving notice thereof to the Buyer refuse to deliver the whole or any part of the Goods and shall have no liability to the Buyer for such refusal).