

# GULFSTREAM MANUFACTURING LLC

## TERMS AND CONDITIONS OF SALE

### ACCEPTANCE

The terms of this agreement apply to the machinery product for which the seller has given a price quotation (hereinafter referred to as "quote") to the buyer, and which is attached hereto and incorporated in the agreement by reference. Quotes given by the seller are valid for thirty (30) days from the date of said quote, and shall remain valid for all orders placed by buyer within said thirty (30) days if delivery of the product to the buyer is scheduled to be made within thirty (30) days from the date of the order.

All orders placed by the buyer are subject to seller's approval of credit and acceptance of the order at its home office

No agreement shall be binding unless accepted at the home office of Gulfstream Mfg. LLC, which shall be deemed to be the location of the making of the contract.

### TERMS

Payments shall be made to the seller as follows: Per final quote terms.

If buyer gives notice of cancellation of this agreement or fails to accept delivery, seller shall retain all sums previously paid by buyer. Buyer shall also pay seller an additional amount equivalent to all costs incurred by seller to date in the fulfillment of this agreement, including overhead expenses and profit on that portion of the product(s) manufactured by the seller up to the date of the cancellation. In no event shall the seller be obligated to return any portion of the down payment or the progress payments to the buyer. All sales are FOB prior to shipping.

### INDEMNITY

Buyer agrees to indemnify and save harmless seller from and against any and all loss to property, both real and personal (including seller's property) arising or growing out of or in connection with the performance of this agreement by buyer or its contractors and subcontractors, and from and against any and all damage claims, demands or suits of whatever nature, and any expense incidental thereto which may be made, claimed or brought by the buyer, its contractors or subcontractors, their employees or agents, or by any other person or persons (including claims by employees or the representative of buyer or buyer's contractor's or subcontractor's employees, for worker's compensation) on account of property damage or personal injury sustained or suffered by, or the death of any person or persons arising or growing out of or in connection with the performance of this agreement or the design, installation or repair of the goods sold hereunder by buyer or its contractors or subcontractors or any act or omission in connection therewith whether caused by the negligence of seller, its agents, servants and employees or otherwise howsoever.

### DELIVERY

Seller shall not be liable for any delay in delivery of the product due to any cause beyond its control, including but not limited to: acts of God, fire, strike, flood, delays in transportation, shortage of energy, or default of a supplier or contractor. In the event of any such delay, the date of delivery will be extended to a period not less than the period of such delay. Delivery time shall be from date of seller's acceptance of order, receipt of accepted approval drawings, receipt of down payment or in full payment, or the date upon which the parties hereto agree to the amount of the contract price, whichever is the last to occur. Seller shall not be responsible for any damage in transit. All claims for breakage or damage in transit shall be made to the carrier by buyer or seller/ whoever books the shipping and any unrecovered loss therefrom shall not relieve the buyer from the obligations of this contract unless agreed to in writing by the seller. Any change in design, or layout drawing change after approval of design or layout drawing shall extend delivery date to a reasonable length of time not less than the period needed to make such change. In no event shall the seller be liable for special or consequential damages. Receipt of the equipment by the buyer will constitute waiver of all claims for loss or damage due to delay. If delivery as originally scheduled is delayed as the result of buyer's actions, seller shall invoice buyer for payment due and shall store the products

### DESIGN

Seller's concrete plant systems are normally designed: (a) for use in seismic zone 1 areas; (b) to withstand peak winds of 90 miles per hour; (c) to meet the structural requirements of the Uniform Building Code applicable to localities which are not subject to greater seismic and wind load risks. Regulations that apply where buyer intends to use the plant which may be more stringent, then it is buyer's responsibility to determine whether any more stringent laws, regulations or codes apply. Any increase cost of engineering or labor as a result of more stringent laws, regulations or codes shall be buyer's responsibility. Seller shall not be responsible to comply with the more stringent requirements unless they are specifically referred to in seller's written quotation or seller's written order acknowledgment.

Seller reserves the right to make changes in product design from time to time without incurring the obligation to furnish them to buyer for products previously sold or shipped to buyer.

### ELECTRICAL EQUIPMENT AND WIRING

Seller's control and I, PLC or motor starter panels are furnished terminal block wired. Buyer is responsible for all electrical wiring between all of seller furnished panels and devices. It is buyer's responsibility to see that all electrical wiring is in compliance with the governing electrical codes. Scale, probe, moisture meter or computer control cables or wires are not to be installed underground and each is to be kept isolated from all other power and I or signal wires.

### BUILDING PERMITS

Buyer shall be responsible for obtaining all federal, state and municipal building permits and shall be responsible for any additional plans or specifications required to obtain permits.

### SAFETY DEVICES

Seller's products are provided with only those safety devices installed at the time of shipping. It is the buyer's responsibility to furnish other appropriate safety devices which are desired by buyer and I or required by OSHA standards and other laws.

### TECHNICAL INFORMATION

All manufacturing devices, designs, data or other technical information relating to buyer's order shall remain the property of the seller.

### BUYER'S RESPONSIBILITIES

All products specified in the quotation shall be assembled and installed by buyer at his own expense. Seller shall make a factory representative available to provide technical advice to assist buyer's employees in the installation and I or first operation on a per diem charge to buyer. Buyer shall be responsible for: 1) installation and erection of the product; 2) all required licenses and permits; 3) freight charges; 4) engineering services and foundation designs; 5) site preparation; 6) concrete foundations and anchor bolts; 7) shims and grout; 8) erection and erection supervision; 9) electrical power source and wiring to power and I or control panels; 10) air and water piping to air and water systems; 11) balancing and calibration of scale systems; 12) heating and I or hot water system controls.

### WARRANTY

Seller warrants to the original buyer that it will repair or replace any part of the equipment manufactured by it if such part is defective or fails to function properly due to defects in workmanship or material during the 90 day period commencing with the date of installation or shipping drop; provided however, that buyer shall be responsible for any shipping costs or labor incurred in connection with such replacement or repair. Seller further agrees to cooperate in making available to buyer the benefit of any warranties covering parts of the equipment manufactured by parties other than the seller. No claims pursuant to any warranty hereunder shall be valid unless submitted, in writing, to the seller prior to the expiration of the aforementioned 90 day period. Seller's liability hereunder shall be limited to replacement or repair and shall not extend to special or consequential damage. Seller shall not be responsible for damages to equipment resulting from improper installation, from operation in excess of its rated speed or capacity, or from improper control or maintenance. THE ENTIRE LIABILITY OF SELLER IS DEFINED BY THIS WARRANTY AND THE SAME IS GIVEN IN LIEU OF ANY AND ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NO OTHER WARRANTY IS MADE OR AUTHORIZED BY SELLER UNLESS NOTED HEREON AND SIGNED BY THE PURCHASER AND AN AUTHORIZED REPRESENTATIVE OF SELLER. IN ANY EVENT, ALL LIABILITY ON THE PART OF SELLER SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD. NO ORAL OR WRITTEN STATEMENTS OR REPRESENTATIONS SHALL BE BINDING UPON SELLER UNLESS ENDORSED HEREON BY SELLER.

### TITLE AND PAST DUE ACCOUNTS

Title to the product sold hereunder and any and all replacements and additions thereto shall remain in the seller, its successors or assigns, until all amounts due hereunder are fully paid. Any payment not made when due shall bear interest at the rate of one and one-half (1.5%) percent per month on the balance due until the full amount due has been paid. Buyer shall pay all costs and expenses incurred by seller relative to the collection of any monies due hereunder, including reasonable attorney's fees.

### TAXES

Buyer agrees to comply with all government laws and regulations affecting this agreement and the product sold hereunder, and to pay all license fees: assessments; and sales, use, property, excise and other taxes now or hereafter imposed by any governmental body or agency for or on the product sold hereunder.

### ASSIGNABILITY

Buyer agrees not to sell, assign, lease, pledge, hypothecate or otherwise encumber or suffer a lien upon or against this agreement, or the product sold hereunder during the time seller has an interest therein. No waiver or consent by seller of any breach or default by buyer shall constitute a waiver of any other breach or default by the buyer, nor shall it be considered a waiver of any of seller's rights. The failure of seller to insist upon strict performance of any of the terms or conditions stated herein will not be considered a continuing waiver of any such term or condition or any of its rights, nor will it imply a course of performance between the parties.

This agreement shall be governed by and construed in accordance with the laws of the State of Michigan USA

This agreement is the entire agreement between the parties hereto and no alterations, amendments or qualifications thereof shall be binding or of any force and effect against seller unless in writing and signed by seller.