

## **STANDARD TERMS AND CONDITIONS OF SALE FOR GOODS AND SERVICES:**

These Standard Terms and Conditions of Sale for Goods and Services (“T&C” and/or “Terms”)) apply to all goods and services by **GULF COAST ELECTRIC MOTOR SERVICE, INC., A FLORIDA CORPORATION** (“GCEMS” and/or “Seller” and/or “Company”). To the extent of any conflict between the quote, proposal, or other offer (individually, interchangeably, and/or collectively the “Offer”) submitted by Seller and these T&C, the Offer shall control. These T&C are an essential part of the Offer, and together these T&C and the Offer collectively constitute the “Contract”. The Contract constitutes the entire agreement between Seller and Buyer and supersedes all prior communications, negotiations, and agreements between Buyer and Seller with respect to the transaction(s) resulting from the Offer. Seller hereby objects to any additional, supplemental, or conflicting terms or conditions contained in any purchase order or other documents submitted by Buyer. The Offer is expressly intended as a legal offer to contract with Buyer, and Buyer may accept the Offer by issuing a purchase order or similar order document, by signing the Offer and returning it to Seller, which Seller must then confirm and accept the Offer in writing. If the Offer is held by a court of competent jurisdiction to constitute not a legal offer to enter into a contract but as an acceptance of an offer from Buyer, then such acceptance is expressly conditioned on Buyer’s assent to these T&C and no conduct by Seller is intended as recognition of the existence of a contract between Buyer and Seller under any terms except those stated in these T&C and are expressly subject to the T&C set forth below. By purchasing any goods, products or services (individually, interchangeably, and/or collectively “Goods”) from Seller, you agree that all sales to you (“Buyer”) are subject to these Terms.

All sales of goods and services by GCEMS, including those transacted through Seller’s website ([www.gcemsinc.com](http://www.gcemsinc.com)), are subject to these Terms. These Terms comprise the entire agreement regarding the sale of the Goods by Seller; there are no agreements, understandings, promises or conditions, oral or written, express or implied, regarding the sale of the Goods by Seller that are not merged in and superseded hereby. Regardless of the place of contracting, place of performance or otherwise, this Contract shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction. Disputes relating to the sale of goods by Seller to Buyer are governed by the WAIVER, CHOICE OF LAW AND DISPUTE RESOLUTION provision found on pages 12-13 of these T&C.

These terms shall expressly prevail over any different, additional, inconsistent terms or conditions or similar communications in the Buyer’s purchase order or other Buyer documents, which are expressly objected to and rejected by the Seller and Company and shall not be binding on Seller unless agreed to in writing by a corporate officer or senior management of the Seller. Only a corporate officer or senior management of the Seller is authorized to accept any different, additional, inconsistent terms or conditions or similar communications, which must be acknowledged by senior management in writing, and in no event is Company’s sales employee or customer service representative authorized to modify these Terms or accept additional or

inconsistent terms. No modification or alteration of these Terms shall result by the fulfillment of any goods, products or services upon receipt of Buyer's purchase order containing additional or inconsistent terms. By issuing a purchase order, accepting shipment or performance, and/or paying for the goods or services, Buyer agrees that it accepts Seller's terms and conditions of sale, including Seller's warranty policy. Buyer further agrees that all information provided by Seller, including pricing, is Seller's confidential information and may not be disclosed without Seller's prior written consent.

#### **PRICE INFORMATION:**

The company's listed prices on its website, catalog, or other publications, are quotes, and prices shall be set forth in the Offer, which are subject to change without notice. If the Offer does not state any pricing, then Seller's then-existing pricing shall apply. Prices in effect at the time of shipment of Goods or performance of services shall prevail. All prices quoted by Seller are subject to correction or change without notice. Stated pricing does not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the Goods or their sale, value or use, or the services. Buyer agrees to pay or reimburse Seller for any such taxes which Seller or Seller's suppliers are required to pay or collect. If Buyer is exempt from the payment of any tax or holds a direct payment permit, Buyer shall provide to Seller, at the time of order placement, evidence thereof acceptance to the relevant governmental authorities. Stated pricing includes customs duties and other fees applicable to Seller's importation of the goods into the United States as of the time of order placement. If such duties, fees, or rates increase after order placement then Seller shall be entitled to an equivalent price increase. Prices do not include freight, shipping, and/or handling fees, or any present or future duties, tariffs, sales, use, excise, value-added or similar taxes or other governmental taxes, which may be imposed in addition to the purchase price. Buyer is responsible for any revenue, sales and use tax, duties assessed, and other tax-like charges imposed, on or incidental to the goods, other than taxes arising solely from income Seller realizes from the sales of the goods. Prices quoted are exclusive of all taxes, VAT, import and export duties, excise duties and other taxes or levies imposed or charged in relation to goods and transportation costs. Where applicable, such taxes shall be billed as a separate item and paid by Buyer. A standard shipping charge is applied to each invoice for goods to cover the material preparation, packaging, freight and/or any additional costs associated with each shipment based on value and/or weight of the shipment. Additional charges for local delivery may also apply. Export orders may be subject to other special pricing. No pricing errors due to clerical mistake(s), math error, or similar occurrence shall be binding on Seller. All orders are non-cancellable. All sales are final.

#### **PRICE REVISION PRIOR TO DELIVERY:**

Prices quoted or shown on acknowledgements are subject to changes by Seller without notice. The manufacturer of any Goods ordered by Buyer may change the price to the Seller of such Goods after the date of Buyer's purchase order. If such price change occurs before the delivery of the Goods to you, the Seller shall have the right to change the price of the affected Goods by providing notice of such a change to the Buyer. If Buyer does not agree to pay the changed price of the Goods, Buyer shall cancel the purchase order by providing the Seller with written notice of such cancellation within (2) days of notice from the Seller of the change in price of the Goods. If Buyer fails to timely provide Seller with such written notice, Buyer shall be bound to pay the changed cash price of the Goods. Notwithstanding the foregoing, for any special-order Goods or orders that cannot be cancelled by Seller with the manufacturer, Buyer agrees to pay the change in price due to the manufacturer's change in the price charged to Seller.

#### **PAYMENT TERMS:**

Unless other payment terms are agreed to in writing by Seller, payment is required upon order acceptance by Seller and payment terms are Cash on Delivery (COD). All payments are due at the time of the sale and before the delivery or shipment of any Goods. If, in the reasonable judgment of Seller at any time prior to delivery, Buyer's financial condition does not justify the payment terms specified, Seller may require adequate assurances of payment, including payment in advance or payment security. If Buyer fails to provide such assurances, then Seller may cancel the order and Buyer will pay a cancellation charge as specified in the Offer (or if no cancellation charge is set forth in the Offer, Buyer shall pay Seller's costs incurred prior to cancellation, plus 15% administrative fee). Such cancellation fee is not intended as a penalty, but as a reasonable estimate of Seller's damages, which are difficult or impossible to ascertain at the time of order placement. Seller, may without liability or penalty, tender delivery in installments, and Buyer shall accept and pay for all goods tendered. Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of a purchase order. Delays in delivery or non-conformities in any installments delivered shall not relieve Buyer of its obligation to accept and pay for remaining installments. If Buyer has established credit with Seller and credit terms are granted by Seller, the credit terms remain subject to change by Seller. Standard sale credit terms, if approved for open term account, are net (30) days from the date of invoice. All payments must be in U.S. dollars and drawn on funds on deposit in the United States. For a high-value order, a payment deposit via ACH will be required after the quote / Offer is accepted by Buyer, and in advance of Seller's work start on the order, as a deposit in the amount of 50%. For terms or credit approved by Seller prior to sale, payment is (30) days net, without setoff or deduction, from date invoice was e-mailed or goods are delivered, whichever is earliest, if Buyer's credit has been approved prior to sale. A late payment charge of 1.5 % per month (an annual percentage rate of 18%), or the maximum amount allowed by law, compounded monthly, which will continue to accrue until the balance is paid in full and shall be charged on any outstanding balance remaining unpaid (30) days beyond its due date. Buyer shall pay Seller all costs incurred by it in collecting any past due account from Buyer, including, but not limited to, all court costs and attorney's fees. However, if the foregoing charges

exceed that rate which is the maximum permitted by law, then such charges shall be calculated to be the highest allowable lawful rate. To ensure correct application of payment, ensure all invoices are itemized on the remittance portion of the invoice, which shall accompany payment. For any questions or additional information, email [info@gcemsinc.com](mailto:info@gcemsinc.com). If paying by ACH, email remittance advice to [info@gcemsinc.com](mailto:info@gcemsinc.com).

**ACH Payment Information:**

ServisFirst Bank

Routing #: 062006505

Account #: 1110099791

Remittance information is required and must be emailed to [info@gcemsinc.com](mailto:info@gcemsinc.com).

**Mail Payments to:**

Gulf Coast Electric Motor Service, Inc.

3810 Hopkins Street

Pensacola, FL 32505

Remittance information is required and must be emailed to [info@gcemsinc.com](mailto:info@gcemsinc.com).

A 4.00% surcharge will apply for all credit card transactions and electronic checks are free.

**CREDIT BALANCE:**

Any credit balance issued will be applied within one (1) year of its issuance. **IF NOT APPLIED WITHIN ONE (1) YEAR, THEN THE BALANCE REMAINING SHALL BE CANCELLED, AND SELLER SHALL HAVE NO FURTHER LIABILITY EXCEPT AS REQUIRED BY APPLICABLE LAW.**

**CHANGES:**

If Buyer requests any changes to the ordered scope of work or supply, Seller will review the request and advise Buyer whether it agrees to make such changes and any adjustments to pricing, scheduled time for performance and/or delivery, and any other terms or conditions arising out of the requested change. Any agreed changes shall only become effective when set forth in writing and signed by both parties.

**DELIVERY, TITLE, RISK OF LOSS AND SHIPPING TERMS:**

Unless the Offer states otherwise, tender of delivery of Goods shall be EXW Seller's U.S. plant or warehouse (Incoterms 2020). If tender of delivery is delayed by Buyer for any reason, then (i) tender of delivery will occur, and title to the Goods shall pass to Buyer, when Seller moves the Goods into storage; and (ii) Buyer will reimburse Seller for the actual cost of storage and for transportation to and from the storage facility. Seller shall use commercially reasonable efforts to tender delivery on the date(s) set forth in the Contract, but such dates are for reference only and

are not guaranteed. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, title and risk of loss or damage to the goods (excluding any software) shall pass to Buyer upon tender of delivery. F.O.B. point of shipment unless otherwise specified in a writing signed by Seller. All risks of loss, damage or untimely delivery shall be on Buyer after the Goods are released to the carrier. When delivery of any Goods occurs in Seller's vehicles, shipments shall be delivered F.O.B. Destination to the Buyer's designated delivery site. In all other instances, Goods are shipped F.O.B. Origin at the Seller's store or warehouse, and all subsequent responsibility and costs of shipping and delivery beyond Seller's store or warehouse shall be borne by Buyer. Any claims in which Seller has the risk of loss are waived for defects, nonconformity, shortage, or damage to Goods, unless immediate notice is given by the Buyer, not to exceed (3) business days from delivery. Seller, in its sole discretion, may fulfill any order in partial or multiple shipments. Unless otherwise noted, all domestic sales of goods are made F.O.B. point of shipment (Uniform Commercial Code), and all international sales of goods are made EXW point of shipment Incoterms 2020. In all cases, title shall pass upon delivery and thereafter all risk of loss or damage shall be upon Buyer. Delivery dates given in advance of actual shipment of goods or performance of services are estimates and shall not be deemed to represent fixed or guaranteed delivery dates. Buyer shall notify Seller of any nonconforming goods within a commercially reasonable time after Buyer becomes aware of such nonconforming goods. Buyer agrees to accept partial shipments of Goods. Buyer agrees to accept and make timely payment for any conforming good delivered by Seller, notwithstanding any inability of Seller to ship the entire amount of Goods.

**UNFORESEEABLE CIRCUMSTANCES:**

Seller shall not be liable for delay or default, business interruption or interference resulting from any cause beyond Seller's reasonable control, including but not limited to, governmental action, strikes, or other labor disruption, casualty, fire, natural disaster, damage or destruction of Goods, wars (declared or undeclared), acts of terrorism, manufacturer shortages, availability or timeliness of transportation, materials fuels or supplies, and acts of God (each a "Unforeseeable Circumstance"). Upon the occurrence of an Unforeseeable Circumstance(s): (a) the time of Seller's performance shall be extended reasonably and the parties shall adjust all affected dates accordingly; (b) the purchase price shall be adjusted for any increased costs to Seller resulting from such Unforeseeable Circumstance(s); and (c) Buyer shall not be entitled to any other remedy, except to cancel any open orders without penalty where the Unforeseeable Circumstance(s) exceed thirty (30) days. Seller reserves the right to adjust quantities and to ship and bill up to 10% more or less than the specified quantity. Buyer agrees to give Seller prompt notice of any breach, default of delivery or nonconformity of goods arising out of a sale by Seller to Buyer. Notice must be received by Seller within (10) days after receipt of the goods by Buyer, unless such breach, fault or nonconformity is not discoverable within such ten-day period, in which case notice must be received by Seller within ten (10) days after discovery occurs or the date on which discovery first should have occurred. Unless Seller shall have timely notice, all liability of Seller shall terminate.

In any event, any action brought by Buyer must be commenced within (1) year after the date of tender of delivery of the goods to Buyer.

**RETURN POLICY:**

Buyer shall not return goods, whether conforming or non-conforming to Seller without Seller's written consent, which consent is Seller's sole discretion. Authorized Goods returns, for standard Goods, may be subject to a restocking charge up to (25%). No authorization for return will be allowed, under any circumstances, for customer-specific Goods. If the purchase was originally paid by a check, any refund will be held for (10) business days after the date of the purchase to allow the check to clear the banking system. Company shall not refund any shipping costs incurred by Buyer.

**CANCELLATION AND RETURNS:**

Buyer may cancel an order by mutual agreement with Seller based upon payment to Seller of reasonable and proper cancellation charges as determined by Seller in Seller's sole discretion. Goods shall not be returned by Buyer without Seller's prior written authorization and payment by Buyer of a minimum restocking charge of 25%. Authorized returns shall be returned at Buyer's sole expense, freight prepaid. There are NO returns of special order or made-to-order items. No returns shall be accepted following thirty (30) days after delivery. No credit will be issued for shipping charges or other special expenses.

**WARRANTIES:**

Company is a retailer of Goods manufactured by other companies and will pass to Buyer any transferable manufacturer's warranties, but Company does not provide any separate or independent warranties. **COMPANY EXCLUDES AND DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. NO WARRANTY OR REPRESENTATION OF FACT OR DESCRIPTION, EXPRESS OR IMPLIED, IS MADE OR AUTHORIZED BY BUYER. BUYER AND PERSONS CLAIMING THROUGH BUYER (COLLECTIVELY, "CLAIMANT") SHALL SEEK RECOURSE EXCLUSIVELY FROM EACH MANUFACTURER(S) IN CONNECTION WITH ANY DEFECTS IN OR FAILURES OF GOODS, AND THIS SHALL BE THE EXCLUSIVE RECOURSE OF CLAIMANT FOR DEFECTIVE GOODS, WHETHER THE CLAIM SHALL SOUND IN CONTRACT, TORT, STRICT LIABILITY, PURSUANT TO STATUTE, OR FOR NEGLIGENCE OR GROSS NEGLIGENCE. BUYER SHALL PASS THESE TERMS TO ANY SUBSEQUENT PURCHASERS AND USERS OF GOODS. COMPANY ASSUMES NO RESPONSIBILITY WHATSOEVER FOR THE INSTALLATION OF GOODS, USE, MISUSE, ALTERATION OR MODIFICATION OF GOODS, OR COMPANY'S INTERPRETATION OF PLANS OR SPECIFICATIONS**

**PROVIDED BY BUYER. EXCEPT AS EXPRESSLY SET FOR IN A WRITTEN DOCUMENT ISSUED BY SELLER THAT IS LABELED "WARRANTY", SELLER MAKES NO, AND EXPRESSLY DISCLAIMS ANY, WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR MERCHANTABILITY, DESIGN, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.** Seller's sole liability and Buyer's sole remedy hereunder shall be limited to the replacement or repair of defective Goods or, at Seller's option, the refund of the purchase price thereof. Goods are sold only with such warranties as may be extended by the manufacturer of the goods. Services performed by third parties are subject only to those warranties extended by such third parties. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS SPECIFICALLY SET FORTH IN SELLER'S WARRANTY POLICY, WHICH IS INCORPORATED HEREIN BY REFERENCE** and available at [WWW.GCEMSINC.COM](http://WWW.GCEMSINC.COM) or upon request to Seller. Buyer is responsible for installation and use in accordance with the manufacturer's instructions. Goods are sold for commercial use only and are not intended for use by consumers. Seller's personnel are not authorized to alter this policy. Buyer shall be solely responsible for any warranty it grants to its customer.

**LIMITATION OF LIABILITY:**

**IN NO EVENT, WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY OUT OF THE PERFORMANCE OR BREACH OF THESE TERMS AND/OR OFFER, SHALL COMPANY BE LIABLE FOR (a) ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES SUCH AS LOSS OF USE, LOST PROFITS, ATTORNEY FEES OR DELAY DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR CAUSED BY COMPANY'S BREACH OF THIS AGREEMENT, (b) ANY CLAIM THAT PROPERLY IS A CLAIM AGAINST A MANUFACTURER, OR (c) ANY AMOUNT EXCEEDING THE AMOUNT PAID TO SELLER FOR GOODS FURNISHED TO BUYER THAT ARE THE SUBJECT OF SUCH CLAIM(S). ALL CLAIMS AGAINST THE COMPANY MUST BE BROUGHT WITHIN (1) YEAR OF ACCRUAL OF A CAUSE OF ACTION.** Seller assumes no responsibility for goods selection, operation, and use, regardless of any recommendations or suggestions made by the Seller. Technical advice and specifications regarding the goods sold hereunder solicited from Seller shall be used by Buyer at its own risk. **SELLER DISCLAIMS ALL LIABILITY FOR DIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SUFFERED AS THE RESULT OF THE USE OF SUCH TECHNICAL ADVICE OR SPECIFICATIONS.** Buyer

shall make selections based upon its own analysis regarding function, material compatibility, fitness for use or intended purpose, and goods ratings. Any such analysis, including testing, shall be the sole responsibility of Buyer. Proper installation, operation, and maintenance are solely the responsibility of Buyer or its customer. Any specifications listed in Seller's datasheets, catalog and website are for reference only and are subject to change without notice. **NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH THEREOF, OR CONNECTED WITH ANY GOODS OR SERVICES SUPPLIED HEREUNDER, OR THE SALE, RESALE, OPERATION OR USE OF GOODS, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), INDEMNITY, OR OTHER GROUNDS, SHALL NOT EXCEED THE PRICE ALLOCABLE TO SUCH GOODS OR SERVICES OR PART THEREOF INVOLVED IN THE CLAIM, REGARDLESS OF CAUSE OR FAULT.** This limitation of liability reflects a deliberate and bargained-for allocation of risks between Seller and Buyer and constitutes the basis of the parties' bargain, without which Seller would not have agreed to the price or terms of this agreement. Seller shall not under any circumstances be liable for any labor charges without its prior written consent. **SELLER SHALL NOT IN ANY EVENT BE LIABLE WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), INDEMNITY OR OTHER GROUNDS FOR CONSEQUENTIAL, DIRECT, INDIRECT, INCIDENTAL, CONTINGENT, SPECIAL, LIQUIDATED, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF GOOD OR ASSOCIATED GOODS, COST OF CAPITAL, COST OF SUBSTITIVE GOODS, FACILITIES OR SERVICES, BUSINESS INTERFERENCE OR INTERRUPTION, DOWN TIME OR SHUT DOWN COSTS, OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGE.** If Seller furnishes Buyer with advice or other assistance regarding any goods or services supplied hereunder, or any system or equipment in which any such goods may be installed, and which is not required pursuant to this agreement, the furnishing of the advice or assistance will not subject Seller to any liability, whether based on agreement, warranty, tort (including negligence or indemnity) or other grounds. **BUYER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER, INCLUDING ANY AND ALL DIRECT OR INDIRECT PARENT CORPORATIONS, SUBSIDIARIES AND AFFILIATES AND ALL PRESENT AND FORMER DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, AGENTS, INSURERS, ATTORNEYS, REPRESENTATIVES, EMPLOYEES, PREDECESSORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY REFERRED TO AS THE "RELEASED PARTIES"), FROM AND AGAINST ALL DEMANDS, CLAIMS, FINES, ACTIONS OR CAUSES, AND/OR LOSSES, DAMAGES, JUDGMENTS, LIABILITIES, PENALTIES, ATTORNEY FEES, COSTS AND EXPENSES ASSERTED AGAINST, RESULTING TO, IMPOSED UPON OR INCURRED BY SELLER IN CONNECTION WITH BUYER'S USE, RESALE, OR LEASE OF ANY GOODS OR**

**SERVICES FURNISHED HEREUNDER, AS WELL AS ANY NEGLIGENT, INTENTIONAL OR TORTIOUS ACT OR OMISSION OF BUYER OR ANY BREACH BY BUYER OF THESE TERMS.** These Terms shall survive termination, cancellation or completed performance under the Contract.

**DEFAULT:**

Buyer agrees that Buyer will be in default if: (a) Buyer fails to comply with these Terms; (b) by bankruptcy or insolvency proceedings involving Buyer; (c) Buyer dies or becomes incompetent; (d) Buyer provided Seller false or misleading information relating to Buyer's order or purchase; (e) Buyer fails to perform any other obligations under these Terms and/or Contract; or (f) Buyer is in default under any other agreement Buyer has with Seller or any of its affiliates. Buyer agrees that, upon Buyer's default, Seller may cancel any open orders, close Buyer's account to future purchases and that Seller may demand immediate payment of Buyer's balance, after giving Buyer any notice and opportunity to cure the default required by applicable law. In addition, Buyer agrees that Seller shall have the right to assert a lien on all Buyer's assets in Seller's possession, custody, or control, in addition to all the rights of a secured creditor under the Uniform Commercial Code and other applicable laws. These Terms shall survive termination, cancellation or completed performance, so long as necessary to allow Seller to fully enforce its rights.

**COLLECTION COSTS:**

Buyer agrees that if Seller seeks to enforce this Agreement or upon a default by Buyer, whether or not suit is filed, Buyer will pay for Seller's expenses incurred in connection with the enforcement of its remedies, including without limitation, repossession, repair and collection costs, any attorneys' fees and court costs and related fees including any bankruptcy fees and costs, in connection with collection of any past due amounts, to the full extent permitted by applicable law.

**LEGAL PROCEEDINGS AND WAIVER OF JURY TRIAL:**

**This Agreement is governed by the substantive laws of the State of Florida without regard to its conflicts of law, specifically excluding the UN Convention on Contracts for the International Sale of Goods. Buyer consents to the jurisdiction of the United States District Court for the State of Florida or the Circuit/District Court of Escambia County, Florida, in any action or proceeding arising out of or relating to the Agreement. Nothing in this paragraph shall affect the right of Seller to bring any action or proceeding against Buyer in a court of other jurisdiction. BUYER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY RELATED COURSE OF CONDUCT, SALE OF GOODS, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OR ANY PARTY HERETO.**

**WAIVER, CHOICE OF LAW AND DISPUTE RESOLUTION:**

The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent nonperformance of any such term or condition by the other party. All transactions shall be governed by the laws of the State of Florida, United States of America, excluding conflict of law rules. Any dispute with a party located in U.S. arising out of or relating to transactions hereunder shall be brought only before any state or federal court with jurisdiction and venue in Pensacola, Florida, unless all such courts refuse to exercise jurisdiction and venue, and the parties hereby consent to exclusive jurisdiction in such courts. Any claims brought by Buyer shall be escalated to senior management level within both organizations prior to Buyer filing a lawsuit. Trial by jury is hereby waived. Any dispute with a party located outside of U.S., except actions by Seller for nonpayment by Buyer of the purchase price of Goods or services sold, shall be settled by binding arbitration in Pensacola, Florida under Florida law administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrators will have the powers a state court judge would have had if the matter had been filed in such court, including equitable powers, except for the power to award punitive damages, which they shall not have. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**COMPLIANCE WITH LAWS:**

Buyer recognizes the goods are utilized in many regulated applications and that from time to time standards and regulations are in conflict with one another. Seller makes no promise or representation that the goods will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon, in writing as part of the agreement between Buyer and Seller. Seller prices do not include the cost of any related inspections, permits, inspection fees, shipping, handling and/or delivery fees.

**SUCCESSORS AND ASSIGNS:**

Buyer shall immediately notify the Seller, in writing, within (5) business days upon a legal change of name or address. This document shall be binding on administrators, executors, and personal representatives of the undersigned Buyer and shall inure to the benefit of Seller, its successors, legal representatives and assigns. When reference is made to “You” “Your” or “Buyer”, the singular shall include the plural and the masculine shall include the feminine or neutral.

**DESTINATION CONTROL STATEMENT:**

Export sales of Goods are subject to the following: these items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for the use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any other person other than the authorized ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or

otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.

**TERMS OF CREDIT AND SECURITY AGREEMENT:**

The Company's Terms of Credit and Security Agreement (applicable for consumer or commercial) are published on the Company's website and/or will be provided with your application for credit; those Terms of Credit and Security Agreement are expressly incorporated herein by reference. The Company reserves the right to amend or modify its Terms of Credit and Security Agreement, and in such instance, the edition in effect at the time of purchase shall control. The Company's Terms of Credit and Security Agreement shall prevail over any additional or inconsistent terms of Buyer's purchase order or other documents, which are expressly rejected by the Company and shall not be binding.

**INTELLECTUAL PROPERTY:**

Each party will retain an exclusive interest in, and ownership of its intellectual property developed before this agreement or outside the scope of this agreement. Upon mutual agreement, Seller hereby grants to Buyer a non-exclusive, world-wide, non-transferable, non-sublicensable, and royalty-free license to use Seller's pre-existing intellectual property solely for the purpose of using the Goods and service provided by the Seller. Any intellectual property developed under or related to the Contract shall be the sole and exclusive property of Seller.

**SUBCONTRACT/SUBSTITUTIONS/INTERCHANGEABILITY:**

Buyer agrees that Seller may subcontract all or any portion of the supply of goods and performance of services to third parties. Buyer agrees that Seller may store, process and use data and other information provided by Buyer, and Buyer authorizes Seller to disclose all such data and other information, including Buyer's confidential information, to Seller's affiliated companies, representatives, suppliers and subcontractors as necessary for such supply of goods or performance of services. Unless specifically restricted on a purchase order, Seller reserves the right to interchange equivalent available goods in place of the goods ordered where the interchangeability of the goods is based on form, fit, and function.

**EQUAL OPPORTUNITY AND LABOR PRACTICES:**

The contract provisions in Section 202 of Executive Order 11246, as amended, and the regulations promulgated thereunder are incorporated by reference as if fully written with respect to any order. Seller certifies that the goods covered by this invoice have been produced in accordance with the Fair Labor Standards Act of 1938, as amended.

**HAZARDOUS ACTIVITIES:**

Unless specifically agreed to in writing by an authorized officer of Seller, goods or services sold hereunder are not intended for use in connection with any nuclear facility or any other application or hazardous activity which Seller, in its sole discretion, determines to be high risk or hazardous, or where failure of a single component could cause substantial harm to persons or property. If so used, Seller disclaims any and all liability for any nuclear damage, contamination or other damage or injury and Buyer shall indemnify, defend, and hold Seller harmless from such liability whether as a result of breach of contract warranty, tort (including negligence or indemnity) or other grounds. Seller and its suppliers shall not be liable to Buyer or its insurers based on agreement, warranty, tort (including negligence or indemnity), or other grounds for onsite damage to property located at a nuclear facility.

**SHORTAGE/OVERAGES:**

All shortages and/or overages must be identified within ten (10) days of the date of shipment.

**CHANGE IN BUYER'S FINANCIAL CONDITION:**

Seller reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to Seller in the event of: (i) Buyer's insolvency, (ii) the filing of a voluntary petition in bankruptcy by Buyer, (iii) the appointment of a receiver or trustee for Buyer, or (iv) the execution by Buyer of an assignment for the benefit of creditors. Seller reserves the right to suspend its performance until payment or adequate assurance of performance has been received. Seller also reserves the right to cancel Buyer's credit at any time for any reason. Buyer, in order to provide security for the payment of the full price of goods furnished hereunder, grants Seller a security interest in the goods and the proceeds thereof. Buyer agrees to execute any documents or furnish information necessary to perfect this security interest. A copy of the invoice may be filed at any time as a financing and/or chattel mortgage, in order to perfect Seller's security interest. Seller may, in its sole discretion require, and Buyer hereby grants to Seller, a continuing purchase money security interest in all inventory, equipment, and goods sold by Seller to or for the benefit of Buyer, wherever located, and all accessions and goods and all proceeds from the sale thereof; and all accounts and accounts receivable which may from time to time hereafter come into existence during the term of this Security Agreement. Seller's purchase money security interest is explicitly limited to outstanding obligations between Seller and Buyer.

**ASSIGNMENT OR DELEGATION:**

Buyer shall not assign, transfer or delegate, whether by operation of law or otherwise, any or all of its duties or rights hereunder without Seller's prior written consent.

**SPECIAL TOOLS:**

Unless specifically agreed in writing by Seller, and unless paid for by Buyer as shown on the invoice, all special tools, dies, jigs, patterns, machinery and/or equipment needed by Seller for the performance of this sale are, and shall remain, the property of Seller.

**EXPORT CONTROLS AND RELATED REGULATIONS:**

Buyer represents and warrants that it is not on, or associated with any organization on the United States Department of Commerce's Bureau of Industry and Security's Denied Persons List or Unverified List; or the United States Department of the Treasury's Office of Foreign Assets Control lists, Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers-Kingpin, or Specially Designated Terrorists List; or the United States Department of State's Designated Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons List; or is subject to a denial order issued by the United States Department of Commerce. Buyer shall comply with all relevant laws and regulations of governmental bodies or agencies, including but not limited to all applicable export control laws of the United States or other governing agencies and their successors. Any commodities, technology and software will be exported from the U.S. in accordance with the U.S. Export Administration Regulations and other applicable laws or regulations. Diversion contrary to U.S. law is prohibited. If requested by Seller, Buyer shall provide documentation satisfactory to Seller verifying delivery at the designated country. **BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.**

**FOREIGN PRINCIPAL PARTY IN INTEREST; FREIGHT FORWARDER AND DOCUMENTATION:**

For any export sales, it is specifically agreed that Buyer shall be the foreign principal party in interest and / or that its freight forwarder shall act as Buyer's agent in such capacity for Export Administration Act or other applicable purposes; and Buyer and freight forwarder shall assume responsibility for all export or routed transactions documentation. At Seller's request, Buyer or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by Buyer or its freight forwarder related to sales to them by Seller.

**ANTI-BRIBERY AND ANTI-CORRUPTION:**

Buyer states that it is an independent contractor, and represents, warrants, and covenants that it is in compliance with U.S. the Foreign Corrupt Practices Act and all applicable laws and regulations relating to bribery and corruption in all countries in which Buyer conducts business.

**RELATIONSHIP OF PARTIES:**

This Agreement does not establish a joint venture, partnership, or joint enterprise between Buyer and Seller. Buyer acknowledges that Seller is neither an agent for nor a fiduciary of Buyer in regard

to your borrowing transactions. Buyer has the absolute obligation to make full payment under the terms and conditions of this Agreement, despite the losses, damage, or destruction to the Goods. Any advice or recommendation by Seller's employees or agents is solely by way of recommendation. Buyer's implementation of any such recommendation is exclusively Buyer's decision and Company shall have no liability for any such decision.

**PERMITS, EXPORT, AND IMPORT LICENSES:**

Buyer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Regulations, International Traffic in Arms Regulations, Toxic Substances Control Act, or other applicable laws or regulations.

**GENERAL:**

All orders are subject to acceptance by Seller. The terms and conditions in Seller's forms are incorporated herein by reference and constitute the entire and exclusive agreement between Buyer and Seller. Any representation, affirmation of fact and course of dealing, promise or condition in connection therewith or usage of trade not incorporated herein, shall not be binding on either party. If any provision hereof shall be unenforceable, invalid or void for any reason, such provision shall be automatically voided and shall not be part of this agreement, and the enforceability or validity of the remaining provisions shall not be affected thereby.

Buyer and Seller assume that no contingency will occur which impairs or affects Seller's ability to obtain or access labor, materials, energy, manufacturing facilities or transportation, or to otherwise perform at customary costs, to secure, produce and ship the goods on a timely basis. Seller shall be permitted to cancel orders or to modify quantities, pricing and shipment times due to the occurrence any such contingency.

No change modification, amendment or waiver of these terms and conditions shall be binding upon either Seller or Buyer without the written consent of authorized representative of both Seller and Buyer.

**SELLER SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE INCURRED BY BUYER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT.**

In the event that Seller retains an attorney to enforce any provisions hereof or to collect any amount owing hereunder or damages for breach of any provisions hereof, Buyer shall pay Seller attorney's fees plus all legal and court costs.

The information provided by Seller, including on Seller's website, is provided "AS IS" without warranty of any kind. Seller does not accept any responsibility or liability for the content, accuracy,

completeness or reliability of the information contained on its website nor does it guarantee that the website is free from computer viruses or other malicious or destructive properties.

**MISCELLANEOUS:**

This Agreement is the entire contract between Buyer and Company with respect to the matters covered herein and supersedes any prior communications and oral agreements. Captions in this Agreement are for convenience only. Should any terms or provisions of this Agreement be found to be void, invalid or unenforceable by a court of competent jurisdiction, that finding shall only affect the provisions found to be void, invalid or unenforceable and shall not affect the enforceability of the remaining terms and provisions or application of this Agreement. Company may delay or forgo enforcing any of its rights or remedies under this Agreement without losing them. Upon any change in the terms of this Agreement, and unless otherwise expressly stated in writing, no party who accepts this Agreement shall be released from liability. All parties agree that Company may modify this Agreement without the consent of or notice to anyone other than the Buyer. Where accepted by multiple buyers for the same or related transactions, each Buyer's obligations under this Agreement are joint and several.

**ACKNOWLEDGMENT:**

The undersigned, being either the Buyer or an individual authorized to act on behalf of the Buyer, represents he/she/it has read this document completely, understands the contents of same, and further agrees to all terms and conditions of this Agreement and to the Company's invoice terms for the sale of any Goods.

Please feel free to contact GCEMS for any questions or additional information. GCEMS appreciates its valued customers and the opportunity to be of service.

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As an authorized user, I agree to the Gulf Coast Electric Motor Service, Inc.'s Standard Terms and Conditions of Sale for Goods and Services.