

## Terms and Conditions of Sale

**Acceptance of Purchase Order:** Unless otherwise stated on the face hereof, the terms, conditions, specifications and drawings included in this purchase order, including all addenda, exhibits, and attachments hereto, upon acceptance by Seller as herein provided, shall constitute the entire agreement between Seller and Buyer regarding the subject matter hereof. No modification or waiver of any terms or provisions of this Purchase Order shall be binding on Buyer unless in writing, signed by Buyer. Seller may accept this Purchase Order on the terms and conditions herein contained by sending an order acknowledgement or confirmation, or by shipping any materials or goods specified herein, or by performing any services specified herein, or by accepting any payment hereunder. No terms or provisions proposed by Seller orally or in any order acknowledgement or confirmation or other writing shall modify or amend any of the terms or provisions of this Purchase or form the basis of any contract between Seller and Buyer, and Buyer hereby specifically objects to and rejects all such terms and provisions proposed by Seller.

**Terms of Payment:** Subject to the approval of Seller's Credit Department, terms are F.O.B. shipping point net 30 days from date of Seller's invoice in U.S. currency. If any payment owed to Seller hereunder is not paid when due, it shall bear interest at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate the Purchase Order Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses associated with collection of past due amounts including legal fees.

**Prices:** Unless otherwise specified by Seller, Seller's price for the Goods shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the goods, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within thirty (30) day period, Seller shall have the right to change the price for the Good to Seller's price in effect for the Goods at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods sold by Seller, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer.

**Delivery and Packaging:** All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. All materials and goods shall be packed, packaged, marked and otherwise prepared in a manner which is (1) in accordance with good commercial practice; (2) acceptable to common carriers for shipment at the lowest rate for materials or goods of such type; and (3) adequate to ensure safe arrival of such materials and goods at the named destination.

**Termination of Order By Buyer:** Buyer may terminate or suspend its order for any or all of the Goods covered by the Purchase Order provided that Buyer gives Seller reasonable written notice in advance of such termination or suspension and reimburses Seller for all losses, damages, costs, and expenses arising from such termination or suspension.

**Limited Warranty:** Seller warrants title and that the goods provided by Seller will be free from defects in materials or workmanship under normal use and service until the expiration of the earlier of twelve (12) months from the date of initial operation or eighteen (18) months from the date of shipment by Seller. If, within thirty (30) days after Buyer's discovery of any warranty defects, Buyer notifies Seller thereof in writing, Seller shall, at its option, promptly repair or replace F.O.B. point of manufacture, that portion of the goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period. **Replacement spare parts are further warranted to meet or exceed the quality of the OEM part and to be completely interchangeable in form, fit and function to the part supplied by the OEM.** Buyer's exclusive remedy shall be for damages, and Seller's total liability for any and all losses and damages arising out of any and all causes whatsoever shall in no event exceed the purchase price of the goods in respect of which such causes arise or, at Seller's option, the repair or replacement of such goods, and in no event shall Seller be liable for incidental, consequential or punitive damages resulting from any such cause. Seller makes no representation or warranty of any kind, express or implied, as to the merchantability, fitness for particular purpose, or any other matter with respect to any of the goods.

**Limitation of Remedy and Liability:** Seller shall not be liable for damages caused by delay in performance. The sole and exclusive remedy for breach of warranty hereunder shall be limited to repair, correction or replacement under the "Limited Warranty." In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), shall Seller's liability to Buyer and/or its customers exceed the price to Buyer of the specific goods manufactured by Seller giving rise to the claim or cause of action. Only Gem-Trim's president and/or Board of Directors are authorized to approve liability exposure beyond the value of the purchase order price. Buyer agrees that in no event shall Seller's liability to Buyer and/or its customers extend to include incidental, consequential or punitive damages. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, loss of use, loss of revenue and cost of capital.

**Confidentiality:** Any information (whether in written or any other tangible form, including magnetic or electronic media, or any intangible form, include oral or visual) furnished by Buyer to Seller under or in connection with this Purchase Order ("Confidential Information") shall be and remain the property of Buyer. Seller agrees that, except to the extent reasonably necessary to perform its obligations hereunder (1) Seller and its personnel shall keep this Purchase Order and its contents and the Confidential Information strictly confidential; (2) neither Seller nor its personnel will disclose this Purchase Order or its contents or the Confidential Information to any third party in any manner whatsoever; and (3) neither Seller nor its personnel will use this Purchase Order or any Confidential Information for any purpose whatsoever. All Confidential Information in tangible form shall be returned to Buyer promptly at its request.

**Buyer Supplied Data:** Seller shall not have the right to assign this Purchase Order or any rights or obligations of Seller hereunder without the prior written consent of Buyer. Any such assignment by Seller without Buyer's consent shall be null and void, unless otherwise mutually agreed upon in writing. No such assignment with Buyer's consent shall relieve Seller from any of its obligations or liabilities hereunder.

**Taxes:** Unless otherwise expressly provided in this Purchase Order, Seller agrees to pay any and all taxes imposed by law upon or on account of any materials, goods, or services covered by this Purchase Order, except taxes required by law to be paid or borne by the Buyer. Buyer holds Direct Payment Exemption Certificates for some states, including Texas. Sales and use taxes shall be omitted from invoices when Buyer has provided and exemption certificate for the involved state(s).

**Waiver:** Acceptance by Buyer of any performance less than required by this Purchase Order shall not be deemed to be a waiver of the rights of Buyer to enforce all of the terms and provisions hereof. No waiver by Buyer of any term or provision of this Purchase Order shall be deemed to be or shall constitute a waiver of any other term or provision hereof, whether or not similar, nor shall any such waiver constitute a waiver of any subsequent failure, delay, or breach by Seller.



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**Signature Page:**

Buyer Signature:

Buyer Title:

Company:

Purchase #:

Date: