

Terms and Conditions

General Terms and Conditions – G&D North America Inc.

These terms and conditions (the "Terms"), together with those contained in any proposal or quotation (a "Proposal") of G&D North America, Inc. ("GDNA"), to which these Terms are attached, constitute the entire agreement (the "Contract") between GDNA and you (the "Client") related to the sale of information technology products (the "Products") and the provision of services associated with the installation of such Products (the "Services"), as specified in the Proposal. GDNA'S ACCEPTANCE OF ANY OFFER BY CLIENT IS EXPRESSLY MADE CONDITIONAL UPON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS OF THE CONTRACT, AND NONE OF CLIENT'S ADDITIONAL OR DIFFERENT TERMS SHALL APPLY. CLIENT'S EXECUTION OF THIS CONTRACT OR CLIENT'S ACCEPTANCE OF SERVICES PROVIDED OR OF ANY PRODUCTS DELIVERED BY GDNA SHALL CONSTITUTE CLIENT'S ACCEPTANCE OF AND AGREEMENT WITH THE TERMS AND CONDITIONS OF THIS CONTRACT.

1. Pricing

The prices for the Products and Services are set forth in the applicable Proposal. Prices do not include any charges imposed by any lawful governmental or other taxing authority for any tax, levy, assessment, including without limitation any excise, consumer, sales, use, employment and any other similar or other burden or tax on, or related to, the Products or the Services provided by GDNA pursuant to the Contract. Unless otherwise specified, the Proposal, including prices contained therein, is valid for thirty (30) days following the date of submission of GDNA's Proposal to Client.

2. Payment terms

Except as otherwise provided in the Proposal, the prices are stated in US dollars. Except as otherwise provided in the Proposal, payment of the amount stated in the Proposal is due prior to GDNA delivering any products or providing any services to Client.

3. Security for Payments

If GDNA agreed in the proposal to payment terms deviating from Section 3 above, then Client grants GDNA a purchase money security interest in all Products provided by GDNA hereunder and the proceeds thereof in order to secure payment of all of Client's payment and performance obligations to GDNA arising under this Contract. Client shall cooperate with GDNA in preserving and perfecting GDNA's security interest in the Products and Client shall promptly execute and deliver to GDNA such agreements, documents and instruments as GDNA may require to perfect and maintain the validity, effectiveness and priority of the security interest created or intended to be created by this Contract. Client authorizes GDNA to file one or more financing or continuation statements and amendments thereto, relating to all or any part of the Products covered hereby.

4. Shipment, Risk of Loss, Title

Except as otherwise set forth in the Proposal, GDNA will deliver the Products Ex Works, GDNA's office. Risk of loss and damage to Products shall pass to Client upon delivery to the carrier. The Proposal will set forth the timing for delivery. After delivery to the carrier, Client is responsible for the risk of loss and damage to the Products and shall keep the Products fully insured for the total value of the Products, and in no case for an amount less than the total amount due to GDNA for such Products. Title to the Products shall vest in Client upon full payment of that portion of the price attributable to such Products. Except as otherwise provided in the Proposal, all freight and shipping costs are not included in the prices set forth in the Proposal.

5. Taxes

In addition to the prices set forth in the Proposal, Client shall pay GDNA the amount of any sales, use withholding or other taxes now or hereafter imposed by any federal, state or local taxing authority upon or with respect to the sale of Products or performance of Services. Where applicable, GDNA shall invoice, and Client shall reimburse GDNA, for any such taxes due to, or charged by, any governmental entity as a result of this Contract.

6. Site Access and Conditions for Services

Client shall provide or arrange for a right of entry and unhindered access to its facility from time to time by GDNA, its employees, agents and subcontractors, in order to perform the Services without interruption in accordance with a mutually agreed upon schedule. GDNA will have the right and option to increase the price or extend the schedule set forth in the Proposal to cover GDNA's reasonable additional costs and provide for any delays resulting from its inability to gain access to Client's facility caused by any circumstances beyond the control of GDNA.

7. Force Majeure

Neither GDNA nor Client shall be liable for any delay or failure to perform any of its respective obligations under this Contract, except, in the case of Client, its payment obligations hereunder, if and to the extent such delay or failure is due to circumstances beyond the reasonable control of such party, including but not limited to, fires, floods, explosions, accidents, acts of God, weather, breakdown of Client's site, declared and undeclared wars or riots, strikes, lockouts or other concerted acts of workmen, acts of government, shortages of materials, shortages of transportation, or any government act, omission, regulation, license, order or rule.

8. Change Orders

GDNA may notify Client of, or Client may request, changes to the project. Should any such changes cause an increase or decrease in the price or in the delivery schedule set forth in the Proposal, or affect any other Contract provision, GDNA will submit to Client a proposed adjustment to any provision affected by the change (each a "Change Order"). GDNA will proceed with such change upon the parties' execution of a Change Order to the Proposal or Contract, provided, however, that, if GDNA performs any additional Services prior to the parties executing a Change Order, GDNA will not be barred from making any claim for additional compensation or time.

9. Term; Termination

This Contract will remain in force until terminated in accordance with the provisions set forth herein.

- a. **Material Breach.** This Contract may be terminated by GDNA, effective after thirty (30) days' written notice has been provided to Client, of Client's breach or failure to perform its obligations under this Contract, and such breach or failure to perform is not cured or otherwise remedied within such thirty (30) day period.
- b. **Insolvency.** The Contract may be terminated by either party, effective immediately by giving written notice to the other party, if the other party (a) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (b) makes a general assignment for the benefit of creditors, (c) files a voluntary petition for bankruptcy or has filed against it an involuntary petition for bankruptcy, or (d) applies for the appointment of a receiver or a trustee for substantially all of its assets or permits the assignment of any such receiver or trustee who is not discharged within a period of 30 days after such appointment.
- c. **Consequences.** Upon termination of the Contract pursuant to Section 10 a, Client will pay GDNA for all Services performed through the date of termination, all Products ordered for Client but not yet paid for, and all of GDNA's direct costs, including, without limitation, non-cancellable commitments, associated with such termination. Nothing contained herein shall limit a party's remedies with respect to breaches occurring prior to termination.

10. Limited Warranties

- a. **Limited Warranty and Manufacturer's Warranty on Products.** The Products are covered by a warranty provided by the original manufacturer of such Products (in each case, a "Manufacturer's Warranty"), and GDNA assigns each such Manufacturer's Warranty to Client to the extent permitted. All warranty claims under a Manufacturer's Warranty will be managed by Client. GDNA does not grant any further warranty to Client for the Products unless otherwise agreed upon in the Proposal.
- b. **Limited Warranty on Services.** Subject to the terms and conditions set forth herein, GDNA warrants to Client, for period of one (1) year from the final date of installation by GDNA (if applicable), that it shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services (the "Services Limited Warranty").
- c. **Limitations and Exclusions.** The Services Limited Warranty is only available to Client and not transferrable. Products covered by a Manufacturer's Warranty are subject to terms and conditions, including limitations and exclusions, provided by the manufacturer. The Services Limited Warranty does not cover any of the following: normal wear and tear; damage or accidents resulting from freight damage; damage or accidents arising from failure to follow precautionary safety measures; abuse, misuse or modification of Products; improper installation (if not installed by GDNA); or any defects, damages or other harm that is not the result of the acts or omissions of GDNA.
- d. **Remedies and Procedures.** Client shall promptly check each delivery, and will notify GDNA immediately of any readily apparent errors to the order or damage to the Products upon delivery. Client will inspect all goods purchased and notify GDNA of any claimed defect or non-conformity within seven (7) days after the day of delivery, and in any event before Client sells or uses the goods. Any claim regarding breach of a Services Limited Warranty must be received by GDNA before the expiration of the applicable warranty period. GDNA reserves the right to inspect and investigate the alleged breach prior to any remedy being provided. GDNA reserves the right to charge reasonable amounts for travel and labor associated with investigation of invalid claims.
- e. **Exclusive Remedies; Disclaimer.** The Services Limited Warranty and the Manufacturer's Warranty and the remedies set forth above are the sole and exclusive warranties and remedies for a breach thereof, and GDNA shall have no other liability to Client or any other person or entity in connection therewith. Any efforts by GDNA beyond the obligations provided for herein will not in any way change the limitation of remedies and damages stated in this Section 11, and no agent, reseller, or other representative of GDNA is authorized to change any warranty, expressed or implied, of GDNA. ALL EXPRESS AND IMPLIED WARRANTIES (INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT) OTHER THAN THE EXPRESS LIMITED WARRANTY SET FORTH ABOVE ARE EXPRESSLY DISCLAIMED. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF GDNA HAS ANY AUTHORITY TO BIND GDNA TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY.

11. Rights and Ownership

GDNA has created, acquired or otherwise has rights in, the Products and Services and may, in connection with furnishing Products and performance of Services for Client, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, knowhow and techniques (collectively, "GDNA Technology"). Except as provided below, GDNA Technology and all data, figures, photographs, drawings, calculations, estimates, notes and other documents prepared by GDNA in providing the Services ("Work Product") will be and remain the property of GDNA. To the extent that any GDNA Technology is contained in any Work Product, GDNA hereby grants to Client, upon full and final payment to GDNA under the applicable Proposal, a royalty-free, paid up, world-wide, nontransferable, non-sublicensable, and nonexclusive license to use such GDNA Technology solely in connection with the use of the Products and Services as intended. GDNA Technology is and will remain the property of GDNA and except for the license granted in the preceding paragraph, Client will acquire no right or interest in such property. Nothing in this Contract will be construed as preclu-

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ding or limiting in any way the right of GDNA to sell products or to provide services of any kind or nature whatsoever to any person or entity as GDNA in its sole discretion deems appropriate. In addition, and notwithstanding anything herein to the contrary, (a) GDNA will own or license all right, title and interest, including, without limitation, all rights under all copyright, patent and other intellectual property laws, in and to the GDNA Technology and the Work Product and (b) GDNA may employ, modify, disclose, and otherwise exploit the GDNA Technology.

11. Indemnity

Client will indemnify and hold harmless (and at GDNA's option, defend) GDNA and its directors, officers, and employees, from and against any and all liabilities, damages, losses, costs, claims, suits, judgments, actions and expenses (including reasonable attorney's fees) (collectively "Claims"), including Claims based upon bodily injury, death of any person or damage to real or tangible personal property, arising in connection with this Contract, and the use of the Products and Services by Client.

12. Limitations of Liability

GDNA'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THE CONTRACT, FROM ANY CAUSE OR CAUSES, AND REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING BUT NOT LIMITED TO, BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR STATUTORY OR REGULATORY LIABILITY, SHALL NOT EXCEED THE AMOUNT ACTUALLY RECEIVED BY GDNA UNDER THE CONTRACT, NET OF ANY TAXES, SHIPPING AND HANDLING COST, AND OTHER ANCILLARY EXPENSES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR ECONOMIC DAMAGES (INCLUDING, BUT NOT LIMITED TO LOST PROFITS AND LOST BUSINESS OPPORTUNITY) ARISING OUT OF OR RELATING TO THIS CONTRACT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13. Confidentiality

All specifications, documentation, figures, drawings, pricing information and any other confidential or proprietary information ("Confidential Information") of GDNA are the property of GDNA. Client shall not disclose Confidential Information of GDNA nor use any Confidential Information of GDNA for any purpose by Client other than in connection with transacting business with GDNA pursuant to Proposals between the Parties, and this Contract, as applicable. Client shall promptly return to GDNA all such Confidential Information upon termination of this Agreement or upon GDNA's request. Client's obligations under this paragraph shall survive the cancellation, termination or completion of any Proposals, orders or this Contract.

14. Assignment

Client may not assign this Contract without the prior written consent of GDNA. Any attempt by Client to assign the Contract without such consent shall be null and void. For purposes of the foregoing, a change of control, stock sale, merger or other reorganization of Client shall be deemed an "assignment."

15. Modifications, Complete Agreement

No modifications of the Contract will be effective unless in writing and signed by authorized representatives of the parties. No course of performance or any course of dealing or usage of trade shall vary the express terms hereof. Except as otherwise expressly set forth herein, this Contract constitutes the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Contract.

16. Governing Law and Venue

This Contract is made in accordance with and shall be governed and construed in accordance with the laws of the State of Florida, United States, without regard to its rule of conflicts of laws. All claims arising under or related to this Contract or the negotiation, validity or performance of the terms of the Contract by the parties hereto, shall be venued in a Federal or state court sitting in the State of Florida, and Client irrevocably consents to the sole and exclusive personal jurisdiction of such courts, waives any objection to the laying of venue in any such court and agrees not to plead or claim that such litigation has been brought in any inconvenient forum or that there are indispensable parties that are not subject to the jurisdiction of such courts.

17. Severability

If any provision of the Contract is held by a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

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