GVA Lighting, Inc.

Standard Terms and Conditions of Sale for Goods & Services (November 2019)

These Standard Terms and Conditions for the Sale of Goods and Services (the “Terms”) are applicable to all quotations, bids and sales of products, goods and systems (the “Goods”) and to the performance of all services (which may include, but are not limited to, the sale and distribution, manufacture, engineering and assembly, repair, installation, maintenance and labor costs, that take effect between the date of the Agreement and delivery of Products and/or performance of Services). In addition, if an Agreement has a term longer than twelve (12) months, GVA may adjust Prices as of each 1st January to reflect variations in the foreign exchange rates, and in the value of Canadian currency and the USA and Euro currencies of more than 5% since the date of a quotation.

Payment Terms. All standard payment terms stated in GVA Quotations are subject to credit limit approval. In the case of a new Buyer or an existing Buyer in default with GVA, full payment is due, including all freight (shipping) costs from GVA’s facility in Oakville Ontario, all taxes, levies, imposts, duties, deductions, environmental provisions, all other charges, fees or withholdings levied, withheld or assessed by any governmental authority, with respect to, or measured by, the manufacture, sale, shipment, use or Price of the Goods (including interest and penalties thereof). GVA, however, reserves the right to refuse all payments that are not made in full settlement of the amount due. Buyer shall make all payments in the stated currency within the Agreement by check or wire transfer. In some cases, GVA may also accept payment by debit card or other payment on an agreed to, in such instances, Buyer hereby agrees to pay an additional 3% of the amount of such payment. 

Late Payments. Buyer shall pay interest on all late payments calculated daily and compounded monthly, at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable laws of the Province of Ontario, Canada. Buyer also shall reimburse GVA for all reasonable costs incurred in collecting any past-due amounts, including reasonable attorney’s fees. Buyer shall also reimburse GVA for all reasonable costs incurred in enforcing its rights under this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or liquidation, or any similar proceeding, in any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of its obligations under this Agreement; (b) becomes insolvent, files a petition for bankruptcy or liquidates or commences proceedings to that effect and cease or threaten to cease to operate. Buyer’s obligations will not terminate until allundeclared claims or charges, including additional charges for late unloading, will be invoiced separately.

Partial Shipment. GVA, in its sole discretion, without liability or penalty, may make partial shipments of Goods to Buyer. GVA shipments will constitute a separate sale and Buyer shall pay for the Goods shipped, in accordance with the terms of the Agreement. Any change in the Goods shipped will be recorded on the GVA invoice, which is in whole or partial fulfillment of an Order. Buyer agrees to use first-in-first-out inventory practices with respect to the Goods it purchases from GVA. 

Late Delivery. Any time quoted for delivery is an estimate only; provided, however, that GVA shall endeavor to make timely deliveries of the Goods at the location specified in the Order. 

Transfer of Title and Risk of Loss. Title to Goods shipped under any Order passes to Buyer upon Buyer’s payment in full for goods and services. Risk of Loss or damage passes to Buyer upon loading delivery to the carrier for delivery (FCA Terms). Buyer’s obligations will not terminate until all undeclared claims or charges, including additional charges for late unloading, will be invoiced separately.

6. Limited Warranty

6.1 Limited Product Warranty. GVA provides a Limited Warranty (Limited Warranty) to the original Buyer for a period of five (5) years for luminaires and power-data equipment and three (3) years for exterior finish of exterior fixtures. In addition, for new Buyers, the original Buyer shall return the Nonconforming Goods to GVA at its facility in Oakville Ontario, at Buyer’s expense and risk of loss, for a period of thirty (30) days following the expiration of the Warranty Period. Buyer agrees to use first-in-first-out inventory practices. 

6.2 Repair or Replacement. Buyer shall repair, or have repaired, the Nonconforming Goods in a timely manner, at Buyer’s expense and risk of loss. Buyer shall provide GVA, in writing, with a statement of the nature of the Nonconformance, together with any photographs or other evidence of the Nonconformance. Nonconformance of Goods may be repaired or replaced at GVA’s option, in whole or in part, at Buyer’s expense. Buyer shall not have, and acknowledges that it does not have, any right, under this Agreement, any Order, or any other agreement, or under law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to GVA. 

6.3 Return Material Authorization. Buyer shall deliver the Nonconforming Goods to GVA within two (2) hours of arrival at Delivery Location. Buyer will be charged an hourly rate of $40.00/hour for every hour beyond the 2-hour maximum that is needed to unload the Goods. All additional charges for late unloading, and additional charges for late unloading, will be invoiced separately.

6.4 Exceptions to Seller’s Obligations. GVA will not accepting any job that requires a job-specific ribbon cable, unless the Buyer agrees to pay an additional 3% of the amount of such payment. 

6.5 Effect of Expiration or Termination. Any termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the date of such termination, at Buyer’s expense, GVA will not accept any job that requires a job-specific ribbon cable, unless the Buyer agrees to pay an additional 3% of the amount of such payment. 

6.6 Claim for Return Material Authorization. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement. 

6.7 Termination. In addition to any remedies that may be provided under this Agreement, GVA may terminate this Agreement immediately upon written notice to Buyer, if Buyer (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of its obligations under this Agreement; (b) becomes insolvent, files a petition for bankruptcy or liquidates or commences proceedings to that effect and cease or threaten to cease to operate. Buyer’s obligations will not terminate until all undeclared claims or charges, including additional charges for late unloading, will be invoiced separately.

6.8 Transfer of Title and Risk of Loss.  Title to Goods shipped under any Order passes to Buyer upon Buyer’s payment in full for goods and services. Risk of Loss or damage passes to Buyer upon loading delivery to the carrier for delivery (FCA Terms). Buyer’s obligations will not terminate until all undeclared claims or charges, including additional charges for late unloading, will be invoiced separately.

6.9 Inspection. Buyer shall inspect Goods received under this Agreement within ten (10) business days following delivery of such Goods (‘inspection period’) and either accept or reject, and upon any such inspections, reject nonconforming Goods (as defined below), reject such Goods. If Buyer discovers any nonconformities, Buyer must request an authorization from GVA to return the Nonconforming Goods under this Agreement, the Return Material Authorization. Buyer shall deliver the Nonconforming Goods to GVA within two (2) hours of arrival at Delivery Location. Buyer will be charged an hourly rate of $40.00/hour for every hour beyond the 2-hour maximum that is needed to unload the Goods. All additional charges for late unloading, will be invoiced separately.

6.10 Return Material Authorization. Buyer shall deliver the Nonconforming Goods to GVA within two (2) hours of arrival at Delivery Location. Buyer will be charged an hourly rate of $40.00/hour for every hour beyond the 2-hour maximum that is needed to unload the Goods. All additional charges for late unloading, will be invoiced separately.

6.11 Nonconforming Goods. GVA will not accepting any job that requires a job-specific ribbon cable, unless the Buyer agrees to pay an additional 3% of the amount of such payment.
6.1.3 Third Party Products Warranty. Products sold through GVA from a Third Party carries the warranty set directly by the OEM. It is the responsibility of the Buyer to initiate a claim directly with the OEM. Intercession by GVA to the third party on behalf of the Buyer must be negotiated at the time of purchase.

6.2 Warranty Limitations. The Limited Warranty does not include:
(a) Goods that, in GVA Lighting’s sole judgment, have been subjected to abuse, misuse, neglect, tampering, negligence, accident, improper testing, improper installation, improper storage, improper handling, improper maintenance, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by GVA.
(b) Storage of unused GVA Goods must be done at below 80% non-condensing humidity and within range of operating temperatures from GVA specification sheets. Failure to do so will void warranty.
(c) Project-specific installation conditions must follow line diagrams and/or wiring layouts provided by GVA and abide by limitations incurred within, otherwise performance of such installed GVA Goods will suffer and warranty is deemed void. Usage of non-GVA approved Goods, such as but not limited to power supplies, cabling, or connectors will void warranty.
(d) Goods that have been reconstructed, repaired or altered by anyone other than GVA.
(e) Goods that are refurbished or purchased through an inventory clearance or liquidation sale or other sales in which GVA expressly disclaims its warranty obligations pertaining to the Product.
(f) Installation, or removal of the Product for repair, troubleshooting, re-installation or any costs associated therewith (including shipping costs).
(g) Parametric failures that occur when key electrical or optical specification parameters change more than a certain amount from the initial values. Electrical and optical parameters can change slightly over time. Slight changes are normal and typically don’t affect the operation of the Product. Slight changes are not considered failures. Moderation of luminous intensity degradation, moderate changes in forward voltage, or moderate changes in reverse leakage current are examples of possible parametric failure modes.

6.3.2 End User Warranties. This limited warranty extends only to the Buyer placing the Order with GVA. In the event that the Buyer is authorized by GVA to resell the purchased Goods to end users (“End Users”), the Limited Warranty in this agreement shall apply to all such Orders as coming from the Buyer, and the Buyer shall handle all returns directly with such End User; provided, however, that GVA shall determine whether the Goods breached the terms of its Limited Warranty and (ii) whether GVA’s obligation under such Limited Warranty shall be either the repair or replacement of the Goods or reimbursement of the purchase price; if GVA so determines that the purchase price will be reimbursed, then the Buyer shall reimburse to the End User the full purchase price paid to the Buyer by the End User.

6.4 Buyer’s Exclusive Remedy. Notwithstanding any other provision of this Agreement, this Section 6.4 contains Buyer’s exclusive remedy for a breach of Section 6.1. Buyer’s remedy under this Section 6.4 is conditioned upon Buyer’s compliance with its obligations under this Section 6.4. During the warranty period, with respect to any Goods alleged to be in breach of Section 6.1, (a) Buyer shall notify GVA, in writing, of any alleged claim or defect within ten (10) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event, no later than the expiration of the applicable warranty period); (b) Buyer shall obtain from the Return Material Authorization in accordance with Section 3.5 and ship, at the Buyer’s expense, such allegedly defective Goods to GVA’s designated location for inspection and testing by GVA; (c) if GVA’s inspection and testing reveals that such Goods are defective and any such defect has not been caused or contributed to by any of the factors described under Section 6.2 above, GVA, in its sole discretion and at its expense, shall repair or replace such defective Goods; and (d) GVA shall ship to Buyer, at GVA’s expense, the repaired or replaced Goods to the Delivery Location. THIS SECTION 6.3 SETS FORTHE BUYER’S SOLE REMEDY AND GVA’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN THIS SECTION.

6.5 DISCLAIMER OF OTHER WARRANTIES; NON-RELIANCE FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6.1 AND 6.2 NEITHER GVA NOR ANY PERSON ON GVA’S BEHALF MAKES OR MAKES ANY EXPRESS REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED, ARISING OUT OF OR RELATING TO ANY ACT, OMISSION OR COURSE OF DEALING BETWEEN THE PARTIES.

6.6 LIMITATION OF LIABILITY. IN NO EVENT SHALL GVA OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, WORK STOPPAGE, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER GVA HAS MADE OR MAKES ANY EXPRESS REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED, ARISING OUT OF OR RELATING TO ANY ACT, OMISSION OR COURSE OF DEALING BETWEEN THE PARTIES.

7. Limitation of Liability

7.1 No Liability for CONSEQUENTIAL OR INDIRECT DAMAGES. IN NO EVENT SHALL GVA OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, WORK STOPPAGE, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER GVA HAS MADE OR MAKES ANY EXPRESS REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED, ARISING OUT OF OR RELATING TO ANY ACT, OMISSION OR COURSE OF DEALING BETWEEN THE PARTIES.

7.2 Maximum Liability for DAMAGES. IN NO EVENT SHALL GVA’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 GVA PURSUANT TO THE APPLICABLE ORDER GIVING RISE TO THE CLAIM.

7.3 Assumption of Risk; Without Limiting the Generality of the Foregoing, Buyer Assumes All Risk and Liability for the Results Obtained by the Use of ANY GOODS in the Practice of ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERATING EQUITY, SUCCESS OR FAILURE RELATED TO THE USE OF SUCH GOODS.

7.4 Intellectual Property Rights. Buyer acknowledges and agrees that all intellectual property rights relating to the manufacturing of the Goods are the sole and exclusive property of GVA or its third-party licensors, and Buyer shall not acquire any ownership interest in any of GVA’s intellectual property rights under this Agreement. Any goodwill derived from the use of the Goods by Buyer of GVA’s intellectual property rights inures to the benefit of GVA or its third-party licensors. Without limiting the foregoing, all tuning, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, catalogs, masks, and drawings, specifications and any other property has been acquired by GVA in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto are owned by GVA (“GVA Tooling”) and Buyer has no right, title, or interest in or to any of the GVA Tooling.

7.5 Confidentiality. All non-public, confidential, or proprietary information of GVA, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that GVA discloses to Buyer, whether orally orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as “confidential”, in connection with the Agreement, is confidential, solely for the use of performing the Agreement, and may not be disclosed or used by Buyer, either directly or indirectly, by the Buyer, or its respective permitted successors and permitted assigns.

8. Miscellaneous

8.1 Relationship of the Parties. The relationship between GVA and Buyer is solely that of vendor and vendees and are independent contracting parties.

8.2 Survival. Statute of Limitations. Any provision that, in order to give proper effect to its intent, should survive such expiration or termination, including, without limitation, Section 3.5, Section 4, Section 5 and Section 7, will survive the expiration or earlier termination of this Agreement.

8.3 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidates or renders unenforceable any such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

8.4 Right to Manufacture and Sell Competitive Goods. This Agreement does not limit GVA’s right to manufacture or sell, or preclude GVA from manufacturing or selling, to any person or entity, or entering into any agreement with any other person or entity related to the manufacture or sale of, the Goods and other goods or products that are similar to or competitive with the Goods.

8.5 Waiver. No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of GVA. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:
(a) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or
(b) any act, omission or course of dealing between the parties.

8.6 Assignment. Buyer may not assign any of its rights or delegate any of its obligations under this Agreement except with the prior written consent of GVA. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under this Agreement.

8.7 Force Majeure. GVA will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of GVA, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by such difficulties, GVA will not be obligated to seek or obtain any settlement that, in GVA’s sole judgment, is not in GVA’s best interest.

8.8 Successors and Assigns. This Agreement is binding on and inures to the benefit of the parties and their respective permitted successors and permitted assigns.

8.9 Dispute Resolution. These Terms are made under and will be construed in accordance with the laws of the Province of Ontario Canada, other than such laws, rules, regulations and case law that would result in the application of the laws of a jurisdiction other than the Province of Ontario. Any suit to enforce any provision of this Agreement, or arising out of or based upon this Agreement, shall be brought exclusively in the provincial or federal courts located in Toronto, Ontario, Canada.

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