

GAMMA INSULATORS CORP. - TERMS & CONDITIONS OF SALE

1. **AGREEMENT.** The contract of sale resulting from documentation on the reverse side or attached hereto together with these terms and conditions ("Contract") constitutes the entire agreement between the parties hereto, except as modified in writing signed by both the Seller and Purchaser. The Seller is Gamma Insulators Corp. and the Purchaser is identified in the Contract. Any terms in a purchase order, irrespective of their materiality, which are either different from or additional to Seller's terms and conditions of sale, are objected to and are excluded unless the Seller expressly agrees in writing to such terms. Execution of such forms by Seller to accommodate Purchaser's procedures or to evidence agreed upon change orders shall not be construed as assent to Purchaser's terms. Any representations, warranties or statements made by any employee, sales person or agent of Seller not expressed in the Contract shall not be binding on Seller. Acceptance of the goods shipped shall constitute assent to Seller's terms and conditions of sale. The Contract shall be binding upon Purchaser and Seller, and on their successors and assigns.

2. **ACCEPTANCE AND APPROVAL OF ORDER.** A proposal or quotation from Seller shall not be considered as an offer, but the basis for an order from Purchaser which is subject to acceptance by Seller. An order will become binding on Seller only when accepted and approved by the Sales and Credit Department of the Seller. Orders are accepted only at Rochester, New York and / or Sabaneta, Colombia. The minimum order is \$500. Partial orders are subject to price reviews. Orders must be in even standard packages. In the event of an order that does not correspond to standard package size, Seller will increase the order quantity to the next largest standard package size.

3. **CREDIT.** Credit terms of payment must have the approval of Seller's Credit Department and must be specified in writing on Seller's invoice or in the Contract. If Purchaser's credit is found by Seller to be unsatisfactory, Seller may rescind or terminate the Contract. If at any time during the term of the Contract Purchaser's financial responsibility becomes impaired or unsatisfactory to Seller, Seller reserves the right to stop shipment on notification to Purchaser, demand payment in advance or at time of delivery for future deliveries, or require other security satisfactory to Seller and in the absence thereof, to terminate the unfilled portion of the Contract. Seller will notify Purchaser promptly of its decision to stop shipments and give an advance notice to the extent possible. In the absence of credit terms, sales are for cash.

4. **PAYMENT.** Default unless otherwise stated is Net 30 days in U.S. Funds. Specific terms of payment shall be set forth on the reverse side of the Contract or identified and appended hereto. Purchaser agrees to make payment at Seller's location specified in the Contract in lawful money of the United States. Purchaser further agrees to make all payments when due to Seller in accordance with the agreed terms of payment in the Contract with no right of retention or set-off. Purchaser agrees to pay a finance charge of 1.5% per month (or, to the extent permitted by law if less) on all delinquent balances if and when assessed by Seller, and any attorney's fees and court costs arising out of and made necessary in collection of Purchaser's obligation to Seller created by the Contract.

5. **TAXES.** Any federal, state or local tax, assessment, fee, duty or charge hereafter imposed on or measured by the products purchased hereunder shall be for Purchaser's account, unless Purchaser furnishes Seller an acceptable exemption certificate from such tax, fee, duty or charge prior to shipment.

6. **FORCE MAJEURE.** Seller shall make delivery in accordance with the terms of the Contract or within a reasonable time in the absence of any specific commitment, but Seller shall not be liable for delays or defaults in delivery caused by floods, fires, storms, or other acts of God, by war or act of public enemy (or civil disturbance), strikes, lockouts, shortages of labor or raw materials and supplies (including fuel) or production facilities, transportation service or equipment shortages or failures, action of any governmental authority or other conditions beyond Seller's reasonable control.

7. **CANCELLATION.** Order cancellations and/or deferrals will be subject to a minimum 25% charge. If Purchaser desires to cancel or change any portion of the Contract, it must make such request in writing to Seller. Seller may, in its sole discretion, accept or reject any such request. If accepted, the Purchaser nonetheless must take delivery and make payment to Seller for all material manufactured and in stock or in process of manufacture at time of notice, and all special materials ordered at time of notice and for which Seller must take delivery, unless otherwise agreed by Seller in writing. All such materials must be removed from Seller's premises within 30 days after payment and payment will be due at time of notice.

8. **INSPECTION AND TESTING.** Seller's standard specifications and tests apply to all orders. All charges for inspections or tests not regularly furnished are for Purchaser's account and subject to prior negotiation. All inspections shall be conducted at Seller's plant, and failure of Purchaser to avail itself of inspection privileges shall be deemed a waiver of such privileges.

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9. **PRICES.** Prices are subject to change without notice. Orders based on published prices and accepted for scheduled shipment will be invoiced at Seller's applicable price in effect on the scheduled date of shipment, unless otherwise specifically noted on Seller's order acknowledgement. All prices will be in accordance with applicable government regulations. Orders specifying palletizing or special packaging will involve special charges.

10. **DELAYS.** All orders are accepted subject to Seller's ability to make delivery at the time and in the quantities specified, and Seller shall not be liable for damages for failure to make partial or complete shipment or for any delay in making shipments. Purchaser shall be liable for any added expenses incurred by Seller because of Purchaser's delay in furnishing requested information to Seller, delay resulting from order changes by Purchaser, or delay in unloading shipments at delivery point.

11. **SHIPMENT.** Seller will select method of shipment and routing when transportation charges are for account of Seller. When shipping instructions are specified by the Purchaser, all costs in excess of the most economical method of transportation will be for the account of the Purchaser. The foregoing includes, but is not limited to, carrier's charges for notification prior to delivery, demurrage, delay in unloading, diversion, or reconsignment. If Purchaser needs a flatbed, the cost difference between regular truck and flatbed will be charged to the Purchaser, documentation of the difference will be available upon request.

12. **FREIGHT ALLOWANCE.** Freight terms are based on regular, enclosed truck to single destination, unless otherwise stated. If flatbed truck is required, additional charges will apply if order is freight allowed. Same applies for shipments during weekends, nights, expedite and/or air shipments. Seller's freight allowance is \$7,500.00 or more per order shipment release to one destination for eastern states (1), \$10,000.00 for western states (2), and \$15,000.00 for shipments destined to Canada unless otherwise negotiated. For orders to Alaska and Hawaii that meet freight allowance requirements freight will be paid to the West Coast Port of Exit. The above policy applies to standard dry van ground transit only. The freight allowance terms are "FOB Origin, Freight Prepaid." In the event the freight thresholds are not met, the terms will either be "FOB Origin, Freight Prepaid and Billed" or "FOB Origin, Freight Collect".

(1). Eastern States: AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI.

(2). Western States: AK, AZ, CA, CO, HI, ID, KS, MT, NE, NM, NV, ND, OK, OR, SD, TX, UT, WA, WY.

14. **IN TRANSIT CLAIMS.** Claims for damage or shortage in transit must be made against the carrier by the owner of the shipment according to the FOB terms of the Contract. Purchaser has the responsibility to inspect shipments before or during unloading to identify any such damage or shortage and see that appropriate notation is made on the delivery tickets or an inspection report furnished by the local agent of the carrier in order to support a claim.

15. **CLAIMS.** Notice of claims against Seller hereunder for any reason, must be made to Seller in writing within 30 calendar days after discovery and within any applicable warranty period. Failure to give such notice to Seller shall constitute a waiver by Purchaser of any right later to assert such claim. Products must be inspected by Purchaser upon receipt and notice of defects or damage must be given to Seller within 24 hours of receipt of product.

16. **RETURNS.** All requests for returned goods must first be approved in writing, by the appropriate Product Line Manager. After written approval, returned goods shall be accepted for credit only if in saleable condition and only with evidence of Seller's prior written consent and proof of purchase within one year of request date. Product must be in original packaging and be in standard pack quantities. Special items of other than normal and standard design regularly sold by Seller cannot be returned. Seller will assess a minimum 25% restocking charge, if applicable. Delivery costs to and from the Purchaser that were paid by Seller will be deducted along with all loading and unloading costs and any costs of repair.

17. **PATENTS.** Seller agrees to defend, and to protect Purchaser against loss or damage usually arising out of any legal action for patent infringement in connection with the manufacture of its products sold to Purchaser, provided Seller is notified within 30 calendar days of any such action with complete information and is given an opportunity to defend. Seller's obligation hereunder shall be subject to the following: That Purchaser has not modified the product and is utilizing it for its intended purpose. In no event shall Seller be liable for any consequential or incidental damages.

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18. WARRANTY; LIMITATION OF LIABILITY. Seller warrants title to each individual product sold under the Contract and further warrants for a period of one (1) year after shipment, but only to the extent and limit of the purchase price paid for such individual product, that such product conforms to the specifications set forth in the Contract and is free from defects in material and workmanship under normal service and use for which it was designed. Seller's sole obligation and Purchaser's exclusive remedy under this warranty shall be limited to one of the following, as selected by Seller: delivering to Purchaser a replacement for any product part thereof determined by Seller to be defective; repairing such product or part; or refunding the purchase price (or an equitable portion thereof) paid for such product or part by Purchaser. SELLER MAKES NO WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY, AND NO OTHER WARRANTY, WHETHER EXPRESS OR ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE IMPLIED SHALL EXIST IN CONNECTION WITH SELLER'S PRODUCTS OR ANY SALE OR USE THEREOF. Purchaser must notify Seller within

30 calendar days of discovery and within the warranty period of any claim under this warranty. Seller's warranty extends only to the first purchaser of a product from Seller or Seller's authorized distributor. All goods not manufactured by Seller are warranted only to the extent of the warranties of the original manufacturer. Seller disclaims, and shall not be responsible for, any liability arising from tort, including strict liability, and Seller further disclaims, and shall not be responsible for, any liability (whether arising under this or any other provision of the Contract or otherwise) for any costs (including costs of removal and replacement), liabilities, lost profits, loss of good will or any other general, direct, special, incidental or consequential damages incurred by Purchaser in connection with the Contract or any product purchased thereunder, in all cases irrespective of whether Seller was advised of the possibility of such liability.

19. INDEMNIFICATION. Purchaser agrees to indemnify, defend and hold Seller harmless from any and all demands, claims, actions or judgments of a third party against Seller, directly or indirectly, relating to injury and/or death of any and all persons and for loss of and/or damage to property arising out of Purchaser's sale, re-sale and/or misuse of products and/or Purchaser's negligence or willful misconduct. This indemnification obligation shall apply even in the event of the fault, negligence or strict liability of Seller.

20. GOVERNMENTAL REGULATIONS. Seller warrants that no code, law, regulation, or ordinance of the United States, a state or any other governmental authority or agency or any applicable Executive Order has been violated in the manufacture or sale of the items covered by the Contract and warrants that the equipment, supplies and/or articles covered thereby conform with all such requirements.

21. LAW. The Contract shall be governed by and shall be construed by the law of the State of New York, and any disputes arising hereunder will be heard by a court of competent jurisdiction in New York.