

## GENERAL TERMS AND CONDITIONS OF PURCHASE

Gerhardi, Inc.  
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These General Terms and Conditions of Purchase (these "Terms") are applicable to all suppliers (the "Suppliers" and each, individually, a "Supplier") of Gerhardi, Inc, an Alabama corporation (the "Company").

### Terms and Conditions of Sale:

1.1. Supplier sell and deliver, and Company shall purchase and accept from Supplier the products (herein, the "Products") described on or in any confirmed Company order or agreement or any combination thereof (the "Order"), pursuant to the terms and conditions of the Order and those specified below, which taken together shall constitute the entire agreement between Company and Supplier regarding the Products (herein, this "Agreement").

1.2. No other terms or conditions shall be of any effect unless otherwise specifically agreed to by Company in a separate written agreement duly signed by an officer of Company. Supplier will be deemed to have assented to all Terms if any part of the Products are delivered by Supplier. Supplier shall confirm all Orders no later than fourteen (14) days following receipt thereof. If Supplier finds any Term not acceptable, Supplier must so notify Company at once and must reject the Order for Products delivered under this Agreement. Any additional or different terms or conditions contained in Supplier's Order confirmation or response shall be deemed objected to by Company and shall be of no effect. No general terms and conditions of a Supplier shall at any time form a part of the content of any contract or agreement between the Supplier and the Company, even if they are not further expressly rejected by the Company.

1.3. Unless otherwise agreed in writing or otherwise stated on the quotations, all of Supplier's quotations for Products are valid for a minimum period of ninety ( 90 ) days from the date of issue.

1.4. No Order is binding upon the Company until the earlier of acceptance of the Order in writing by the Supplier or the delivery of the Products by the Supplier. Notwithstanding any prior acceptance of an Order by Supplier, Company shall have no obligation if the Supplier is in breach of any of its obligations hereunder, or any other agreement between the Supplier and Company, at the time Supplier's performance was due.

1.5. All verbal agreements concerning the terms of any Order, including agreements made by telephone, shall have no force and effect unless and until acknowledged by the Company in writing.

1.6. Company shall be entitled to cancel or modify the content of the Order for convenience. Supplier shall be entitled to reimbursement of reasonable costs arising out of such cancellation or modification which shall

include reimbursement of material costs and production costs of Products, provided, however, that Supplier is unable to otherwise sell the Products to third parties.

## **2. Prices:**

2.1. All price quotations are Delivered Duty Paid (DDP; per Incoterms 2010) to Company's facility at Montgomery, Alabama, and include costs for packaging, postage or other freight charges, insurance or taxes, if any.

2.2. Company shall not be entitled increase the price of Products by the amount of any new or increased tax or duty (excluding franchise, net income and excess profits taxes) which Company may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Products or the materials required for their manufacture or which affects the costs of such materials.

## **3. Terms of Payment:**

3.1. Unless otherwise agreed to in writing by the Company, invoices issued by the Supplier will be paid by the Company within fourteen (14) days following delivery of the Products subject to a three percent (3%) discount. Company shall make payments only via bank transfer.

3.2. Company may not – without prior notice - change or withdraw extensions of credit at any time. If Supplier ceases to extend credit terms before shipment, Company's remedy shall include, but not be limited to, cancellation of its order. If Company does not receive notice before shipment, Company shall be entitled to reject the Products upon delivery.

3.3. If Supplier fails to observe these Terms or the terms of any other agreements between Company and Supplier, or if Supplier becomes insolvent, all Orders that have been confirmed by the Supplier but not yet delivered shall in such cases become cancelable at the sole discretion of Company.

3.4. Supplier does not enjoy a right of set-off under any circumstances.

## **4. Delivery Terms:**

4.1. Supplier shall bear all risk of loss to the Products while in transit. Unless otherwise agreed, Supplier shall not be entitled to make partial deliveries or deliveries prior to the agreed-upon delivery date.

4.2. Supplier shall pay all freight, transportation, shipping, insurance and handling charges, duties, and taxes, including any applicable VAT, sales, personal property, *ad valorem*, and other taxes, duties, levies or charges imposed by any governmental authority, irrespective of whether applicable law makes such items the responsibility of the buyer or seller, but excluding any taxes payable by Company with respect to its net income.

4.3. The Products shall be packaged as stated in Company's Order. All deliveries must include accompanying paperwork containing Order number and position number of Products. Company shall provide Company with any information necessary to comply with special labeling requirements applicable at Supplier's place of business.

4.4. Subject to Company's available facilities, Company shall determine the type of transportation and shall notify Supplier thereof at the time Company places each Order. Company may select any commercial

air, ship, motor or rail carrier or any combination thereof for the transportation of the Products. Supplier shall make deliveries of the Products in the quantities ordered at Company's requested delivery dates.

4.5. For all deliveries of Products to Company hereunder, time shall be of the essence. Supplier shall be liable to Company for any delays in delivery or damage to Products while in transit, irrespective of whether Company or Supplier determined the mode of transportation.

4.6. In cases of deliveries of Products manufactured to Company's specification ("Special Orders") and unless otherwise agreed to in writing, all tools, models, plans, blueprints or other devices and/or documents used and/or supplied by Company (the "Tools") in order to fulfill any Order or Special Order are the property of the Company, even if the cost of development and/or manufacturing of such tools, models, plans, blueprints or other devices and/or documents was wholly or partially borne by the Supplier.

## **5. Assembly and Installation of Products:**

5.1. The assembly and installation of Products purchased by Supplier shall only be performed in strict compliance with Company's instructions and specifications by a qualified and experienced technician at Supplier's own responsibility. Company shall not assume any legal liability in relation to the assembly and installation of Products.

## **6. Liens and Security Interests:**

6.1. Supplier shall deliver the Products to Supplier free and clear of any rights of third parties, including, without limitation, any third-party security interests and liens.

## **7. Warranty and Limitations:**

7.1. Supplier warrants to the Supplier that for the Warranty Period (as defined below), the Products will be free from material defects in materials and workmanship under normal use, will conform to Company's published specifications of the Products, including, without limitation applicable industry standards, will be of merchantable quality and will be fit for the purpose intended. Supplier further warrants that the Products comply with applicable law, regulations or specifications in any jurisdiction in which the Products may be sold or marketed in any jurisdiction. Any governmental or other approvals necessary in connection with the resale, marketing, distribution or use of the Products shall be the sole responsibility of the Supplier. Supplier further warrants that the Products do not infringe the intellectual property or other proprietary rights of any third party. Supplier is solely responsible for assuring that Special Order Products do not so infringe. In the event that the Product manufactured under a Special Order infringes the intellectual property or other proprietary rights of any third party then Supplier shall hold Company harmless from any costs and claims in connection with such infringement.

7.2. The "Warranty Period" begins on the date the Products are delivered and continues for twenty-four ( 24 ) months.

7.3. Company does not authorize any person or party to assume or create for it any other obligation or liability in connection with the Products except as set forth herein.

## **8. Limitation of Liability:**

8.1. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL OR USE, INCURRED BY SUPPLIER OR ANY THIRD PARTY,

WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND SUPPLIER, THAT COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

8.2. IN JURISDICTIONS THAT LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SUPPLIER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY OR OTHER JURISDICTION.

## **9. Indemnification:**

9.1. Supplier agrees to diligently defend, and hold harmless and indemnify, Company and its directors, officers, employees, shareholders, affiliates and representatives from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, reasonable attorney's fees and costs, and court costs, (the "Losses") arising from any third party claim (i) infringement of the intellectual property rights of any third party, or (ii) arising out of any breach of any of Supplier's representations or covenants or other terms contained in these Terms or any contract in which these Terms are incorporated or to which these Terms are attached or made part of, or (iii) arising out of the improper use, storage, handling, transportation, maintenance, modification or alteration of Products by or on behalf of Supplier or any third party (iv) Supplier's strict liability, negligence or willful misconduct with respect to any product liability claims or (iv) third party rights as described in Section 6 Hereof.

9.3 Supplier shall notify the Company in writing within ten (10) days of the receipt of any claim, suit or proceeding, including any incidents involving personal injury or damage to property. The indemnity shall cooperate with the indemnitor with regard to the defense of any suit or threatened suit. In the event of a claim involving accident or safety issues, the indemnitor shall make available all statements, reports and tests concerning the incident. The Supplier may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, except that the indemnitor shall obtain the Company's prior written consent to any settlement.

## **10. Intellectual Property Rights**

10.1. To the extent that the Company contributes or provides any intellectual property, including without limitation any intellectual property contained in drawings, specifications, instructions or other documents provided in connection with its Order, Supplier shall not be liable for any claims upon any infringement claims by third parties resulting from such intellectual property, and Company hereby agrees to indemnify and hold Supplier harmless from any such infringement claims.

## **11. Force Majeure:**

11.1. Company shall not be liable to Supplier or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots

and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.

11.2. Supplier shall not be liable to Company or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.

11.3. When the event operating to excuse performance by either party shall cease, this Agreement shall continue in full force until all deliveries have been completed.

## **12. Miscellaneous Terms:**

12.1 Any controversy or claim arising out of or relating to this Agreement, or the negotiation or breach thereof, shall be exclusively settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA"). The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in Montgomery, Alabama, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than \$250,000, before a single arbitrator mutually agreeable to Company and Supplier, or if no agreement can be reached, then selected by the AAA, or (ii) if the amount in dispute is \$250,000 or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. In addition, the losing party shall reimburse the prevailing party for reasonable attorneys' fees and disbursements, the costs of the arbitration (including but not limited to the fees and expenses of the arbitrator and expert witnesses) and the costs incurred by the prevailing party in successfully seeking any preliminary equitable relief or judicially enforcing any arbitration award.

12.2 This Agreement shall be governed by and construed in accordance with the law of the State of Alabama, without giving effect to principles of conflict of laws thereof or the UN Convention on Contracts for the International Sale of Goods of 1980.

12.3 If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

12.4 The parties hereto are independent contractors and nothing in this Agreement will be construed as creating a joint venture, employment or agency relationship between the parties. Any subcontractor shall agree to be bound by the terms and conditions of this Agreement and the Order.

12.5 Supplier shall not sub-contract or assign any obligations relating to this Agreement without Company's prior written consent.

12.6 This Agreement, including any Schedules attached hereto, contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements between them, whether oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement is binding upon the parties hereto, their successors and permitted assigns.