



## TERMS AND CONDITIONS OF CONTRACT - MINNESOTA

**1.0 SCOPE OF CONTRACT.** These terms and conditions, together with GSL's Proposal which is incorporated herein by reference, will constitute the entire Contract between the Gopher Stage Lighting, Inc. ("GSL") and Customer as to any order. This Contract supersedes any prior understandings, agreements, representations, or warranties. GSL's commencement of performance and/or delivery shall not constitute a waiver of any provision of this Contract or acceptance of any terms or conditions contained in the Customer's purchase order or other documents. Orders must be in writing; however, phone orders may be accepted from established accounts when followed by written confirmation from GSL. Customer agrees all phone orders will be subject to the payment terms in GSL's Proposal and to GSL's Terms and Conditions of Contract. Acceptance of any product or service by the Customer will be construed as acceptance of GSL's Terms and Conditions of Contract.

**1.1 SCOPE OF WARRANTY.** Goods are guaranteed to be as specified, subject to applicable manufacturer's warranties. All work, if any is included in the Proposal, will be completed in a workmanlike manner according to standard industry practices. Customer's remedy in the event of breach of the foregoing warranties shall be limited to repair or, at GSL's option, replacement of goods and services found not to be in compliance with warranties, subject to applicable manufacturer's warranties. If any goods or work are found to be not in accordance with the foregoing warranty, unless the Customer has previously given GSL a written acceptance of such condition GSL shall repair or replace the affected items promptly after receipt of written notice from the Customer. The Customer shall give such notice promptly after discovery of the condition, and in no event more than 6 months after installation (unless a shorter period is provided in any manufacturer's warranty, in which case the manufacturer's warranty shall govern). Returns for warranty work will be in accordance with GSL's established warranty procedures. In no case will permission be granted to return specially-modified or custom goods, or goods of any kind invoiced more than six (6) months prior to date of Customer's return request. If the Customer fails to notify GSL in writing within the applicable time period and to give GSL an opportunity to repair or replace as provided in this Section 1.1, the Customer waives all rights to require repair or replacement by GSL and to make a claim for breach of warranty. Except as expressly set forth in this Section 1.1 **ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNDER THIS CONTRACT OR OTHERWISE, IN CONNECTION WITH GSL'S GOODS AND SERVICES ARE EXPRESSLY DISCLAIMED.**

**1.3 PAYMENT TERMS.** Unless other payment terms are specified in the Proposal, GSL's standard payment terms are Net 30, for established and approved Customers only. Payment terms are defined as follows: (1) "Net 30" means that GSL is extending limited credit to Customer for a period not to exceed 30 days after shipment of the goods or completion of GSL's work or services. Payment under Net 30 terms is due 30 calendar days after the date of GSL's invoice. Unless otherwise specified in the Proposal, invoices under Net 30 terms generally will be issued upon shipment of the goods or, in case of work or services, periodically during performance of the work or services in proportion to the value of the work or services completed during the preceding billing period. (2) A "down" payment means that Customer must prepay the indicated percentage of the total estimated Contract price, including estimated shipping costs, before GSL is required to identify any goods to the Contract or to perform any work or services. (3) "Due upon delivery" means that Customer must pay the indicated percentage of the total estimated Contract price upon receipt of the goods and before Customer can take possession of the goods. Notwithstanding any differing payment terms specified in the Proposal GSL at all times reserves the right to ship goods C.O.D. (4) "100% pre-pay" means that Customer must pay the total estimated Contract price, including estimated shipping costs, before GSL is required to identify any goods to the Contract or to commence any work or services. Unless the Contract price is expressly identified in the Proposal as a firm fixed price, notwithstanding any prepayment Customer remains responsible for payment of any amounts in excess of the prepaid amount. Unless specifically prohibited, partial shipments may be made in GSL's discretion. Payment terms are subject to a satisfactory credit investigation. Quoted price is based on payment by cash, check, direct deposit, or wire transfer. Except where prohibited or limited by law, payments by credit card on orders over \$3,000 will be subject to a 3.5% surcharge. Federal, state and/or local taxes imposed by any jurisdiction, duties and other charges are excluded from any quoted prices, and are the responsibility of the Customer. All prices are in US Dollars unless otherwise noted on applicable invoices. If Payments are not made within thirty (30) days after date of invoice, a **SERVICE CHARGE OF ONE AND ONE HALF (1.5) PERCENT PER MONTH (18% PER ANNUM)** or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance. Service charges may be compounded.

**1.4 CLAIMS FOR SHORTAGE, OR GOODS DAMAGED IN TRANSIT.** Unless otherwise stated, all shipments are EXW Incoterms 2010, GSL's premises. Claims for shortage or damaged goods must be made within ten (10) days of receipt by the Customer. Goods will be carefully packed and delivered in good condition to the carrier. All claims for loss or damage in transit must be made by the consignee directly to the carrier. GSL will render reasonable aid and assistance in the presentation and enforcement of such claims without waiver of GSL's rights to enforce strict compliance with the terms of payment of GSL's invoices.

**1.5 SCHEDULE.** Time limits established by the schedule identified in the Proposal shall not, except for reasonable cause, be exceeded by Customer. GSL's compensation shall be equitably adjusted in the event of delays caused by Customer, Customer's other contractors or vendors, or Customer's agents. GSL will attempt to ship goods for delivery on or about the times stated on the Proposal. GSL will attempt to follow Customer's written instructions as to mode and routing of shipments. In absence of such instructions, GSL shall have discretion as to mode and routing of shipments, including express or parcel post for small shipments. Where the Customer has requested expedited freight, the Customer will be responsible for the incurred additional charges. GSL shall not be liable for late delivery and/or inability to perform due to circumstances or conditions beyond GSL's reasonable control.

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**1.6 CREDIT RETURNS.** Goods returned for credit must be in accordance with GSL's established product return procedures. Goods must be unused, in original cartons and in saleable condition, subject to inspection. Custom products such as drapes, backdrops, gobos, etc. are non-returnable/non-refundable. Restocking charges of \$25.00 or 25% of invoice (whichever is greater) plus any repacking or reconditioning costs will be deducted from the credit.

**2.0 CHANGES.** Any alterations or deviations from the goods and services quoted in the proposal involving extra costs will be executed only upon written orders, and will become an extra charge over and above the compensation quoted in the Proposal. The Contract may not be modified, added to or otherwise altered except by written document signed by an authorized representative of GSL, notwithstanding any terms and conditions contained in the purchase order or other document of Customer. Providing any goods or services not otherwise expressly included in this Contract will be considered a change to the Contract and will be subject to additional compensation. If any change by Customer causes an increase in the cost of, or in the time required for performance of, any part of the Contract, then GSL be entitled to, and shall make, a reasonable adjustment to the price of the affected goods and/or services. In the case of changes a written confirmation from GSL to which Customer does not object, in writing, within ten (10) business days shall be deemed an amendment to this Contract.

**3.0 CUSTOMER'S REPRESENTATIONS AND RESPONSIBILITIES.** Customer at its expense shall promptly provide full information and requirements for the Project identified in the Proposal, including but not limited to all information in Customer's possession or otherwise available to Customer, Customer's design professionals and contractors or other vendors, or Customer's agents relating to: the design, construction, and actual or intended use of the Project; as-built information regarding existing structures and improvements; existing surveys describing physical characteristics, legal limitations and utility locations for the site of Project; mechanical, electrical, plumbing, structural, civil, and architectural design for the Project; and all other information reasonably requested by GSL. GSL shall be entitled to rely upon the accuracy and completeness of all information furnished by Customer. Customer shall provide information, render decisions, and make approvals promptly. The person signing this Contract on behalf of Customer represents and warrants that Customer either owns fee title to, or has the legal right to direct GSL to perform services in connection with, the site of the Project and that there is presently nothing to prevent GSL from filing a lien against the site of the Project.

**4.0 DRAWINGS AND SPECIFICATIONS.** Goods ordered which differ in any way from standard catalog items will require drawings approved in writing by the Customer. When drawings are approved, they shall take precedence over all other written or verbal instructions. Any drawings, specifications, and other documents prepared by or on behalf of GSL (including CAD files or other information on electronic media) as well as substantially similar and/or derivative documents prepared by using or copying GSL's intellectual property (collectively referred to as "Documents"), are instruments of GSL's service for use solely with respect to the Project identified in the Proposal. GSL is the author of these Documents and retains all common law, statutory and/or reserved rights, including copyright. The Documents may not be used on other projects, for addition to this Project or for completion of this Project by others. Submission or distribution of the Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of GSL, as long as Customer is not in breach of the Contract. Any use or reuse of Documents will be at GSL's sole discretion and at the Customer's sole risk. The Documents are intended to work only on GSL's computer system. GSL makes no representation as to the compatibility of the Documents with other systems. No person other than Customer may use or rely upon any Documents, except to the extent GSL gives written permission in each instance.

**5.0 DISPUTE RESOLUTION, GOVERNING LAW.** Any claim, dispute or other matter in question arising out of or relating to this Contract or breach thereof ("Claim") in which the aggregate amount in controversy exclusive of interest, attorneys' fees and costs, is less than or equal to \$100,000 shall be decided by binding arbitration in Minneapolis in accordance with the Construction Industry Rules of the American Arbitration Association. Judgment on any award by the arbitrator(s) shall be enforceable in any court having jurisdiction. Any Claim in which the aggregate amount in controversy, exclusive of interest, attorneys' fees and costs, is greater than \$100,000 shall be resolved by litigation in the State or Federal Court located within Hennepin County, Minnesota. GSL and Customer expressly consent to the exclusive personal jurisdiction and venue of the Minnesota courts for all purposes relating to this Contract. The parties waive trial by jury. This Contract shall be governed by Minnesota law, without regard to conflicts of law principles, except that the Federal Arbitration Act shall govern the Contract's arbitration clause. The United Nations Convention on the International Sale of Goods is disclaimed.

**6.0 CANCELLATION AND TERMINATION.** If Customer cancels any portion of this Contract prior to shipment, Customer shall be liable for a cancellation charge equal to actual costs incurred in connection with the portion of the Contract that is cancelled, including, without limitation, services and goods. This Contract may be terminated by either party upon not less than seven days' written notice should the other party fail to perform in accordance with its terms through no fault of the party initiating termination. Such termination shall not affect the parties' accrued rights and liabilities as of the date of termination. Without limiting the generality of the foregoing, paragraphs 1.1, 1.3, 4.0, 5.0, 7.0, 8.0, and 10.0 of these Terms and Conditions shall survive any cancellation, expiration, or termination of this Contract.

**7.0 MISCELLANEOUS PROVISIONS.** (1) No failure of GSL to insist upon or compel compliance by the Customer with any of these terms and conditions shall be construed as a waiver by GSL of its right to insist upon compliance. (2) The Customer and GSL have discussed the risks, rewards, and benefits of the Project and GSL's total compensation for its services. The risks have been allocated such that to the fullest extent permitted by law, and for Customer to receive the benefit of a Contract price which includes a reasonable allowance for risks, **GSL'S TOTAL LIABILITY TO CUSTOMER FOR ANY LOSS, CLAIM OR DAMAGE ARISING OUT**

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**OF THE NEGLIGENCE, BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, OR OTHER LEGAL FAULT OF GSL IN PROVIDING GSL'S GOODS AND SERVICES SHALL BE LIMITED TO THE AMOUNT STATED IN THIS CONTRACT AS COMPENSATION FOR GSL.** Customer may eliminate this limitation on liability by notifying GSL in writing prior to commencement of GSL's services and tendering, with such written notice, a one-time payment equal to twenty percent (20%) of the amount identified in the Proposal as GSL's compensation. This increased compensation is not the purchase of insurance. (3) In no event shall GSL be liable for damages for loss of profits, loss of use, loss of revenue, or any or special, indirect or consequential damages of any kind.

**8.0 ADDITIONAL PAYMENT TERMS AND SECURITY PROVISIONS.** In addition to the payment terms set forth in the Proposal:

**8.1** If GSL in good faith doubts Customer's ability or willingness to pay or otherwise deems itself insecure, GSL may in its discretion complete its performance of this Contract upon a cash in advance basis, make deliveries only upon a C.O.D. basis, file a mechanic's lien, or a file a UCC financing statement including a fixture filing if appropriate, or suspend all or part of its performance hereunder.

**8.2 NOTICE OF LIEN RIGHTS (MINNESOTA).** (A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS. (B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.

**8.3 PURCHASE MONEY SECURITY INTEREST.** GSL retains and reserves a purchase money security interest in all goods delivered to Customer until payment in full of all amounts due to GSL under this Contract. This security interest extends to amounts due to GSL for any work or services performed by GSL in connection with the goods, as well as any amounts due or to become due under Section 8.4 below. Customer grants GSL and GSL's contractors and agents an irrevocable license to enter onto Customer's premises for the purpose of removing any and all goods for which GSL has not received payment in accordance with the terms of this Contract. Customer releases GSL from, and defends indemnifies and holds GSL harmless from and against, any and all actual or alleged loss, liability or damage caused in whole or in part to Customer or third parties as a result of GSL's exercise of its right of removal under this Contract or GSL's exercise of other rights available to GSL under applicable law.

**8.4 DELAYED PAYMENT; PAYMENT DISPUTES.** The Customer may not withhold any payments to GSL unless the basis of (including all particulars) and amount in dispute are identified and presented in writing to GSL not later than the fifteenth (15th) calendar day after presentation of the disputed invoice. Objections to invoices not made within this time period are deemed waived. Unless Customer proceeds in accordance with this Section 8.3, Customer's failure to pay any invoice (either on the project which is the subject of this proposal or in connection with any other project for which GSL is providing goods or services to Customer) within thirty (30) calendar days after presentation of GSL's invoice shall constitute just cause for the suspension of services, and the withholding of all goods and deliverables, on all contracts between Customer and GSL. Customer will pay all of GSL's costs of collection, including: internal labor costs at GSL's standard hourly rates; reasonable attorneys' fees; and litigation and arbitration costs and fees, in the event Customer fails to make timely payment to GSL in violation of this Contract. External fees, costs, and expenses incurred under this clause will be reimbursed at the rate of 1.15 times actual cost.