



Purchase Order - General Conditions of Purchase

- 1) **Contract Documents** - The contract between Garnet USA LLC (“GMA Garnet”) and the Supplier comprises, in descending order of priority (in the case of ambiguity or inconsistency) (together, the PO Documents).
- a) the Purchase Order relating to the Goods or Services;
- b) these General Conditions of Purchase which govern any Purchase Order issued by GMA Garnet; and
- c) any specifications or documents attached to or incorporated by express reference in the Purchase Order.
- 2) **Supply of Goods or Services**
- a) The Supplier shall:
- i) supply the Goods or Services (including all associated Documents and IP Rights) to the Delivery Location by the Delivery Date in accordance with the terms of the PO Documents and any reasonable directions issued by GMA Garnet’s Personnel; and
- ii) notify GMA Garnet in writing as soon as the Supplier becomes aware that it will be unable to comply with clause 2)a)i).
- b) GMA Garnet shall be entitled to claim delay damages at the Interest Rate for failure to deliver or perform or complete the Goods or Services by the Delivery Date, which GMA Garnet is entitled to set off against the Contract Price or any other amount owing by GMA Garnet to the Supplier.
- c) GMA Garnet may inspect work on the Goods or Services at any stage of engineering, manufacture or installation and the Supplier shall make this right a condition of any sub-contracting work. GMA Garnet may direct that any work that does not conform to the PO Documents (including the warranties required to be provided by the Supplier by the PO Documents) shall be re-done or re-performed at no additional cost to GMA Garnet. Any such inspection or direction (or lack thereof) by GMA Garnet does not relieve the Supplier of its obligations under the PO Documents.
- d) The Supplier acknowledges and agrees that it has not relied on any information provided by or on behalf of GMA Garnet which does not form part of the PO Documents and that it has used and relied on its own endeavours, efforts and investigations to verify the accuracy and sufficiency of that information.
- e) The Supplier warrants that it is entering into the contract comprising the PO Documents:
- i) solely on the basis of its own investigations and determinations as to the obligations, liability and risk assumed or to be assumed by the Supplier in entering into the contract; and
- ii) without relying on any representation by GMA Garnet or any other person purporting to represent GMA Garnet.
- 3) **Goods and Services Requirements**
- a) The Supplier shall ensure that the Goods or Services are:
- i) provided so as to avoid any unreasonable disruption of, or interference, nuisance or inconvenience to people or property, including at the Delivery Location; and
- ii) clearly marked and suitably packed for delivery to avoid damage while in transit or in storage.
- b) The Supplier warrants that, for the greater of a period of three years from the Delivery Date or the applicable period provided by law, all Goods or Services will be:
- i) in accordance and compliance with the Requirements and all applicable laws and regulations;
- ii) new (including being made of new components) unless otherwise specified in the Purchase Order, and: (i) be free from any deficiencies or defects in design, manufacture, material and workmanship, and (ii) be of good and merchantable quality;
- iii) in conformity with any applicable specifications, drawings, samples provided to GMA Garnet, and other requirements specified by GMA Garnet;
- iv) fit for the purposes for which the Goods or Services are intended to be used, as stated in the PO Documents or, if no purpose is stated, for which goods of a similar nature to the Goods, or services of a similar nature to the Services, are commonly supplied under similar conditions;
- v) provided and performed by appropriately qualified, experienced and trained Personnel with due care and skill in a proper, competent and professional manner; and
- vi) free from any lien, encumbrance or security interest of any kind, and that any associated goods or items supplied as part of the Services will be new (including being made of new components), free from deficiencies in design, manufacture and workmanship, of good and merchantable quality and fit for purpose.
- c) Subject to clause 1), where there is any ambiguity or inconsistency in the quality or standard required by the PO Documents, the higher quality or standard applies.
- 4) **Approvals and Compliance**
- The Supplier shall, at its cost:
- a) obtain any necessary export and import licences (including arranging any necessary customs entry) and any other licenses, permits or approvals for the provision of the Goods or Services; and
- b) comply, and ensure its Personnel comply, with the federal and state laws and regulations from time to time in force in the jurisdictions in which any part of the work under the PO Documents is to be carried out.
- 5) **Hazardous Substances** - Except where GMA Garnet otherwise gives prior written, fully informed, consent, the Supplier warrants that the Goods or Services do not contain any prohibited or ‘hazardous substances’ as defined under applicable workplace health and safety legislation in the jurisdiction in which the Goods or Services are created, through which they transit and to which they are delivered (including the Environmental Protection Act and the Occupational Safety and Health Act and all applicable state law counterparts). Where GMA Garnet provides its consent, the Supplier shall comply with any relevant Regulation and Policies.
- 6) **Attendance at sites** - Where attendance at the Delivery Location is required, the Supplier shall comply, and ensure its Personnel comply with all applicable laws, Regulations and Policies. GMA Garnet or Delivery Location operators may deny access to any person who fails to comply with applicable Regulations and Policies.
- 7) **Acceptance/Rejection**
- a) GMA Garnet may accept or, where the Goods or Services are Defective, reject the Goods or Services. If GMA Garnet does not notify the Supplier of acceptance or rejection within 14 Business Days of the delivery of the Goods or Services in accordance with the PO Documents, GMA Garnet will be taken to have accepted the Goods or Services.
- b) If GMA Garnet rejects the Goods or Services, GMA Garnet may:
- i) require the Supplier to supply or perform, at Supplier’s expense (including transportation charges for the rejected goods and shipping charges for the replacement goods) and no additional cost to GMA Garnet, replacement Goods or Services which comply with the PO Documents within a reasonable period as determined by GMA Garnet; or
- ii) cancel the Purchase Order in accordance with clause 16),
- and, in either case and at GMA Garnet’s request, the Supplier shall promptly remove any relevant Goods from GMA Garnet’s premises at its cost. Any exercise by GMA Garnet of its rights and remedies under this Section 7) shall not reduce Supplier’s obligations or GMA Garnet’s rights and remedies under the PO Documents or applicable law, and GMA Garnet shall have the right to conduct further inspections after Supplier has carried out any remedial actions.
- 8) **Defects**
- a) Notwithstanding acceptance of the Goods or Services by GMA Garnet, the Supplier shall remedy at its cost any Defects in the Goods or Services notified by GMA Garnet at any time within the Defects Liability Period or the Supplier’s or manufacturer’s standard warranty period, whichever is the longer.
- b) If the Defect relates to the supply of Goods, or the supply of Services that include Goods, the Supplier shall forthwith remedy the Defects or provide replacement non-Defective Goods. If the Goods require removal in order for the Defects to be remedied, the Supplier shall forthwith remove the Goods,

- undertake the remediation and re-supply non-Defective Goods at the Supplier’s cost together with any associated or incidental costs (include transport and re-commissioning costs). If the Supplier does not promptly remedy the Defect, GMA Garnet may (or may engage a third party to) do so and GMA Garnet may claim the costs incurred by GMA Garnet (or its reasonable estimate of such costs) from the Supplier.
- c) If GMA Garnet, acting reasonably, considers it necessary (for the purposes of averting imminent harm to the environment or any person or any other reason whatsoever) to immediately remedy any Defects in the Goods or Services, GMA Garnet is not obliged to give the Supplier an opportunity to remedy the Defects before GMA Garnet takes such action.
- 9) **Title and Risk** - Title to Goods transfers to GMA Garnet upon their acceptance by GMA Garnet. The risk of any loss or damage to the Goods remains with the Supplier until their acceptance by GMA Garnet.
- 10) **Payment**
- a) Subject to GMA Garnet’s entitlements to set off and a right to withhold or suspend payment in relation to any disputed amount and its other rights under these General Conditions of Purchase, GMA Garnet will pay the Contract Price to the Supplier in accordance with the Payment Terms Period after receiving a correctly rendered invoice in accordance with clause 11)a).
- b) Payment by GMA Garnet of an invoice will be payment on account only, and will not constitute acceptance by GMA Garnet that the Goods or Services have been supplied or performed in accordance with the PO Documents or that the amount of the invoice was properly payable to the Supplier.
- c) A failure by GMA Garnet to dispute an invoice within the Payment Terms Period will not prevent GMA Garnet from disputing the invoice at any other time and, if the invoice has not been paid at the time GMA Garnet disputes the invoice, GMA Garnet may withhold or suspend payment in relation to the disputed amount.
- 11) **Invoice**
- a) The Supplier shall submit a correctly rendered invoice to GMA Garnet. Unless otherwise specified in the Purchase Order, an invoice is correctly rendered if: it is correctly addressed and calculated in accordance with the Purchase Order; it shows the name of the Delivery Location; describes the Goods or Services (and, where applicable, the quantities) to which the invoice relates; it is for an amount which does not exceed the Contract Price; it includes the Purchase Order identification number and contact details of GMA Garnet’s representative; and it separately states any applicable taxes.
- b) The Supplier shall promptly provide to GMA Garnet such supporting documentation and other evidence reasonably required by GMA Garnet to substantiate the claim for payment.
- 12) **Contract Price** The Contract Price is firm and inclusive of all other taxes, duties (including any customs duty) and government charges imposed or levied in the USA or overseas. Unless otherwise stated in the Purchase Order, the Contract Price includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.
- 13) **Insurance** The Supplier shall:
- a) procure and maintain at its expense the policies of insurance, if any, specified in the Purchase Order or, if none is stated, then such other insurances from reputable insurance companies and on such terms and conditions as a prudent supplier acting in accordance with Good Operating Practice would procure and maintain; and
- b) on request, provide to GMA Garnet copies of certificates of insurance for the policies the Supplier shall have in place under this clause.
- 14) **Intellectual Property**
- a) The Supplier warrants that:
- i) it has all intellectual property rights (**IP Rights**) necessary to: provide the Goods or Services in a way that will not infringe or violate any third party’s IP Rights and allow GMA Garnet to have the full benefit of the Goods or Services; and
- ii) the Goods or Services will not infringe or violate any third party’s IP Rights.
- b) The Supplier shall, at no additional cost to GMA Garnet:
- i) assign to GMA Garnet; or
- ii) grant to GMA Garnet and each of its affiliated companies a non-exclusive, perpetual, royalty free, irrevocable, transferable, worldwide licence (including the right to sub-licence) to use, reproduce and modify for any purpose in connection with the PO Documents,
- all of the IP Rights necessary to allow GMA Garnet to have the full benefit of the Goods or Services.
- 15) **Confidential Information** - All documents and other confidential, proprietary, or non-public information of GMA Garnet, including but not limited to trade secrets, specifications, samples, customer lists, whether or not marked as confidential (**Confidential Information**) shall not be disclosed by the Supplier to a third party except with the prior consent in writing of GMA Garnet. The Supplier shall only use Confidential Information as necessary for the purpose of supplying the Goods or Services.
- 16) **Cancellation for default**
- a) GMA Garnet may cancel the Purchase Order in whole or in part if:
- i) the Supplier does not, or notifies GMA Garnet that it will be unable to, deliver all of the Goods or Services to the Delivery Location by the Delivery Date;
- ii) GMA Garnet rejects any of the Goods or Services in accordance with clause 7);
- iii) the Supplier breaches these General Conditions of Purchase or a term of the PO Documents and/or a warranty given by the Supplier is untrue, misleading or incorrect (**Breach**) and the Breach is not reasonably capable of remedy;
- iv) the Supplier does not remedy a Breach which is capable of remedy within the period specified by GMA Garnet in a notice of default; or
- v) the Supplier becomes bankrupt or insolvent.
- b) If GMA Garnet cancels the Purchase Order in accordance with:
- i) clause 16)a), the Supplier shall forthwith refund any amount paid by GMA Garnet by way of deposit, pre-payment or instalment payment attributable to the cancelled portion of the Contract Price; and
- ii) clause 16)a)ii), GMA Garnet is not obliged to make any payment in respect of the rejected Goods or Services.
- 17) **Cancellation for convenience**
- a) In addition to any other rights it has under the Purchase Order, GMA Garnet may at any time cancel the Purchase Order in whole or in part by notifying the Supplier in writing. If GMA Garnet issues such a notice, the Supplier shall promptly stop work in accordance with the notice, comply with any directions given by GMA Garnet and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the cancellation, including those arising from affected subcontractors.
- b) GMA Garnet will only be liable to pay for:
- i) Goods or Services accepted in accordance with clause 7) before the effective date of cancellation; and
- ii) any reasonable costs actually incurred by the Supplier that are directly incurred in order to deliver or perform the Goods or Services under an accepted PO during the period from acceptance of the PO through the effective date of the cancelation if the Supplier substantiates these amounts to the satisfaction of GMA Garnet.
- The Supplier will not be entitled to profit anticipated on any part of the Purchase Order that is cancelled.
- 18) **Indemnity**
- a) The Supplier shall defend, indemnify, and hold harmless GMA Garnet and its Personnel against any and all liability, loss, damage, death, injury, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including but not limited to attorney and professional fees and costs or expenses arising out of or occurring in connection with:
- i) a Breach or any unlawful, wilful or negligent act or omission on the part of the Supplier or its



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- Personnel;
- ii) any of the circumstances referred to in clause 16)a);
 - iii) the loss of, or any damage to, any property of any person;
 - iv) the death of, or injury to, any person;
 - v) any breach of clause 26) by the Supplier or its Personnel; or
 - vi) any action, claim, dispute, suit or proceeding brought by GMA Garnet or any third party in respect of any infringement or alleged infringement of that third party’s IP Rights in connection with the Goods or Services.
- 19) **‘Set Off** - GMA Garnet may set off and deduct from any amounts owing to the Supplier, including the Contract Price:
- a) any amount the Supplier owes to GMA Garnet, whether or not in connection with the PO Documents; and
 - b) the amount of any cost, liability, loss, damage or other expense that GMA Garnet has incurred or reasonably considers it might in the future incur and which is due, or GMA Garnet reasonably considers may become due, from the Supplier to GMA Garnet as a consequence of any act or omission of the Supplier or any of its Personnel;
- provided that nothing in this clause 19) will affect GMA Garnet’s rights to recover the whole or any amount from the Supplier in other ways.
- 20) **Notices** - Any notice or communication under the Purchase Order will be effective if it is in writing in the English language, signed and delivered to a party’s address set out in the Purchase Order or to such other address that may be designated by the receiving party in writing.
- 21) **Assignment and Security Interests** -
- a) The Supplier shall not assign any of its rights under the Purchase Order without the prior written consent of GMA Garnet (which may be withheld in its absolute discretion).
 - b) The Supplier or any of its affiliated companies shall not register any security interest in relation to the Goods or Services against GMA Garnet or any of its affiliated companies under the Uniform Commercial Code.
- 22) **Subcontracting** - The Supplier shall not subcontract the whole or part of the Supplier’s obligations under the PO Documents without GMA Garnet’s prior written consent (which may be withheld in its absolute discretion). Such consent will not relieve the Supplier of its obligations under the PO Documents and the Supplier shall remain liable for the acts, omissions or negligence of its subcontractors. Upon request, the Supplier shall promptly make available to GMA Garnet the details of all subcontractors engaged to provide any part of the Goods or Services under the PO Documents.
- 23) **Relationship** - The Supplier is not an agent or employee of GMA Garnet but is an independent contractor, without authority to bind GMA Garnet or act on its behalf unless it has received GMA Garnet’s prior written authorisation.
- 24) **Applicable Law** – All matters arising out of or relating to each Purchase Order shall be governed by and construed un accordance with the internal laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. The parties irrevocably and unconditionally agree to and submit exclusively to the courts of the State of Delaware in relation to any dispute under or in relation to the PO Documents.
- 25) **No waiver** - A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on it under the PO Documents or at law does not operate as a waiver of the power or right. A single or partial exercise of a power or right does not preclude a further exercise of it or the exercise of any other power or right under the PO Documents. A waiver of a breach does not operate as a waiver of any other breach.
- 26) **Ethical Conduct** –
- a) GMA Garnet conducts its operations with honesty, integrity and respect for human rights and responsibility towards the environment. GMA Garnet’s ‘Zero Tolerance Policy’ is annexed for information purposes and does not constitute a contractual representation or warranty on behalf of GMA Garnet.
 - b) The Supplier shall: conduct its business ethically and legally; not give or receive any bribes, gifts or improper payments to, or on behalf of, GMA Garnet or at all; not engage in domestic or foreign corrupt practices; not take part in, endorse or tolerate work-place discrimination or harassment; not engage in any restrictive or illegal trade practices including any international ant-trust laws (if applicable); comply with all relevant and applicable laws relating to anti-bribery and anti-corruption; not maintain any unrecorded account, fund or asset; and ensure its accounting records accurately reflect the true nature of every transaction.
- The Supplier shall immediately notify GMA Garnet in writing (with details then known) if it engages in, or becomes aware of, any breach or potential breach of the obligations in clause 26)b) by or involving the Supplier, its Personnel or GMA Garnet’s Personnel.
- 27) **Entire Agreement** - The Purchase Order, when issued on behalf of GMA Garnet and bearing an order identification number, is the only form which will be recognised by GMA Garnet as authority for charging the Goods or Services to its account. By supplying the Goods or Services the Supplier acknowledges and accepts that the PO Documents represent the parties’ entire agreement in relation to their subject matter and supersede:
- a) all requests for tender, tendered offers, quotations, specifications, terms;
 - b) any other terms and conditions included in any other document provided by the Supplier in accepting or acknowledging the Purchase Order or any of the PO Documents; and
 - c) any prior representations, communications, agreements, arrangements, statements and understandings between the parties, whether oral or in writing.
- To the maximum extent permitted by applicable laws, no local, general or trade custom shall vary the terms of the PO Documents.
- 28) **Surviving clauses** - The following clauses survive cancellation of the Purchase Order or expiry of the PO Documents: 1), 2), 3), 4), 9), 14), 15), 16), 18), 19), 20), 23), 24),23), 24), 25), 25), 26) and 28). Cancellation or expiry will not affect any accrued rights or remedies under the PO Documents.

- 29) **Definitions** - In these General Conditions of Purchase:
- Affiliated Company** is any business entity which is related to Supplier through ownership, control or separate third party control, or a joint venture.
- Business Day** means a day that is not a Saturday, Sunday, federal holiday.
- Commissioning** means the process of installation, operation and testing of the Goods or Services which, as a result of such process, confirms that the Goods or Services comply with the Requirements.
- Contract Price** means the price or calculations to determine the price for purchase of the Goods or Services set out in the PO Documents.
- Defect or Defective** means any defect, deficiency, fault, non-conformance, error or omission in the Goods or Services or any aspect of the Goods or Services which is not in accordance with the requirements of the PO Documents.
- Defects Liability Period** means any period specified in the PO Documents or, if none is specified, then the period of 12 months commencing on the later of:
- a) the date of acceptance by GMA Garnet in accordance with clause 7)a); and
 - b) Commissioning (if any),
- of the relevant Goods or Services.
- Delivery Date** means the date or dates for provision of the Goods or Services specified in the Purchase Order.
- Delivery Location** means one of GMA Garnet’s premises or a third party-operated site for delivery or performance of the Goods or Services as specified in the Purchase Order.
- Documents** means as-built drawings, engineering data, shop drawings, operation and maintenance manuals, and

- warranties (including manufacturer warranties).
- GMA Garnet** means Garnet USA LLC a Delaware corporation the procurer of the Goods or Services whose details are specified in the Purchase Order.
- Good Operating Practice** means a standard of operating practices, methods, standards and procedures generally accepted and followed by prudent, diligent, skilled and experienced suppliers of goods or services of the same or similar kind as the Goods or Services (including appropriate workplace health and safety, fitness-for-work and fatigue management policies).
- Goods** means materials, goods, machinery, plant, equipment, stores, articles, items, work and the like to be furnished by the Supplier under the Purchase Order.
- Goods or Services** materials, goods, machinery, plant, equipment, stores, articles, items, services, work and the like to be furnished or performed by the Supplier under the Purchase Order.
- Interest Rate** means 3% above the applicable Federal Reserve cash rate charged daily on the Contract Price after the date of delivery specified under Purchase Order up to and including the actual date of delivery in accordance with the PO Documents.
- Payment Terms Period** means the period for payment stipulated in the Purchase Order.
- Personnel** means, in relation to a party, its officers, employees, affiliated companies, contractors (excluding, in the case of GMA Garnet, the Supplier), servants and agents.
- Purchase Order** means the GMA Garnet-issued written order for procurement of the Goods or Services which are governed by these General Conditions of Purchase.
- Regulations and Policies** means management plans, all security and safety regulations and other rules and policies applicable at the Delivery Location, attended by the Supplier’s Personnel, or as otherwise issued by GMA Garnet which relate to provision of the Goods or Services and all reasonable directions and instructions issued by Delivery Location Personnel.
- Requirements** means, in relation to the supply of the Goods or Services, the Supplier’s compliance with Regulations and Policies, PO Documents, all laws and relevant standards (including any relevant USA Standards) and Good Operating Practice.
- Services** means the services to be performed by the Supplier under the Purchase Order.
- Supplier** means the supplier of the Goods or Services specified in the Purchase Order.
- USA** means the United States of America.
- 30) **Interpretation**- In these General Conditions of Purchase, unless the context otherwise requires:
- a) the singular includes the plural and vice versa, and a gender includes other genders;
 - b) headings are for reference only and do not affect interpretation;
 - c) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
 - d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it;
 - e) if the Supplier comprises two or more persons any agreement, representation, warranty or indemnity given by the Supplier binds those persons jointly and severally or given in favour of the Supplier is for the benefit of those persons jointly and severally;
 - f) a reference to:
 - i) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - ii) a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - iii) a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - iv) a party includes that party’s executors, administrators, successors and permitted assigns and substitutes;
 - v) time is to local time in Houston, Texas;
 - vi) “\$” or “dollars” is a reference to USA currency unless otherwise specified in the Purchase Order or agreed by the parties; and
 - vii) a clause is a reference to a clause of these General Conditions of Purchase;
 - g) if the date on or by which any act must be done under the PO Documents is not a Business Day, the act must be done on or by the next Business Day; and
 - h) where time is calculated by reference to a day or event, that day or the day of that event is excluded.