

**GBI DATA & SORTING SYSTEMS**  
**GENERAL TERMS AND CONDITIONS OF SALE**

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**1. Priority of Terms and Conditions** – Seller hereby notifies Buyer in advance that Seller objects to any terms and conditions in Buyer's purchase order or other document which are additional to or different than these Terms and Conditions of Sale, whether or not such additional or different terms would materially alter this contract. If a contract between Buyer and Seller is established through performance or other conduct of the parties, the terms and conditions of that contract will not be deemed to consist only of terms and conditions as to which the parties' writings agree, but rather these Terms and Conditions of Sale will be a part of that contract and will prevail over the conflicting and/or different terms and conditions of any other document forming a part of the contract.

**2. Effect of General Terms and Conditions; Ownership of Intellectual Property** – This General Terms and Conditions forms an integral part of any quotation, offer to sell, or agreement to sell goods and equipment ("Goods"), and licensing of software, by GB Instruments, Inc. d/b/a GBI Data & Sorting Systems ("GBI") and may be incorporated by reference therein. The buyer of Goods or licensee of such software understands and accepts and agrees to the terms and conditions stated in these General Terms and Conditions and recognizes GBI is only selling Goods and licensing software and not entering into any agreement to jointly develop property or any other joint enterprise, venture, or business arrangement with the buyer. Further, the buyer of Goods and licensee of software understands and agrees that all intellectual or industrial property that is reflected in the Goods or the software, other than any portion of the Goods or any software that is acquired commercially and off-the-shelf by GBI from third party sources (e.g., Microsoft), is and shall remain the sole and exclusive property of GBI and the buyer relinquishes and waives any claim, whether legal or equitable, that he, she, or it may have to any such intellectual or industrial property. The buyer also understands that GBI shall have unlimited discretionary control and use of all materials that it received from buyer in connection with preparing any quotation or designing and manufacturing any of the Goods or any related software or other intellectual property, regardless of whether such materials are designated as confidential or proprietary by buyer. Anything created or manufactured by GBI and derived from the buyer's concept or design, shall become the sole and exclusive property of GBI once it is incorporated within GBI equipment, or manufactured components, whether contained in or becoming a part of the GBI manufactured material, hardware, software, or firmware unless specifically excluded in a separate written document signed by GBI's President. Further, the buyer understands and agrees that all the technical information and schematics, specifications and mechanical drawings of the Goods and the source code of the software used in connection with the operation of the Goods (other than third party software) are confidential to, and shall be owned exclusively by, GBI, which shall not be obligated under any circumstances to disclose such schematics, specifications or mechanical drawings, and source code to buyer, regardless of whether buyer supplied any information to GBI that it incorporated into the Goods or such schematics, specifications and mechanical drawings or software.

**3. Limited Warranty** – THIS IS THE ONLY WARRANTY FOR THE GOODS AND LICENSED SOFTWARE. THERE IS NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. GBI EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GBI warrants the Goods it manufactures and the software it licenses to be free from defects in material and workmanship under normal and proper use, maintenance, and service, for a period of one (1) year commencing on the date that GBI invoices the final one sixth payment, as defined in section 13 below. Within the stated warranty period, GBI will repair or replace, at GBI's option, any of its products (with the exception of consumable items such as ribbons, labels, etc., that have a life expectancy of less than one (1) year) provided GBI's inspection and examination discloses to the satisfaction of GBI that: (a) the reported defects are within the aforesaid warranty, (b) the product has not been altered or repaired other than by GBI's approved procedures, (c) the product has not been tampered with, or (d) the product has not been damaged due to misuse, inappropriate environmental conditions, improper maintenance, negligence, accident, or excessive current. GBI warrants all of the software programs that it has developed or develops for use in connection with the Goods ("Proprietary Software") to be free of defects, and will modify at no charge all software errors reported within one year after delivery of the Goods to the buyer. In no event shall GBI have any liability, loss or damage caused directly or indirectly by GBI equipment, programs or personnel, including, without limitation, the operation of revisions to existing programs or enhancements of system software, sold or provided by GBI, or service provided by GBI, including, but not limited to, any interruption of service, loss of business or anticipatory profits, or any indirect, special or consequential damages. This warranty is expressly in lieu of all other warranties, express, implied or statutory and all other obligations or liabilities on the part of GBI. GBI's sole warranty liability shall be to repair defective items at its factory or to supply replacement parts in accordance with the terms of this warranty. Major components not manufactured by GBI, but included with the GBI manufactured equipment, such as, but not limited to, computer systems, printers and third-party supplied software, are covered only by warranty of that manufacturer. Further, software not created by GBI and purchased or otherwise obtained from third party vendors are covered only by warranty of that manufacturer.

**4. Claims for Damages in Shipment** - The buyer must inspect and/or test the equipment as soon as possible after it is received. If the equipment is damaged in any way, including concealed damage, a claim should be filed by the buyer with the carrier, or if insured, separately with the buyer's insurance company. Should any damage be incurred in transit to GBI of products being returned under warranty, the buyer will be promptly advised in order that he might file an appropriate claim.

**5. Technical Information** - All technical information is proprietary to GBI and is to be used only for the maintenance, repair, and operation of equipment by the buyer and his, her, or its employees. Manuals, if available, will be supplied by GBI to buyer only to the extent specifically identified in the description of items to be furnished. All technical information relating to the Goods or software used to operate the Goods is proprietary to and/or trade secrets of GBI to the exclusion of buyer.

**6. Returns & Rejections** - Returned or rejected material under warranty will be repaired or replaced at the option of GBI only if returned under an Authorized RMA (Return Material Authorization) Number. The buyer will bear the cost and risk of shipping any allegedly defective Goods to GBI's warehouse at Deerfield Beach, Florida and GBI shall pay and arrange for shipment back to buyer by regular ground transportation. The buyer has the option to request and pay for expedited return delivery of the repaired Goods from GBI. Return shipping (regular ground) on warranty repairs is paid by GBI. The buyer will be responsible for shipping and handling charges to and from GBI for Goods that are out of warranty.

**7. Wage and Hour Laws and Non-Discrimination in Employment** - All equipment supplied by GBI is manufactured under conditions which meet the standard of the Fair Labor Standards Act of 1936 as amended, the Welsh-Healy Act, Executive Order No. 40, and all other laws and executive orders applicable to non-discriminatory employment.

**8. Packaging** - Price of all shipments includes standard commercial packaging and marking. Special packaging for sorting systems is additional.

**9. F.O.B.** - All shipments are F.O.B. GBI Plant, Deerfield Beach, Florida USA. The buyer assumes any and all risk of loss or damage upon leaving GBI's dock. Actual travel and living expenses of installers and/or trainers are the buyer's responsibility and will be billed separately from proposed offerings unless specifically stated otherwise.

**10. Shipping Methods** - Shipments will be made via the most appropriate means compatible with size and complexity of equipment to assure safe arrival at destination.

**11. Freight** - GBI will prepay all freight charges incurred during shipping and charge back and invoice the charges to the buyer

**12. Photofinishing Division Payment Terms** - One-third deposit on placement of order, one third prior to shipment, balance upon installation.

**13. Warehouse Division Payment Terms:** 35% Deposit due upon order placement; 25% due upon completion of assembly at GBI (Electro-Mechanical readiness); 25% due when GBI is ready to ship (Controls, timing and internal QC complete); and 15% due upon the earliest of the following four events:

(i) customer acceptance, (ii) customer begins to receive beneficial use of the delivered product or equipment, (iii) after GBI has shipped the product or equipment to the customer site and the customer delays progress for more than 30 cumulative days, or (iv) 90 days after GBI has given customer



notification that the product is ready to ship. **Software over \$10,000:** 50% due with order; 35% due prior to delivery, or 30 days after completion, whichever comes first; and 15% due upon receiving beneficial use, or 30 days from delivery, whichever comes first.

**14. Validity and Prices** - Unless otherwise specified, proposals are valid for 90 days from the date of the accompanying cover letter, and in any event, prices are subject to change without notice until the order is accepted by GBI.

**15. Taxes and Duties** - All federal, state and local sales and use taxes and import duties or taxes, as well as any and all taxes or fees in connection with assuring the product complies with local ordinances, are the sole responsibility of the buyer.

**16. Title** - Title shall pass to buyer when the final payment is made.

**17. Cancellation** - Orders accepted by GBI are firm and are not subject to cancellation except upon express written consent from GBI. Should an entire order be canceled, and there were costs to GBI for special engineering or programming development efforts, or equipment is a custom order for the buyer, GBI's costs plus reasonable profit for these efforts and/or manpower rescheduling charges, if applicable, will be billed to the buyer, but in no event will the charge back exceed the total price of the canceled order.

**18. Default** - In the event of payment default for payments past due over 30 days, buyer shall be liable for full attorney's fees, interest at 1-1/2% per month on the unpaid balance, or the maximum legal rate, whichever is lower, and other expenses incurred by GBI for the recovery and collection of amounts due. Until final payment is made, after default, GBI shall have the unlimited right to enter without notice upon the premises of buyer and repossess the subject property without prejudice to any other rights and remedies available to GBI. In the event of payment default, buyer waives any action or right of action of any kind whatsoever against the seller growing out of removal, repossession or retention of subject property.

**19. Software License** - Computer programs supplied by GBI, either delivered with the equipment or later, are the sole and exclusive intellectual, industrial or other property of GBI in their entirety. Buyer shall only enjoy limited and restricted use of such software programs in accordance with GBI's Standard Software License Agreement, which it agrees to execute and honor in all respects. The programs may be used by the buyer on the single associated processor (CPU or MPU) or pair of processors on a single machine, as the case may be, whose serial or other identifying number is listed on the GBI Shipping Memo and/or invoice for the equipment supplied to the buyer by GBI.

**20. Insurance** - GBI will provide and maintain all standard insurance liability for all products during manufacture at GBI premises. Insurance during shipment will be through the freight carrier and will be included in shipping costs paid by the buyer. The buyer assumes insurance liability for the product when it arrives at buyer's premises.

**21. It is the buyer's responsibility to ensure** - (1) Installation sites are accessible and available at time of installation. (2) A suitable climate controlled operating environment for the equipment that is free of excessive airborne particles, moisture, or temperature swings exceeding a range of 10 degrees Fahrenheit in any given day; and which is suitable for the type and kind of equipment being installed unless otherwise explicitly stated and provided for in the proposal. *Suitable operating environment: Ambient Temperature between 60 and 90 degrees F (15 and 32C). Contaminant particle-size must be less than 100 microns. Humidity between 30 and 70 percent R.H. Non-condensing.*

**22. Dispute Resolution** - The validity, interpretation and performance of this Agreement shall be controlled by and construed in accordance with the laws of the State of Florida, as if performed wholly within the State and without giving effect to the principles of conflicts of laws. All disputes, controversies or claims arising hereunder shall be resolved using the following procedure:

(A) GBI and buyer shall endeavor to settle the dispute by mediation using a mutually acceptable third party mediator. The non-complaining party shall provide the complaining party with a list of five (5) mediators acceptable to the non-complaining party and the complaining party shall pick one (1) of the five (5) mediators. Such mediator shall be appointed upon the written demand of either party. Upon such appointment, the mediation shall be held within thirty (30) days in Miami-Dade or Broward County, at a site selected by the mediator. The fees and expenses of such mediator shall be borne equally by GBI and buyer;

(B) If the controversy or claim has not been resolved pursuant to the aforesaid mediation procedure within thirty (30) days of the commencement of such procedure (which period may be extended by mutual agreement), or, if any party will not participate in such procedure, the controversy shall be settled by arbitration. Within five (5) days after a written demand for arbitration of a dispute by one party upon the other, the parties shall attempt to agree on the appointment of a single arbitrator. In the event they are unable to agree on a single arbitrator within ten (10) days after the demand, then each party shall appoint one arbitrator and such arbitrators shall appoint a third arbitrator, all of whom shall be the "Panel of Arbitrators" to render an Award on the disputed claim. The Arbitrators shall notify the parties of the date and time of the Hearing, which shall take place no later than sixty (60) days after the appointment of the last member of the Panel, at a place mutually agreed upon by the Arbitrators and the parties, but if they are unable to agree, the neutral Arbitrator shall select the time and place of the Hearing. At the Hearing, parties may, but need not be represented by counsel, and, except that all witnesses shall be placed under oath before giving testimony, the Panel of Arbitrators shall establish its own rules of procedure and evidence. The Arbitrators shall receive and consider evidence of witnesses by affidavit if submitted by the parties. The parties may submit such documentary evidence as they shall deem appropriate, or as shall be, requested by the Arbitrators. The Arbitrators shall have the power of subpoena provided in Section 682.08, Florida Statutes, as amended from time to time. The powers of the Arbitrators may be exercised by majority vote. Within fifteen (15) days after the date of the Hearing, the Arbitrators shall render a written Award resolving the dispute between the parties submitted to arbitration hereunder. The amount of the Award, if any, and any fees and expenses so awarded shall be paid by the party owing under the Award to the other party within thirty (30) days after the Award is rendered. The Arbitrators' fees together with other expenses, not including attorneys' fees, incurred in the conduct of the arbitration, shall be paid as provided in the Award. If necessary, the Award shall be confirmed and enforced under the laws of Florida and the party so enforcing the Award shall be entitled to an award of its reasonable attorneys' fees and costs of enforcement (including the fees and costs for any appeal). In all respects not specifically provided for in this Section, the provisions of Chapter 682, Florida Statutes, as amended from time to time, shall govern any arbitration conducted pursuant to this Section. Any and all arbitration proceedings shall take place in either Miami-Dade County or Broward County, Florida. The prevailing party in the arbitration shall be entitled to reimbursement of all reasonable costs and attorney fees from the nonprevailing party.

(C) If buyer or GBI shall determine to proceed to court rather than respect the arbitration provisions of (B), above, or determines to challenge any decision in arbitration by court proceeding, GBI and buyer, without implying or suggesting any such court proceeding is appropriate or consistent with (B), above, agree that venue and jurisdiction therefore shall lie exclusively in the courts of the State of Florida, in Miami-Dade County or Broward County or the United States District Southern District Court of the Southern District of Florida, Miami-Dade Division.

**23. Hiring of GBI Data & Sorting Systems Personnel** - Buyer acknowledges that GBI Data & Sorting Systems provides a valuable service by identifying and assigning personnel for Buyer's work. Buyer further acknowledges that Buyer would receive substantial additional value and GBI Data & Sorting Systems would be deprived of the benefits of its work force, if Buyer were to directly hire GBI Data & Sorting Systems personnel after they have been introduced to Buyer by GBI Data & Sorting Systems. Without the prior written consent of GBI Data & Sorting Systems, Buyer shall not recruit or hire any personnel of GBI Data & Sorting Systems, who are or have been assigned to perform work until two (2) years after the completion of the engagement in effect between the parties. In the event that Buyer hires any personnel of GBI Data & Sorting Systems who are or have been assigned to perform work for Buyer, Buyer shall pay GBI Data & Sorting Systems within ninety (90) days of the date of such hiring, an amount equal to fifty percent (50%) of the total first-year compensation Buyer pays such personnel, as a fee for the additional benefit obtained by Buyer.

**24. Modification to Terms and Conditions** - Modification to any of these Terms and Conditions by GBI is not effective and enforceable unless made in writing by Maurice Rochman, President of G B Instruments, Inc. Modification to any portion affects only that portion and all other General Terms and Conditions of Sale apply in their entirety.

