



TERMS & CONDITIONS OF SALE

ARTICLE I ORDER OF PRECEDENCE

1.1 TERMS AND CONDITIONS. These General Terms and Conditions of Sale (“Terms and Conditions”) shall apply to all sales of products (“Products”) by GFP Acquisition Company, a Delaware corporation (dba American Wheatley) and affiliates (each, as applicable, “Company”), to the buyer identified in Company’s proposal, quotation, invoice, or Buyer’s purchase order (“Buyer”).

ARTICLE II PURCHASES

2.1 ACCEPTANCE. Buyer shall be deemed to have accepted and agreed to these Terms and Conditions by purchasing Products from Company pursuant to such proposal, quotation, invoice, and/or purchase order.

2.2 GENERAL. All sales of Products to Buyer, including sales pursuant to purchase orders placed by Buyer, shall be subject to these Terms and Conditions and an order confirmation from Company accepting the purchase order for the Products (the “Order Confirmation”). These Terms and Conditions, together with the Warranty (as defined below), the Order Confirmation and any other document referenced herein are hereby collectively referred to as the “Contract”. If any provision in the Order Confirmation is inconsistent with these Terms and Conditions, the provision of the Order Confirmation will govern. No additional or different terms or conditions in any purchase order or any modifications, changes or amendments to this Contract shall be binding upon Company unless specifically agreed to in writing signed by an authorized representative of Company. Any additional or different terms already or hereafter proposed by Buyer, whether in a purchase order or other communication or otherwise, are hereby rejected and shall not apply. The lack of objection by Company to any additional, modifying or deleting provisions contained in any purchase orders or other communications from Buyer shall not be construed either as a waiver of the terms of this Contract or as an acceptance by Company of any deviation from this Contract.

2.3 PRICES. All price, delivery and installation quotations made by Company are subject to and conditioned upon the terms of the Terms and Conditions. No order shall be binding upon Company until an Order Confirmation is issued by an authorized representative of Company, or until Company commences performance of the order. Prices for Products are subject to change without notice, provided that Company shall not change the prices of any Products subject to an accepted purchase order. Price quotations, unless otherwise stated, will expire ninety (90) calendar days from the date issued and may be terminated at any time upon notice to Buyer. All prices for Products listed in Company publications are intended as a source of general information only and not as an offer to sell, and all prices contained therein are subject to confirmation by formal quotation by Company. Unless otherwise set forth in Company’s quotation or the Order Confirmation, prices for Products do not include, and Buyer shall pay Company for, any transportation charges, insurance costs, export/import duties, licenses or fees, or any tax or governmental charge of any nature whatsoever, each of which shall be itemized on Company’s invoices. Company shall have the right to correct any clerical or ministerial errors and/or omissions in any quotation or other documentation and shall not be bound by any such clerical or ministerial errors and/or omissions.

2.4 CHANGE ORDERS/CANCELATIONS Changes and/or additions to the Products in any purchase order accepted by Company shall be made only by a written change order agreed to by Buyer and accepted by Company in writing. Any such written change order shall describe the change in Products, quantity, price and estimated delivery dates affected by the change order.



After 72 hours of Company's Order Confirmation, if all or part of the purchase order is cancelled, and if there is no contrary written agreement between Company and Buyer, Buyer shall pay termination charges in the amount equal to the greater of:

- (a) Ten (10) percent of the net sales price, or
- (b) The price provided in the purchase order for all items in process prior to the termination of the Contract, plus, the expenditures made and liabilities incurred by Company in connection with any portion of the purchased items not yet completed.

2.5 TAXES, FEES, AND DUTIES. Unless otherwise set forth in Company's quotation or the Order Confirmation, all freight, shipping charges, insurance premiums, tariffs, export and import duties, custom broker's charges, taxes and other such charges shall be paid by Buyer. Any claim for exemption by Buyer shall, if applicable, be effective only after receipt of proper exemption forms by Company. Company will prepare export packaging when requested (at an additional quoted price) and furnish pro forma export invoices and export declarations according to its best ability and judgment, but without liability for fines or other charges due to unintentional error or incorrect declarations.

2.6 SHIPMENT AND DELIVERY. All delivery dates are approximate and conditional upon prompt receipt of all necessary information and required materials. Unless otherwise set forth in the Order Confirmation, all shipments are F.O.B. _____ for all deliveries. Company reserves the right to make delivery in installments, unless otherwise expressly agreed to in this Contract; all such instalments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any instalment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries. Title to and risk of loss of the Products will pass to Buyer when the Products are made available to the carrier at Company's facility. Buyer shall be responsible for all shipping charges, including but not limited to shipping, transportation, duties and insurance costs. Company's responsibility for damaged goods ceases upon acceptance by the carrier and all claims for loss or damage occurring after acceptance by the carrier must be filed by Buyer with the carrier. Buyer shall inspect the Products immediately upon delivery to Buyer. In the event of (a) shortage, or (b) visible damage, or (c) concealed damage, or (d) loss occurring prior to acceptance by the carrier, a claim must be made in writing by the Buyer against Company. All claims against the carrier or Company under this Section 2.6 must be made within five (5) days after Buyer's receipt of Products. Buyer's failure to timely make any such claim shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Company may, at Company's option, require Buyer to (i) provide photographs or other documentation of such claim, and (ii) make the Products subject to the claim available for inspection by Company or its authorized representative in order to substantiate the grounds for rejection of the Products. All rejected Products must be returned to Company, at Buyer's expense, prior to replacement, if any, by Company. Any of the Products whose manufacture or shipment is delayed by or through Buyer, may be placed in storage by Company, and Buyer will be liable for all costs associated with such storage.

2.7 TERMS OF PAYMENT. Upon approval of Buyer's credit and unless specified otherwise by Company, all Products shall be invoiced upon shipment of the Products; provided, however, that for orders for Products to be shipped outside of the United States, (a) fifty percent (50%) of the total order price shall be paid at the time that the order is placed, and (b) the remaining fifty percent (50%) shall be paid prior to shipment of the Products. Payment of the amount specified in all invoices shall be due within the time period specified in Company's quotation, the Order Confirmation, or Company's invoice, as applicable, provided that Company may modify its payment terms from time to time, upon reasonable advanced notice to Buyer. All prices are in U.S. currency, and all payments shall be made in U.S. dollars. A charge of 1½ % per month (or the maximum amount allowed by law, if less) will be made on past due accounts. Buyer shall reimburse Company for all collection costs, court costs, administration costs, investigation costs, attorneys' fees and all other incidental costs, charges or expenses incurred in the collection of past due amounts or otherwise resulting or arising from any breach by Buyer of this Contract. Buyer shall not withhold payment of any amount due and payable by reason of any set-off of any claim or dispute with Company, whether relating to Company's alleged breach, bankruptcy, or otherwise.

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2.8 SECURITY INTEREST. To the extent any Products are sold to Buyer on credit, Buyer hereby grants to Company a security interest in all such Products sold to Buyer on credit until such time as the purchase price for such Products has been paid in full to Company. Buyer also hereby authorizes Company to file any initial UCC financing statements, continuation statements or amendments thereto necessary to effectuate and perfect such security interest and the proceeds thereof.

2.9 WARRANTY. The warranty applicable to the particular products purchased is below and is incorporated herein by reference ("Warranty").

Seller warrants that its manufactured product will, at the F.O.B. point, be free from defects in materials and workmanship. Term of warranty is 18 months from date of shipment and/or 12 months from date of installation, whichever occurs first. Seller does not warrant that its product is suitable for Buyer's intended purpose. Any product supplied by seller which Seller does not manufacture shall be subject only to the warranty of the original manufacture to the extent Seller can enforce such warranty. Any defective or nonconforming product must be held for seller's inspection and returned at Seller's request, freight prepaid, to the original F.O.B. Point. Any repairs to, or alteration of, or work done on alleged defective product without Seller's written authorization shall void Seller's warranty. Upon Buyer's submission of a claim as provided above and substantiation thereof, Seller shall at its option (i) either repair or replace its nonconforming product or (ii) refund an equitable portion of the purchase price attributable to such nonconforming product. Seller shall not be liable for the cost of removal or installation of materials or any unauthorized warranty work, nor shall Seller be responsible for any transportation cost, unless expressly authorized in writing by Seller. Any products or materials replaced by Seller will become the property of Seller, unless otherwise agreed in writing by Seller. Repair or replacement of products or refund of an equitable portion of the purchase price shall be Seller's only obligation and the sole and exclusive remedy of Buyer in the event of a failure to conform to the foregoing warrant.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (EXCEPT THAT OF TITLE) EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES SET FORTH IN THE WARRANTY SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTY. COMPANY MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY, OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR CONFORMANCE TO DESCRIPTION, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE.

2.10 RETURNS. No returns will be accepted without prior written authorization from Company. Company will issue an account credit to Buyer for properly returned Products. Company will inspect all returned Products, and no credit will be issued for Products which have been abused, neglected, altered, modified, or defaced. Returns may be subject to a restocking charge, at Company's sole discretion.

ARTICLE III INDEMNITY, LIMITATION OF LIABILITY

3.1 BUYER INDEMNITY. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BUYER RELEASES AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES, ANY OR ALL OF WHICH MAY BE INCURRED BY COMPANY AS A RESULT OF CLAIMS ARISING OUT OF BODILY INJURY, LOSS OF LIFE, PERSONAL INJURY, EMOTIONAL OR PSYCHOLOGICAL INJURY, PROPERTY DAMAGE, PROPERTY OR WAGE LOSS, LOSS OF BENEFITS, ILLNESS, OR DEATH OF ANY EMPLOYEES OF BUYER DIRECTLY OR INDIRECTLY ARISING OUT OF ANY

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PRODUCTS PURCHASED BY BUYER FROM COMPANY, INCLUDING WITHOUT LIMITATION ANY LOADING, UNLOADING, INGRESS, OR EGRESS OF PERSONNEL OR CARGO, REGARDLESS OF THE FAULT (OTHER THAN WILLFUL MISCONDUCT, MALICE, OR INTENTIONAL TORT), NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE OR OTHERWISE), PRE-EXISTING DEFECT, OR STRICT LIABILITY OF COMPANY, AND ANY THIRD PARTY CLAIMS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF PRODUCTS MANUFACTURED TO BUYER'S DESIGN OR SPECIFICATIONS. BUYER STIPULATES AND AGREES THAT IT SHALL NOT BE ENTITLED TO INVOKE ANY IMMUNITY IT MAY HAVE UNDER ANY WORKERS COMPENSATION ACT (THE "ACT") AS A DEFENSE TO ITS OBLIGATIONS TO INDEMNIFY COMPANY PURSUANT TO THIS CONTRACT, IT BEING EXPRESSLY UNDERSTOOD THAT ANY WAIVER OF SUCH IMMUNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT NECESSARY TO PRESERVE THE LEGAL VALIDITY OF BUYER'S INDEMNITY OBLIGATIONS UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT TO THE CONTRARY, SUCH WAIVER SHALL NOT IN ANY WAY IMPAIR BUYER'S IMMUNITY UNDER THE ACT WITH RESPECT TO CLAIMS MADE AGAINST BUYER BY ITS OWN EMPLOYEES.

IN ADDITION, ANY TECHNICAL INFORMATION OR ASSISTANCE THAT THE COMPANY HAS PROVIDED HAS BEEN GIVEN AND ACCEPTED AT BUYER'S RISK AND IS NOT A WARRANTY OR SPECIFICATION. BUYER AGREES THAT IT WILL FAMILIARIZE ITSELF WITH ALL HAZARDS AND PRECAUTIONARY STATEMENTS AND PROCEDURES WITH RESPECT TO THE HANDLING, TRANSPORTATION, USE, MAINTENANCE, AND REPAIR OF THE PRODUCTS AND WILL DEAL WITH THE PRODUCT ACCORDINGLY. BUYER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY FOR ANY CLAIMS MADE AGAINST COMPANY AND FOR ASSOCIATED DAMAGES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES, ANY OR ALL OF WHICH MAY BE INCURRED BY COMPANY AS A RESULT OF CLAIMS ARISING OUT OF BODILY INJURY, LOSS OF LIFE, PERSONAL INJURY, EMOTIONAL OR PSYCHOLOGICAL INJURY, PROPERTY DAMAGE, PROPERTY OR WAGE LOSS, LOSS OF BENEFITS, ILLNESS, OR DEATH DUE, IN WHOLE OR IN PART, TO BUYER'S FAILURE TO FAMILIARIZE ITSELF WITH SUCH HAZARDS AND PRECAUTIONARY STATEMENTS AND PROCEDURES, TO MANAGE ACCORDINGLY, OR TO PROVIDE THE INFORMATION AS SET FORTH ABOVE TO ANY THIRD PARTY OR AS REQUIRED BY LAW.

3.2 LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, EACH PARTY WAIVES ANY CLAIM AGAINST THE OTHER FOR ITS OWN LOST PROFITS OR LOSSES DUE TO BUSINESS INTERRUPTIONS, OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES, HOWEVER THE SAME MAY BE CAUSED, REGARDLESS OF THE FAULT (OTHER THAN WILLFUL MISCONDUCT, MALICE, OR INTENTIONAL TORT), NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE OR OTHERWISE), PRE-EXISTING DEFECT, OR STRICT LIABILITY OF THE RELEASED PARTY DIRECTLY OR INDIRECTLY ARISING OUT OF ANY PRODUCTS PURCHASED BY BUYER FROM COMPANY. BUYER AGREES THAT, EXCEPT FOR WARRANTY CLAIMS UNDER SECTION 2.9 ABOVE, COMPANY'S ENTIRE LIABILITY, AND BUYER'S EXCLUSIVE REMEDY, IN LAW AND EQUITY OR OTHERWISE WITH RESPECT TO ANY PRODUCTS PURCHASED BY BUYER FROM COMPANY IS SOLELY LIMITED TO THE AMOUNT PAID BY BUYER FOR THE PRODUCTS TO WHICH THE APPLICABLE CLAIM RELATES.

3.3 REMEDIES. THE DAMAGE LIMITATIONS PROVIDED IN THIS CONTRACT AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE BUYER'S SOLE REMEDY (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN). THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE.

ARTICLE IV INTELLECTUAL PROPERTY

4.1 CONFIDENTIAL INFORMATION. A party (the "Receiving Party") shall keep in strict confidence all information which is of a confidential or proprietary nature (including any drawings, memoranda, ideas and information, technical or commercial know-how, specifications, inventions, processes or initiatives) and has been disclosed to the Receiving Party by the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any

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other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under this Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party shall remain liable for a breach of such obligations by the Receiving Party's employees, agents and subcontractors. The Receiving Party shall only use or make copies of confidential information (including any reproductions, extracts or analyses of that confidential information) in connection with and to the extent necessary for the purposes of this Contract.

4.2 INTELLECTUAL PROPERTY RIGHTS. Company retains all right, title, and interest in all intellectual property rights related to the Products, and Buyer hereby assigns to Company any right that it may be deemed to own therein. The sale of any Products to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property ownership or license whatsoever.

ARTICLE V FORCE MAJEURE

5.2 FORCE MAJEURE AND ALLOCATION. Company shall not be liable for damages under the Contract for a delay or failure in its performance under the Contract as a result of causes beyond its reasonable control, including any law, order, regulation, direction, or request of any government having or claiming to have jurisdiction over Company, its subcontractors and/or its suppliers; failure or delay of transportation; insurrection, riots, national emergencies, war, acts of public enemies, strikes or inability to obtain necessary labor, manufacturing facilities, material or components from Company's usual sources; pandemics; fires, floods or other catastrophes; acts of God, acts of omissions of Buyer or any causes beyond the reasonable control of Company and/or of its suppliers. Upon the giving of prompt written notice to Buyer of any such causes of a delay or failure in its performance of any obligation under this Contract, the time of performance by Company shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause. During times of shortage, Company shall have the right to allocate among its customers in accordance with Section 2-615 of the Uniform Commercial Code.

ARTICLE VI APPLICABLE LAWS AND JURISDICTION

6.1 GOVERNING LAW. This Contract shall be governed by and be construed in accordance with laws of the State of Oklahoma without regard to conflict of laws principles.

6.2 CONSENT TO FORUM. Buyer hereby consents to the jurisdiction of any state or federal court located within Tulsa or Wagoner County, Oklahoma and consents that it may be served with any process or paper by registered mail or by personal service within or outside the State of Oklahoma in accordance with applicable law. Furthermore, Buyer waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section 6.2 shall limit or restrict the right of Company to commence any proceeding in the federal or state courts located in the state where Buyer resides or maintains its chief executive offices, as applicable, or in any other state, to the extent Company deems such proceeding necessary or advisable to exercise remedies available under the Contract.

ARTICLE VII

TERMINATION. In addition to all other remedies available under the Contract or at law (which Company does not waive by the exercise of any rights under the Contract), (i) if Buyer fails to pay any amount when due hereunder,



(ii) if the financial condition of the Buyer becomes impaired or unsatisfactory to Company, in its sole discretion, or (iii) in the event of Buyer's bankruptcy or insolvency, Company shall be entitled to (a) suspend the delivery of any Products and/or modify the payment terms applicable to Buyer under this or any other agreement between the parties, or (b) terminate the Contract immediately by written notice to Buyer. Upon such termination, Buyer shall pay Company for all Products delivered, all costs of labor, work in progress, non-cancellable materials on order and all other costs incurred by Company prior to the effective date of termination in connection with the Contract.

ARTICLE VIII MISCELLANEOUS

8.1 SEVERABILITY. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract.

8.2 WAIVER. Either party's failure at any time to require strict performance by the other of any of the terms or provisions of this Contract shall not waive or diminish that party's rights thereafter to demand strict compliance therewith or with any other provision. Waiver by either party of any default by the other shall not waive any other or similar defaults by the other party.

8.3 AMENDMENTS. The Contract is the exclusive agreement between the parties relating to the subject matter hereof and supersedes all trade custom and all prior or subsequent understandings, writings, proposals, representations or communications, oral or written, of either party. The Contract may only be amended in writing by authorized representatives of both parties.

8.4 CAPTIONS AND HEADINGS. The captions and headings of Articles and Sections of this Contract are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Contract or any provision thereof.

8.5 BINDING EFFECT. This Contract shall be binding upon and inure to the benefit of Company, Buyer and their respective successors and permitted assignees. Buyer shall not assign its rights or obligations under this Contract (by operation of law or otherwise) without the prior written consent of Company, which consent will not be unreasonably withheld. For purposes of this Contract, assignment shall include a change in control of Buyer in which more than fifty percent (50%) of the equity interests of Buyer cease to be beneficially owned by the equity holders of Buyer as of the date the Products are purchased by Buyer.

8.6 COMPLIANCE WITH LAW. Each party will comply with U.S. Federal, state, and local laws and regulations applicable to it as of the date of the Order Confirmation.

8.7 EXPORT CONTROLS. Buyer acknowledges that all shipments by Company are or may be subject to restrictions and limitations imposed by United States export controls, trade regulations, and trade sanctions. Buyer at all times will comply with such sanctions, controls and regulations and will cause compliance with such sanctions, controls and regulations in its use and disposition of the Products. With respect to each Product shipment pursuant to this Contract, Buyer will obtain and supply to Company in writing all information required by Company to obtain any U.S. export license, permit, approval or documentation applicable to such shipment. Notwithstanding any contrary provision in this Contract, Company will have no obligation to make any shipment to Buyer until it has received all such information and has obtained the applicable licenses, permits, approvals or documentation for shipment, if any.



8.8 SURVIVAL. Sections 2.6, 2.7, 2.8, 2.9, 2.10 and Articles III, IV, VI, VII and VIII will survive the expiration or earlier termination of the Contract, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination.

8.9 SEVERAL LIABILITY. Each Contract constitutes a separate and independent agreement between Buyer and each Company. It is hereby agreed and understood among the parties that there is no joint and several liability between or among each Company and Buyer, each Company shall be severally liable to the extent of its respective obligations and liabilities hereunder, the specific party identified as the seller of the Products in the applicable Contract shall be the party responsible for such Contract, and no Company shall be deemed a guarantor or surety with respect to the obligations or liabilities of any other Company. If Buyer has a claim or cause of action against a Company based on breach or non-performance of a Contract by a Company, Buyer's claim or cause of action shall be against the Company which provided the applicable Products to which the claim or cause of action relates.