



# GOVERNOR CONTROL SYSTEMS, INC.

*authorized sales & service center*

[www.govconsys.com](http://www.govconsys.com)  
MSHS Group of Companies

## TERMS AND CONDITIONS

These terms and condition represent the final and complete agreement of the parties, and no modification shall be binding upon Governor Control Systems ("GCS") unless made in writing and signed and approved by an officer of GCS. No modification of these terms shall be deemed made or accepted by GCS shipping goods or performing services following receipt of a purchase order or other documents containing terms and conditions additional to or in conflict with the terms and conditions herein. GCS does not agree to the accident, indemnity, and insurance provisions, if any, contained in the buyer's or customer's invitation or specifications, and in such cases GCS accepts only such liability as is imposed upon GCS by law and as limited by this contract. Receipt of goods or services by the buyer or customer shall be deemed conclusive proof of irrevocable acceptance of these terms and of the conformity of the goods or services provided; similarly these terms and conditions shall be deemed irrevocably accepted upon commencement of work by GCS at GCS' facility or at any other location.

**GENERAL:** GCS's contracts for furnishing repairs, parts and services are solely on the basis of the insured limited liabilities and specific warranties set forth below. GCS shall not be liable for any injury or death resulting from its provision of repairs, parts or services, and the purchaser or customer agrees to indemnify, defend and hold GCS harmless for any such claims brought against GCS by or on behalf of any person other than a GCS employee. When GCS provides parts, repairs or services to any vessel, GCS shall not be liable, directly or indirectly, in contract, tort or otherwise, to the vessel's owners, charterers, underwriters, lienholders or other party in interest for any damages to such vessel or to its appurtenances, cargo, equipment or moveable stores, or for any consequence thereof, unless such damage is caused solely by GCS's gross negligence or intentional tort, and in no event shall GCS's aggregate liability under this contract (with the exception of the specific warranty as set forth in "WARRANTY" below) exceed the sum of \$50,000.00 or the value of the vessel, whichever figure is the lesser. In no event shall GCS be liable for any consequential or special damages including but without limitation, for faulty or negligent design or manufacture, delay, loss of revenue, detention, wharfage, demurrage, tug expense, pilotage, crew wages, salvage or loss of use. For all sales or services provided, whether vessel related or non-vessel related, GCS shall not be liable for incidentalspecial or consequential damages or losses arising directly or indirectly from the purchase and sale of goods or provision of services, or for any other cause, and GCS' sole liability shall be as set forth under

"warranty" below. The buyer or customer agrees to indemnify, defend and hold GCS harmless with respect to all liabilities to all parties in interest exceeding the amounts herein stated.

**FORCE MAJEURE:** GCS shall not be liable in any event for any loss, damage or delay caused by strikes, labor difficulties, accidents, delays in delivery of materials, acts of God, war, restraint of princes, including, but not limited to, restraint by local, state or federal authorities, or causes or any kind beyond GCS's control, including, but not limited to, tropical storms, hurricanes, lightning or rain.

**WARRANTY:** GCS warrants that its parts and services are provided in accordance with industry standards and parts supplied are free from defects in material and workmanship. Buyer or customer agree that the sole remedy for breach of any warranty, express or implied shall be limited, at GCS sole discretion, to the replacement of parts, repair of parts, return or crediting of purchase price, or referral of the claim to the original manufacturer for manufacturer's warranty review. GCS makes no warranty and specifically disclaims all liability for design of any items supplied. The foregoing warranty is non assignable and is in lieu of and specifically excludes all other warranties not actually set forth herein, whether express or implied by operation of law or otherwise including but not limited to any implied warranties of merchantability or fitness or those implied by the common law of bailor and bailee. No agent or employee of GCS has authority to bind GCS to any other or expanded warranty, and any representation to that effect shall not be deemed to become a part of this contract and shall be unenforceable. The specific warranty provided by this section shall be deemed expired and all rights of the buyer or customer irrevocably waived unless the claimed defect is submitted to GCS in writing within sixty days of receipt of the relevant part or service (or the redelivery of the vessel, if vessel service is involved, whichever occurs first). This period shall govern whether the alleged defect is latent or patent and shall not be deemed to be tolled or to arise at any future time as a result of the discovery of a latent defect. Remedies for latent defects not discovered and submitted to GCS within the 60 day period shall be exclusively those available from the manufacturer, if any.

**FORUM AND CHOICE OF LAW:** This contract shall be deemed to have been executed and fully performed within in the State of Florida, and shall be interpreted and construed in accordance with and subject to (a) if

work on or for a vessel is in any way involved, the federal maritime law of the United States or, should no such law exist on any particular issue, the laws of the State of Florida, to the exclusion of the laws of any other state or country, or (b) if no work on any vessel is involved, the laws of the State of Florida, to the exclusion of the laws of any other state or country. The prevailing party in any legal action shall be awarded reasonable attorneys fees and costs. Moreover: (1) for U.S. buyers or customers: any dispute arising under, in connection with or incident to this contract shall be litigated before a court of competent jurisdiction located in the State of Florida, County of Broward, to the exclusion of the courts of any other state or country, and buyer or customer hereby irrevocably consent to the jurisdiction of such court;

(2) for non-U.S. buyers and customers: any dispute arising under, in connection with or incident to this contract shall be referred to three persons at New York, New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final and, for the purpose of enforcing any award, this contract may be made a rule of the court. Should a party fail to appoint an arbitrator within ten days of notice of demand for arbitration, the demanding party may appoint the second arbitrator with the same force and effect as if appointment by the second party. Should the two arbitrators be unable to agree on the appointment of a third arbitrator within 14 days after appointment of the second arbitrator, the President of the Society of Maritime Arbitrators, Inc. shall make the appointment upon the request of either party without further notice. The proceedings shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators, Inc., including Section 2 "Consolidation". The arbitrators shall be commercial men and not practicing attorneys. The arbitrators shall consider this Agreement an honorable engagement rather than merely a legal obligation; they are relieved from all judicial formalities and may abstain from following the strict rules of law. The arbitrators shall award reasonable attorneys fees and costs to the prevailing party. The parties irrevocably stipulate to the jurisdiction of the United States District Court for the Southern District of New York and the United States District Court for the Southern District of Florida (at the election of the party filing) for purposes of compelling arbitration or confirming an arbitration award. With regard to petitions to compel arbitration or to confirm an arbitration award, the parties consent to service of process by certified mail, certified international mail, fax, e mail, Federal Express or DHL courier service to the parties at any of the addresses or other contact information set forth in the GCS purchase order, quotation, or elsewhere in this contract, and

irrevocably waive and right to personal service of these documents.

**PAYMENT AND PRICE:** Prices quoted and product availability stated are valid for ten days only unless designated as firm for a specific other period in writing by an officer of GCS. Payment in all cases is net upon receipt of invoice, 1.5% per month to be added to the invoice amount if full payment is not received by GCS within thirty days of presentation of the invoice. GCS may place any account not paid within thirty days into the hands of attorneys for collection and the buyer or customer agrees to pay the reasonable fees and costs of the attorneys, without regard to whether suit is filed or arbitration commenced. All payments must be made in Florida at 3190 SW 4<sup>th</sup> Avenue, Fort Lauderdale, Florida 33315 or by wire as set forth below. It is agreed that wires are to be deemed payments made in Florida. For payment for work done on or materials furnished to any vessel, whether authorized orally, or by letter, or written contract, and whether GCS is the general contractor or a subcontractor, GCS looks to both vessel and owner.

Wire Transfer: City National Bank  
450 East Las Olas Boulevard  
Fort Lauderdale, Florida 33301  
Acct#: 12005697395  
ABA 066004367

**VESSEL WARRANTIES:** For any work on or for a vessel, the vessel, its owners, charterers, underwriters, lienholders, and all parties in interest, shall indemnify and hold GCS harmless from all liability arising under any state or federal air or water quality statute or regulation unless the liability shall arise solely from the gross negligence or intentional tort of GCS's own employees. Owners, or other parties in interest, warrant that a valid and current U.S. Coast Guard Certificate of Financial Responsibility (Water Pollution) (Form CG-5358-10) shall be kept in force at all times while GCS is furnishing repairs, parts or services.

**BUYER AND CUSTOMER'S RIGHT TO PURCHASE FURTHER WARRANTIES:** Different or more extensive liabilities will be accepted if an agreement in writing stating the nature and extent thereof is entered into before work is commenced by GCS, and if the price is adjusted to include the cost of appropriate additional insurance. The terms contained in this contract or as set forth by an addendum thereto shall in no way be interpreted to hold GCS as an insurer.

**MISCELLANEOUS:** Nothing herein shall be deemed to constitute a waiver of GCS's maritime lien. Invalidity of any one or more provisions of this contract shall not affect nor impair the remaining provisions. This contract may not be changed orally.



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