

ACKNOWLEDGMENT TERMS AND CONDITIONS Dated 08/01/2004

THE TERMS AND CONDITIONS SET FORTH BELOW ARE INCORPORATED INTO THE ACKNOWLEDGMENT MAKING REFERENCE HERETO.

- 1. PRICE.** Unless otherwise specified in this Acknowledgment, prices exclude all taxes (imposed by any state, country or other governmental entity), duties, special packing and freight costs (including, without limitation, the cost of loading goods on board a carrier) and related costs and expenses, all of which shall be added to such prices and paid by Buyer. In addition, Buyer shall pay, or reimburse Seller for, reasonable out-of-pocket expenses, including, without limitation, travel and travel-related expenses, incurred by Seller in connection with the performance of its obligations or incurred by Seller at the request or with the approval of Buyer. Should Buyer request any change in goods or services covered by this Acknowledgment, Seller shall not be obligated to proceed with such change until Seller agrees in writing to proceed with such change. If Seller determines that any such change may cause an increase in Seller's costs or the time required for provision of goods or services, or may raise other issues of concern to Seller, an equitable adjustment shall be made with respect to price, schedule or otherwise in order to address such issues.
- 2. PAYMENT.** Unless otherwise specified in this Acknowledgment, payment for goods and services covered by this Acknowledgment shall be made, in cash, within thirty (30) days from date of Seller's invoice. Unless otherwise specified in this Acknowledgment, U.S. dollars shall be the currency of account, for all purposes, with respect to this Acknowledgment. Amounts not paid when due by Buyer may result in Seller suspending shipments or taking other remedial actions.
- 3. SCHEDULES.** All dates or schedules specified in this Acknowledgment are approximate and are based upon Buyer's and other parties' timely provision of information, and performance of related work and obligations, necessary for Seller to perform its obligations hereunder. Seller shall be excused from any failure to meet such dates or schedules, where such failure is occasioned by any of the circumstances or conditions enumerated in paragraph 12 below. If any failure to meet dates or schedules is occasioned by the fault of Seller, Seller shall make commercially reasonable efforts to remedy such failure as soon as reasonably practicable. Any installation or use of goods or services by Buyer shall constitute a waiver of all claims for delay. Seller has the right to deliver goods at one time or in installments, from time to time, within the period provided for delivery. In the event of partial shipments, Seller may immediately invoice Buyer for the amount(s) due in respect thereof, which amount(s) shall be due and payable in accordance with paragraph 2 above. Delivery of nonconforming goods, or a default of Seller of any nature in relation to one or more installments, shall not substantially impair the value of this transaction, as a whole, and shall not constitute a default hereunder, as a whole. In the event Buyer fails to take delivery of goods tendered by Seller pursuant to this Acknowledgment, Buyer shall, notwithstanding anything to the contrary in this Acknowledgment, (i) thereafter bear all risk of loss with respect to such goods, (ii) promptly reimburse Seller for any packing, un-packing, loading, un-loading, storage, protection, freight and other costs thereafter incurred by Seller in connection with such goods, (iii) pay Seller, at Seller's then current commercial billing rates, for any storage of such goods by Seller and (iv) indemnify, defend and hold harmless Seller and its suppliers and subcontractors, and their respective officers, directors, stockholders, employees, agents and assigns, from any claims, actions, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising out of any acts, omissions or events relating to such goods regardless of any negligence of Seller or any other indemnified party (including, without limitation, any breach of warranty); provided, however, extended delivery terms are acceptable only if agreed upon in writing by Seller.
- 4. SECURITY INTEREST.** Seller shall retain, and Buyer hereby grants to Seller, a security interest in goods covered by this Acknowledgment, now owned or hereafter acquired, wherever located, including all returns, repossessions and parts, and all chattel paper, instruments, documents, accounts, general intangibles, contract rights and security agreements (resulting from the sale or other disposition of such goods) and all cash and non-cash proceeds of any of the foregoing, which shall secure the payment of all amounts due from Buyer to Seller as specified in this Acknowledgment. Buyer shall, at the request of Seller, execute, and hereby grants Seller the right to execute in the name of Buyer, any documents necessary to grant to Seller a security interest in such goods and any filings necessary to perfect such security interest in all jurisdictions where Seller deems such filings to be necessary to protect its interest.
- 5. INSPECTION.** Buyer may have the right, with Seller's concurrence, to inspect goods fabricated hereunder prior to acceptance provided (i) such inspection shall occur at the place of fabrication, during the period of fabrication, (ii) such inspection shall be conducted by an authorized and qualified representative of Buyer, during normal working hours after reasonable notice to Seller and without interference with operations, (iii) Buyer shall ensure that all persons involved in such inspection comply with applicable security and other procedures relating to the place of fabrication and (iv) Buyer shall promptly notify Seller, in writing, in the event that any person involved in such inspection shall discover any defects or other problems with respect to the goods. Any inspection at the facilities of a supplier or subcontractor of Seller shall be subject to securing permission from such supplier or subcontractor, and Seller shall make commercially reasonable efforts to obtain such permission. Buyer shall accept goods, or part thereof, as soon as they are reasonably tendered to Buyer, unless during inspection at the place of fabrication Buyer has notified Seller of the unacceptability of such goods and confirms such notice in writing within ten (10) days of such inspection, but not later than the regularly scheduled shipment of such goods. Buyer may not revoke its acceptance. This paragraph 5 in no way modifies or affects Buyer's remedies or Seller's warranties set forth elsewhere in this Acknowledgment. Cost of inspection shall be born by Buyer unless otherwise agreed to in advance by Seller.
- 6. SPECIFICATIONS.** In the event Buyer is to specify the form, measurement, features or other specifications for goods, or to provide other information with respect to goods or services, Buyer shall deliver such information and secure Seller's written acceptance of such information. Buyer is responsible for its own due diligence in evaluating Seller's goods and is solely responsible for its approval of the application of goods.
- 7. COOPERATION.** Buyer shall cooperate with Seller in connection with Seller's performance of its obligations through, among other things, performing its responsibilities set forth in this Acknowledgment, securing performance of related work by other parties and making available, as reasonably requested by Seller, access, management decisions, information, approvals and acceptances in order that Seller may perform its obligations in a timely manner.
- 8. LIMITED WARRANTY.**
 - a) *General.* This warranty is extended by Seller solely to Buyer. If any item of goods covered by this Acknowledgment fails to function properly because of a defect in materials or workmanship, under normal use and maintenance within the earlier of twelve (12) months after being put in service or eighteen (18) months from the date of shipment, Seller shall, at its option and after inspection, repair or replace the defective item of goods or refund the purchase price. Buyer must return the defective item of goods to Seller, transportation costs prepaid, with an explanation for the return. This warranty shall not apply, and Seller shall have no liability with respect to any item of goods which has been altered, damaged, misused, abused, improperly installed or repaired or repaired with parts not supplied by Seller.
 - b) *Disclaimer*
THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT OF TITLE), EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDY DESCRIBED ABOVE IS THE SOLE AND EXCLUSIVE REMEDY, AND SELLER'S SOLE OBLIGATION, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF THE MANUFACTURE, SALE OR USE OF GOODS COVERED BY THIS ACKNOWLEDGMENT.
- 9. BUYER'S REMEDIES.** Buyer's exclusive and sole remedies, except as provided in paragraph 8 above, for any default hereunder by Seller, are strictly limited to either, at Seller's option, (a) refund of the price paid by Buyer for goods and services in question and return of such goods to Seller or (b) repair and/or replacement of nonconforming goods, or parts thereof, and re-performance of nonconforming services. Notwithstanding anything to the contrary, in the event this Acknowledgment provides for any specified amount to be paid, or indemnification or any other specified action to be taken, by Seller, such amount or action shall constitute Buyer's sole and exclusive remedy for the circumstance or condition upon which such amount or action is based. Under no circumstances shall (i) Buyer have the right to claim or recover any punitive, exemplary, incidental or consequential damages or (ii) Seller be liable, in the aggregate for any and all matters arising out of, under, or in connection with this Acknowledgment, whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise, for more than the amount paid by Buyer for goods and services covered by this Acknowledgment.
- 10. SELLER'S REMEDIES.** All of Seller's remedies set forth in this Acknowledgment, in the event Buyer fails to comply with this Acknowledgment or any of its obligations hereunder, shall be cumulative and in addition to, and not in lieu of, any other remedies available to Seller at law, in equity or otherwise, and may be enforced concurrently or from time to time and Seller shall additionally be entitled to recover its reasonable attorney's fees and costs incurred by Seller in the enforcement of its rights and remedies. Without limiting the foregoing, in the event Buyer fails to make one or more payments when due, or otherwise defaults in the performance of any of its obligations, Seller may, at its option, suspend performance hereunder until such default is cured or terminate its obligations hereunder, or both.

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11. RISK OF LOSS AND PASSAGE OF TITLE. Unless otherwise specified in this Acknowledgment, all goods to be delivered by Seller are sold ex works (as defined in Incoterms 2000, ICC Publication NO. 460) and title to such goods shall pass to Buyer at the earlier of (i) the date when Buyer obtains physical possession of such goods or part thereof or (ii) the date such goods are loaded on a carrier for delivery to Buyer. If no carrier is specified by Buyer sufficiently in advance of the required date(s) of shipment, Seller may select any mode(s) of transportation and any common carrier satisfactory to Seller and such selection shall conclusively be deemed satisfactory to Buyer. In the absence of a written agreement to the contrary, Buyer bears all risks of shipment of any goods sold hereunder.

12. FORCE MAJEURE. Seller shall be excused from performance hereunder for any period, and to the extent, that it is hindered or prevented from performing pursuant hereto, in whole or in part, as a result of delays caused by Buyer or third parties, floods or other acts of God, war, revolution, terrorism or civil disturbance, governmental action, statute, ordinance or regulation, court order, strike or other labor dispute, fire, damage to or destruction in whole or in part of goods or place of fabrication, lack or inability to obtain raw materials, labor, fuel or supplies or any other circumstances or conditions beyond Seller's reasonable control. In the event of nonperformance occasioned by any of the foregoing circumstances or conditions, the time for performance shall be extended to the extent of such delay. Such nonperformance shall not be a default hereunder or a ground for termination hereof and shall not excuse Buyer from its payment obligations hereunder or extend the time for such payment.

13. VERIFICATION OF INFORMATION. This Acknowledgment, including, without limitation, prices, schedules and specifications set forth herein, is based upon information furnished by Buyer to Seller. Buyer believes that such information is accurate and complete. However, if any such information should prove to be inaccurate or incomplete in any material respect, Seller may, at its option and by giving written notice thereof to Buyer, make appropriate adjustments to the provisions hereof including, without limitation, prices, schedules and specifications.

14. OWNERSHIP. Unless otherwise specified in this Acknowledgment, Buyer shall not obtain any rights or interests in any patent, copyright, proprietary right or confidential know-how, trademark or process owned by Seller or any other party. Any and all intellectual property rights, including rights of patent, copyright and trademark, in any reports, drawings, documents, specifications, calculations, confidential know-how, materials, or processes (the "Intellectual Property Rights") owned or created by Seller and used or embodied in goods or services covered by this Acknowledgment shall remain the sole property of Seller. Any and all Intellectual Property Rights developed by Seller, whether in the provision of goods and services covered by this Acknowledgment or independently thereof, shall belong to Seller. Any and all right, title or interest that Buyer or any other party may have or obtain in or to Seller's Intellectual Property Rights is hereby assigned to Seller and Buyer shall take, or cause to be taken, all necessary or appropriate actions to vest such Intellectual Property Rights in Seller.

15. CONFIDENTIALITY. Buyer shall handle confidentially all designs and specifications and technical, commercial, financial and other information which Buyer receives from Seller pursuant to this transaction and shall not use, copy or communicate such information to others except in the performance of Buyer's obligations pursuant to this Acknowledgment or as necessary for operation and use of the goods, without prior written consent of and the payment of fair compensation to Seller. If Buyer discloses such information to any other party, as permitted by this paragraph 15, Buyer shall secure such party's written agreement to the same confidentiality restrictions as stipulated herein and shall cause such party to comply with such confidentiality restrictions.

16. BUSINESS RELATIONSHIP. Seller, in providing goods and services to Buyer, is acting only as an independent contractor and under no circumstances shall Seller be deemed to be in any relationship with Buyer carrying with it fiduciary or trust responsibilities, whether through partnership or otherwise. Unless otherwise specified in this Acknowledgment, Seller has the sole right and obligation to supervise, manage and direct the provision of all goods and services covered by this Acknowledgment. Seller does not undertake by this Acknowledgment or otherwise to perform any obligation of Buyer, whether regulatory or contractual, or to assume any responsibility for Buyer's business or operations. Buyer shall (i) accurately represent goods and services covered by this Acknowledgment, including, without limitation, as to quality, function, purpose and compatibility, (ii) not attempt or purport to create any obligation of Seller with respect to goods, services or otherwise, (iii) not add, remove, obstruct, conceal, change or deface any notice, legend, logo, designation or other mark on, or affixed to, any goods or any packing or other materials provided with goods, (iv) permit operation, maintenance and use of goods only in accordance with, and in a manner anticipated by, applicable design conditions, specifications and operating instructions and (v) market and distribute goods and services only in the form provided to Buyer by Seller. Buyer shall indemnify, defend and hold Seller harmless from any and all damages, liabilities, costs, and expenses, including without limitation, reasonable attorneys' fees and expenses, arising out of, under or in connection with any claim, demand, charge, action, cause of action or other proceeding relating to the conduct of Buyer's business, including without limitation, the acquisition, transfer, operation and/or use of goods and services covered by this Acknowledgment. This Acknowledgment is not intended to confer any rights or benefits on any third party, including, without limitation, any employee, customer, business associate, creditor or affiliate of Buyer.

17. WAIVER. Waiver or non-enforcement by either Seller or Buyer of a right or privilege with regard to, or of a default by the other of, any term or condition of this Acknowledgment shall not be deemed a waiver of future compliance therewith, and such terms or conditions shall remain in full force and effect.

18. ASSIGNMENT. Buyer shall not assign or transfer its rights or obligations under this Acknowledgment, or any part hereof, without Seller's prior written consent.

19. HEADINGS. The headings contained in this Acknowledgment are for reference purposes only and shall not in any way affect the meanings or interpretations hereof.

20. CHOICE OF LAW AND FORUM. This Acknowledgment shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to principles of conflict of laws. The United Nations Convention on the International Sale of Goods shall not be applicable to this transaction. Any dispute that may arise out of or in connection with this transaction shall be subject to the exclusive jurisdiction of the courts of the State of Texas and the U.S. federal courts located in such state, and Buyer irrevocably submits to the personal jurisdiction of such courts for purposes of any suit, action or proceeding involving any such dispute.

21. ENTIRE AGREEMENT. The terms and conditions set forth in this Acknowledgment constitute the entire agreement between the parties with respect to the subject matter hereof. This Acknowledgment wholly cancels, terminates and supersedes any and all letters, requests for quotes, quotes, purchase orders, acknowledgments, bills of lading, agreements and understandings, whether oral or written, between Buyer and Seller with respect to the subject matter hereof. Terms and conditions set forth in any letter, request for quote, quote, purchase order, acknowledgment, bill of lading, agreement or other document utilized or exchanged by the parties shall not be incorporated herein or binding unless expressly agreed upon in writing by Seller. This Acknowledgment may not be modified or terminated orally, and no modification, termination or waiver shall be binding on Seller unless accepted and acknowledged by a written instrument signed by a duly authorized representative of Seller.

22. EXPORTS. If all or any portion of the goods to be provided pursuant to this Acknowledgment are to be exported from the United States, Buyer agrees that such exportation is subject in all respects to, and Buyer shall comply in all respects with, United States laws with respect to such export and subsequent re-export of such goods. Seller makes no representation or warranty relative to the export or re-export of such goods.

23. SURVIVAL. All representations, warranties, covenants and indemnities made in this Acknowledgment shall survive the consummation of the transactions contemplated by this Acknowledgment. Termination of all or any part of this Acknowledgment, for any reason, shall not release Buyer from any liabilities or obligations set forth in this Acknowledgment which (i) expressly survive any such termination or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination.

24. SAVINGS CLAUSE. If any provision of this Acknowledgment is declared or found to be illegal, unenforceable or void, then obligations arising under such provision shall be null and void and each provision not so affected shall be enforced to the full extent permitted by law.