

SECTION 6

STANDARD TERMS AND CONDITIONS

1. **CONTROLLING PROVISIONS.** This document (both pages) entitled "Standard Terms and Conditions" and the attached pricing proposal (which is incorporated herein for all purposes) are collectively referred to herein as the "Proposal." This Proposal, when submitted by the corporation identified as "Seller" in the attached pricing proposal or its authorized representatives (collectively, "Seller") and "Buyer"), whether such acceptance is oral or in writing, by submission of a purchase order or purchase order number, by acceptance of a product, by commencement of performance hereunder, or by any other means, shall constitute the entire agreement between Buyer and Seller concerning its subject matter, and supersedes all prior agreements and understandings related thereto. Buyer's acceptance of this Proposal is expressly limited to the terms contained herein and no waiver, alteration, modification, amendment, or supplementation of, or conflict with, any provision in this Proposal, whether on Buyer's purchase order, by custom or practice, or otherwise, shall be valid unless such waiver, alteration, modification, amendment, supplementation, or conflict (I) is specifically accepted in writing by Seller and signed by an authorized representative of Seller, and (ii) specifically states in an obvious and conspicuous manner that it alters, amends, modifies, or supplements (as the case may be) this Proposal. This Proposal shall be governed by the laws of the State of Texas, excluding choice of law rules.

2. **DELIVERY.** Seller shall make a good faith effort to complete delivery of the products described on the attached pricing proposal, but Seller assumes no responsibility or liability, and will accept no back-charge or reduction in price, for loss or damage due to delay or inability to delivery caused by acts of God, war, labor difficulties, accident, delays of carriers, contractors or suppliers, inability to obtain materials, shortages of fuel and energy, or any other causes of any kind whatsoever beyond the control of Seller. Seller may terminate any agreement for sale of its products and/or services without liability of any nature to Seller by written notice to Buyer, if the delay in delivery or performances resulting from any of the aforesaid causes shall continue for a period of sixty (60) days or more. Under no circumstances shall Seller be liable for any special, consequential, incidental, or punitive damages or for loss, hamage, or expense (whether based on negligence or any other form of liability) directly or indirectly arising from any delay or failure to give either notice of delay or notice of termination of an agreement or order. Under no circumstances shall Buyer be entitled to specific performance.

3. **WARRANTY.** Seller warrants, for one year from the date of shipment of any product manufactured by Seller, that Seller shall replace, correct, or, at its election, refund the net sales price of such manufactured product; provided Seller concludes, after its examination, that such manufactured product contains defects in materials or workmanship, does not conform to the specifications, drawings, or other descriptions supplied by Buyer, and cannot be used for the purpose and in the manner which Seller recommends. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS-IS," "WHERE-IS," AND "WITH ALL FAULTS" AND BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES, RENOUNCES, AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, AND/OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO (1) THE PRODUCTS SOLD, THEIR MERCHANTABILITY, THEIR PHYSICAL CONDITION, THEIR FITNESS FOR A PARTICULAR PURPOSE, (2) THE MAINTENANCE OR OTHER EXPENSES TO BE INCURRED IN CONNECTION WITH THE PRODUCTS, (3) THE ENGINEERING, DESIGN, OR FABRICATION WORK OR ANY OTHER WORK OR SERVICE (WHETHER GRATUITIOUS OR FOR PAYMENT) SUPPLIED BY SELLER AND/OR ITS AGENTS, SUPPLIERS, AND EMPLOYEES, AND (4) THE ACCURACY OR RELIABILITY OF ANY INFORMATION, DESIGNS, OR DOCUMENTS FURNISHED TO PURCHASER. SELLER NEITHER ASSUMES, NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT, ANY OTHER OBLIGATION IN CONNECTION WITH THIS PROPOSAL, INCLUDING, WITHOUT LIMITATION, THE SALE OF ITS PRODUCTS AND/OR RENDERING OF ITS SERVICES. THIS WARRANTY SHALL NOT APPLY TO ANY PRODUCTS OR PARTS OF PRODUCTS WHICH (1) HAVE BEEN REPAIRED OR ALTERED OUTSIDE OF SELLER'S FACTORY, IN ANY MANNER, (2) HAV BEEN SUBJECTED TO MISUSE, NEGLIGENCE, OR ACCIDENTS, (3) HAVE BEEN USED INA MANNER CONTRARY TO SELLER'S INSTRUCTIONS, RECOMMENDATIONS, OR SPECIFICATIONS (IF ANY), (4) CONTAIN DESIGN OR MANUFACTURING ERRORS AS A RESULT OF INACCURATE, INCOMPLETE, OR MISLEADING INFORMATION OR SPECIFICATIONS SUPPLIED BY BUYER OR ITS EMPLOYEES OR AGENTS OR (5) HAVE BEEN PRODUCED OR MANUFACTURED (IN WHOLE OR IN PART) BY PERSONS OTHER THAN SELLER.

4. **SELLER'S LIABILITY.** SELLER'S LIABILITY FOR BREACH OF THE WARRANTY IN PARAGRAPH 3 SHALL BE EXPRESSLY LIMITED TO AND SHALL NOT EXCEED THAT NET SALES PRICE OF THE DEFECTIVE PRODUCTS(S), AND NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. SELLER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, COST OF REPAIRS, OR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OF ANY KIND, WHETHER BASED UPON WARRANTY (EXCEPT FOR THE LIMITED

OBLIGATION SET FORTH IN PARAGRAPH 3), CONTRACT, NEGLIGENCE, OR ANY OTHER TORT OR CAUSE OF ACTION, ARISING IN CONNECTION WITH THIS PROPOSAL AND/OR THE DESIGN, MANUFACTURE, INSTALLATION, SALE, TRANSPORTATION, USE, OR REPAIR OF THE PRODUCTS OR OF THE INFORMATION, DESIGNS, SERVICES, OR OTHER WORK SUPPLIED TO BUYER.

5. **INFRINGEMENT.** Buyer shall indemnify, defend, and hold Seller harmless against all claims, causes of action, and liability and expense incurred by Seller and its agents and employees, in connection with any alleged infringement of any patent, copyright, trademark, or other intellectual property or proprietary information resulting from or arising in connection with this Proposal, including, without limitation, any claims, causes of action, and liability and expense arising from or occurring in connection with the design, manufacture, sale, installation, use, or repair of Seller's products and/or the use or dissemination of any designs, drawings, plans, specifications, or other documents, information, or services used by Buyer and/or Seller. The provisions of this Paragraph 5 shall survive the termination of this Proposal.

6. **INDEMNITY.** Except as expressly set forth in Paragraph 3, and to the maximum extent permitted by applicable law, Buyer shall defend, indemnify, and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgement, and expense (including, without limitation, attorney's fees) arising out of or in connection with the injury, disease, or death of persons (including, without limitation, Buyer's and Seller's employees and agents) or damage to or loss of any property or the environment or violation of any applicable law of any governmental authority resulting from or in connection with this Proposal and/or the design, manufacture, sale, transportation, installation, use, or repair of the products or of the information, designs, services, or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees, or suppliers. The obligations, indemnities, and covenants contained in this Paragraph 6 shall survive the termination of this Proposal.

7. **CONFIDENTIAL INFORMATION.** Buyer shall hold in confidence and not disclose (without prior written approval of Seller, except that such prior written consent shall not be necessary under any circumstances in which such disclosure is required by law) or use for its own benefit or otherwise disseminate any confidential information. As used herein, confidential information shall include, without limitation, (i) all plans, designs, blueprints, and specifications of Seller and its agents and suppliers, (ii) all design, manufacturing, construction, and installation processes and techniques of Seller and its agents and suppliers, and (iii) all patents, copyrights, trademarks, intellectual property, and other proprietary information produced, used, or owned by Seller or its agents or suppliers. Buyer shall indemnify and hold Seller and its agents and employees harmless for any failure to conform or breach of any provision in this Paragraph 7. If it is determined by a court of competent jurisdiction that any provision of Paragraphs 3 through 7 hereof is declared invalid, illegal, or unenforceable in any respect, such provision shall automatically be amended to conform to the maximum monetary limits and other legal limits and to the maximum amount of time allowed by applicable law. The obligations, indemnities, and covenants contained in this Paragraph 7 shall survive the termination of this Proposal.

8. **INSPECTION AND ACCEPTANCE.** Buyer shall have seven (7) days from the date Buyer receives such products to (i) inspect such products and services and (ii) notify Seller, in writing, of any non-conformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have accepted the products, unless Buyer has already accepted the products in a manner provided in Section 2.606 of the Texas Business and Commerce Code. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance of any non-conforming products, except as specifically provided in Section 2.608 of the Texas Business and Commerce Code; it being agreed by both parties that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Without affecting the preceding limitation, where engineering, design, or fabrication work or other service is supplied by Seller, Buyer's acceptance of Seller's design or delivery of such work or service shall relieve Seller of all further obligations, except for the limited warranty set forth herein. If Buyer rejects any product or service, Seller shall have forty-five (45) days to cure such defect or non-conformance. Buyer shall have no right to (i) order any change or modification to any product or service previously ordered by Buyer or its representatives, or (ii) terminate this Proposal, without Seller's written consent and without prior payment to Seller of all charges, expenses, commissions, and reasonable profits owed to or incurred by Seller.

9. **SHIPMENTS.** The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the purchase price. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete, or misleading information supplied by Seller or its agents or employees, storage and all other additional costs shall be borne solely by Buyer. No claim for shortages shall be allowed unless made in accordance with Paragraph 8, and Seller's count shall be accepted as conclusive on all shipments. Claims for products damaged or lost in transit shall be made on the carrier, as Seller's responsibility ceases, and title passes to Buyer, on delivery to the Carrier.

10. **DEFAULT.** If Buyer breaches any provision hereof, or becomes insolvent, enters bankruptcy, receivership, or other similar proceedings (whether voluntarily or involuntarily), or makes an assignment for the benefit of its creditors, Seller shall have the right, in addition to any other right or remedy it may have hereunder or by law, to (i) defer shipment of any product, or (ii) terminate this Proposal by giving Buyer written notice. If Seller terminates this Proposal as provided herein, (i) Seller shall be released from all further obligations hereunder, and (ii) Buyer shall pay Seller, within thirty (30) days from the date Seller terminates this Proposal, the

full value for all products and services previously delivered, for all costs and expenses incurred by Seller in attempting to complete this Proposal, and for all costs and expenses (including attorney's fees and collection costs) incurred by Seller as a result of Buyer's breach.

11. **PRICES AND DESIGNS.** Prices and designs are subject to change without notice. All prices are F.O.B. Point of Shipment, unless otherwise stated by Seller in writing. All prices apply only to the specific products described on the attached pricing proposal.
12. **TAXES.** The amount of any sales, excise, or other taxes, if any, applicable to the products and services covered herein shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to Seller.
13. **TERMS.** Cash, net 30 days unless otherwise specified in writing by Seller. Buyer absolutely and unconditionally guarantees to Seller prompt payment, when due, of all amounts owing Seller. Seller may decline to make deliveries under this Proposal and may withdraw any credit or payment terms and demand payment for any amount owed by Buyer to Seller, whenever Seller, for any reason, doubts Buyer's ability to pay and Seller advised Buyer, in writing. In addition to the Remedies contained in Paragraph 10, if Buyer fails to perform any of the terms of this Proposal, Seller shall have the right to defer shipments until such default is cured.
14. **ARBITRATION.** In the event of any dispute between Seller and Buyer in connection with this Proposal, the design, manufacture, sale, transporting, use, installation, or repair of the products provided, or the services provided, such dispute shall be settled by arbitration at the request of either party. To institute such arbitration proceedings, the party desiring to institute the arbitration procedure shall notify the other party and in such notice designate the first arbitrator. If the first arbitrator is acceptable to the other party, the other party shall so notify the first party within ten (10) days and the first arbitrator shall proceed to determine the dispute within twenty (20) days thereafter. If the first arbitrator is not acceptable, then within ten (10) days of notification of the name of the first arbitrator, the second party shall designate in writing a second arbitrator. If a second arbitrator is designated, the two arbitrators shall meet and select a third arbitrator and the three arbitrators shall determine the matter and dispute within twenty (20) days from the date of the designation of the second arbitrator. Failure of the two initial arbitrators to select a third arbitrator within ten (10) days, shall entitle either party to apply to an appropriate court for appointment of the third arbitrator. All arbitrators shall be licensed attorneys with at least five (5) years experience in business and/or commercial transactions.

The decision of the arbitrator or arbitrators shall be binding and conclusive on the parties hereto. The fees and expenses of the arbitrator appointed by each party shall be the responsibility of that party. If only one arbitrator is used, or with respect to the third arbitrator, the fees and expenses of such sole or third arbitrator, as the case may be, shall be borne equally by the parties. Any arbitrator designated to serve pursuant hereto shall not be an affiliate of any of the parties hereto. Any arbitration carried out pursuant to this Proposal shall be conducted in accordance with the Federal Arbitration Act and the applicable rules of the American Arbitration Association. The arbitrator(s) shall allow the production of all documents which form the basis of the dispute, as well as all supporting documentation reasonably necessary to explain the documents in dispute. No hearings or other discovery shall be allowed unless the arbitrator(s), in his or their sole opinion, deems it necessary for the arbitration. All the hearings and proceedings held and all investigations and actions taken by the arbitrator shall take place in the city in which the principal offices of Seller are located (as of the date of this Proposal, the principal offices of Seller are located in Houston, Harris County, Texas). Judgement upon any award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. While the fees and expenses of the arbitrators shall be apportioned as set forth above, the losing party will pay the prevailing party's attorneys' fees and other costs.
15. **INVALID PROVISIONS.** If any provision hereof is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable; this Proposal shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions here shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provisions or by its severance herefrom.
16. **COSTS.** Except as specifically provided in Paragraph 14, the prevailing party in any dispute between the parties to this Proposal, arising out of the interpretation, application, or enforcement of any provision of this Proposal, shall be entitled to recover all of its reasonable attorneys' fees and costs, whether suit be filed or not.
17. **PAST DUE ACCOUNTS.** Buyer agrees to pay Seller the maximum lawful rate allowed by applicable state and federal law on all past due accounts.
18. **ASSIGNMENT.** This Proposal shall not be assigned by Buyer without the prior written consent of Seller.
19. **WAIVER.** A waiver by Seller of any provision of this Proposal or of any right or remedy shall not constitute a waiver of any other provision, right, or remedy.
20. **SECTION HEADINGS.** The section headings in this Proposal are for convenience only and shall have no meaning or effect.