

SEMISOUTH LABORATORIES, INC
ACKNOWLEDGMENT TERMS AND CONDITIONS OF PURCHASE AND SALE

1. ACCEPTANCE

This acknowledgment is an acceptance by SemiSouth Laboratories, Inc. (herein referred to as "SemiSouth") of Buyer's purchase order/contract only for those applicable goods and services listed on the front hereof. Acceptance is conditional upon Buyer's consent to the terms and conditions set forth herein which are in lieu of and replace any and all terms and conditions set forth on Buyer's purchase order/contract, specifications, or other document issued by Buyer. Any additional, different, or conflicting terms or conditions on any such document shall be wholly inapplicable to any sale made under this acknowledgment and shall not be binding in any way on SemiSouth. No waiver or amendment of any of the provisions of this acknowledgment shall be binding on SemiSouth unless made in writing expressly stating that it is such a waiver or amendment and signed by an authorized representative of SemiSouth.

2. TERMS OF PAYMENT

- a. Unless otherwise stated on the face of this acknowledgment (or otherwise agreed upon in writing as, for instance, in a letter of credit), all payments are due and payable within thirty (30) days from the date of invoice. All past due amounts shall incur interest at the rate of 1.5% per month or the highest rate permitted by applicable law, whichever is less. All payments shall be made to SemiSouth at the address specified on the front of the invoice. If all the goods or services covered by this acknowledgment are not delivered or performed at one time, Buyer shall pay for the quantity of goods delivered or services performed. Each shipment shall be considered a separate and independent transaction.
- b. All shipments, deliveries and performance of work covered by this acknowledgment shall, at all times, be subject to the credit approval of SemiSouth. As a part of this credit approval, SemiSouth may at any time decline to make any shipments or deliveries, perform any work, and/or impose such other terms or conditions or security arrangements as SemiSouth, in its sole discretion, deems appropriate.
- c. SemiSouth reserves a security interest in any products sold to the extent of the invoiced amount. If Buyer defaults under any obligation hereunder, it agrees to make the products available to that SemiSouth can repossess them without a breach of the peace. A copy of the invoice may be filed with appropriate authorities at any time as a financing statement. On request of SemiSouth, Buyer will execute any instruments SemiSouth shall desire to perfect its security interest. Buyer also grants SemiSouth authority to execute any such instruments on behalf of Buyer, and SemiSouth shall have no liability related thereto.

3. PRICES

- a. Except as provided in Section 3b below, the prices for the goods and services covered hereby shall be those shown on the face of this acknowledgment, provided, however, that if such prices are based on the purchase of a particular quantity of goods and Buyer fails to purchase such quantity of goods. SemiSouth shall have the right (in addition to any other rights and remedies SemiSouth may have) to collect from Buyer the difference between the price paid by Buyer for the goods purchased and a price for such goods commensurate with the quantity actually purchased by Buyer, as determined by SemiSouth.
- b. In the event that the price of materials (including, but not limited to, gold and silver) that are incorporated into the goods rises prior to the delivery of such goods by SemiSouth, SemiSouth may adjust the prices set forth in the acknowledgment by written notice to Buyer. Such adjustments shall be made in accordance with a formula, determined solely by SemiSouth, designed to pass on the increased cost of such materials to Buyer.

4. TAXES AND CUSTOMS DUTIES

Unless otherwise stated on the face hereof, the prices stated herein do not include customs duties or any sales, use, excise, or other similar taxes. Buyer shall pay, in addition to the prices stated, the amount of any present or future customs duties or any sales, use, excise or other similar tax applicable to the sale of goods or performance of services covered by this acknowledgment, or in lieu thereof, Buyer shall supply SemiSouth with an appropriate tax exemption certificate.

5. DELIVERY SCHEDULE

The delivery dates set forth on this acknowledgment are estimations only, and SemiSouth shall not be liable for, nor shall SemiSouth be in breach of its obligations to Buyer because of, any delivery made within a reasonable time of the stated delivery date. SemiSouth may, by written notice to Buyer, change any delivery date and such date shall become the agreed upon delivery date unless Buyer delivers to SemiSouth its objection to such date in writing within ten (10) days of receipt of SemiSouth's notice.

6. VARIATION IN QUANTITY

SemiSouth may ship a quantity which is five percent (5%) more or less than the ordered quantity and Buyer will accept and pay for the quantity delivered.

7. DELIVERY AND RISK OF LOSS

All shipments covered by this acknowledgment are FCA SemiSouth's facility. SemiSouth's liability for delivery shall cease upon SemiSouth making delivery to the carrier. Title and all risk of loss or damage to the goods shall pass to Buyer upon delivery to the carrier.

8. FORCE MAJEURE

SemiSouth shall not be liable for any failure to deliver, or delay in the delivery of, any goods or services due to any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, acts of terrorism, natural disasters, fires, epidemics, floods, riots, wars, sabotage, labor disputes, strikes, yield problems, governmental actions, or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a reasonable period of time based on the effect of such cause. In the event SemiSouth's production is curtailed for any reason, SemiSouth may allocate its production among its customers, in its discretion.

9. ACCEPTANCE AND WARRANTY

- a. Any product or service sold or provided pursuant to this acknowledgment, shall be deemed accepted by Buyer upon delivery, subject to the warranty provisions set forth in this Section 9. SemiSouth warrants that goods delivered hereunder shall comply with the specifications and shall be free from defects in material and workmanship under normal use and service for a period of one (1) year from the applicable date of invoice. Products which are "samples", "design verification units", and/or "prototypes" are sold "as is," "with all faults," and with no warranty whatsoever.
- b. If, during such warranty period, (i) SemiSouth is notified promptly in writing upon discovery of any defect in the goods, including a detailed description of such defect; (ii) such goods are returned to SemiSouth, DDP SemiSouth's facility accompanied by SemiSouth's Returned Material Authorization form; and (iii) SemiSouth's examination of such goods discloses to SemiSouth's satisfaction that such goods are defective and such defects are not caused by accident, abuse, misuse, neglect, alteration, improper installation, repair, improper testing, or use contrary to any instructions issued by SemiSouth, SemiSouth shall (at its sole option) either repair, replace, or credit Buyer the purchase price of such goods. No goods may be returned to SemiSouth without SemiSouth's Return Material Authorization form.
- c. Prior to any return of goods by Buyer pursuant to this Section 9, Buyer shall afford SemiSouth the opportunity to inspect such goods at Buyer's location, and any such goods so inspected shall not be returned to SemiSouth without its prior written consent.
- d. SemiSouth shall return any goods repaired or replaced under this warranty to Buyer transportation prepaid, and reimburse Buyer for the transportation charges paid by Buyer for such goods. The performance of this warranty does not extend the warranty period for any goods beyond that period applicable to the goods originally delivered.
- e. The foregoing warranty constitutes SemiSouth's exclusive liability, and the exclusive remedy of buyer, for any breach of any warranty or other nonconformity of the goods covered by this acknowledgment. This warranty is exclusive, and in lieu of all other warranties. SemiSouth makes no (and disclaims all) other warranties, express, implied, or statutory, including without limitation any warranties of merchantability or fitness for a particular purpose. The sole and exclusive remedy for any breach of this warranty shall be as expressly provided in this Section 9.

10. BREACH

- Any one of the following acts by Buyer shall constitute a breach by Buyer of Buyer's obligations under the contract formed by this acknowledgment:
- a. Buyer fails to make payment for any goods or services when due;
 - b. Buyer fails to accept conforming goods or services supplied hereunder;
 - c. The filing of a voluntary or involuntary petition in bankruptcy against Buyer, the institution of any proceeding in insolvency or bankruptcy (including reorganization) against Buyer, or an assignment for the benefit of creditors of Buyer; or
 - d. Any other act by Buyer in violation of any of the provisions of such contract.

In the event that Buyer breaches such contract in any manner set forth above, SemiSouth may (in addition to any other rights or remedies provided herein or at law or in equity), by written notice to Buyer, terminate the contract or any part thereof, without any liability to SemiSouth. Buyer shall pay all costs, including reasonable attorney's fees, incurred by SemiSouth in any action brought by SemiSouth to collect payments owing or otherwise enforce its rights hereunder or under applicable law.

11. INTELLECTUAL PROPERTY

- a. SemiSouth shall, at its own expense, defend any suit that may be instituted against Buyer for any alleged infringement of any United States patent, trademark or copyright related to the goods covered by this acknowledgment (except goods covered by Section 11d below), provided that: (i) such alleged infringement does not arise from the use of such goods as a part of or in combination with any other devices or parts or from SemiSouth's compliance with instructions issued by Buyer; (ii) such alleged infringement does not arise from any act or omission of Buyer which is inconsistent with SemiSouth's instructions or with the intended use of any product or service; (iii) Buyer gives SemiSouth immediate notice in writing of any such suit and permits SemiSouth, through counsel of SemiSouth's choice, to answer the charge of infringement and defend such suit; and (iv) Buyer gives SemiSouth all needed information, assistance and authority, at SemiSouth's expense, to enable SemiSouth to defend such suit. In the case of a final award of damages in any such suit SemiSouth shall pay such award, but shall not be responsible for any settlement made without its prior written consent.
- b. To terminate SemiSouth's obligations under Section 11a, SemiSouth may, at its option, (i) replace or modify the products with non-infringing ones which are functionally equivalent, (ii) obtain a license for Buyer to continue the use or sell the product, or (iii) accept the return of the products and refund the amount paid by the Buyer for such returned products.
- c. This Section 11 states SemiSouth's total responsibility and liability and Buyer's sole remedy, for any actual or alleged infringement of any patent, trademark or copyright by any goods or services delivered hereunder, or any part thereof. This Section 11 is in lieu of and replaces any other expressed, implied or statutory warranty against infringement. In no event shall SemiSouth be liable for any consequential, incidental, indirect, exemplary, special, or other damages resulting from any such infringement.
- d. Buyer shall, at its own expense, indemnify and hold SemiSouth harmless from and against any expense or loss resulting from any alleged infringement of any patent, trademark or copyright arising as a result of SemiSouth's compliance with any of Buyer's designs, specifications or instructions, and shall defend at its own expense, including attorney's fees, any suit brought against SemiSouth alleging any such infringement, provided that SemiSouth, (i) gives Buyer immediate notice of any such suit and permits Buyer, through counsel of its choice, to defend such suit, and (ii) gives Buyer all needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend any such suit.

12. **LIFE SUPPORT APPLICATIONS**

SemiSouth products shall not be used within any Life Support System without the specific written consent of SemiSouth. A Life Support System is a product or system intended to support or sustain life which, if it fails, can be reasonably expected to result in significant personal injury or death.

13. **LIMITATION OF LIABILITY**

- a. Notwithstanding anything to the contrary contained herein, SemiSouth shall not, under any circumstances, be liable to buyer or any third parties for consequential, incidental, indirect, exemplary, special, or other damages whether in an action based on contract, TORT (including negligence) or any other legal theory, arising out of or related to the transaction contemplated hereunder, including but not limited to lost profits or loss of business, even if SemiSouth is apprised of the likelihood of such damages occurring.
- b. Under no circumstances shall SemiSouth's total liability of all kinds arising out of or related to the contract formed by this acknowledgment or otherwise (including but not limited to any warranty claims hereunder), regardless of the forum and regardless of whether any action or claim is based on contract, tort or otherwise, exceed the total amount paid by Buyer to SemiSouth hereunder for the goods or services actually giving rise to such liability (determined as of the date of any final judgment in such action). This limitation is cumulative, with all payments to Buyer for claims or damages being aggregated to determine satisfaction of the limit. The existence of one or more claims will not enlarge the limit.
- c. It is expressly understood and agreed that each and every provision of the contract formed by this acknowledgment which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the parties to be severable and independent of any other provision and to be enforced as such.
- d. Notwithstanding any provision herein to the contrary, any claims by Buyer against SemiSouth resulting from reductions in contract value, penalties, etc., assessed by Buyer's customer and attributable to the action or inaction of SemiSouth, shall not include any of Buyer's markups or profit.

14. **GENERAL**

- a. SemiSouth's obligations are subject to the export administration and control laws and regulations of the U.S. Government. Buyer shall comply fully with such laws and regulations in the export, resale or other disposition of products.
- b. No U.S. government procurement requirements or regulations shall be binding upon SemiSouth unless specifically agreed to in writing.
- c. The validity, performance and construction of these terms and all sales hereunder shall be governed by the laws of the State of Mississippi. All disputes shall be subject to the exclusive jurisdiction of the Mississippi state courts of Oktibbeha County, Mississippi (or, if there is exclusive federal jurisdiction, the United States District Court for the Northern District of Mississippi), and Buyer consents to the personal and exclusive jurisdiction and venue of these courts.
- d. Buyer may not assign its rights or delegate its obligations under the contract formed by this acknowledgment, by operation of law or otherwise, without the prior written consent of SemiSouth and any purported assignment or delegation without such consent shall be of no force or effect. Any waiver by SemiSouth of any default by Buyer hereunder shall be of no force or effect, unless such waiver is specific, in writing and signed by an authorized representative of SemiSouth.
- e. Any waiver by SemiSouth of any default by Buyer hereunder shall not be deemed to be a continuing waiver of such default or a waiver of any other default or of any of the terms and conditions of the contract formed by the acknowledgment.
- f. The terms and conditions of the contract formed by this acknowledgment may not be superseded, modified, or amended except in a writing stating that it is such a modification and signed by an authorized representative of each party.
- g. SemiSouth shall retain title to and possession of all tooling of any kind used in the production or testing of products furnished hereunder.
- h. The contract formed by this acknowledgment, which includes the documents incorporated by reference on the face hereof (but expressly does not include any of the terms and conditions of Buyer's purchase order/contract or any similar document issued by Buyer) shall constitute (except for any Confidential Disclosure Agreement) the entire agreement between Buyer and SemiSouth with regard to the goods or services listed on the face hereof, and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral, relating to such goods or services.
- i. Buyer acknowledges that all or part of the goods may be manufactured, assembled or otherwise worked on any of SemiSouth's or its subcontractors' facilities, domestic and foreign.

IF THIS ACKNOWLEDGMENT CONTAINS DESIGN AND DEVELOPMENT WORK, PARAGRAPHS 15 THROUGH 21 APPLY. OTHERWISE, SUCH PARAGRAPHS DO NOT APPLY.

15. **SEMISOUTH**

SemiSouth shall use all reasonable efforts to design and develop the product set forth herein, and shall use all reasonable efforts to meet the schedule for each phase or milestone of the design and development. Except as set forth on the face of this acknowledgment, SemiSouth shall provide all technology, labor, material, tooling and facilities necessary for such a design and development effort. Buyer shall provide the specifications and other related information as set forth on the face of the acknowledgment for the product.

16. **ACCEPTANCE**

Buyer shall have five (5) days after the notice of completion of each milestone of the design (except thirty (30) days on delivery of the prototypes) to reject the results of such milestone as not meeting the requirements. If an express written rejection is not received by SemiSouth within such acceptance period, the results of such milestone shall be conclusively deemed to have been accepted. Any such written rejection shall specify in detail the reasons for such rejection. In the event of such rejection, SemiSouth shall have a period of (10) days after receipt of such notification of rejection to cure the defects or other

nonconformity set forth in such notice, or to provide Buyer with a schedule providing for the resolution of such defects. In the event that SemiSouth is unable to cure such defects or other nonconformity, Buyer shall not be liable for the payment due to SemiSouth hereunder for such milestones. SemiSouth shall have no obligation to continue work on the design following any milestone for which Buyer rejects the results until such results are accepted by Buyer. Each specific design schedule shall be revised to fully account for the length of any delay caused by the rejection of any milestone.

17. **CHANGES**

Buyer may, at any time during each design, propose changes to the specifications set forth in the circuit design and layout, or any other functional or performance specifications agreed to between SemiSouth and Buyer. Such proposal shall be submitted by Buyer to SemiSouth in writing. SemiSouth will then estimate the amount of rework necessary and the additional development time and cost that would be incurred, and shall request Buyer's approval of such additional cost and development time. Upon written receipt of such approval, implementation of such changes will proceed. The contract formed by this acknowledgment will be amended to reflect such changes and the schedules will be amended to reflect the new dates and additional payments (if any) resulting from such changes.

18. **DESIGN TERMINATION**

- a. During performance of the design or development, either party may terminate the design at its convenience upon written notice to the other party. If the design is terminated by SemiSouth, Buyer shall not be liable for any payment for work performed by SemiSouth for the milestone during which such termination occurs. If the design is terminated by Buyer, Buyer shall be liable to SemiSouth for full payment for the milestone during which such termination occurs, regardless of the amount of work actually performed by SemiSouth for such milestone. In either event, Buyer shall be liable for payment not already made by Buyer for any previous milestone. When no milestones are specified, in the event of termination by either party, Buyer shall settle and pay to SemiSouth an amount determined in accordance with FAR 52.249-02 or such other successor provision as shall be in effect on the date of such termination.
- b. During performance of the design or development, either party may terminate the design in the event of material breach by the other party (except for non-payment which does not require notice) upon thirty (30) days prior written notice specifying such breach to the breaching party. If during such thirty (30) day period the breaching party cures such breach (or, if the cure cannot be effected within such thirty (30) day period, the breaching party commences to cure and diligently pursues the cure), no such termination shall occur. If terminated by SemiSouth for breach, Buyer shall be liable to SemiSouth for the full payment of the development milestone during which such termination occurs, regardless of the amount of work actually performed by SemiSouth for such milestone. If terminated by Buyer for SemiSouth's breach, Buyer shall not be liable for any payment for work performed by SemiSouth for the milestone during which such termination occurs. The provisions of this Section 18b constitute the sole liability and responsibility of each party, and the sole and exclusive remedy of each party, in the event of a breach of this Agreement by the other party during the design and development.

19. **WARRANTY – DESIGN AND DEVELOPMENT**

Unless otherwise disclosed by SemiSouth, SemiSouth warrants that it has title to all material to be furnished to Buyer and that all prototypes delivered to Buyer hereunder will materially conform to the schematic, logic diagram, specifications and (if any) breadboard herein set forth, or which are otherwise agreed upon between the parties. SemiSouth makes no other warranties, express, implied or statutory, including without limitation any warranties of merchantability or fitness for a particular purpose. The sole and exclusive remedy for any breach of this warranty shall be as provided in Section 9 hereof.

20. **INTELLECTUAL PROPERTY RIGHTS**

- a. SemiSouth shall retain all patent, copyright, trade secrets and other intellectual property rights it processes with regard to any gate array or other integrated circuit design or process. The design, development or production of the product hereunder shall not be deemed to be a work made for hire, and nothing in the contract formed by this acknowledgment shall be construed to grant to Buyer any right or license in any patent, copyright, trade secret, mask rights or other intellectual property or rights relating to the product or services.
- b. All mask sets, design tapes and documentation and data generated by SemiSouth in the performance of this acknowledgment shall remain the sole and exclusive property of SemiSouth. All patents, copyrights or other intellectual property rights related solely and exclusively to the technical information and specifications generated by Buyer shall remain the sole and exclusive property of Buyer.
- c. Each party's proprietary information may, if required by the parties, be further defined and protected by separate Confidential Disclosure Agreement to be executed by the parties, and each party's sole and exclusive obligations with regard to such proprietary information shall be set forth in such Confidential Disclosure Agreement.

21. **OWNERSHIP**

Except as set forth on or the front of this acknowledgment, any circuits, cells, devices or processes that are developed by SemiSouth concurrently with the work performed under this Agreement shall be the sole and exclusive property of SemiSouth, and SemiSouth reserves the right to use such cells for other circuits for other customers, or license the use thereof to others, or otherwise dispose of such cells.