

K & K Systems, Inc.

687 Palmetto Road, Tupelo, MS 38801-7662

NHCRP 350 Certified FHWA SS-90 & SS-112

FEDERAL ID #72-1370925 GSA Number GS07F0005K

1. **Offer, Governing Terms and Cancellation.** This writing constitutes an offer or counter-offer by K&K Systems Inc ("K&K") to sell the products and/or provide the services described herein to the buyer to which it is directed ("Buyer") in accordance with these terms and conditions; this writing is not an acceptance of any offer made by Buyer, and it is expressly conditioned upon Buyer's assent to all of these terms and conditions. K&K objects to any additional or different terms or conditions contained in any request for quotation, purchase order or other communication previously, now or hereafter provided by Buyer to K&K. No such additional or different terms or conditions will be of any force or effect. When accepted by Buyer explicitly through issuance of an order or otherwise, or by Buyer's acceptance of products and/or services described herein, these terms and conditions shall constitute the entire agreement between K&K and Buyer with respect to the purchase and sale of such products and/or services. No order may be cancelled or altered by Buyer except upon terms and conditions acceptable to K&K, as evidenced by K&K's signed, written consent. In the event of such an approved cancellation by Buyer, Buyer shall pay a cancellation charge to K&K in accordance with K&K's then-standard policies. Any clerical errors in K&K's quotations, acknowledgements or invoices are subject to correction by K&K. K&K's rights and remedies hereunder shall be cumulative.

2. Prices and Payment.

(a) The price of K & K Systems Products are those specified on the front of K&K's invoice. Unless otherwise stated, price quotations will be void forty-five (45) calendar days from the date of issue, and may be cancelled or amended within that period upon notice to Buyer.

(b) Full payment is due promptly upon placing an order. For all other orders, upon approval of credit, corporate standard terms of payment are net ten (10) days from the date of invoice unless otherwise specified in writing by K&K. In addition, Buyer will be deemed to have accepted an invoice upon the fifth (5th) day from the date of invoice and no further objections to the invoice will be permitted or accepted. If K&K specifies in writing payment terms longer than ten (10) days from the date of invoice, then: (i) the invoice will be deemed accepted upon the tenth (10th) day from the date of invoice and no further objections will be permitted; and (ii) Buyer must certify within ten (10) days from the date of invoice that payment has been submitted for processing. K&K may invoice each shipment separately and each shipment shall be considered a separate and individual contract. Buyer agrees to pay such invoice pursuant to its terms without the benefit of setoff or deduction.

(c) Transportation costs are FOB Tupelo, MS. Transportation charges incurred by K&K's shall be paid by Buyer to K&K, in addition to the purchase price of the Product, unless otherwise agreed to in writing by K&K. K&K will select the carrier in the absence of specific instructions by Buyer.

(d) K&K reserves the right to establish and/or change credit and payment terms extended to Buyer when, in K&K's sole opinion, Buyer's financial condition or previous payment record warrants such action. Further, on accounts which are unacceptably arrears, K&K shall not be obligated to continue performance under any agreement with Buyer.

(e) If K&K believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, K&K may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any Products already shipped.

(f) Any payment received from Buyer may be applied by K&K against any obligation owing from Buyer to K&K, regardless of any statement appearing on or referring to such payment, without discharging Buyer's liability for any additional amounts owing from Buyer to K&K, and the acceptance by K&K of such payment shall not constitute a waiver of K&K's right to pursue the collection of any remaining balance.

Any partial payment made by buyer is hereby deemed acceptance of the entire invoice as a whole.

3. **Installation, Maintenance, Service and Training.** The price quoted on K&K's quotation does not include any on-site installation, maintenance, service or training unless specifically stated otherwise on the quotation. Upon Buyer's request, K&K will provide a separate quotation for such items.

4. **Taxes and Other Charges.** Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between K&K and Buyer (collectively, "Taxes") shall be paid by Buyer in addition to the prices quoted or invoiced. In the event K&K is required to pay any such Taxes, Buyer shall reimburse K&K therefor on demand. K&K, however, shall be responsible for net income taxes imposed upon it.

5. **Drop/Same Day Shipments; Minimum Order Requirements.** Drop shipments and same-day shipments, if they are available, are subject to K&K's then-standard charges for such services. Orders for less than K&K's then-standard minimum dollar order amount are subject to handling and documentation charges.

6. **Delayed Shipment.** Schedule changes are not allowed unless agreed to by K&K in writing. If for any reason beyond K&K's reasonable control (including without limitation Buyer's failure to give shipping instructions), products are not shipped within 15 calendar days after notification to Buyer that they are ready for shipping, K&K may store the products at Buyer's risk and expense, and Buyer shall pay handling, transportation and storage charges as imposed by K&K.

7. **Delivery, Claims and Force Majeure.** Unless otherwise specified in writing by K&K, all shipments are made F.O.B. K&K's plant in Tupelo, Mississippi. Delivery of products to a carrier at K&K's plant shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss or damage in transit. Unless otherwise expressly stipulated herein, K&K reserves the right to make delivery in installments; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Claims for shortages or other errors in delivery must be made in writing to K&K within 5 calendar days after receipt of shipment. Failure to timely make such a claim shall constitute unqualified acceptance of the products and a waiver of all such claims by Buyer. Claims for loss of or damage to goods in transit must be made to the carrier, and not to K&K.

All delivery dates are approximate. K&K shall not be liable for any losses or damages resulting from any delay or failure to deliver due to any cause beyond K&K's reasonable control, including, without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request,

fire, flood, natural disaster, accident, strike, slowdown or other labor dispute, war, riot, act of terrorism, delay in transportation, machinery failure, or inability to obtain necessary labor, materials, manufacturing facilities, fuel or containers. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay.

8. **Security Interest.** In order to secure full payment of the purchase price and all other amounts due hereunder, Buyer hereby grants to K&K a first priority purchase money security interest in the products sold to Buyer by K&K. This security interest in particular products sold by K&K shall automatically expire upon payment in full of the purchase price of those products.

9. **Changes.** K&K may at any time make such changes in design and construction of products as K&K deems appropriate, without notice to Buyer. K&K may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority, or nonavailability of materials from suppliers.

10. **Patents, Trademarks and Copyrights.** Subject to the following paragraph, K&K will, at its own expense, defend any suits instituted by anyone against Buyer to the extent same allege that products manufactured and sold by K&K hereunder infringe any United States patent, trademark or copyright, provided that Buyer shall have made all payments then due hereunder, shall have given K&K immediate notice in writing of any such suit and transmitted to K&K immediately upon receipt all processes and papers served upon Buyer, and shall have permitted K&K through its counsel, either in the name of Buyer or in the name of K&K, to defend the same and given all needed information, assistance and authority to enable K&K to do so. If damages are finally awarded in such a suit, and to the extent such damages arise from a holding that K&K's products are infringing, K&K will pay such damages. Notwithstanding the foregoing, K&K shall not be responsible for any compromise or settlement made without its prior written consent. The foregoing states K&K's entire liability for infringement, and Buyer's exclusive remedy, and in no event shall K&K be liable for consequential damages attributable to an infringement.

As to any products K&K furnishes to Buyer manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer, K&K shall not be liable, and Buyer shall indemnify and hold harmless K&K from and against any and all losses, liabilities, damages, claims and expenses (including but not limited to K&K's reasonable attorneys' fees and other costs of defense) incurred by K&K as a result of any claim of patent, trademark, copyright or trade secret infringement, or infringement or any other proprietary rights of third parties.

11. **Product Returns.** Products may not be returned to K&K for credit unless K&K's written permission and return merchandise authorization have been obtained by Buyer in advance; K&K may withhold such permission and authorization in its sole discretion. Any authorized returns must comply with K&K's policies then in effect, including as applicable payment of restocking charges. Authorized returns must be securely packaged in their original shipping containers, and shall be delivered to K&K F.O.B. K&K's plant.

12. **Warranties; Disclaimers.** Certain K&K products are covered by stand-alone warranty statements, and to the extent Buyer is purchasing such products, the provisions of those warranty statement(s) are incorporated herein. With respect to K&K products sold hereunder that are not covered by a stand-alone warranty statement, K&K warrants the products to be free from defects in materials and workmanship during the period expiring one year after the date such products are shipped from K&K. If within such warranty period any such product shall be proved to K&K's satisfaction to fail to conform to the foregoing warranty, the affected part will be repaired or replaced free of charge, F.O.B. K&K's plant. Such repair or replacement (whichever K&K determines, in its sole discretion, to provide) shall be K&K's sole obligation and Buyer's exclusive remedy hereunder, and shall be conditioned upon K&K's receiving written notice of any alleged defect within 10 calendar days after its discovery and Buyer's return of such product(s) to K&K, F.O.B. K&K's plant. Installation of replacement parts shall be performed by Buyer at its risk and expense. The foregoing warranty shall not apply to any defects caused by (i) any accident, fire, natural disaster, power surge, negligence, alteration, abuse or misuse occurring during or after shipment of the products from K&K, or (ii) improper installation, storage, use, maintenance or repair, or other acts or omissions, by persons other than K&K or its employees, agents or contractors. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND K&K EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

Any description of the products (whether in writing or made orally by K&K's employees or agents), specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by K&K's employees or agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in a writing signed by an officer of K&K.

13. **No Consequential Damages; Limitations; Indemnity.** Except as otherwise expressly agreed in writing by K&K, K&K's liability with respect to the products sold hereunder or defects therein shall be limited to the warranty and remedy provided in Section 10 above. K&K's liability with respect to alleged infringement shall be limited as provided in Section 12 above. With respect to any other breaches of its agreement with Buyer, K&K's liability shall in no event exceed the purchase price of the products or services that are the subject of the breach. **K&K SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY K&K, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, K&K specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, cost of capital, cost of substitute products, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages. **K&K SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL, INDIRECT AND CONTINGENT DAMAGES WHATSOEVER,** regardless whether K&K has been advised of the possibility of such damages.

Buyer shall indemnify K&K against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) that K&K may sustain or incur as a result of any claim by Buyer, its successors or assigns or its customers, or any third party, arising out of or in connection with the products and/or services sold hereunder or their use, except to the extent said claims are based on product or service defects proven to have been caused by K&K's negligence.

14. **Software.** K&K's products may incorporate computer software program(s) and/or firmware (collectively, "Software"). K&K grants to Buyer a non-exclusive, non-transferable license to use any such Software solely for the operation of the products, for so long as Buyer owns the products. The Software is licensed for use in the United States or Canada. Buyer may not export the Software to any other country without K&K's prior written consent. No Software is being sold to Buyer. Buyer acknowledges that the Software, all hardware and Software designs, and any related user

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15. **Information; Tooling.** Any sketches, models or samples submitted by K&K shall remain the property of K&K, and shall be treated as confidential information by Buyer unless K&K has in writing stated a contrary intent. Buyer shall make no use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, without the express, prior written consent of K&K. All tooling and other items utilized by K&K in manufacturing the products are and shall remain owned solely by K&K.

16. **Brochures.** Any and all brochures, warnings or the like concerning the products supplied hereunder are supplied as an aid to Buyer and are not represented to be accurate, complete or sufficient. Buyer will indemnify and hold harmless K&K against all liabilities and expenses (including without limitation attorneys' fees) arising out of the use of the products by Buyer, its customers or any third party in any case where Buyer fails to make available adequate warnings and instructions concerning the proper and normal use of the products.

17. **Intellectual Property.** Buyer acknowledges and understands that K&K is not the initial source of numerous subcomponents contained in any products ordered or to be supplied to Buyer. K&K is not liable to the Buyer, or any third party, for any copyright, design or patent issue, right or claim that may arise in relation to any Product. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement. If any Product includes software or other intellectual property, such software or other intellectual property is provided by K&K to Buyer subject to the copyright and user license, if any, for such Products, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property.

18. **Governing Provisions.** These terms and conditions shall be governed by and construed according to the laws of Mississippi and the U.S. (without reference to principles of conflicts of laws). There are no conditions affecting this agreement that are not expressed herein. **THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**