

ACKNOWLEDGMENT OF RISK AND RELEASE OF LIABILITY

In consideration of the sale by South Dakota Science and Technology Authority ("SDSTA") to _____ ("Buyer") of items described more fully herein, Buyer specifically acknowledges and agrees as follows:

1. **Materials to be Purchased.** SDSTA is selling the items identified as follows:

The items listed above, together with any and all other materials, equipment and tangible items sold by SDSTA to the Buyer, shall be referred to collectively herein as the "Purchased Materials."

2. **Condition "As Is".** SDSTA is not making any representations, warranties, or guarantees about the Purchased Materials, including any implied warranties of merchantability and/or fitness for any purpose. SDSTA cannot warrant the soundness of any material for any structural, mechanical, or operational use of any kind. Buyer is accepting the Purchased Materials "as is." Buyer understands that SDSTA will not provide any instructions regarding use of any Purchased Materials, nor follow-up services, such as providing testing, replacement parts, or repairs to the same.
3. **Assumption of Risk.** Buyer understands that there are certain risks of injury that may arise from the possession, use, or misuse of the Purchased Materials, including the risk of personal injury, death, and damage to property. Buyer understands and assumes all risks associated with any deterioration, defect in structural or operational integrity, and other potential dangers associated with the Purchased Material. Buyer understands that the materials to be purchased may include items that were treated with and/or contain substances now known to be toxic, including but not limited to lead and asbestos. Buyer assumes full responsibility for all risks arising directly or indirectly from its possession, use or misuse of the Purchased Materials, both known and unknown, regardless of the cause.
4. **Waiver and Release.** Buyer waives and releases any and all claims against SDSTA, including its successors, representatives, assigns and all past and present SDSTA officers, directors, employees, consultants, and affiliates, and any and all claims against the State of South Dakota, including its past and present elected officials, officers, employees, and consultants (collectively "SDSTA Parties") with respect to any and all injury, disability, death, loss or damage to property resulting from possession, use or misuse of the Purchased Materials, regardless of the cause and even if caused by negligence, whether passive or active. Buyer agrees not to sue any of the SDSTA Parties on the bases of these waived and released claims.
5. **Indemnity.** Buyer agrees that it shall defend, indemnify and hold SDSTA harmless from and against any and all liability, loss, damages, claims and attorney's fees that may be suffered by

any SDSTA Party resulting directly or indirectly from the possession, use or misuse of the Purchased Materials by it or any other individual or entity, excepting also to the extent that the liability is caused by the gross negligence or willful misconduct of a SDSTA Party.

6. I have read and understand the terms of this Acknowledgment of Risk and Release of Liability. I understand that this agreement covers each and every item of Purchased Materials which I am buying. I sign it freely and voluntarily.

Buyer Name

Date

Signature