

OVATION DATA SERVICES, INC. - RESELLER SALES TERMS AND CONDITIONS

All sales made by Ovation Data Services, Inc. ("Ovation") to its customers with Ovation U.S. resale accounts ("Purchaser") are subject to these terms and conditions. Purchaser's acceptance of these terms and conditions shall be made by either (i) Purchaser providing a purchase order number to Ovation or (ii) Purchaser's acceptance of any Product from Ovation, whichever occurs first. These terms and conditions shall apply to sales of all products sold by Ovation current resell offerings including special order product except as otherwise noted below ("Product"). The term "Special Order Product" as used herein shall mean products that are not "In-Stock" at Ovation's facilities or have been configured to Purchaser's specifications.

1. ORDERING AND ACCEPTANCE

Prior to placing an order, Purchaser must have an active Ovation sales account number and Purchaser's account must be current and in good standing. Purchaser must provide Ovation with complete Product order information as required by Ovation. The Product order information will include without limitation the (i) Product description, (ii) unit quantity, (iii) Ovation SKU number and/or vendor part number, (iv) current unit price as provided by Ovation, and (v) correct shipping address. Ovation reserves the right to require additional information based on the requirements of the manufacturer or publisher of the Product. Purchaser shall not disclose any confidential information when ordering from Ovation. Purchaser may place orders over telephone, via facsimile, via electronic documentation, and via Ovation-approved electronic ordering methods only through persons who identify themselves as Purchaser personnel. Ovation will have no obligation to confirm the validity of any order placed or the authority of the person placing an order in this manner. Ovation's acceptance of any order from Purchaser is limited to these terms and conditions in their entirety without addition, modification, or exception. Any additional or different terms in Purchaser's purchase order or submitted by Purchaser in any form are hereby deemed to be material alterations hereto and notice of objection to them is hereby given. All orders under \$500 will be assessed a \$15 minimum order fee. Orders for direct shipment to Purchaser's customers or Special Order Products may require prepayment and may be subject to additional fees. Ovation will have no obligation to hold Product for future sale to Purchaser if Purchaser's order is incomplete, or on hold.

Any following acts by Ovation shall constitute acceptance of an Order: signing and returning a copy of a Purchase Order; delivery of any products ordered; informing Purchaser in any manner of commencement of performance; or returning Purchaser's own form of acknowledgment.

Purchaser may cancel any "In-Stock" orders prior to shipping, or "Special-Order" products that have not been entered into the manufactures order-entry process system.

All Product pricing, description and availability information ("Information") provided by Ovation, in any form, is the property of Ovation. Ovation hereby grants Purchaser a limited, non-exclusive, non-transferable license to use the Information for Purchaser's internal use only for purposes of Purchaser's sales and purchases of Products sold by Ovation. If Ovation provides Information to Purchaser electronically, Purchaser agrees to update such Information regularly to ensure its accuracy. Purchaser agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any of the Information or utilize the Information for

any purpose except as permitted herein. OVATION MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED ON THE INFORMATION. ALL INFORMATION IS PROVIDED TO PURCHASER "AS IS." OVATION HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATING TO INFORMATION INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

All Products sold to Purchaser hereunder are for resale only.

2. PRICE

All prices are subject to change without notice and will be established at time of order acceptance by Ovation. Order acceptance and sale by Ovation occurs at time of shipment. Prices for backordered Products are not guaranteed. There is no price protection on any product after shipment.

3. SHIPMENT AND DELIVERY

U.S. Shipments - All Product shipments will be made FOB origin. **For Products owned by Ovation, title and risk of loss will transfer to Purchaser upon Ovation tendering the Product for delivery to the carrier.** If Purchaser requests Ovation prepay and bill Purchaser for freight charges, Purchaser agrees that Ovation retains the right to choose the carrier. Notwithstanding anything to the contrary herein, additional charges may apply for unusually heavy or large items or for shipment of materials designated as hazardous in accordance with Federal and/or International Air Transportation regulations. COD and additional fees may also apply. Purchaser shall examine all Products upon receipt and shall notify Ovation, as specified herein, of all discrepancies, damaged, and refusal to accept delivery of purchased Product. Such notice shall be reasonably detailed and explain the discrepancy or why the purchased Product was refused. If Purchaser does not give Ovation such notice as stated herein, Purchaser agrees that such Products have been accepted by Purchaser as of the date of shipment. Additional handling and packing fees may apply.

4. CREDIT AND PAYMENT TERMS

Purchaser shall furnish to Ovation all financial information reasonably requested by Ovation from time to time for the purpose of establishing or continuing Purchaser's credit limit. Purchaser agrees that Ovation shall have the right to decline to extend credit to Purchaser and to require that the applicable purchase price be paid prior to shipment. Purchaser shall promptly notify Ovation of all changes to

Purchaser's name, address, or of the sale of substantially all of its assets. Ovation shall have the right from time to time, without notice, to change or revoke Purchaser's credit limit on the basis of changes in Ovation's credit policies or Purchaser's financial condition and/or payment record. Purchaser shall not deduct any amounts owing from any Ovation invoice without Ovation's express written approval, which approval shall be contingent upon Purchaser providing all supporting documentation for such deduction as required by Ovation.

Payment must be made in U.S. Dollars and with a check money order drawn on a bank located in the U.S. or by wire transfer. ALL TRANSFER FEES are the responsibility of the applicant.

Non approved credit terms require payment prior to shipment from Ovation. (Cleared checks or wire transfers.)

CREDIT TERMS: All charges shown on invoices are due, in full, and payable within 20 days from the date of the invoice. A service charge of the lesser of one and one-half percent (1-1/2%) per month or the maximum amount allowed by law will be charged on all past due balances commencing on the date payment is due.

Credit cards (American Express, MasterCard and VISA) will only be accepted at the time of order.

Ovation retains (and Purchaser grants to Ovation by submitting a purchase order) a security interest in the Products to secure payment in full, and Purchaser agrees to execute any additional documents necessary to perfect such security interest. If Purchaser fails to make timely payment of any amount invoiced hereunder, Ovation shall have the right, in addition to any and all other rights and remedies available to Ovation at law or in equity, to immediately revoke any or all credit extended, to delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to Purchaser. Purchaser shall pay all costs of collection including reasonable attorneys' fees. Any obligation of Ovation under these terms and conditions to deliver Products on credit terms shall terminate without notice if Purchaser files a voluntary petition under a bankruptcy statute, or makes an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Purchaser, or if a receiver or trustee is appointed to take possession of the assets of Purchaser.

5. TAXES

Purchaser shall bear applicable federal, state, municipal, and other government taxes (such as sales, use, etc.). Unless otherwise specified, prices do not include such taxes. Exemption certificates, valid in the place of delivery, must be presented to Ovation prior to shipment if they are to be honored.

Sales To or Delivery of product or services within the State of Texas will be assessed applicable State Sales Tax, UNLESS a valid Resale Certificate is on file.

6. WARRANTY

Product warranties, if any, are provided by the manufacturer or publisher of the Products. Ovation makes no warranties whatsoever. Ovation's sole obligation (and Purchaser's sole remedy) in the event of breach of any warranty shall be the repair or replacement of defective

Products. IN NO EVENT SHALL OVATION BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. OVATION DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. OVATION MAKES NO WARRANTY, EXPRESS OR IMPLIED, OTHER THAN THOSE SPECIFICALLY SET FORTH HEREIN.

7. PRODUCT RETURNS

Ovation has a no return policy, except as set forth below:

A. Requirements - Purchaser must obtain a valid Return Material Authorization ("RMA") number from Ovation for all returns. RMAs will be issued, at Ovation's sole discretion, in accordance with these terms and conditions. Purchaser must provide its account number and all other information as required by Ovation for all returns. RMAs are valid for twenty (20) calendar days from the date of issuance. Purchaser must allow for in-transit time for Products to be returned to Ovation, as Ovation must physically receive Products within the twenty (20) calendar days. RMAs will be issued for authorized returns under one of the following categories: (i) defective Products, (ii) billing or shipping discrepancies, or (iii) damaged Product. Purchaser is responsible for ensuring that the RMA number is clearly visible on the address label of the Product packaging when it is returned to Ovation. Ovation will refuse delivery of any boxes without a valid, clearly visible RMA number as noted above. Overgoods are unauthorized returns. Any Products received by Ovation (i) without a valid RMA number, including Product shipments refused by Purchaser or Purchaser's customer except those damaged in transit from Ovation to Purchaser or from Ovation to Purchaser's customer, (ii) later than twenty calendar (20) days from the RMA date, or (iii) in a condition unsuitable for resale (excluding defective Products), will be considered Overgoods. Ovation will return Overgoods to Purchaser or Purchaser's customer, and will charge Purchaser a \$50 processing fee per shipment plus related freight charges. If Purchaser refuses the shipment of Overgoods from Ovation or returns the Overgoods to Ovation a second time without Ovation's prior authorization, Purchaser agrees to relinquish all right and title to and waives all claims against Ovation for credit related to such Products. Notwithstanding anything to the contrary, Ovation reserves the right not to authorize the return of Products that are no longer in production or are being produced or published by a manufacturer or publisher that (i) is insolvent, (ii) has declared bankruptcy, or (iii) will not accept returns from Ovation.

B. Defective Product Returns - Defective returns are only for Products purchased from Ovation that are inoperable or do not function in accordance with the specifications published by the manufacturer or publisher and are covered under the manufacturer's or publisher's warranty. All defective returns are subject to more restrictive manufacturer or publisher policies. Purchaser may request an RMA for the return of defective Products, excluding Special Order Products, within forty-five (45) calendar days of invoice date. Upon receipt of the defective Product for which the RMA was issued, Ovation may test the Products and may return to Purchaser, at Purchaser's expense, any Products found not to be defective. Upon verification that the returned Product is defective, Ovation may, at Ovation's sole discretion, either (i) repair the

defective Product, (ii) ship Purchaser a replacement Product, or (iii) provide Purchaser a credit equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. **Ovation reserves the right to require Purchaser to return defective Products directly to the manufacturer or publisher for replacement according to its defective Products return policy.** Ovation shall not be obligated to repair, replace, or issue credit to Purchaser for Products rendered defective, in whole or in part, by causes external to the Products, including, but not limited to, catastrophe, power failure or transients, overvoltage on interface, environment extremes, improper use, maintenance or application of the Products or use of unauthorized parts. Purchaser shall bear all shipping costs and risks of loss when returning defective Products.

C. Damaged Product Returns - Damaged Product returns are only for Products purchased from Ovation and shipped via Ovation's carrier of choice that are damaged in transit from Ovation to the Purchaser or from Ovation to the Purchaser's customer. Purchaser or Purchaser's customer shall refuse any Product delivered in damaged condition. *If the Product is received in damaged condition, Purchaser shall notify Ovation, make notation on Carriers Bill-Of-Lading, and request an RMA within three (3) business days of receipt of such Product.* Failure to notify Ovation, make notation on Carriers Bill-Of-Lading, and request an RMA within such time shall be deemed an acceptance of the Product as of the date of shipment.

8. BILLING AND SHIPPING DISCREPANCIES

Billing and shipping discrepancies are for Products purchased from Ovation that were invoiced or shipped incorrectly. These include lost shipments, short shipments, wrong sales, wrong shipments and pricing/invoice errors. Purchaser may request an RMA for verified billing and shipping discrepancies within thirty (30) calendar days of invoice date. In addition, Purchaser must notify Ovation of any billing discrepancies related to Purchaser's authorized returns within ninety (90) calendar days of RMA date. Such notice shall be reasonably detailed and shall specify the discrepancy. Failure to give such notice within the time specified herein shall be deemed a waiver of Purchaser's rights to claim such discrepancy.

9. PATENT AND TRADEMARK INDEMNITY

OVATION SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, OR HOLD HARMLESS PURCHASER FROM AND AGAINST ANY OR ALL DAMAGES AND COST INCURRED BY PURCHASER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY PRODUCTS.

10. LIMITATION OF LIABILITY

OVATION SHALL NOT BE LIABLE TO PURCHASER, PURCHASER'S CUSTOMERS, OR ANY OTHER PARTY FOR ANY LOSS, DAMAGE, OR INJURY THAT RESULTS FROM THE USE OR APPLICATION BY PURCHASER, PURCHASER'S CUSTOMER, OR ANY OTHER PARTY, OF PRODUCTS DELIVERED TO PURCHASER, UNLESS THE LOSS OR DAMAGE RESULTS DIRECTLY FROM THE INTENTIONALLY TORTIOUS OR FRAUDULENT ACTS OR OMISSIONS OF OVATION. IN NO EVENT SHALL OVATION BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR LOSS, DAMAGE, OR INJURY OF

ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENT INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS BY OVATION, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, IN EXCESS OF THE NET PURCHASE PRICE OF THE PRODUCTS OR SERVICES ACTUALLY DELIVERED TO AND PAID FOR BY PURCHASER HEREUNDER. IN NO EVENT SHALL OVATION BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH OVATION'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS AND CONDITIONS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION OVATION SHALL PROVIDE HEREUNDER, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES. PURCHASER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES. IN NO EVENT SHALL OVATION HAVE ANY LIABILITY FOR ANY PRODUCTS USED FOR AVIATION, MEDICAL, LIFESAVING, LIFE-SUSTAINING OR NUCLEAR APPLICATIONS.

11. COMPLIANCE WITH U.S. EXPORT LAWS

If Purchaser delivers the Products to its customer who may use the Products outside the United States, Purchaser acknowledges and shall advise its customer that the Products are controlled for export by the U.S. Department of Commerce and that the Products may require authorization prior to export from the United States or re-export. Purchaser agrees that it will not export, re-export, or otherwise distribute Products, or direct products thereof, in violation of any export control laws or regulations of the United States. Purchaser warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Purchaser has obtained prior approval from the Department of Commerce. Purchaser further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the Department of Commerce.

12. RELATIONSHIP OF THE PARTIES

Purchaser's relationship with Ovation will be that of an independent contractor. Purchaser will not have, and will not represent that it has, any power, right or authority to bind Ovation, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of Ovation or in Ovation's name, except as herein expressly provided. Nothing stated in these terms and conditions will be construed as constituting Purchaser and Ovation as partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the parties. Purchaser will make no warranty, guarantee or representation, whether written or oral, on Ovation's behalf.

If authorization for resale is required by the manufacturer or publisher of any Product, then Ovation will not be obligated to sell such Product to Purchaser unless Ovation has received notification of such authorization from the manufacturer or publisher. All Products delivered to Purchaser hereunder may have additional restrictions on their use required by the manufacturer or publisher. Purchaser is solely responsible for ensuring its adherence to any and all such restrictions and requirements. If any supplier prohibits Ovation from selling specific Products to Purchaser, then Ovation reserves the right not to sell such Products to Purchaser.

14. CHOICE OF LAW/CHOICE OF FORUM

These terms and conditions (and any agreement into which they are incorporated) shall be construed, interpreted and enforced under and in accordance with the internal laws of the State of Texas, excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. Purchaser agrees to exercise any right or remedy in connection with these terms and conditions exclusively in, and hereby submits to the jurisdiction of the State of Texas, Courts of Harris County, Texas, or the United States District Court for the Southern District of Texas, Houston Division. The state and federal courts situated in Harris County, Texas will have non-exclusive jurisdiction and venue over any dispute or controversy that arises out of these terms and conditions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.

15. NOTICES

All notices, requests, demands, and other communications that either party may desire to give the other party must be in writing and may be given by (i) personal delivery to an officer of the party, (ii) mailing the same by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of such party, or such other address as the parties may hereinafter designate, or (iii) facsimile subsequently to be confirmed in writing pursuant to item (ii) above. Notices to Ovation shall be sent to: Ovation Data Services, Inc., 9101 Jameel Road, #180, Houston, Texas 77040-6015. Attn: President and COO.

Agree to by:

Name (print): _____

Title/Position: _____

Signature: _____

Company: _____

Address: _____

Date: _____

16. BINDING EFFECT/ASSIGNMENT

These terms and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns. Neither party may assign its rights and/or duties under these terms and conditions without the prior written consent of the other party given at the other party's sole option. Any such attempted assignment shall be void. Notwithstanding the foregoing, Ovation may assign any purchase order received from Purchaser to a subsidiary or affiliate upon notice to Purchaser.

17. PARTIAL INVALIDITY

If **any provision of these terms** and conditions shall be held to be invalid, illegal or unenforceable, such provision shall be **enforced to** the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

18. NO WAIVER

Failure or delay of Ovation to exercise a right or power under these terms and conditions shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

19. CAPTIONS

The captions used herein are for reference purposes only and shall have no effect upon the construction or interpretation of any provisions herein.

20. GENERAL

These terms and conditions, as published at the time of sale, are the official terms and conditions of sale between Ovation and Purchaser and may be amended from time to time without notice at Ovation's sole discretion.