

GENERAL TERMS AND CONDITIONS OF PURCHASE
GOODS AND SERVICES

1. APPLICATION. These General Terms and Conditions of Purchase ("Terms and Conditions") will apply to the attached purchase order into which these Terms and Conditions are incorporated ("**Order**"). As used herein, Pro-Serve Inc. shall be referred to as "**Buyer**" and the supplier indicated on the Order as "**Seller**". Buyer objects to and rejects any provision additional to or different from the terms hereof that may appear in Seller's invoice, acknowledgment, confirmation, writing, or in any other prior or later communication from Seller to Buyer, unless such provision is expressly agreed to by Buyer in a writing signed by Buyer. Seller's acceptance of, or furnishing of Goods or Services, acknowledgment of the Order, commencement of performance or acceptance of any payment or acceptance of the Order, including these Terms and Conditions, in the event of a conflict between these Terms and Conditions and the specific provisions contained in the Order, the specific provisions contained in the Order shall control. For the purposes of these Terms and Conditions, the term "**Goods**" shall refer to the goods, material and equipment, as well as all drawings and other documents, listed on the Order or provided in connection with any Services, and the term "**Services**" shall refer to the services listed on the Order as well as all ancillary services provided with any Goods. Terms not defined herein shall have the meanings set forth in the Order.

2. DELIVERIES. (a) TIME IS OF THE ESSENCE WITH RESPECT TO PERFORMANCE AND DELIVERY. Delivery of the Goods shall be at the time(s) and place(s) and in quantities and on terms specified in the Order.
(b) If Goods are shipped or received in advance of schedule, Buyer may, at its sole option, return such Goods to Seller, at Seller's cost, risk and expense. If delivery of Goods are expected to be delayed, Seller will promptly notify Buyer (of the cause and expected duration of such delay) and will take all reasonable steps, at Seller's cost and expense, to expedite delivery. Deliveries to Buyer's warehouse outside normal working days and hours will not be accepted.

(c) Any delay in delivery that is longer than five days shall entitle Buyer, at its sole option, and in addition to any other rights or remedies to which Buyer may be entitled at law or in equity, to terminate the Order or two work orders.
(d) Seller will ensure that the Goods are properly preserved, secured, packed, containerized and labeled and otherwise prepared for shipment in accordance with the instructions of Buyer as specified in the Order and accepted industry practice and carrier regulations, so as to prevent damage and deterioration. Each package shall be marked to show the project and Order number. The packing list and delivery note, showing, among other things, package, Order and project number, shall be included in each package as appropriate. On import from non-BEE countries, Seller shall transmit latest one working day after shipping date by fax or e-mail complete export details, including copy of invoice and Bill of Lading or Airway Bill or CMR. No charges will be allowed for packing, crating or cartage except as specified in the applicable Order.

(e) If at any time or for any cause whatsoever, Seller is unable to fulfill the terms and conditions of the Order, Seller shall provide Buyer an option, to be exercised by Buyer's sole discretion, to (i) receive a pro-rata portion of the Goods Seller has on hand at the time it discovers its inability to perform or (ii) terminate all or part of the remainder portion of the Order. Seller's election to write-off or dispose of the Goods shall be made in writing and shall be for the same proportion as the Order volume bears to the total Goods volume Seller has then contracted to sell. The exercise by Buyer of either option noted above shall not prejudice Buyer's rights to damages in connection with any undelivered portion of the Goods.
(f) Seller and its suppliers shall, at no additional cost to Buyer, expedite delivery, to include faster means of transportation, to meet established delivery schedules. When deemed appropriate by Buyer, Seller shall also be subject to expediting by Buyer or its customer. Seller hereby granting free, safe and clear access to Seller's and Seller's supplier's premises for expediting purposes.

3. TITLE/RISK OF LOSS. (a) The Goods or portions thereof, including but not limited to, data and work in progress, shall become the property of Buyer and title to them shall pass to Buyer upon delivery of the Goods to the delivery point designated, or when Buyer makes payment therefor, whichever occurs earlier. Seller shall be responsible for and shall bear risk of loss and damage to the Goods, or portions thereof, until final completion of their delivery. However, loss or damage, which results from Seller's non-conforming preservation, packaging, packing, crating or containerization, whenever encountered, shall be the responsibility of Seller.
(b) All property used by Seller in connection with the Order which is owned, furnished, charged to, or paid for by Buyer shall be segregated and identified to the Order and shall be and shall remain the property of Buyer and shall be used only for Buyer's benefit and shall be subject to removal and inspection by Buyer at any time without cost or expense to Buyer. Seller shall insure, assume all liability for, maintain and repair all such property and return the same to Buyer in its original condition, reasonable wear and tear excepted, at the completion or termination of the Order or as requested by Buyer. Buyer shall have free access to Seller's and its vendors' premises for the purpose of inspecting or removing such property. Seller shall not grant security interest in the Goods or any part thereof in favor of any third party. The furnishing of free issue material by the Buyer to the Supplier shall not be, and shall not be construed so as to be, financing of the Order or project or other operation of the Seller.

4. INSPECTION/REJECTION OF GOODS. All Goods shall be received subject to Buyer's and its customers' audits, inspection, testing and rejection at all times and places. If requested by Buyer, Seller shall provide to Buyer the results of all samplings, analysis, inspection or test relating to the Goods and Seller shall, without additional charge, provide to Buyer its customers, facilities and assistance for safe and convenient inspection. If Buyer finds any of the Goods to be defective in material or workmanship, or otherwise not in exact conformity with any warranty, specifications or the requirements hereof, Buyer, in addition to any other rights which Buyer may have under warranties or otherwise, may, at its sole election, reject such Goods. Rejected Goods shall not be replaced by Seller without prior authorization by Buyer, and Buyer, in its sole discretion, may obtain replacement Goods from another supplier. Rejected Goods will be held by Seller until a reasonable time to be returned or disposed of by Buyer or Seller's timely written instruction and at Seller's sole cost and expense. If, within five days after rejection of the Goods, Buyer is not provided written instructions by Seller regarding disposal of rejected Goods, Buyer may (i) return such Goods at Seller's cost and expense or (ii) sell such Goods at the best price it can obtain (such determination shall be in Buyer's sole discretion), and credit the proceeds therefrom from Seller's account, less Buyer's costs and expenses of sale, including a reasonable commission not to exceed ten percent (10%). Inspection of the Goods or payment by Buyer for Goods shall in no event constitute an acceptance of such Goods. Moreover, Buyer's review or approval of Seller's methods, manufacturing procedures, drawings, calculations, and other documents shall not relieve Seller of any responsibility for Goods delivered hereunder. Buyer's right to reject nonconforming Goods applies to all deliveries under the Order, whether or not they are in separate lots, whether or not the nonconformity substantially impairs the value of that installment, or whether or not the nonconformity with respect to one or more installments substantially impairs the value of the entire lot, or the installation or passing title to the nonconforming Goods. The foregoing rights shall be cumulative and in addition to any other rights or remedies to which Buyer may be entitled at law or in equity.

5. WARRANTY. (a) Seller warrants and covenants the following for Goods: (i) the Goods shall conform to the specifications referred to in the Order and shall be of merchantable quality and free from defect in design, material and workmanship; (ii) the Goods will conform to any statements or representations made by Buyer or appearing in Seller's literature or advertisements; (iii) the Goods will be safe and appropriate for the purpose for which the Goods are intended; (iv) Seller will warrant that the Goods will conform to the specifications and shall be delivered free of liens or encumbrances; and (v) Seller has complied in all respects with all laws applicable to the manufacture, transportation and delivery of the Goods.
(b) Seller warrants and covenants that Seller shall perform the Services: (i) in a workmanlike manner using qualified, efficient and careful workmen; (ii) in accordance with all plans, drawings, and specifications provided by Buyer; (iii) in compliance with all applicable laws; and (iv) otherwise in accordance with the Order and these Terms and Conditions.

(c) Seller shall cause all suppliers of Goods or Services applicable hereunder to be assigned to Buyer and shall take all measures which Buyer considers necessary or desirable to assure that Buyer timely receives the full benefit of all such warranties, regardless of whether they are assignable. Seller shall provide Buyer true copies of all such warranties.
(d) Unless otherwise specifically agreed to by the parties, all warranties of Seller hereunder shall be for a period ending 24 months after delivery of the Goods or Services or 18 months after the date of completion of the Goods or the subject of the Services, whichever occurs last.
(e) If during the warranty period the Goods or Services are found to be defective or otherwise fail to conform to the warranties, and Buyer so notifies Seller, Seller shall, at Seller's sole expense and using its best efforts, promptly correct such nonconformity to the satisfaction of Buyer, failing which (a) Buyer may reject or revoke acceptance and cover by making purchase of substituted goods or services; (b) Buyer may proceed to correct Seller's nonconforming work by the means available to the Buyer, and Buyer shall be entitled to such correction; (c) Seller shall be liable to Buyer for the cost of such correction; (d) Buyer may return the nonconforming Goods or Services with an equitable reduction to the Order price to reflect the diminished value of such nonconforming Goods or Services.

(f) Buyer may assign to its customers and end-users of the Goods or Services any warranty rights Buyer may have under the Order, provided however, that the Order shall not, and shall not be construed so as to, establish privileges of contract between Seller and Buyer's customers or end-users of the Goods or Services.

6. PRICE. Seller represents that the price or prices specified in the Order do not exceed the current selling price for the same or substantially similar goods or services to any other purchaser, taking into account quantity under consideration. The price stated in the Order is firm, definite and not subject to price adjustment, and is exclusive of VAT but includes all other taxes, import duties, fees, charges and expenses as applicable. Seller shall report and pay all above mentioned taxes, import duties, fees, charges and expenses and shall indemnify and hold harmless the Buyer against any liability arising therefrom.

7. CHANGES. Buyer shall have the right, at any time, to make changes in plans, drawings or specifications, packaging, time or place of delivery, or method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for performance, a party may send a written claim for any adjustment in price received by Seller. Seller warrants that any such claim for price adjustment if such claim is not received within the time specified or within an earlier of ten days after the date upon which Seller receives Buyer's changes or the date of delivery. Buyer's claims for adjustment shall be deemed agreed to by Seller unless Buyer receives Seller's objection thereto within the earlier of ten days after the date of such claim or the date of delivery.

8. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD BUYER, ITS PARENT COMPANY, PARTNERS, SUBSIDIARIES AND ANY OTHER RELATED OR AFFILIATED ENTITIES, ITS CUSTOMERS AND USERS OF THE GOODS OR SERVICES, AND ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, PARTNERS, EMPLOYEES, SUCCESSIONS AND ASSIGNS AND ALL COLLECTIVE OR INDIVIDUAL "INDEMNIFIED" PARTIES HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, DAMAGES, DEMANDS, LAWSUITS, CAUSES OF ACTION, STRICT LIABILITY CLAIMS, PENALTIES, FINES, ADMINISTRATIVE LAW ACTIONS AND ORDERS, EXPENSES (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES) AND COSTS OF EVERY KIND AND CHARACTER (COLLECTIVELY, "CLAIMS/LIABILITIES") ARISING OUT OF OR IN ANY WAY INCIDENT TO (A) ANY ACT OR OMISSION OF SELLER, ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS OR (B) ANY OTHER PARTY OR ENTITY, INCLUDING, WITHOUT LIMITATION, CLAIMS/LIABILITIES RELATING TO PERSONAL INJURIES, DEATH, DAMAGE TO PROPERTY, DAMAGE TO THE ENVIRONMENT OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT OR OTHER PROPERTY RIGHT, REGARDLESS OF WHETHER SUCH HARM IS TO SELLER, ITS SUBCONTRACTORS, INDEMNITEES OR ANY OTHER PERSON OR ENTITY. THE DUTY TO DEFEND, PROTECT, INDEMNIFY AND HOLD INDEMNITEES HARMLESS REFERRED TO IN THE PRECEDING SENTENCE SHALL INCLUDE, WITHOUT LIMITATION, CLAIMS/LIABILITIES THAT RESULT FROM THE COMPARATIVE, CONCURRENT OR CONTRIBUTING NEGLIGENCE OF ANY PERSON OR ENTITY INCLUDING, BUT NOT LIMITED TO, INDEMNITEES OR THEIR AGENTS, EXCEPT SELLER SHALL NOT BE LIABLE UNDER THIS SECTION FOR CLAIMS/LIABILITIES RESULTING FROM THE SOLE NEGLIGENCE OF INDEMNITEES. SELLER'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE TERMINATION, REVOCATION OR EXPIRATION OF THIS AGREEMENT.

9. INSURANCE. Seller, at its own expense, shall carry, and shall require its suppliers or subcontractors to carry, such insurance which shall protect the Seller and Indemnities from loss, expense or claims of very kind. Such insurance will in no event be less than the following:
(a) Worker's Compensation and Employers' Liability Insurance, as prescribed by applicable law.
(b) Comprehensive General Liability Insurance, including completed operations, blanket contractual liability and contingent Employer's liability with a combined single limit of \$3,000,000 for each incident for bodily injury, death or property damage.
(c) Automobile Public Liability Insurance covering all owned and non-owned automotive units with bodily injury, death or property damage liability for third parties with a combined single limit of \$3,000,000 for each occurrence.
The amounts listed above may be increased from time to time as required by Buyer. At Company's request, Seller shall furnish Buyer with certificates setting forth the required insurance coverages.

10. TERMS OF PAYMENT. Interest may be charged on all past due amounts owed by Buyer hereunder at an interest rate equal to 12% per annum, from the 45th day after such payment is due until paid in full. All payments shall be made in the currency listed in the Order. If the payment due date is a day other than a business day, Buyer shall make such payment on the next business day after such due date.

11. DOCUMENTATION. Seller shall provide to Buyer by the due date, in the specified form and quantities, all drawings, certificates and other documents specified in the Order and shall also provide, as specified or required by industry standard, all other relevant and applicable data and documents.

12. SET-OFF. Buyer reserves the right, at any time, to Set-off against any amount that Buyer (or any of its affiliates) owes to Seller (or any of its affiliates) under the Order or any other agreement between or among any such parties. "Set-off" means set-off, offset, combination of accounts, netting of dollar amounts of monetary obligations, right of retention or withholding or similar right to which Buyer is entitled (whether arising under the Order, another agreement, applicable law, or otherwise) that is exercised by Buyer.

13. PROPRIETARY RIGHTS. (a) Notwithstanding any proprietary legend or copyright notices to the contrary, the Buyer and its customers and end-users of the Goods, may copy and reproduce documents and information furnished by Seller at any time and distribute such copies or reproductions to others for the limited purposes of designing, constructing, operating, maintaining, permitting and licensing. All data, inventions, improvements, information, drawings and specifications which are owned, in whole or in part, by Seller, or which are developed by Seller, or which are developed by Seller or its suppliers, shall be and shall remain the property of Buyer and, unless stated otherwise by the Buyer, shall be promptly furnished to Buyer at the completion or termination of the Order. Seller grants to Buyer and its affiliates a nonexclusive, royalty-free, worldwide, perpetual right and license to use, make, sell, offer for sale, import or export any product or process in any field, which incorporates or is based on Goods or Services to be provided to Buyer under this Agreement that do not otherwise assigned to Seller.
(b) Seller hereby represents, warrants and covenants that it has not infringed or misappropriated and that it shall not infringe or misappropriate: (i) any patent covering Goods or Services or use of sale thereof, or any method embodied in or resulting from the Goods or Services, or (ii) any copyright, trademark, trade secret or, without limitation, other proprietary right with respect to the Goods or Services. SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER FROM AND AGAINST ALL CLAIMS, LIABILITIES, DAMAGES, PENALTIES, FINES, DAMAGES, AND/OR OTHER HARM ARISING FROM ANY ACTUAL OR ALLEGED CLAIM THAT THE GOODS OR SERVICES AND/OR THE USE AND/OR SALE OF THE GOODS OR SERVICES BY BUYER OR ITS CUSTOMERS INFRINGES, OR MISAPPROPRIATES, ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET AND/OR OTHER PROPRIETARY RIGHT. SUCH OBLIGATION SHALL SURVIVE THE ACCEPTANCE OF THE GOODS AND SERVICES AND PAYMENT THEREBY BY BUYER.

14. DEFAULT. In addition to the remedies otherwise set forth herein, upon (y) the failure of Seller to perform any other obligation in the Order (including any breach of a warranty) and such failure is not excused or cured within two business days after written notice thereof or (z) the occurrence of a Bankruptcy Event, then Buyer, in its sole discretion and without prior notice to Seller, may on any one or more of the following: (a) suspend performance under the Order or any other agreement between Buyer and Seller; and/or (b) terminate the Order, or any part of it, or any other agreement between Buyer and Seller, whereby any of its obligations or duties or deliverables due, or the obligation of Buyer, become immediately due and payable or delinquent, as applicable; and/or (c) take possession, by whatever reasonable means and at whatever location and time, of all materials, tools and equipment used in performance of the Order and furnish the work or acquire the Goods by whatever method it may deem expedient, in which case Seller shall not be entitled to payment, if any, until all of the Goods are delivered to Buyer in accordance with the Order. The foregoing specific rights, which shall specifically include suspension of performance, shall be cumulative and in addition to any other rights or remedies to which Buyer may be entitled at law or in equity. In addition, Buyer shall be entitled to recover from Seller all court costs, attorneys' fees and expenses incurred by Buyer in connection with Seller's default. "**Bankruptcy Event**" means the occurrence of any of the following events with respect to Seller or its affiliates: (i) filing of a petition of or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law; (ii) making of an assignment for the benefit of creditors; (iii) having a bankruptcy petition filed against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing; (iv) otherwise becoming bankrupt or insolvent (however evidenced); (v) having a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (vi) being generally unable to pay its debts as they fall due.

15. TERMINATION. (a) Buyer reserves the right to terminate this Order, or any part of it, for Buyer's sole convenience, upon written notice to Seller.
(b) If the Goods are manufactured or fabricated to Buyer's unique specifications and specifically prepared for Buyer pursuant to an Order (collectively, "**Specialty Goods**"), Seller shall stop all work hereunder immediately following a termination by Buyer, and shall immediately terminate all suppliers' and subcontractors' contracts for performance hereunder. In full compensation for termination under this Section and only in the case of Specialty Goods, Buyer shall pay Seller a reasonable termination charge. Unless otherwise set forth in the Order, such termination charge shall be equal to the percentage of the price of the Specialty Goods (as shown in the applicable Order) reflecting the percentage of the work performed prior to the notice of termination, plus reimbursement of reasonable, actual direct costs resulting from termination provided, however, that the sum of such termination charge, plus payments previously made by Buyer, shall in no event exceed the total purchase price under the applicable Order. Seller shall not be paid for the following: (i) any work done after receipt of notice of termination, (ii) any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided; and (iii) any costs incurred by Seller for any goods or services for which Buyer has not issued an Order. In performing hereunder, Seller shall not act in anticipation of a notice of termination. If the termination of the Order is not as provided in the above, in no event, shall Buyer pay any termination charges for standard stock merchandise or catalog items that are new and in saleable condition.
(c) Upon Buyer's written request, and upon expiration or other termination of the Order, Seller shall: (i) preserve, protect, and if so requested, transfer title to and deliver to Buyer, materials on hand and work in progress, both in Seller's and in its suppliers' plants or other facilities, and intellectual property (including licenses) purchased by Buyer; and (ii) transfer to Buyer all applicable government permits.
(d) Following termination, Seller shall be entitled for payment for all Services rendered prior to Buyer's notice of termination.

16. FORCE MAJEURE. (a) If because of Force Majeure, Buyer is unable to carry out any of its obligations hereunder (other than for Buyer's obligation to pay Seller for Majeure), Seller shall be relieved of its obligations under the Order. The obligations of Buyer shall be suspended to the extent made necessary by and during such Force Majeure's continuance. The term "**Force Majeure**", as used herein, means any cause not reasonably within the control of Buyer, and shall include the following: (i) physical events such as acts of God, disease, plague, landslides, lightning, earthquakes, fires, storms such as hurricanes, which result in evacuation of the affected area; (ii) acts of war, including armed conflict, terrorism, sabotage, piracy, hostilities, riots, insurrections or wars; (iii) compliance with any law, statute, ordinance, regulation, policy, order or request of any federal, state, provincial or local government unit, or any officer, department, agency, or committee thereof (except to the extent such order or request arises from Seller's failure to comply with applicable law); and (iv) any other event or contingencies of like or different character beyond the reasonable control of Buyer, that, in each case, interferes with the ability of Buyer to perform its obligations hereunder.
(b) If Buyer's performance is prevented by Force Majeure, it will provide notice to Seller. Initial notice will be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Delay or failure to give notice herein shall not prevent Buyer from claiming its performance is excused by Force Majeure, unless such delay or failure has adversely affected Seller.

(c) Upon providing written notice of Force Majeure to Seller, Buyer will be relieved of its obligations under the Order from the onset of the Force Majeure event and for the duration of the Force Majeure. Buyer may terminate the Order if Force Majeure lasts for more than 30 consecutive days.
17. ASSIGNABILITY. The rights and duties under the Order are not assignable or transferable by Seller, in whole or in part, by operation of law or otherwise, without the express written consent of Buyer. Any assignment or attempted assignment in contravention of the foregoing shall be null and void, shall be considered a breach of the Order and shall permit Buyer, in addition to any other rights which it may have, to terminate the Order. Buyer shall have the right to assign the Order to any party.

18. GOVERNING LAW. The Order and its execution, performance, interpretation, construction and enforcement shall be governed by the law, both procedural and substantive, of the State of Tennessee. Any action or proceeding between Buyer and Seller relating to the Order shall be commenced and maintained exclusively in the State or federal courts in Memphis, Tennessee, and Buyer submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. BUYER AND SELLER EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATED TO THIS ORDER.

19. NOTICE. All notices, communications or transmissions under the Order shall be in writing and shall be deemed received on the day of delivery if personally hand delivered or sent by airmail or electronic transmission (with written confirmation of the completed transmission) or within two business days if mailed by Canada Post or United States mail as certified or registered mail with return receipt, postage prepaid addressed to the party to whom such notice is given at the address of such party stated in the Order. Mistakes in prices, discounts, specifications, delivery schedules or other terms and any noticeable discrepancies in quantities or sizes are to be reported promptly by Seller to Buyer and Seller shall promptly remedy such mistakes by refunding incorrect charges to Buyer or correcting such other discrepancies, unless otherwise directed in writing by Buyer.

20. TAXES. Seller shall pay all taxes, duties, fees, levies, penalties, licenses or charges imposed by any government authority ("**Taxes**") which may now or hereafter be imposed on or with respect to (a) the Goods at or prior to time of loss of passing to Buyer, and (b) the Services. If Buyer is required to remit or pay Taxes that are Seller's responsibility hereunder, Seller shall reimburse Buyer for such Taxes within ten days of notice hereunder.

21. ENTIRE AGREEMENT; AMENDMENT; WAIVERS. The Terms and Conditions, together with the Order into which they are incorporated, shall supersede all prior negotiations, discussions, and dealings concerning the subject matter hereof, and shall constitute the entire agreement between Seller and Buyer concerning the Order. No oral modification shall be binding on Seller or Buyer unless the same is in writing and such writing: (i) specifically refers to the Order; (ii) specifically identifies the term amended; and (iii) is signed by duly authorized representatives of Seller and Buyer. No waiver by Buyer of any breach of any terms, conditions or obligations under the Order shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.

22. ACCESS TO BUYER'S FACILITIES. If and to the extent that the Goods or Services provided hereunder are to be delivered or provided at any Buyer facility, Buyer shall have the right to require the consent prior to granting Seller, its contractors, or its agents access to such facility. Seller agrees that it, and its contractors and agents, will comply with all of Buyer's safety rules and regulations when they are at Buyer's facility in connection with the performance of the Order.

23. HAZARDOUS PRODUCTS/HAZMAT LAWS. (a) If and to the extent Seller loads, unloads or ships "hazardous materials" (as designated in accordance with 49 C.F.R. Parts 100-185, as amended from time to time), then Seller hereby warrants that all such materials shall be prepared for shipment, loaded, shipped and unloaded in compliance with all applicable laws, rules, regulations, orders, and other requirements of federal, provincial or state and local governments and agencies, including but not limited to the handling and transportation of such materials, and Seller shall indemnify and defend Buyer, its agents, contractors, and employees from all liability of whatever nature (including attorneys' fees and expenses) to which they may become subject as a result of Seller's failure to comply therewith.
(b) Seller shall be responsible for all hazardous materials, including the disposal thereof, resulting from the manufacturing of the Goods and the provision of the Services.

24. TOOLING. All tooling (including patterns, fixtures or jigs) created for purposes of the Order shall be the property of Buyer. Seller hereby assigns to Buyer all rights, title and interest in any drawings, designs, specifications, models, perspectives, software or other intellectual property, including, but not limited to, copyrights, patents, trademarks and trade secrets, created or to be created under the Order or in connection with any Services.
25. AGENTS. Buyer may designate certain of its affiliates to act, from time to time, as its agent for the sole purpose of soliciting Sellers of Goods or Services. Said agent shall not, however, have the authority to bind or otherwise obligate Buyer regarding the purchase of Goods or Services. All contracts for the purchase of Goods or Services must be signed by a duly appointed representative of Buyer.

26. INTERNATIONAL TRANSACTIONS. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the transactions under the Order. Unless otherwise stated in the Order, the provisions of the most current version of INCOTERMS, International Chamber of Commerce Publication, are incorporated herein by reference.

27. ELECTRONIC TRANSACTIONS. The Order and Terms and Conditions may be digitally copied and stored on computer tapes and disks (the "**Imaged Agreement**"). The Imaged Agreement (once digitally generated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions of admissibility as if they were original documents. The electronic transmission of the Imaged Agreement and the original agreement were not originated or maintained in documentary form under any rule of evidence.

28. COMPLIANCE. (a) Seller shall comply fully with all applicable laws and regulations in its performance of the Order and shall neither take nor refrain from taking any action that could result in liability for either Buyer or Seller under applicable law, including the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention or any other applicable anti-bribery law or treaty, or those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control (31 C.F.R. Chapter V) or the U.S. Commerce Department's Bureau of Industry and Security (15 C.F.R. Parts 730 et. Seq.). Seller's breach of the preceding sentence shall constitute cause for immediate termination of the Order. Neither Buyer nor Seller shall be required to take or refrain from taking any action impermissible or penalized under any applicable laws.
(b) In all cases, Seller must provide to Buyer, via the packing list and the customs invoice (as applicable), the country of origin and the appropriate export classification codes including, if applicable, the Export Control Classification Number (ECCN) and the Harmonized Tariff Codes of each and every one of the Goods supplied pursuant to this Order, including in sufficient detail to satisfy applicable trade preferential or customs requirements, if any.

29. INDEPENDENT CONTRACTORS. Seller and Buyer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under the Order or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under the Order or otherwise at law.

30. THIRD PARTY BENEFICIARIES. The Order is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

31. SEVERABILITY. The invalidity or unenforceability of any provision of the Order shall not affect the validity or enforceability of its other provisions.

32. CONFIDENTIALITY. All information that Seller acquires from Buyer hereunder, directly or indirectly, and all information that arises out of the sale of the Goods or Services hereunder, concerning such Goods, Services, and/or proprietary processes involved, including without limitation, information concerning Buyer's current and future business plans, information relating to Buyer's operations, know-how, and other Buyer-furnished information shall be deemed Buyer's "**Proprietary Information**". Seller (a) shall hold Buyer's Proprietary Information in strictest confidence, (b) shall not disclose it to others, (c) shall use it solely for purposes of this Agreement and (d) shall, upon Buyer's request, either promptly deliver to Buyer all such Proprietary Information that is in written, electronic or other form, including copies and summaries, or, at Buyer's option, destroy such Proprietary Information and provide Buyer certification of such destruction. The obligations under this Section shall survive the expiration or termination of this Agreement.

33. LIMITATION ON LIABILITY. BUYER WILL NOT BE LIABLE FOR LOSS OF PROFITS, BUSINESS REVENUES, ANTICIPATED SAVINGS, GOODWILL OR OTHER ECONOMIC LOSS (WHETHER DIRECT OR INDIRECT) OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE, IN EACH CASE WHETHER ARISING UNDER WARRANTY OR GUARANTEE, CONTRACT, NEGLIGENCE (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT LIABILITY ARISING FROM A DUTY OF CARE, BY OPERATION OF LAW OR OTHERWISE. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BUYER'S CUMULATIVE LIABILITY, AND SELLER'S EXCLUSIVE REMEDY AGAINST BUYER, FOR ANY CAUSE OF ACTION, RELATED TO OR ARISING OUT OF THE ORDER IS EXPRESSLY LIMITED TO AN AMOUNT EQUAL TO THE PURCHASE PRICE.

34. MISCELLANEOUS. The captions and section headings set forth in the Order and Terms and Conditions are for convenience only and shall not be used in defining or construing the meaning of any term in the Order. The term "days" as used herein, shall mean actual days occurring, including Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "business days" shall mean days other than Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "including" or "any variation thereof means" including, without limitation" and shall not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender shall be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require.