

Canadian Standard Purchasing Terms and Conditions

1. DEFINITIONS:

In this Order, including the recitals hereto, the following words and phrases, and the grammatical variations thereof, shall have the meanings indicated below:

"Affiliate"	means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity or one or more of the other Affiliates of that entity (or a combination thereof). For the purposes of this definition, an entity shall control another entity if the first entity: (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity; or (ii) has the ability to elect a majority of the directors of the other entity;
"Buyer"	means the entity identified on the face of this Order;
"Buyer's Group"	has the meaning given thereto in Section 21 hereof;
"Change Order"	means a written order issued in accordance with Section 30 hereof;
"Event of Force Majeure"	has the meaning ascribed thereto in Section 15 of these terms and conditions.
"Goods"	means all goods purchased by Buyer from Vendor (including any part or parts thereof) under this Order including all goods, supplies, materials, deliverables, documentation, machinery, equipment, systems or apparatus;
"Intellectual Property"	means any right or protection existing from time to time in a specific jurisdiction, whether registered or not, under any patent law or other invention or discovery law, copyright law, performance or moral rights law, trade- secret law, confidential information law, plant breeders law, integrated circuit topography law, semi-conductor chip protection law, trade-mark law, or other similar laws and includes legislation by competent governmental authorities and judicial decisions under common law or equity;
"Order"	means this purchase order between the Buyer and the Vendor for the purchase of the Goods and/or Services specified herein and to which these terms and conditions have been attached;
"Parties"	means Vendor and Buyer, collectively and "Party" means either one of them;
"Person"	means an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators, or other legal representatives of an individual and will include, if in the context requires, a "third party";
"Records"	means all documentation prepared, provided or received by Vendor in connection with this Order and the provision of Goods and/or Services including all books, statements, records and accounts whether in copy or electronic form or otherwise;

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"Representative"	means Vendor's directors, officers, employees, agents, subcontractors, assignees or other representatives engaged in the provision of the Goods and/or Services;
"Services"	means any services performed by Vendor (including any part or parts thereof) under the Order;
"Termination Notice"	has the meaning ascribed thereto in Subsection 20(a) of these terms and conditions;
"Vendor"	means the Party identified as the Vendor on the face of this Order; and
"Work Product"	has the meaning ascribed thereto in Subsection 17(c) of these terms and conditions.

Words of Inclusion. Wherever the words "include", "includes" or "including" are used in this Order, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

2. ACCEPTANCE:

By providing all or any part of the Goods and/or Services described in this Order, Vendor is indicating its acceptance of this Order and agrees to be bound by all of its terms, without alteration or addition.

3. CONFORMANCE:

The provision of all Goods and the performance of all Services pursuant to this Order shall be free from defects, in accordance with the description which forms part of this Order, in conformance with any plans, specifications, standards, operating conditions and performance data referred to in this Order, in conformance with all applicable laws, regulations, orders and permits, and in conformance with all applicable industry standards in the jurisdiction where same are delivered to, or performed for, the Buyer, and provided and performed in a timely, efficient and workmanlike manner.

4. SERVICES:

- (a) Unless otherwise agreed to by Buyer in writing, the Vendor shall furnish at its own cost and expense any and all necessary labour, machinery, equipment, tools, transportation and other inputs required to perform the Services. Buyer shall not be liable for any loss of or damage to machinery, equipment or tools furnished by the Vendor.
- (b) The Vendor shall provide the Services in such manner as to cause minimum interference to Buyer.
- (c) The Vendor and its Representatives shall adhere to such policies, procedures, rules and regulations, both written and oral, as are determined by Buyer from time to time to be applicable to Vendor, a copy of which shall be provided to the Vendor. Failure to comply with such policies, procedures, rules or regulations shall, in Buyer's sole discretion, be grounds for immediate termination of the Order and the work in progress, with no further obligation to the Vendor other than payment for Services provided prior to the date of such termination.
- (d) If Buyer determines (acting reasonably) the performance of a Representative to be unsatisfactory in any material respect, the Vendor agrees to remove that Representative from the provision of the Services promptly upon notice from Buyer. If a Representative is

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removed in accordance with this Subsection, the Vendor shall be responsible for all costs associated with the expeditious restoration of the knowledge, skills or other resources displaced thereby.

5. INSPECTION:

- (a) The Buyer and Buyer's representatives shall at all times have reasonable access, during normal business hours and upon prior notice, to Vendor's and Vendor's supplier(s) and subcontractor(s) places of business at which the Vendor or Vendor's supplier(s) and subcontractor(s) are performing Vendor's obligations under this Order. The Vendor shall provide Buyer with safe and proper facilities for access, testing, and inspection of the Goods and Services. Buyer shall have the right to test and inspect the Goods at any time during manufacture and prior to shipment and the Services at any time during their performance or afterward. Upon delivery of the Goods to the Buyer as specified in this Order, or upon completion of the performance of the Services, Buyer shall have a reasonable period of time for final testing and inspection of the Goods and Services. The Goods and Services shall not be deemed accepted until after said final testing and inspection. Buyer shall be entitled to reject delivery of any Goods and/or Services determined by Buyer (acting reasonably) to be not in conformance with the requirements of this Order. In the case of payment against documents, acceptance of the documents does not constitute an acceptance of the Goods or impair any options or remedies of the Buyer for their improper delivery.
- (b) Notwithstanding the foregoing, neither inspection nor failure to inspect nor any acceptance of any Goods or Services by Buyer shall in any way limit or relieve the Vendor of any of the Vendor's obligations hereunder, including in respect of any of the Vendor's representations or warranties set out herein, or the Vendor's obligation to supply such Goods and/or Services strictly in the quantities ordered and otherwise in accordance with this Order.
- (c) Goods delivered in error, rejected hereunder, or overages in excess of trade practice shall be returned to the Vendor at the Vendor's sole expense and risk. The Vendor shall, upon request by Buyer, provide instructions for such return. If the Vendor does not provide instructions within a reasonable time, and in every event within thirty (30) days, after being requested, Buyer may dispose of the Goods as it deems appropriate. In no event shall Buyer be liable for any restocking or other charges for Goods returned to the Vendor.

6. PRICE:

Unless otherwise stated on the face of this Order, all amounts herein shall be in Canadian Dollars. The price for all Goods and/or Services set forth in this Order is firm, except to the extent expressly provided in any escalation or adjustment clause appearing in this Order.

7. TAXES:

- (a) All taxes shall be disclosed as separate line items on Vendor's invoice. Vendor is exclusively liable for, and shall pay before delinquency, all taxes, levies, duties and assessments imposed or levied in respect of the Goods or performance of the Services contracted for hereunder (other than GST, any applicable provincial sales tax or any other applicable value added tax payable by Buyer as the purchaser of the Goods and/or Services) and Vendor shall be liable for, and shall defend, indemnify and hold Buyer's Group harmless from and against all expenses, losses, damages, liabilities and third party claims incurred or suffered by Buyer's Group owing to Vendor's failure to do so.
- (b) Where the price to be paid by Buyer includes taxes and duties and such taxes and duties are payable by Vendor, Vendor and its subcontractors may, on their own behalf and not as agents of Buyer, take full advantage of tax and duty exemptions, remissions and

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drawbacks. When the price to be paid by Buyer excludes taxes and duties and such taxes and duties are payable by Buyer, Buyer may, on its own behalf, take advantage of tax and duty exemptions, remissions and drawbacks or may require Vendor and, through it, subcontractors, to apply for tax and duty exemptions, remissions and drawbacks on behalf of Buyer. Where applicable, Buyer shall supply Vendor with suitable certification or documentation to authorize Vendor to obtain such tax and duty exemptions, remissions and drawbacks.

- (c) If Vendor is or becomes a non-resident for the purposes of applicable law, regulation, judgment or order, including tax or lien legislation, Vendor shall ensure each invoice issued to Buyer identifies that portion of the Services performed as a non-resident and the value of that portion, and Buyer shall be entitled to withhold that amount from payment of any invoice and remit same to the applicable taxing authority. Such amounts shall be deemed to have been paid to Vendor on their due dates, provided that Buyer shall furnish to Vendor reasonable evidence of such payments.

8. TERMS OF PAYMENT:

- (a) Buyer shall pay Vendor any undisputed amounts owing pursuant to this Order within sixty (60) days of Buyer's receipt of the Vendor's correct, conforming and uncontested invoice submitted in accordance with Section 9, unless otherwise noted on the face of this Order.
- (b) Buyer shall be entitled to deduct and retain all such amounts as may be prescribed or permitted pursuant to all applicable lien or equivalent legislation or otherwise prescribed or permitted by applicable laws, rules, regulations or governmental orders.
- (c) If Buyer should dispute all or part of any invoice submitted by Vendor pursuant to the terms hereof, Buyer shall provide written notice of the reason for the dispute, including any factual or contractual basis to Vendor within the aforementioned sixty (60) day period. Buyer shall remit payment of any undisputed portion of the invoice within sixty (60) days of receipt, but may withhold the disputed portion of the invoice until the dispute has been resolved. Either Party shall be entitled to receive interest (both before and after judgment) on all overdue amounts owing hereunder from the date that payment was due, as per the terms of this Order, until the date payment is received by the other Party. Such interest shall be charged at the rate of one and one-half percent (1.5%), per annum, above the Bank of Nova Scotia's prime lending rate for Canadian dollar commercial demand loans made in Canada, compounded monthly.

9. INVOICES:

Vendor shall send invoices in accordance with the invoicing instructions noted on the face of this Order. Vendor shall include on the invoice the Order number, the corresponding Order line item, and a full description of the items invoiced. Prices referenced in the invoice must agree with the prices shown on this Order. Invoices for reimbursable charges, expenses, and/or third party charges shall include adequate supporting documentation as required by Buyer. In the event freight is not included in the Order price, and is prepaid by Vendor, such freight charges shall be invoiced as a separate line item on the invoice with receipted copies of freight bills attached.

The following items shall be listed separately:

- (a) sales, use, and excise taxes;
- (b) any portion of the Services performed as a non-resident;
- (c) applicable surcharges;
- (d) refundable deposits;

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- (e) any special charges for packing, boxing or crating; and
- (f) any packaging materials.

10. RESPONSIBILITY FOR PROPERTY:

To the extent that this Order permits or requires property of Buyer to be in the care, custody, and/or control of Vendor, Vendor shall be responsible for all loss and damages to said property from the time such property is received by Vendor or its Representative, and Vendor shall return said property to Buyer in accordance with the terms of this Order or, upon Buyer's request, in a condition at least as good as when said property was received by Vendor, reasonable wear and tear excepted.

11. TITLE AND RISK:

Unless otherwise provided for in this Order, title to the Goods shall remain with Vendor until actual delivery to and acceptance by Buyer in accordance with this Order. INCOTERMS 2010 shall apply to this Order. Vendor assumes all risk of loss or damage to all Goods, products, work in progress, and materials until actual delivery to and acceptance by Buyer in accordance with this Order, including the following:

- (a) damage to property owned by or in the care, custody, and/or control of third parties;
- (b) property received from or held by Vendor or Vendor's subcontractors for the account of Buyer; and
- (c) property rejected by Buyer.

12. LIENS:

Provided that Buyer has made all payments required pursuant to this Order (other than those which it has disputed in good faith), Vendor, for itself and on behalf of its Representatives, agrees to: (i) keep the property and premises of Buyer and those third parties where Goods are delivered or Services are performed on behalf of Buyer free and clear of all liens, charges and encumbrances arising by reason of having provided labour, materials and equipment relating to the Goods provided or the Services performed hereunder; (ii) not cause or allow to be filed any mechanic's liens, materialmen's liens or other liens or encumbrances arising by reason of having provided labour, materials and equipment relating to the Goods provided or the Services performed hereunder; and (iii) defend, indemnify and hold Buyer's Group harmless from and against any and all such liens and encumbrances.

Vendor warrants that upon submittal of an invoice pursuant to the terms hereof, no party shall, to the best of Vendor's knowledge, information and belief, have any right to liens, claims, security interests or encumbrances by reason of having provided labour, materials or equipment relating to the Goods provided or the Services performed hereunder.

13. WARRANTIES:

- (a) For the Goods sold hereunder, Vendor warrants as follows:
 - (i) the Goods shall conform to the provisions of Section 3 above;
 - (ii) the Goods, as described herein, are of merchantable quality;
 - (iii) the Goods are fit for the particular purpose stated in this Order;

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- (iv) the Goods do not infringe the Intellectual Property of any third party; and
 - (v) at the time of delivery of the Goods, the Goods shall be free and clear of all liens, charges and encumbrances.
- (b) In the event the Goods, or any portion thereof, do not, in Buyer's reasonable opinion, comply with any of the warranties set out in Section 13(a) above, Buyer may, at Vendor's sole risk and expense, elect to:
- (i) prior to commercial operation of the Goods, reject or revoke acceptance of the Goods or any portion thereof and receive a full refund for all the Goods so rejected or withhold payments for such Goods if such payments have not been made; provided that rejection or revocation of only a portion of the Goods shall not invalidate the remaining shipment of Goods, to which the terms of this Order shall apply;
 - (ii) require Vendor to repair or replace the Goods;
 - (iii) repair or replace the Goods and recover all expense reasonably incurred by Buyer for such repair or replacement from Vendor; or
 - (iv) retain the Goods and assert a right to compensation for breach of contract.
- (c) The warranties set out in Section 13(a) above shall survive until the earlier of:
- (i) twelve (12) months from the date of commercial operation of the Goods; or
 - (ii) twenty-four (24) months from date of shipment of the Goods, unless otherwise specified in this Order.
- (d) For the Services supplied hereunder, Vendor warrants that:
- (i) the Services shall conform to the provisions of Section 3 above;
 - (ii) the Services shall be performed in a safe and environmentally sound manner and in performing the Services, Vendor shall exercise the level of skill, care, diligence and workmanship that would be expected of an experienced, skilled, competent and reputable contractor specializing in the provision of services comparable to the Services;
 - (iii) the Services do not infringe the Intellectual Property of any third party; and
 - (iv) it has the skills, expertise, experience and resources to properly perform the Services in a timely and efficient manner, without undue interference to Buyer and that it will deploy sufficient resources and personnel to so perform the Services.
- (e) In the event that the Services, or any portion thereof, do not, in Buyer's reasonable opinion, comply with any of the warranties set out in Section 13(d) above, Buyer may, at Vendor's sole risk and expense, elect to:
- (i) require Vendor to re-perform the Services;
 - (ii) perform the Services itself or hire a third party to perform such Services and recover all expense reasonably incurred by Buyer in respect of such performance from Vendor; or
 - (iii) assert a right to compensation for breach of contract.

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- (f) The warranties for the Services set out in Section 13(d) above shall survive until the date which is twelve (12) months from the completion of the Services.
- (g) Notwithstanding any termination of this Order, all warranties, whether express or implied, shall continue in full force and effect for the entire term of such warranty. Vendor shall notify Buyer of any manufacturer or subcontractor warranty(ies), and Vendor shall assign to Buyer and, upon written notice from Buyer, enforce for Buyer's benefit, any such warranty(ies) obtained from such manufacturers or subcontractors. Each such warranty shall be in addition to and not in substitution of the warranties set out herein. No acceptance of or payment for the Goods or Services provided hereunder shall constitute a waiver of the warranty provisions set out in this Section 13, any Vendor standard warranty, or any manufacturer or subcontractor warranty and the rights of the Buyer thereunder.
- (h) All Goods repaired or replaced, and all Services re-performed, by Vendor pursuant to the terms of this Section 13 shall conform to the terms of this Section 13 for an additional twelve (12) months from the date of commercial operation of such repaired or replaced Goods, or from the date such Services are re-performed.
- (i) The warranty period for Goods shall be extended by a period equal to the sum of any periods during which the Goods cannot be used for the purpose for which they were intended during the warranty period by reason of a breach of the warranties above.
- (j) Notwithstanding the expiration of any warranty period described herein, the Vendor's warranty obligations shall extend to correcting any defects in Goods or Services of which Buyer has given Vendor notice prior to the expiration of such warranty period and to latent defects discovered at any time thereafter. The expiration of any particular warranty period shall not affect any other representation or warranty made hereunder, each of which shall survive, independently, in the manner provided herein.

The rights, powers and remedies of Buyer in this Order are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to Buyer.

14. DELIVERY:

Time is of the essence of this Order. Vendor shall strictly comply with any and all time deadlines set out in this Order. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of Goods or Services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery, and it shall not be deemed a waiver of future compliance. If Vendor ascertains that it cannot deliver the Goods or Services within the time specified in this Order, for any reason other than an Event of Force Majeure, Vendor shall give Buyer immediate notice and advise Buyer of the earliest possible delivery date. Buyer may then require Vendor to expedite delivery at Vendor's expense. Failure of Vendor to complete performance within this time, or within a reasonable cure period, will entitle Buyer to cancel this Order without liability or, alternatively, to require performance by Vendor according to the terms and conditions of this Order. Exercise of either option shall be without prejudice to Buyer's right to claim from Vendor any loss or damage suffered.

15. FORCE MAJEURE:

If Vendor or Buyer is prevented from or delayed in its performance under this Order as a result of fire, floods, epidemics, an act of God or of the public enemy, an order of a government authority, or a labour dispute (in each case, an "Event of Force Majeure"), the time for performance of that Party shall be extended by the length of time it is so prevented or delayed, unless the Goods or Services to be furnished were obtainable from other sources in sufficient time to permit the Party in question to meet the required delivery schedule. If any Event of Force Majeure involving

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Vendor or Vendor's subcontractors (i) disrupts, or threatens to disrupt, Buyer's operations; or (ii) if the event of force majeure lasts for more than forty-five (45) days, Buyer may cancel this Order immediately by written notice, terminating all obligations and liabilities imposed on it by this Order except for the obligation to pay the reasonable costs and expenses incurred by Vendor in the course of its performance of this Order prior to such notice of cancellation, not to exceed the price to be paid by Buyer hereunder for such cancelled Goods and Services. No reimbursement shall be made in favour of the Vendor with respect to any of the Goods which are Vendor's standard stock. Vendor shall notify Buyer of the delay in writing as soon as reasonably possible (and in no event later than seventy-two (72) hours after the beginning of any Event of Force Majeure), in the absence of which Vendor waives its right for an excuse for such delay.

16. COMPLIANCE:

Vendor agrees that, in performing hereunder, Vendor will comply with all applicable laws including all applicable legislation, permits, rules, regulations, and orders including those governing equal and fair employment practices, environmental, safety, health, and vocational rehabilitation, personal information privacy, and affirmative action programs. Specifically, Vendor agrees, in performance under this Order, not to discriminate against any employee or applicant on the basis of race, sex, religion, sexual orientation, color, age, national origin, disability or veteran status. Vendor further agrees to acquire and maintain all required permits and certificates of approval and to comply with all dangerous goods legislation and codes governing its obligations as they relate to the Goods including, as applicable, the safety, handling, packaging, labeling, and transport of the Goods. In addition, Vendor hereby agrees to be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Order. Vendor agrees to defend, indemnify and hold Buyer's Group harmless from any and all liability, claims, fines, or penalties (including legal fees on a solicitor-client basis, costs, expenses, and settlements) which may arise out of Vendor's failure to comply with such requirements.

17. INTELLECTUAL PROPERTY:

- (a) All Intellectual Property of Buyer or its licensors shall be and remain the property of Buyer or its licensors, respectively. All Intellectual Property of Vendor that was not developed, created or generated while performing under this Order, shall be and remain the property of the Vendor.
- (b) Neither Vendor nor its Representatives shall release or publish any data or documents used in the performance of the Services without the prior written consent of Buyer. Vendor shall submit to Buyer copies of all inspections, tests, or approvals prepared by any authority, person, firm or corporation other than Buyer.
- (c) In addition, the parties agree that all work product and Intellectual Property developed, created or generated by Vendor or its Representatives during the course of, or in connection with, the performance of the Services, by the Vendor or its Representatives (collectively "Work Product") shall be the property of, and owned by, Buyer.
- (d) Vendor hereby assigns, and upon performance of each element of the Services automatically assigns, to Buyer all of Vendor's and its Representatives' right, title and interest, if any, in the Work Product. This assignment includes any and all rights to secure any Intellectual Property registrations (including any renewals or extensions thereto) with respect of the Work Product. Vendor hereby unconditionally and irrevocably waives, and shall cause its Representatives to unconditionally and irrevocably waive, all moral rights of Vendor or its Representatives that exist or may exist in any Work Product. Vendor shall, upon Buyer' request, obtain from each and every one of its Representatives any agreement or assignment required to confirm ownership rights in the Work Product in favour of Buyer, the licenses granted herein and the waiver of all moral rights therein.
- (e) If Vendor or its Representatives incorporate into any Work Product any pre-existing Intellectual Property owned by Vendor or its Representatives or in which Vendor or its

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- Representatives has an interest, Buyer is hereby granted and shall have, unless otherwise provided on the face of this Order, a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use, sell, license (at any level) and in any other way exploit such pre-existing Intellectual Property as part of or in connection with such Work Product, without obligation to account to, or obtain consent from, Vendor or its Representatives.
- (f) Vendor shall be liable to and in addition shall indemnify and save harmless Buyer's Group and users of said items from and against any and all proceedings, claims demands, losses, cost, damages and expenses whatsoever arising out of any actual or alleged infringement, misuse or misappropriation of Intellectual Property rights relating to any Goods or Services provided or performed by Vendor, or its Representatives hereunder or the use thereof by Buyer. Vendor, if requested to do so by Buyer, shall at its sole expense, promptly defend against any such claim or action, provided that Buyer shall at all times have the option to participate in any matter or litigation through counsel of its own selection at its own expense. Vendor shall not, without the consent of Buyer, conduct any defence, enter into any settlement or agree to any disposition that imposes an obligation on the Buyer that is not wholly discharged or dischargeable by the Vendor, or results in any an admission of liability by any member of the Buyer's Group.
 - (g) Vendor warrants and represents that it is the owner or licensee of any software or equipment used in the provision of Goods and Services hereunder and that it has the right to use and/or license the same. To the best of its knowledge, such software or equipment does not infringe upon any other software or equipment or violate any copyright, trademark, patent or trade secrets legislation. Vendor warrants that any equipment or software it provides to Buyer will be free of viruses or other harmful mechanisms and agrees that it will indemnify and hold harmless Buyer's Group and users of said items from any losses sustained by them, and from any claims brought against them by third parties as a result of the existence of viruses or any harmful mechanisms in the software.
 - (h) Where Vendor, at its discretion, uses the product of a particular process licensor or vendor or manufacturer, Vendor shall demand from such entities, for the protection of Buyer, indemnity agreements with terms at least as protective as those set out herein and in any case in a form approved by Buyer, for such entities' infringements, misuses or misappropriations of Intellectual Property rights.
 - (i) Vendor shall promptly give notice to Buyer if Vendor has or acquires knowledge of any Intellectual Property rights under which an action could reasonably be expected to be maintained because of the use or purchase by Buyer of Goods or Services to be provided or performed hereunder, or used, incorporated or to be used or incorporated by Vendor with or into such Goods or Services. Following such notification, Vendor will discontinue use of the contentious item in performing its obligations under this Order, and will not use the item again without Buyer's prior written approval.

The provisions of this Section shall survive the termination of this Order.

18. CONFIDENTIALITY:

Vendor agrees that during and after termination of this Order for any reason, Vendor and Vendor's Representatives (and provided always that such Persons are under obligations of confidentiality no less stringent than those set forth herein), shall not divulge, to any Person, Persons, or entity not having a need to know, any information gained as a result of or in connection with this Order and performance related to this Order, and Vendor shall ensure that all such information furnished or arising under this Order is treated in strict confidence and used only for the purposes for which such information was received, except: (i) to the extent disclosure by the Vendor or Vendor's Representative is required by law, judicial request, governmental order, decree or regulation or the rules of any public securities exchange upon which the shares of the Vendor or its Affiliate

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may be trading, provided that, where permissible, the Vendor or Vendor's Representative shall give the Buyer prompt notice of such pending disclosure to allow the Buyer the opportunity to dispute any such required disclosure; or (ii) with the prior written consent of the Buyer. Vendor shall take all reasonable precautions to maintain the confidentiality of such information, and to prevent any Person from making unauthorized use of such information. Immediately upon termination of this Order or at any time upon demand of Buyer, Vendor shall return or supply to Vendor any of such information in Vendor's possession or under its control and any analysis or derivative work relating to such information, and no copies of such information, analysis or derivative work shall be made or retained.

The provisions of this Section 18 shall not apply to information which: (a) is or becomes generally available to the public through no act or fault of the receiving Party; (b) is, prior to disclosure hereunder, already in the possession of the receiving Party; (c) is hereafter rightfully received from a third party who did not receive the same from the disclosing Party and who did not require that it be held in confidence, and who did not, to the receiving Party's knowledge, after due inquiry, acquire it, directly or indirectly, from a Party hereto other than the receiving Party or a third party owing an obligation of confidence to a Party hereto (other than the receiving Party) in respect of such information; or (d) is demonstrated by the Vendor to have been developed by the Vendor independently of any information gained as a result of or in connection with this Order and performance related to this Order.

Vendor shall not, in providing the Goods or Services, improperly use or disclose any confidential or proprietary information or trade secrets of any former or concurrent client of the Vendor or any other person or entity, nor shall Vendor undertake any activity in providing the Goods or Services which could reasonably result in the improper use of or infringe upon the Intellectual Property rights of any former or concurrent client or any other person or entity.

The provisions of this Section shall survive the termination of this Order.

19. ASSIGNMENT/SUBCONTRACTING:

- (a) Buyer may assign, pledge or make other disposition of rights, benefits or entitlements, or delegate any duty, obligation or liability it has under this Order at any time without the prior written consent of Vendor. Vendor shall not assign, pledge or make other disposition of rights, benefits or entitlements, or (except as provided in Section 19(b) below) delegate any duty, obligation or liability it has under this Order without first obtaining the prior written consent of the Buyer, which consent shall not be unreasonably withheld. No such approved assignment shall relieve Vendor of its obligations under this Order.

- (b) Should Vendor wish to subcontract any item of the Services, Vendor shall notify Buyer of such intent prior to engaging the subcontractor, and shall not engage any such subcontractor without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion. All Services performed for Vendor by a subcontractor shall be performed pursuant to an appropriate agreement between Vendor and the subcontractor that specifically binds the subcontractor to the applicable terms and conditions of this Order. Nothing contained in this Order shall create any contractual relation between any subcontractor and the Buyer. With respect to any portion of the Services so subcontracted, Vendor hereby guarantees the performance of this Order by each such subcontractor and hereby assumes full responsibility for any of their acts or omissions. Vendor shall remain fully liable to Buyer notwithstanding any such approved subcontract. Every subcontract, by its terms, shall provide that it may be cancelled in the event this Order is terminated or suspended.

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20. TERMINATION:

- (a) Notwithstanding anything in this Order to the contrary, Buyer may, at its sole option and without cause, and with immediate effect, upon the provision of written notice to the Vendor, terminate this Order as to all or any portion of the Goods not already shipped, or as to all or any portion of the Services not already performed (“**Termination Notice**”). Upon receipt of such Termination Notice, Vendor shall immediately cease performance under this Order and use its best efforts to mitigate any costs associated with such cessation. The liability of Buyer shall be limited to applicable costs and expenses incurred by Vendor prior to receipt of such Termination Notice, which shall in no event exceed the price of this Order. No reimbursement shall be made in favour of the Vendor with respect to any of the Goods which are Vendor’s standard stock.
- (b) Either Party may terminate this Order, with immediate effect, upon its provision of written notice to the other Party, if (i) such other Party is subject to proceedings in bankruptcy or insolvency, voluntarily or involuntarily; (ii) if a receiver is appointed with or without the other Party’s consent; (iii) if the other Party assigns its property to its creditors or performs any other act of bankruptcy; or (iv) if the other Party becomes insolvent and cannot pay its debts when they are due.

21. INDEMNITY AND LIABILITY:

- (a) Vendor will hold harmless, indemnify and defend Buyer, its Affiliates and their respective directors, shareholders, officers, agents, representatives and employees (collectively, “Buyer’s Group”) from and against all claims for:
 - (i) death or injury to persons or loss or damage to property (including the Parties to this Order, their employees, agents, representatives and subcontractors and third parties and any property of the foregoing);
 - (ii) breach of the warranties contained herein;
 - (iii) the violation of any applicable laws or governmental regulations; and
 - (iv) incidental penalties, damages, losses, and expenses (including legal fees on a solicitor-client basis, costs and expenses);

in any manner arising out of or resulting from, or related to, the negligence of the Vendor or its Representatives in the course of its performance of its obligations under this Order, whether those claims or demands are made by third parties or persons engaged or employed in connection with Vendor’s performance, or from Goods sold to or Services performed for Buyer, except to the extent that such claims are due to the gross negligence or willful misconduct of the Buyer.

- (b) Vendor shall promptly advise Buyer of any such claims, shall compensate Buyer for any damage done to its property arising out of or in connection with such claims, and agrees to pay Buyer’s legal fees on a solicitor-client basis, costs and expenses incidental to defense of such claims. Buyer shall have the option of participating in such defense, without relieving Vendor of any of its obligations hereunder.
- (c) **Notwithstanding anything to the contrary in this Order, in no event shall Buyer be liable to Vendor for any loss of profit, loss of production, cost of capital, interest, cost of delay, business interruption, plant shutdown or any indirect, special or consequential damages whether arising from fault, breach of contract, tort (including concurrent or sole and exclusive negligence), indemnity, strict liability or otherwise, even if Buyer has been advised of the possibility of such damages.**

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- (d) If the Vendor shall be comprised of more than one Person, the obligations of each such Person shall be joint and several.

The provisions of this Section shall survive the termination of this Order.

22. INSURANCE:

- (a) Prior to commencement and throughout the Vendor's performance of this Order, Vendor shall procure and maintain, and shall require each of its subcontractors and assigns, if any, to procure and maintain, at their cost, as applicable, policies in respect of the following insurances:

- (i) Commercial General Liability (CGL) including coverage for liability assumed by Vendor, Owner's and Contractor's Protective, Broad Form Property Damage, Products and Completed Operations, Severability of Interest and Cross Liability and when applicable to the operations on site as determined by Buyer, Sudden and Accidental Pollution Liability, in the amount of Five Million Dollars (\$5,000,000) per occurrence. This policy of insurance shall include Buyer as Additional Insured, and contain a waiver of subrogation in favour of Buyer.

This limit may be satisfied by Vendor through a combination of CGL and Umbrella or Excess Liability insurance. If such Commercial General Liability Insurance is written on a Claims Made form, then the policy must be kept in full force and effect for a period of two (2) years following termination of this Order.

- (ii) Automobile Liability Insurance - covering all vehicles owned or non-owned, operated and/or licensed in connection with the performance of this Order. The insurance to be provided shall include coverage for bodily injury, pollution liability passenger hazard if applicable, and property damage, in an amount of not less than Two Million Dollars (\$2,000,000) inclusive any one occurrence or accident. Non-owned automobile liability may be provided by the CGL or the Automobile Liability policy.

- (iii) Property Insurance –

“All Risk” insurance (including flood and earthquake) upon all property owned by the Vendor or for which the Vendor is legally liable, or which is installed by or on behalf of the Vendor as well as the Vendor's personal property, and construction machinery and equipment owned or rented and used by the Vendor for the performance of the work, in an amount of at least one hundred percent (100%) of the full replacement cost. This policy shall contain a waiver of subrogation in favour of Buyer. Contractor's Equipment may be included in the property policy or in a separate policy.

- (iv) Workers' Compensation and Employer's Liability Insurance –

- (1) Vendor shall procure Workers' Compensation insurance in accordance with the jurisdictional requirements in which the work is being performed. This policy shall contain a waiver of subrogation in favour of Buyer;

- (2) Employer's Liability Insurance for employees in the United States covering all persons employed by the Vendor including directors, partners and proprietors in the amount of One Million Dollars (\$1,000,000), in a form as required in the jurisdiction in which the work is being performed. This policy shall contain a waiver of subrogation in favour of Buyer;

- (3) Employer's Liability Insurance for employees in Canada covering all persons employed by Vendor who are not required to be covered by Workers' Compensation, and Contingent Employers Liability Insurance

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covering all Vendor employees where such employee is covered by Workers' Compensation. This insurance may be provided on the CGL policy, and shall contain a waiver of subrogation in favour of Buyer.

- (v) Design Professional Liability Insurance (if performing design professional services or as determined by Buyer), or if Vendor's errors or omissions in the course of performing the Services could result in pure financial loss to Buyer, Errors and Omissions Insurance, with minimum limits of Five Million Dollars (\$5,000,000) and a deductible no greater than One Million Dollars (\$1,000,000) to protect Vendor against claims which may arise from its negligence or errors and omissions in connection with this Order. Such Professional Liability Insurance or Errors or Omissions Insurance shall be kept in full force and effect by Vendor at all times during the work and for a period of four (4) years following the completion date.
 - (vi) Aircraft Liability covering owned or non-owned aircraft if such are used directly or indirectly in the performance of this Order and as determined by Buyer, including use of aviation premises, in an amount of not less than Five Million Dollars (\$5,000,000) for Aircraft Passenger Hazard. This policy shall include Buyer as Additional Insured and shall contain a waiver of subrogation in favour of Buyer.
 - (vii) Contractor's Pollution Liability Insurance (if performing contractors pollution services and as determined by Buyer) covering losses caused by pollution conditions (including sudden and accidental and non-sudden and accidental pollution conditions) arising from the Services provided by Vendor or any subcontractor of Vendor, in the amount of Five Million Dollars (\$5,000,000) per occurrence subject to an aggregate limit of not less than Ten Million Dollars (\$10,000,000). Coverage to apply, without limitation, to bodily injury, property damage, loss of use of damaged property, clean-up costs, and liability arising from the transportation of hazardous waste. This policy shall include Buyer as Additional Insured, and contain a waiver of subrogation in favour of Buyer. If such Contractor's Pollution Liability Insurance is written on a claims made form, then the policy must be kept in full force and effect for a period of two (2) years following termination of this Order.
 - (viii) Insurance Required by Law - any other insurance which is required by law in connection with this Order.
- (b) Vendor shall comply with Employment Insurance and Worker's Compensation legislation covering all persons employed by Vendor including directors, partners, and proprietors.
 - (c) Prior to commencement of Vendor's performance of this Order, Vendor shall provide Buyer with a certificate of insurance evidencing the aforementioned insurance policies.
 - (d) For all policies, there shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Vendor or its insurer(s) to Buyer. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Order and shall be grounds for immediate termination of this Order by Buyer. Vendor shall deliver to Buyer all documentation evidencing renewal of the particular insurance policy prior to expiration.
 - (e) The aforementioned insurances must be placed with insurers who have an A.M. Best rating of A- or better, and who are licensed to do business in the location in which the work is being performed.
 - (f) The requirement for Vendor to maintain insurance shall not displace any liability Vendor would otherwise have to Buyer.

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23. RECORDS AND AUDIT RIGHTS:

- (a) Vendor shall keep and preserve any Records during Vendor's performance of this Order and for a period of seven (7) years thereafter.
- (b) Vendor shall permit Buyer and the authorized representatives of Buyer to review any Records at all reasonable times during Vendor's performance of this Order and for a period of seven (7) years thereafter, for the purposes of:
 - (i) determining Vendor's compliance with the terms and conditions of this Order;
 - (ii) evaluation and verification of any invoices, Change Orders, payments or claims submitted by Vendor;
 - (iii) ensuring compliance with applicable requirements of government statutes, rules, regulations, and orders.
- (c) Buyer shall report in writing to Vendor any error or discrepancy in respect of Vendor's provision of Goods or Services, or the payment therefor, which is discovered pursuant to an audit. Upon receipt of such notice, Vendor shall:
 - (i) in the event of an error in provision of Goods or Services under this Order, commence to correct any such error within five (5) days of receipt of such notice;
 - (ii) in the event of any overpayment by Buyer in connection with any Goods or Services, reimburse Buyer such amount within thirty (30) days of receipt of such notice.

In the event of any shortfall in payment by Buyer, Buyer shall pay Vendor such amount within thirty (30) days of delivery of such notice.
- (d) Vendor shall cause each of its subcontractors to comply with the terms of this Section 23 and Vendor shall provide copies of all Records as set out above, as the same apply to the subcontractors, upon the request of Buyer.

The provisions of this Section shall survive the termination of this Order.

24. SHIPPING DOCUMENTS:

All cases, packages, bundles, etc., to be provided hereunder shall be marked with the Order number. The Vendor shall enclose with each box, package, or container, a shipping notice showing contents, together with the name of Vendor and Order number.

25. PACKING:

Unless otherwise provided herein, Vendor shall not charge an additional fee for boxing, packing, crating, or for cases, packages, pallets, or boxes.

26. SHIPPING:

If this Order specifies a method of shipping, carrier, or route, no deviation from those terms may be made without a duly executed Change Order. Vendor shall be responsible for any loss or damage resulting from an unauthorized deviation in method, carrier, or route. Buyer reserves the right to reject C.O.D. shipments.

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27. DOCUMENTS (FOREIGN SHIPPERS):

Unless otherwise provided in this Order, for customs purposes, Buyer requires the following documents for shipments originating outside Canada:

- (a) invoice (commercial, Canada Customs Invoice "CCI", or Proforma Invoice);
- (b) packing lists;
- (c) other documents to determine admissibility (such as NAFTA or other Free Trade Agreement Certificate, certificate of analysis, Material Safety Data Sheet, License/Permit).

The above referenced documents shall be sent to Buyer's designated customs broker as stated on the Order. In the event Buyer's designated customs broker is not specified in the Order, documents shall be sent by electronic mail, fax or air mail to the attention of the Buyer contact identified on the face of this Order.

28. CONDUCT OF VENDOR AND BUSINESS ETHICS COMPLIANCE:

- (a) Vendor, in performing its obligations under this Order, shall establish and maintain appropriate business standards, procedures and controls including those necessary to avoid any real or apparent impropriety with respect to, or adverse impact on Buyer's Group. Vendor shall comply with Buyer's policy, which discourages the giving or receiving of gifts, entertainment or favours of any kind. Such policy shall be provided by Buyer to Vendor on request.
- (b) Vendor shall review with Buyer, on a regular and frequent basis during performance of Vendor's obligations under this Order, such business standards, procedures and controls, including those related to the:
 - (i) activities of Vendor's Representatives and other third parties;
 - (ii) avoidance of any conflict of interest; and
 - (iii) giving of gifts, entertainment or favours of any kind.
- (c) Vendor represents that all financial settlements, reports and billings rendered to Buyer under this Order shall properly reflect the facts of all activities and transactions handled for Buyer's account and may be relied upon as being complete and accurate in any further recording or reporting made by Buyer for any purpose. Vendor shall require the same covenant from its subcontractors involved in furnishing the Goods or performing the Services.
- (d) Vendor shall notify Buyer in writing promptly upon discovery of any failure to comply with Sections 24(a) or 24(c).
- (e) Vendor represents and warrants that, except as otherwise disclosed and approved by Buyer, neither Vendor's nor any of Vendor's Affiliates' respective principals, directors, officers, or employees is an official, agent, employee, or representative of any national, provincial, or local government, political party, political candidate, or public international organization. Vendor shall promptly notify the Buyer if circumstances during the term of this Order render the preceding representation and warranty inaccurate with respect to any Vendor Representative. Upon such notification, the Buyer may impose such restrictions on the participation of such personnel in the performance of Vendor's obligations as the Buyer deems necessary to ensure compliance with this Subsection.

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- (f) In performance of its obligations under this Order, neither Vendor, nor any person acting on behalf of Vendor, shall:
- (i) authorize the giving of, offer, or give anything of value to a government official, a political party or party official, a political candidate, or an official of a public international organization for the purpose of influencing or inducing the recipient to obtain, retain, or direct business for or to any Person or for the purpose of securing any improper advantage; or
 - (ii) authorize the giving of, offer, or give anything of value to any other person with knowledge or firm belief that all or a portion of the payment or gift will be offered, given, or promised, directly or indirectly, to any of the persons described in Subsection 24(f)(i).
- (g) Notwithstanding any other provisions in this Order, if Vendor's performance under this Order is determined by the Buyer to be contrary to:
- (i) the *Canadian Corruption of Foreign Public Officials Act*;
 - (ii) the *United States Foreign Corrupt Practices Act*;
 - (iii) the principles described in the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, signed in Paris on December 15, 1999, or the *Convention's Commentaries*;
 - (iv) the laws of the country of incorporation of Vendor or Vendor's ultimate parent entity or the principal place of business of Vendor or Vendor's ultimate parent entity; or
 - (v) any other applicable laws with respect to the matters that are the subject of this Order;

then this Order shall be null and void from its inception, and in such event any compensation paid or accrued shall be forfeited by Vendor, and no future payments or accruals shall be made by the Buyer for Vendor's account.

29. PERSONAL INFORMATION PRIVACY:

"Personal Information" means any information about an identifiable individual, other than that person's business title or business contact information, when collected, used or disclosed for the purposes of enabling the individual to be contacted in relation to the individual's business responsibilities.

The Vendor covenants and agrees:

- (a) to only collect, use or disclose Personal Information for purposes that a reasonable person would consider are appropriate in the circumstances and to conduct its activities with respect to Personal Information in accordance with law;
- (b) where Personal Information is disclosed by Buyer to the Vendor:
 - (i) to use and disclose such Personal Information only for those purposes authorized in writing by Buyer;
 - (ii) to, at the request and option of Buyer, return or cause to be returned, or destroy or cause to be destroyed, such Personal Information;

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- (iii) to promptly advise Buyer of any request by an individual to access, correct or otherwise challenge the accuracy of such Personal Information, or any other communication received by the Vendor in respect of such Personal Information, including any withdrawal or variation of consent by an individual, and to work, in a timely manner, with Buyer to respond to such requests (which response shall be first approved by Buyer), including by providing access to, correcting, and ceasing to collect, use, or disclose, such Personal Information as requested by such individual;
 - (iv) to use all reasonable efforts to protect and safeguard such Personal Information including to protect such Personal Information from loss or theft, or unauthorized access, disclosure, copying, use, modification, disposal or destruction and to promptly notify Buyer of any such known or suspected loss, theft or unauthorized activity, and use all reasonable efforts to prevent any further loss, theft or unauthorized activity;
 - (v) to obtain prior consent of Buyer for any change by the Vendor to the country location of where such Personal Information may be collected, used, or disclosed; and
 - (vi) to only disclose such Personal Information to a third party where such third party has first agreed to be bound by covenants substantially similar to the provisions of this Section and with the prior consent of Buyer;
- (c) where Personal Information is disclosed by the Vendor to Buyer:
- (i) to only provide Personal Information to Buyer where the Vendor has the legal right to do so, having complied with all applicable law; and
 - (ii) to defend, indemnify and save Buyer harmless in respect of any costs, expenses (including legal fees on a solicitor-client basis), charges, losses, liabilities, claims or demands brought against Buyer as result of, or in any way related to, any such Personal Information, including Buyer's collection, use or disclosure thereof;
- (d) to immediately:
- (i) inform Buyer where the Vendor is unable or unwilling to comply with any of the foregoing provisions and at the request and option of Buyer return or cause to be returned, or destroy or cause to be destroyed, all of such Personal Information;
 - (ii) suspend all use or disclosure of the Personal Information disclosed by Buyer to the Vendor until such time as the Vendor is able and willing to comply with the foregoing provisions; and
- (e) to ensure and be responsible for the compliance of its employees, officers, directors, affiliates and third parties acting on its behalf consistent with this Section.

30. ENTIRE AGREEMENT/ CHANGES:

This Order contains the entire agreement between the parties. No oral statements or agreements, and no variations of the terms and conditions of this Order shall be binding on Buyer unless evidenced in a Change Order and executed by the parties.

31. CONTROLLING TERMS:

Except as otherwise stated in Section 13(g), the terms and conditions contained herein shall be

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controlling over any other terms or conditions which conflict with or change the obligations of either Party in any other documents, including invoices, provided however, that in the case of a conflict or inconsistency between these terms and conditions and the provisions contained on the face of this Order or on the face of any other agreement to which the parties have agreed to attach these terms and conditions, unless otherwise stated, these terms and conditions shall govern and prevail. To the extent that Vendor, without the prior written agreement of Buyer, attempts to modify the terms of this Order by submitting to Buyer (whether when supplying Goods or Services or at any time before or after such supply) any documents which purport to modify the terms of this Order, or add additional or different terms or conditions, Buyer does not agree to the inclusion of any such additional or different terms or conditions or any attempt by Vendor to vary the terms and conditions of this Order and all such proposed modifications, additional or different terms or conditions shall be deemed rejected and shall form no part of the agreement between Buyer and Vendor regarding the subject matter of this Order.

32. PROPER LAW and DISPUTE RESOLUTION:

Unless otherwise stated on the face of this Order, this Order shall for all purposes be construed and interpreted according to the laws of the Province of Alberta and the federal laws of Canada applicable therein, excluding reference to conflicts of laws principles. Neither the *Uniform Commercial Code*, nor the *United Nations Convention for the International Sale of Goods* shall apply to this Order. Any dispute relating to this Order shall be resolved by the courts of the Province of Alberta, Canada and those competent to hear appeals therefrom. In the interpretation of this contract or any part of it, no rule of construction shall apply to the disadvantage of any party on the basis that that party: (a) prepared this contract or any part of it; or (b) seeks to rely on this contract or any part of it.

33. UNAUTHORIZED USE OF NAME:

Vendor shall not, without Buyer's prior written consent:

- (a) make any statement or publish or release to any other person any photograph, advertisement, testimonial, letter of commendation or approval, or any other document or written matter that might imply Buyer's approval of the products, actions or performance of Vendor; or
- (b) make any use of Buyer's trademarks or logos.

34. SEVERABILITY:

In case any provision in this Order or the application thereof shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

35. NO WAIVER:

Buyer may at any time insist upon strict compliance with the terms and conditions of this Order, notwithstanding any previous custom, practice or course of dealing between the Parties to the contrary. The waiver by Buyer of any breach of any term, covenant, condition or agreement contained in this Order shall not be deemed to be a waiver of any subsequent breach of the same or a breach of any other term, covenant, condition or agreement.

36. SET OFF:

Buyer shall have the right to apply any monies due to Vendor hereunder toward the payment of any sums which Vendor or any affiliated entity may otherwise now or hereafter owe to Buyer or to any affiliated entity. In addition, in the event that Vendor defaults in any other contract between the Vendor or any of its Affiliates, and the Buyer or any of its Affiliates, Buyer shall have the right

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to withhold any unpaid sums due under all such contracts with Vendor or such Affiliates.

37. HEADINGS:

Headings are for convenience only and shall not affect the construction of this Order.

38. SURVIVAL:

The provisions of this Order which by their nature are intended to survive the termination, cancellation, completion or expiration of this Order, including any expressed limitations of or releases from liability and any warranties, indemnities or guarantees, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration and shall not merge.