

# TERMS AND CONDITIONS

Supplier is hereinafter referred to as "Supplier" and BMW of North America, LLC. hereinafter referred to as "Buyer".

**1. ACCEPTANCE:** Any of the following acts by Supplier shall constitute acceptance of this Order and all of its terms and conditions: signing and returning a copy of this Order; delivery of any of the goods Order; informing Buyer in any manner of commencement of performance; performance of all or any portion of the services ("Services") subject to this Order; work on the goods ("Goods") subject to this Order or shipment of such Goods, whichever occurs first; or returning Supplier's own form of acknowledgment. Any acceptance of this Order is limited to acceptance of the express terms contained on the face and back thereof. ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY SUPPLIER TO VARY IN ANY DEGREE ANY OF THE TERMS OF THIS ORDER IN SUPPLIER'S ACCEPTANCE IS HEREBY OBJECTED TO AND REJECTED. But such proposal shall not operate as a rejection of this Order unless such variances are in the terms of the description, quantity, price or delivery schedule of the services or Goods, but shall be deemed a material alteration thereof, and this Order shall be deemed accepted by Supplier without said additional or different terms. If this Order shall be deemed an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms contained on the face and back hereof. Additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this Order shall be deemed material and are objected to and rejected, but this Order shall not operate as a rejection of the Supplier's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the Services or Goods. Except as otherwise agreed in writing, all tangible or intangible property, without limitation, created or generated in the course of Supplier's performance under this Order, are the property of Buyer and should be so marked. **MODIFICATION OF AGREEMENT:** No modification of this Order or waiver of, or addition to, any of this Order's terms and conditions shall be binding upon Buyer, unless made in writing and signed by Buyer's authorized representative.

**2. PACKING AND SHIPPING:** All Goods are to be suitably prepared for shipment and must be packed and shipped in accordance with Buyer's specifications. No charge shall be made for packing except as stated otherwise in this Order. Material shipped in advance of releases or shipping dates specified in the Order, or in excess of the quantity ordered, shall be at Supplier's risk and may be returned to Supplier and all transportation charges both to and from the original destination shall be paid by Supplier. If the Goods are not shipped in accordance with the Buyer's directions and the instructions set out in this Order, Supplier shall pay or reimburse Buyer, as the case may be, for any excess cost resulting. Buyer's count will be accepted as final on all shipments not accompanied by a packing slip. Supplier shall bear all risks of loss or damage to items covered by this Order until delivery of items to the carrier, if transportation is F.O.B. Supplier's Point of Origin, or until acceptance by Buyer, if transportation is F.O.B. Buyer's Destination. When terms of delivery or conditions of contract are F.O.B., Buyer's Destination, all transportation charges (including terminal switching service) must be at the expense of Supplier in accordance with the tariffs of the transportation lines and railroad companies as lawfully in effect at the time the shipments of the Goods are moved or the Services are performed. No charge shall be made for packing, boxing or crating except as stated in this Order.

**3. FREIGHT RATES, CUSTOMS DUTIES, IMPORT TAXES, EXCISE TAXES, AND SALES TAXES:** Any reduction in Supplier's costs resulting from a reduction in the foregoing from those in force on the date of this Order is to be paid to Buyer by Supplier in reduction of the price of the Services or Goods ordered.

**4. DELIVERY:** Time is of the essence in Supplier's performance of this Order. Deliveries are to be made both in quantities and at times specified herein, in such quantities and at such times as are specified in Buyer's written instructions; provided, however, that Supplier shall not be liable for any default under this paragraph due to unforeseen circumstances beyond Supplier's control and without Supplier's fault or negligence. Supplier's default shall not be excused, however, unless written notice of any such contingency is given to Buyer within five (5) days of the occurrence thereof. If prices and/or delivery dates are not so stated, Supplier shall offer its lowest prices or best delivery dates and, upon written acceptance by Buyer, such prices and delivery dates shall be deemed to have the same force and effect as if initially specified on this Order. All prices shall include all applicable taxes, except sales and use taxes which are separately shown where applicable. If Supplier's deliveries fail to meet schedule, Buyer, without limiting its other rights or remedies, may either direct expedited routing and charge all excess costs incurred thereby to Supplier or terminate all or part of this Order in accordance with the Termination provision hereof. Any additional handling charges and other expenses (whether related or not) resulting from Supplier's failure to comply with Buyer's shipping instructions will be charged to the Supplier and payable on demand. Buyer is not obligated to accept partial deliveries or excess deliveries. Acceptance by buyer of all or part of the items shall not constitute a waiver by Buyer of its claims arising from delays in delivery.

**5. PAYMENT:** Unless otherwise agreed or otherwise stated on the face of this Order, net invoices (subject to applicable withholding taxes imposed by authorized government authorities, if any) shall be paid within 30 days after the date of invoice or 30 days after the date of performance of the Services or delivery of the Goods, as the case may be, whichever is later. Payment of invoice shall not constitute acceptance of the items ordered, and shall be subject to appropriate adjustment for failure of Supplier to meet the requirements of this Order.

**6. WARRANTY:** In addition to any other express of implied warrants, Supplier warrants that the items furnished pursuant to this Order, including, without limitation, any special tools, dies, toolings, patterns, machinery and equipment obtained at Buyer's expense for the performance of this Order and which are to be the property of the Buyer will be, (a) merchantable and free from defects in workmanship and materials, including, without limitation, such defects as could create a hazard to life or property, (b) free from defects in design, except to the extent that such items comply with any detailed design provided by Buyer, (c) fit and sufficient for the purpose intended or stated on the face of this Order, (d) in conformity with all the drawings, specifications, descriptions, samples and/or requirements set forth or incorporated herein, and (e) suitable for use under, be manufactured in

accordance with and, where required, be registered under, all applicable federal, state, and local laws and all orders and regulations promulgated hereunder including, without limitation, the Fair Labor Standards Act of 1938, as amended.

**7. HARMFUL CODE:** Supplier warrants that the items furnished pursuant to this Order will not contain, and the Supplier shall not introduce through data transmission via modem or any other medium, or in the performance of any service hereunder, any harmful code. In the event that the items contain, or the Supplier introduces harmful code, then, in addition to any other remedies available to the Buyer at law or equity, the Supplier shall at no cost to the Buyer: (a) restore to the fullest extent possible any and all data lost by the Buyer as a result such harmful code and (b) provide and install a replacement for the items without harmful code. Supplier shall indemnify and save Buyer harmless from any breach of this warranty, and no limitations of Buyer's remedies in Supplier's documents, if any, shall operate to reduce this indemnification. This warranty is in addition to all warranties contained under the law.

**8. DEFECTIVE GOODS:** If any of the Services or Goods fails to meet the warranties contained in Paragraph 6, Supplier, upon notice thereof from Buyer at any time within twelve (12) months after delivery to Buyer, shall promptly correct or replace the same at Supplier's expense. Supplier's warranty shall apply to corrected or replaced Services or Goods until twelve (12) months after the date of re-delivery to Buyer. If Supplier shall fail to correct or replace the defective or non-conforming Services or Goods, Buyer may cancel this Order as to all such Services or Goods and, in addition, may cancel the then remaining balance of this Order. After notice to Supplier, all such Services or Goods will be held at Supplier's risk. Buyer may, and at Supplier's direction, shall, return such Services or Goods to Supplier at Supplier's risk, and all transportation charges both to and from the original destination, shall be paid by Supplier. Any payment for such Services or Goods shall be refunded by Supplier, unless and to the extent that, Supplier promptly corrects or replaces the same at its expense.

**9. CHANGES:** Buyer may at any time, by written order, make changes in any of the following: (a) the drawings, designs, services and goods and/or the specifications applicable to the items covered by this Order, (b) the method of shipment and/or packaging and (c) the place of delivery. If any such change causes an increase or decrease in the cost of, or the time required, for the performance of any part of the effort under this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Order shall be modified in writing accordingly. Any claim hereunder shall be asserted within thirty (30) days of the notification of change by Buyer. The Supplier shall give the Buyer advance notice in writing of all specifications, design, part numbers and other identification changes, as well as major changes in process procedure or changes in the location of the manufacturing plant, made by the Supplier applying to the Services or Goods covered by this Order.

**10. MATERIAL, EQUIPMENT, TOOLS AND FACILITIES:** Unless otherwise agreed in writing, Supplier will supply at its own expense all material, equipment, tools, toolings, jigs, dies, patterns drawings, specifications, samples and facilities required to perform this Order. All material, equipment, tools, toolings, dies, patterns, drawings, specifications, samples and facilities (referred to in this Order as items) furnished to Supplier by Buyer or specifically paid for by Buyer, and any replacements thereof, or any materials affixed or attached thereto, shall be and remain the property of, with the right of possession in, the Buyer, and Supplier shall use the items only in the performance of work for Buyer and not otherwise. All such items while in Supplier's custody or control and while in the custody or control of Supplier's suppliers shall be held at Supplier's risk, shall be kept insured by Supplier at Supplier's expense against loss or damage in an amount equal to the cost of replacement and shall be subject to removal at Buyer's written request, in which event Supplier shall at its expense prepare such items for shipment and shall deliver to Buyer in the same condition as originally received by Supplier, reasonable wear and tear excepted, Supplier shall promptly notify Buyer of the location of such items if such items are located in any place other than at Supplier's plant. Except as otherwise provided in this Order, Supplier shall maintain accountability and properly control records of such items in accordance with sound industrial practice. Supplier shall, at its expense, maintain all such items in good condition and repair replacing any such items if necessary. Buyer does not warrant the accuracy of such items which it furnishes and all material, supplies and services to be produced or provided in conjunction with this Order must be in strict accordance with the specifications set forth in this Order. Upon completion or termination of this Order, all such items furnished or specifically paid for by Buyer shall be retained by Supplier at its expense, until disposition directions are received from Buyer. Buyer acquires title to and the right to possession of special tooling, the cost of which is fully or substantially amortized in the price of the Services or Goods purchased under this Order.

**11. INTELLECTUAL PROPERTY:** Except as otherwise agreed in writing, all tangible or intangible property created or generated in the course of Supplier's performance under this Order, including without limitation printed materials, artwork, designs, concepts, plates, audiovisual materials, software, negatives, drawings, mechanicals and photographs, are the property of Buyer and should be so marked. All results of work performed or items created or supplied hereunder by or at the direction of Supplier, constitute "works made for hire" specially commissioned by Buyer within the meaning of the U.S. Copyright Act or shall vest all right, title and interest for same in Buyer under U.S. patent law. Supplier acknowledges that Buyer is to be considered the author and or as may be applicable, owner of such works, and hereby irrevocably grants to Buyer, its successors and assigns, all rights, title and interest in such works worldwide.

**12. INTELLECTUAL PROPERTY INFRINGEMENT AND OTHER INDEMNITIES:** Supplier shall hold and save buyer, Buyer's affiliated corporations and their respective successors, assigns and customers, and users of products sold by Buyer containing the Services or Goods, harmless from loss and/or liability of any nature of kind, including court costs and attorney's fees, arising out, or existing because, of (a) any injury to person or property caused by any actual or alleged defect in the items covered by this Order or any act or omission of Supplier or Supplier's agents or employees with respect to such items, (b) any breach by Supplier or any third party acting on behalf of Supplier, of any representation, warranty or other obligation of Supplier hereunder, or (c) the infringement or alleged infringement of any patent, trademark, copyright, industrial design or process of manufacture for or on account of the manufacture, sale or use of any Services or Goods furnished under this Order, except in the case where strict compliance by Supplier with specifications prescribed by and originating with Buyer constitutes the sole basis of the infringement or alleged infringement. Supplier shall, if its representatives, employees or agents enter upon the premises owned or controlled by Buyer in the performance of Supplier's obligations hereunder, indemnify and save harmless Buyer, its representatives, employees, agents and invitees, from and against all liabilities, demands, claims, losses, costs, damages and expenses by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with or is occasioned by Supplier's actions, omissions or negligence.

Supplier agrees to defend, protect, and hold harmless Buyer, Buyer's parent and subsidiary corporations and their respective successors, assign, agents, dealers and customers against any and all claims for personal injury, property, consequential, punitive, or special damages resulting from improper, unsafe, or defective material, workmanship, design or Supplier's failure to comply with Paragraph 21, but only if Supplier is promptly notified in writing of any such claim and given the right to defend, settle or otherwise dispose of such claim through counsel of its own choosing. Buyer shall cooperate in the investigation and defense of any such claim or suit. Supplier's obligation shall not extend to, or include, claims resulting from the use of Services or Goods in combination with unsuitable Services or Goods not furnished under this Order, or from an unauthorized modification or alteration of the Services or Goods. Supplier agrees that any controversy between itself and Buyer concerning its obligations hereunder may be litigated in the same forum and concurrently with any lawsuit against Buyer by any third party to which such controversy may relate and Supplier agrees to voluntarily appear in such forum and submit to the jurisdiction thereof. Except as provided otherwise in this Paragraph, in no case shall Buyer indemnify or hold harmless Supplier against any and all claims for personal injury, property, consequential or special damages resulting from improper, unsafe or defective material, workmanship or design of the Services or Goods purchased from Supplier under this Order. Buyer shall notify Supplier, in writing, of any suit filed against it or its affiliated corporations, or their respective successors, assigns or customers, or users of products sold by Buyer containing the Services or Goods and, at Supplier's request, shall give Supplier control of the defense of such suit, insofar as Buyer has the authority to do so, and information and assistance for the same, all at Supplier's expense. Buyer and the party against whom suit is brought may be represented by their own counsel and actively participate in any such suit, if it so desires and the reasonable costs of such representation shall be paid by Supplier on demand.

**INDEPENDENT CONTRACTOR.** Supplier agrees that all efforts in the performance of this Order shall be done as an independent contractor and that the persons engaged in such performance shall not be considered employees of Buyer.

**13. PROPRIETARY INFORMATION, OWNERSHIP OF ITEMS PROVIDED, CONFIDENTIALITY AND ADVERTISING:** Supplier shall consider and treat all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than pursuant to and as required by this Order, unless Supplier obtains written permission from Buyer to do so. This paragraph shall apply to drawing specifications, or other documents prepared by Supplier for Buyer in connection with or relating to this Order. Buyer retains all rights in designs, drawings and other data furnished to Supplier by Buyer and no such designs, drawings and other data shall, without Buyer's specific written permission to Supplier, be reproduced or in any way used, in whole or in part, in connection with services or goods furnished to others. The term "data" includes, without limitation, drawings, reproductions, specifications, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, computations, regardless of the medium such data has been reduced to. Supplier shall not advertise or publish the fact that Buyer has contracted to purchase services or goods from Supplier, nor shall any information relating to this Order or the Services or Goods covered by this Order be disclosed without Buyer's prior written permission. In addition to the foregoing, Supplier shall take such further steps as Buyer may direct to ensure the protection of confidential information.

**14. DISCLOSURE TO BUYER:** Unless otherwise specifically agreed to in advance and in writing by Buyer, no commercial, financial or technical information disclosed in any manner or at any time by Supplier to Buyer shall be deemed secret or confidential, and Supplier shall have no rights against Buyer with respect thereto except such rights as may exist under applicable patent laws if any.

**15. QUALITY CONTROL AND INSPECTION:** All items and workmanship utilized in the performance of this Order will be subject to inspection and test by Buyer and its customers to the extent practicable at all times and places including the period of manufacture. If any such inspection or test is made on Supplier's premises, Supplier will provide, without additional charge, all reasonable facilities and assistance for sale and convenient inspections and tests. Inspection and approval at Supplier's plant does not preclude rejection of any defects subsequently discovered. Supplier will provide and maintain, without additional charge, a test and inspection system (which shall include quality control and reliability procedures) acceptable to Buyer covering the items and workmanship hereunder. If Buyer reasonably determines that any items covered by this Order are defective or otherwise not in conformity with the requirements of this Order, Buyer, by written notice to Supplier, may (a) rescind this Order as to such items, (b) accept such items at an agreed reduction in price, (c) retain and correct the defects or non-conforming aspects of such items or (d) reject such items and require the delivery of replacements. Supplier shall pay Buyer for expense incurred in correcting defective or non-conforming items. Rejected items will be returned to Supplier at Supplier's request and risk of loss, and Supplier shall pay Buyer for all packing, handling, sorting and transportation expenses incurred in connection with the rejected items. Delivery of replacements shall be accompanied by a written notice specifying that items are replacements. If Supplier fails to deliver required replacements in accordance with the delivery date specified by Buyer, such date to be reasonable in light of the circumstances and requirements involving the replacements, Buyer may replace or correct such items and charge Supplier with the expense incurred thereby or terminate this Order. No inspection, tests approval or acceptance of items ordered shall relieve Supplier from liability for (i) defects or other failure to meet the requirements of this Order (ii) latent defects, (iii) fraud, (iv) such gross mistakes as may amount to fraud, or (v) failure by Supplier to meet its warranty obligations hereunder. The rights granted to Buyer under this paragraph are in addition to any other rights or remedies provided elsewhere in this Order or by law. At Buyer's option, the Buyer may make a surveillance of the Supplier's inspection, quality control and reliability procedures as well as the data supporting same. Supplier shall comply with the latest revisions of Buyers Quality Control Specifications and Inspection Standards as supplied by Buyer to Supplier from time to time. Supplier will, if requested by Buyer, furnish a certificate indicating such compliance. Acceptance of the Services or Goods by Buyer shall not relieve Supplier from any of its obligations and warranties under this Order. In no event shall payment be deemed to constitute acceptance by or on behalf of Buyer.

**16. SETOFF:** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of or relating to this Order or any other transaction with Supplier.

**17. CANCELLATION ON ACCOUNT OF INSOLVENCY OR BANKRUPTCY:** Buyer may cancel this Order without liability in the event of insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against Supplier or if Supplier makes an assignment for the benefit of creditors or ceases to carry on business in the ordinary and normal course.

**18. TERMINATION:** (a) Buyer may terminate this Order in whole or in part at any time by written or telegraphic notice stating the extent and effective date of such termination. Upon receipt thereof, Supplier will to the extent directed by the Buyer: stop work under this Order and place no further orders hereunder; terminate work under outstanding orders which relate to work terminated by such notice; and protect property in Supplier's possession in which Buyer has or may acquire an interest. Supplier will submit to Buyer its claim, if any, as soon as possible, but in any event not later than thirty (30) days (unless Buyer agrees otherwise) from the effective date of termination. Supplier hereby gives Buyer the right to audit and inspect its books, records and other documents relating to its termination claim. Unless otherwise authorized in writing by Buyer, Supplier shall not make commitments for materials or fabricate in advance of the time necessary to permit shipment on delivery date. Buyer shall in no event be liable or responsible for any such costs or amounts incurred by Supplier in breach of this provision.

(b) If the parties cannot agree within a reasonable time upon the amount of fair compensation for such termination, Buyer will, in addition to making prompt payment of the contract price for the Services or Goods performed or delivered and accepted by Buyer prior to the effective date of termination, pay to Supplier the following amounts, without duplication: the contract price for Services performed or Goods completed in accordance with the provisions of this Order but not previously paid for; and the actual costs incurred by Supplier and properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this Order.

(c) Supplier may with Buyer's consent retain at an agreed price or sell at an approved price any completed Services, Goods, work in process or other physical inventory, the cost of which is allocable or apportionable to this Order under paragraph (B) (ii) above, and will credit or pay the amounts so agreed or received as Buyer directs, with appropriate adjustment for delivery cost savings. Supplier will, if directed by Buyer, transfer title to and make delivery of any Services, Goods, work in process or other physical inventory not so retained or sold. Buyer reserves the right to terminate this Order in whole or in part for default occasioned by failure on the part of Supplier to perform in accordance with the requirements of this Order. Such termination will be without liability except for completed Services performed or Goods delivered and accepted by Buyer. Supplier will be liable for damages caused by or resulting from its default.

**19. ASSIGNMENT:** Supplier will not assign this Order or any portion thereof or work hereunder or any interest therein except to the extent that Supplier may, upon the prior written consent of Buyer, make an assignment of monies due or which may become due, hereunder to a bank, trust company or other financing institution; provided, however, that any such assignment shall be subject to setoff, recoupment or any other lawful means of enforcing any present or future claim or claims which Buyer may have against Supplier, and provided, further, that any such assignment will not be made to more than a single assignee. In the event of any such assignment, Supplier will provide to Buyer, in addition to written notice of the assignment, a true copy of the instrument of assignment for Buyer's information only and, notwithstanding such receipt by Buyer, such notice of assignment and/or instrument of assignment shall not be deemed to vary or contradict the preceding provisions of this paragraph. Buyer shall have the right to assign this Order or its Interest therein to any affiliated person, firm, company or corporation or to any corporation succeeding to Buyer's business.

**20. INSURANCE:** Supplier shall maintain and carry General Liability Insurance including, but not limited to, public liability, property damage liability, product liability and contractual liability coverages, workman's compensation and employees liability insurance covering all employees engaged in the performance of this Order, in amounts satisfactory to and with companies approved by Buyer covering the Services or Goods subject to this Order. Supplier shall procure and maintain, at Supplier's sole expense, insurance with reputable and financially responsible insurance companies having an A.M. Best Company Rating of A- or better. Supplier shall furnish certificates of insurance indicating the foregoing coverage prior to commencing work under this Order. The receipt or review of such certificates or other proof of insurance coverage, if any, by Buyer shall not relieve Supplier from its insurance obligations hereunder or reduce or modify such insurance requirements. Such policies shall provide for cancellation only subsequent to 30 days prior written notice to Buyer.

**21. TAXES AND CUSTOMS EXPENSES:** Unless otherwise stated in this Order, prices include customs duties and expenses and all Federal, Provincial, State and local taxes applicable to the provision of any Services or the sale of any Goods.

**22. DELAY AND NOTICE:** If Supplier shall fail or refuse to proceed with this Order, or if Supplier shall fail to make delivery, or if Buyer shall fail to accept delivery according to the delivery schedule, the other party may cancel the remaining balance of this Order, unless the delay is an excusable delay as subsequently defined. An excusable delay shall not constitute a default hereunder. The term "excusable delay" as used in this paragraph means any delay in making or accepting which is due to causes beyond its control including, without being limited to, acts of God or of the public enemy, any preference, priority or allocation order issued by government or any other act of government, any act of the other party hereto, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a Supplier due to such causes. The term "excusable delay" shall not, however, mean or include financial difficulties. Whenever an actual or potential excusable delay is delaying or threatens to delay performance of this Order, each party shall immediately give notice thereof to the other party. Such notice shall include all relevant information with respect to such excusable delay. Buyer may delay delivery or acceptance under this Order occasioned by causes beyond its control, and Supplier shall hold the Services or Goods at the direction of Buyer and shall perform or deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Supplier's direct additional costs in holding the Services or Goods or delaying performance of this Order at Buyer's request. Supplier agrees to insert the substance of this paragraph in all purchase orders issued under this Order.

**23. COMPLIANCE WITH LAWS:** Supplier warrants compliance with all federal, provincial, state and local laws, including any foreign or international laws, ordinances, rules and regulations, and all amendments thereto, that are applicable to this Order and will furnish Buyer with certificates of such compliance where required thereunder or where requested by Buyer. It is also agreed that each invoice rendered to Buyer under this Order shall constitute written assurance by Supplier of the fact that Supplier has fully complied with the applicable laws, ordinances, rules and regulations. Supplier shall package and label the Goods and their containers, in particular those which constitute a health, poison, fire, explosion or other safety hazard, in accordance with all applicable federal, provincial, state, foreign or international and local packaging and labeling laws, ordinances, rules and regulations, and all amendments thereto, in effect in the place to which the Goods are shipped or as specified otherwise by Buyer.

**24. REMEDIES:** The remedies herein reserved shall be cumulative and not alternative and may be exercised separately or together, in any order or combination, and in addition to any other remedies provided for or allowed by law, at equity or otherwise.

**25. PRICE WARRANTY:** So long as not prohibited by applicable laws, ordinances, rules or regulations, Supplier warrants that the prices for the Services or Goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or substantially similar articles in the same or substantially similar quantities. In the event that Supplier reduces its price for such same or substantially similar services or goods during the term of this Order, Supplier agrees to reduce the prices hereof correspondingly. Supplier warrants that prices shown on this Order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, the cost of shipping, packaging, labeling, custom duties, taxes, storage, insurance, packaging, boxing and crating.

**26. NEW MATERIALS:** Unless expressly so stated on the face of this Order, none of the Services or Goods to be furnished by Supplier under this Order are, in any way, Government or commercial surplus, used, remanufactured, reconditioned or of such age or condition so as to impair the usefulness or safety thereof.

**27. WAIVER:** Any party's failure to insist on the performance by the other party of any term or condition hereof or failure to exercise any right or privilege reserved herein or any party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, privileges, breaches, or defaults, whether of the same or a similar type or not.

**28. GOVERNING LAW:** This Order shall be interpreted and enforced in accordance with the laws of the State of New Jersey, exclusive of the choice of the laws thereof.

**29. C-TPAT COMPLIANCE:** To the extent any goods covered by this Contract are to be imported into the United States of America, Supplier shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT) initiative. Upon request, Supplier shall certify in writing its compliance with the C-TPAT initiative.

**30. MISCELLANEOUS:** No course of dealing of Buyer nor any delay or omission of Buyer to exercise any right or remedy granted under this Order shall operate as a waiver of any rights of Buyer, and every right and remedy of Buyer provided herein shall be cumulative and concurrent, unless otherwise expressly provided herein, and shall be in addition to every other right or remedy provided for herein or now or hereafter existing in law or in equity or by statute or otherwise. If any provision of this Order is found to be illegal otherwise unenforceable by any court or other judicial or administrative body, such provision shall be limited to the extent necessary so that it will not render this Order unlawful or otherwise unenforceable and the remaining provisions of this Order shall remain in full force and effect. This Order contains the entire agreement of the parties. No claimed change, modification, rescission or waiver shall be binding on Buyer unless in writing and signed by a duly authorized representative of Buyer.

THIS ORDER EMBODIES THE ENTIRE AGREEMENT BETWEEN BUYER AND SUPPLIER AND NO UNDERSTANDING OR AGREEMENTS, VERBAL OR OTHERWISE, IN RELATION THERETO EXIST BETWEEN THEM, EXCEPT AS EXPRESSLY SET FORTH IN THIS ORDER. NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF A CONFLICT BETWEEN THIS ORDER AND A CONTRACT BETWEEN THE PARTIES FOR THE GOODS OR SERVICES CONTEMPLATED BY THIS ORDER, THE TERMS OF THE CONTRACT SHALL PREVAIL..