



A HOSHIZAKI Company

## STANDARD TERMS AND CONDITIONS OF PURCHASE

These Standard Terms and Conditions of Purchase are incorporated into, and made part of, the purchase order or work order (the "**Order**") issued by Lancer Corporation, a Texas corporation ("**Buyer**") to the seller of the goods and/or services that are the subject of the Order (the "**Supplier**"). The Order is an offer by Buyer to purchase the raw materials, goods, products or services set forth therein (individually "**Goods**" or "**Services**" and collectively the "**Goods and/or Services**"), subject solely to these Standard Terms and Conditions of Purchase (these "**Terms**"). The Order includes any specifications, drawings, plans, designs, engineering data and other documents provided to Supplier by Buyer to communicate the scope of work, quality, performance, warranty and other requirements for the Goods and/or Services. The Order together with these Terms shall be collectively referred to herein as the "**Agreement**."

### 1. Acceptance; Modifications

1.1 The Agreement states the complete and entire agreement between Buyer and Supplier regarding the purchase of the Goods and/or Services and supersedes any prior or contemporaneous communications, representations, promises, or negotiations (whether written or oral) of the same subject matter. **BUYER EXPRESSLY REJECTS ANY ADDITIONAL OR INCONSISTENT TERMS AND CONDITIONS PROPOSED BY THE SUPPLIER OR INCORPORATED BY SUPPLIER INTO ANY ORDER ACKNOWLEDGMENT OR OTHER DOCUMENT. ANY REFERENCE TO SUPPLIER'S QUOTATION, BID OR PROPOSAL, OR ANY SIMILAR DOCUMENT OR INSTRUMENT WILL NOT BE DEEMED ACCEPTANCE OF ANY TERM, CONDITION, OR INSTRUCTION CONTAINED IN OR INCORPORATED INTO ANY SUCH DOCUMENT BY BUYER.**

1.2 Supplier must issue an order acknowledgment to Buyer within one (1) business day of its receipt of the Order. The order acknowledgment must confirm the price, quantity, delivery dates, and shipping terms for the Goods and/or Services as stated in Buyer's Order without deviation, or the Order shall be deemed rejected and may not be fulfilled by Supplier. Supplier becomes bound to the Agreement when it issues a confirming order acknowledgment or otherwise delivers the Goods and/or Services to Buyer.

### 2. Delivery, Shipment and Packaging

2.1 TIME IS OF THE ESSENCE. Supplier shall deliver all Goods and/or Services in accordance with the quantities and date(s) specified on the Order. If Goods and/or Services are not received in the quantities and/or on the date specified, Buyer reserves the right, without liability, and in addition to other rights and remedies provided under this Agreement or applicable law, to take the following actions or any combination thereof, as applicable: (a) direct expedited shipping of the Goods (the difference in cost between the expedited shipping and standard shipping costs to be paid by Supplier), (b) terminate the Order as to all or

any specified Goods and/or Services not yet shipped or performed with Supplier and to refund any payments Buyer has already made, (c) deduct from the amounts due under the Order a late delivery penalty in the amount of two (2%) percent of the Order total per week until the Goods and/or Services are fully delivered, with a maximum penalty amount of twenty (20%) percent of the total charges; or (d) purchase substitute Goods and/or Services elsewhere with the difference in price to be charged to Supplier. Supplier shall be liable for excess transportation charges, delays or claims resulting from Supplier's deviation from Buyer's shipping instructions. Buyer will not be liable to pay for any Goods and/or Services delivered to Buyer which exceed the quantities specified in the Order. Buyer may, at its option, retain such Goods and/or Services and pay for them at the unit price or reject and return such Goods and/or Services at Supplier's expense. Supplier will not make any substitutions without Buyer's prior written approval.

2.2 All Goods will be packaged in accordance with Buyer's instructions or, if none are specified, in accordance with good commercial practice in a manner sufficient to ensure receipt in an undamaged condition. Unless otherwise directed, all Goods shipped in one day from and to a single location must be consolidated on one bill of lading or air waybill, as appropriate. All containers will be properly marked for identification per the instructions on the Order and contain a packing slip that details, at a minimum, the Buyer Order number(s), product part number, detailed product description, total number of boxes in the shipment, quantity of product shipped, and final delivery address. Items shipped in advance of Buyer's delivery schedule may be returned at Supplier's expense. Supplier will give notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. The Order number must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading and air waybills. All Goods, unless specifically exempted by the destination country's governing authorities, must be marked with the country of origin (manufacture) of the Goods in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits.

### 3. Shipping Terms, Title and Risk of Loss

Unless otherwise specified on the face of the Order, the point of delivery shall be Buyer's designated facility and Incoterms DAP (or DDP for international deliveries), as defined in Incoterms® 2020. Supplier shall bear all risk of loss, and title shall not pass to Buyer until Buyer's receipt and acceptance of the Goods at Buyer's facility.

### 4. Import/Customs, Compliance/Duties

Supplier assumes all responsibility and liability for any shipments covered by the Order requiring any government import clearance. If government authorities declare or otherwise impose countervailing duties, antidumping duties, or retaliatory duties on the Goods imported under the Order,

Buyer may offset the amount of any duties, fees, or freight incurred by Buyer due to Supplier's failure to comply with the terms and conditions of the Agreement against the cost of the Goods in addition to its other remedies set forth herein. All drawback of duties, and rights thereto, related to duties paid by Supplier or Buyer upon importation of the Goods or any materials or components that enter into the manufacture of the Goods will accrue to the exclusive benefit of Buyer. Such duty drawback rights include rights developed by substitution and duty drawback rights obtained from sub-tier suppliers related to the Goods. Supplier will provide Buyer with all documents, records, and other supporting information necessary to obtain any duty drawback and will reasonably cooperate with Buyer to obtain payment.

## 5. Proprietary Rights

5.1 Deliverables. Supplier acknowledges and agrees that any work product, reports, tools, templates, software, materials, items, inventions, improvements, and technical data created or developed by Supplier for Buyer as a result of the Services performed in connection with the Order ("**Deliverables**") shall be Buyer's sole and exclusive property and to the extent applicable, a work made for hire (as that term is used in Section 101 of the United States Copyright Act, 17 USC Section 101, or analogous provisions under other applicable laws), and that regardless of whether the Deliverables are works made for hire, all intellectual property rights in and to each Deliverable are hereby assigned to and vest in Buyer as of the date such Deliverables are created, conceived, reduced to practice, actually or constructively, or reduced to a tangible medium of expression, whichever occurs first. If, under applicable law, all intellectual property rights in the Deliverables do not automatically vest in Buyer, Supplier hereby irrevocably transfers, conveys and assigns in perpetuity to Buyer any and all present and future intellectual property rights that Supplier may have in or to the Deliverables. Supplier shall execute assignments or other documents reasonably necessary to vest in Buyer the entire right, title and interest in and to the Deliverables at no additional charge to Buyer.

5.2 Supplier Property. Notwithstanding anything to the contrary herein, Supplier shall own its prior developed works and proprietary products to the extent not created or developed pursuant to the Agreement, including the intellectual property rights appurtenant thereto (the "**Supplier Property**"). To the extent any Supplier Property is embedded in the Deliverables or required in order for Buyer to utilize the Deliverables or to receive the Services, Supplier hereby grants to Buyer a perpetual, non-exclusive, royalty-free, assignable right to use, copy, modify, make derivative works of, distribute, display, sublicense and fully exploit the Supplier Property and any embedded third-party materials in connection with its use of the Deliverables and receipt of the Services (which rights may be exercised by Buyer and/or its affiliates and/or by its and their subcontractors on Buyer's behalf). Unless set forth in the Order, the third-party materials and/or Supplier Property are provided to Buyer at no additional cost.

## 5.3 Buyer Property.

(a) Unless otherwise agreed by Buyer in writing, Buyer property furnished to or made available to Supplier in connection with the supply of the Goods or the performance of the Services (including but not limited to all tooling, tools, equipment and material and any replacement thereof), shall be and remain the sole property of Buyer. Such property, other than consumable materials, shall not be modified without the written consent of Buyer. Buyer's property shall be plainly marked or otherwise adequately identified by Supplier as property of Buyer and shall be safely stored separately and apart from Supplier's property. Such property while in Supplier's possession or control shall be kept in good condition, shall be held at Supplier's risk, and shall be kept insured against damage or loss by Supplier, at its expense, in an amount equal to the replacement cost, with loss payable to Buyer. To the extent such property is not material consumed in the performance of the Agreement, it shall be subject to inspection and removal by Buyer at any time and Buyer shall have a right of entry for such purposes without liability to Supplier. All technical information in the nature of designs, blueprints, specifications, engineering data, or product know-how, which is supplied to Supplier by or on behalf of Buyer to facilitate or assist in the performance of the Order, together with any improvement thereto made by Supplier in the course of the performance of its obligations under the Order will remain or vest with Buyer. All of the foregoing shall collectively be referred to as "**Buyer Property.**"

(b) Supplier will use Buyer Property exclusively for the performance of its obligations under the Order. Buyer Property is intended for use at the Supplier's site only or as otherwise authorized in writing by Buyer and, to the extent applicable, is subject to U.S. and other government export or re-export requirements. Supplier is responsible for any loss, damage, or destruction of Buyer Property and any loss, damage or destruction of any third-party property resulting from Supplier's negligent use of Buyer Property. Supplier will not include the cost of any insurance for Buyer Property in the prices charged under the Order. Supplier will return Buyer Property or dispose of it at Buyer's sole option in accordance with Buyer's written directions. Buyer makes no representations and disclaims all warranties (express or implied) with respect to the Buyer Property.

## 6. Price

Supplier will furnish all Goods and/or Services at the prices stated on the Order. Unless otherwise specified, the prices set forth in the Order include all applicable federal, state, and local taxes, customs, or duties. All such taxes shall be stated separately on Supplier's invoice. Buyer's payment of an invoice shall not constitute acceptance of the Goods and/or Services.

## 7. Invoicing, Payment and Audits

7.1 Supplier's invoice must include sufficient detail to document all charges for the Good and/or Services. The invoice will be accompanied (if applicable) by a signed bill of lading or express receipt evidencing shipment. Payment of an invoice does not constitute acceptance of the Goods

and/or Services and is subject to appropriate adjustment should Supplier fail to meet the requirements of the Order. Payment terms will be as stated on the Order. Buyer may at any time setoff any amount owed by Supplier or any of its affiliated companies (including by way of damages under the Agreement) to Buyer or any of its affiliated companies.

7.2 Supplier will maintain suitably detailed records as may be necessary to adequately reflect Supplier's compliance with the terms of the Agreement. Supplier will permit Buyer's auditors to have access at all reasonable times to Supplier's books and other pertinent records and Supplier will require each of its sub-tier suppliers to do likewise with respect to their books and records. Supplier and each sub-tier supplier will also furnish other information as may be reasonably requested by Buyer's representatives in auditing compliance. Buyer may perform audits up to three years following completion of the Order. Supplier will promptly correct any deficiencies discovered as a result of the audit.

## **8. Inspection/Acceptance**

8.1 All Goods, Services, and Deliverables may be inspected and tested by Buyer at all reasonable times and places in Buyer's discretion. If such inspection or testing is performed at Supplier's premises, Supplier will provide reasonable access and assistance required for such inspections and tests. All inspection records, including sub-tier supplier records, will be maintained and made available to Buyer during the performance of the Order, and for a period of three (3) years after the completion thereof. No inspection, tests, approval, design approval, or acceptance of Goods and/or Services relieves Supplier from responsibility for warranty or any latent defects, fraud, or negligence.

8.2 If any Goods, Services, or Deliverables provided under the Order are defective or otherwise not in conformity with the requirements of the Agreement, Buyer may, by written notice to Supplier: (i) rescind the Order for a full refund; (ii) accept the same at an equitable reduction in price as reasonably determined by Buyer in relation to the non-conformance; or (iii) reject the same and require the delivery of replacement Goods, Services, or Deliverables, as applicable, all at Supplier's entire cost, risk, and expense including transportation charges both ways. Delivery of replacements will be accompanied by a written notice specifying that such Goods, Services, or Deliverables are replacements provided at no additional charge. If Supplier fails to deliver required replacements promptly, Buyer may correct any retained defective or non-conforming Goods, Services, or Deliverables at Supplier's expense; replace the same with those from another supplier and charge the difference in cost to Supplier, including cover and any incidental costs; or terminate the Order for cause. Acceptance of any portion of the Goods, Services, or Deliverables shall not bind Buyer to accept future shipments, nor deprive it of the right to reject non-conforming Goods, Services, or Deliverables already accepted.

## **9. Warranty**

9.1 Goods. Supplier warrants to Buyer, its successors, assigns, customers and end users that, upon delivery, and

during the entire Warranty Period specified below, all Goods furnished (including all replacement or corrected Goods or components which Supplier furnishes pursuant to this warranty) will (a) be free from defects in material, workmanship, and design, even if the design has been approved by Buyer, (b) conform to applicable drawings, designs, quality control plans, specifications and samples and other descriptions furnished or specified by Buyer, as set forth in the Order, as the case may be, (c) be merchantable, (d) be fit for the intended purposes and operate as intended, (e) comply with all applicable laws, rules and regulations, (f) be free and clear of any and all liens, restrictions, reservations, security interests or encumbrances, and (g) not infringe any patent, published patent application, or other intellectual property rights of any third party existing as of the date of delivery, and not utilize misappropriated third party trade secret information. These warranties will survive any delivery, inspection, acceptance, or payment by Buyer for the entire Warranty Period. Claims for breach of warranty do not accrue until discovery of noncompliance, even if the Goods were previously inspected. The warranties provided are cumulative and in addition to any warranty provided by law or equity. Any applicable statute of limitations runs from the date of discovery.

9.2 Services. To the extent any Services and/or Deliverables are provided in connection with the Agreement, Supplier hereby represents and warrants: (a) that Supplier will perform such Services and produce such Deliverables with reasonable care and skill in accordance with generally recognized commercial practices and standards; (b) the Services and Deliverables will conform with all descriptions and specifications provided to Supplier by Buyer; (c) the Services and Deliverables will comply with all applicable laws and regulations; and (d) the Services and Deliverables will comply with any other such reasonable warranty requested of Supplier in connection with its provision of Services hereto.

9.3 Goods and/or Services that conform to the warranties in this Section 9 are called "**Conforming Products**" and Goods and/or Services that do not conform to such warranties are collectively called "**Non-Conforming Products**." If Conforming Products are not furnished within the time specified by Buyer then Buyer may, at its election and in addition to any other rights or remedies it may have hereunder, have the Non-Conforming Products repaired, replaced, or corrected at Supplier's expense. In addition to the costs of repairing, replacing, or correcting Non-Conforming Products, Supplier is responsible for all related reasonable out-of-pocket costs, expenses and damages incurred by Buyer. Supplier will promptly reimburse Buyer for all such costs upon receipt of Buyer's invoice. All remedies set forth in the Agreement are in addition to, and will in no way limit, any other rights and remedies that may be available to Buyer at law or in equity.

## **10. Recall**

Supplier is liable for all actual, out-of-pocket costs or damages associated with any voluntary or involuntary recall of defective or potentially defective Goods, Non-Conforming Products, or any products containing or

incorporating such Non-Conforming Products including, but not limited to, recalls by a customer, regulatory agency or in accordance with applicable laws or regulations. If neither Buyer nor any customer elects to conduct such recall, Supplier will be responsible for administering any recall or willfully participating in the administration of any recall conducted by Buyer or its customer in relation to Supplier's Goods as Buyer may so direct. Each party will cooperate in making available records and other information reasonably required by the other party in connection with any recall. This Section survives any termination or expiration of the Agreement.

#### 11. Buyer Changes and Order Cancellation

Buyer reserves the right at any time, by written or electronic notification, to direct changes in the drawings, designs, specifications, method of shipment or packing, quantity, or time or place of delivery of the Goods and/or Services. If any change causes an increase or decrease in the cost of, or the time required for performing the Order, an equitable adjustment will be made in the Order in writing or electronically. Any claim for adjustment under this provision may, at Buyer's option, be deemed to be waived unless it is asserted in writing (including the amount of the claim) and delivered to Buyer within 10 days from the date of the receipt by Supplier of the Buyer-directed change to the Order. Notwithstanding any disagreement between the parties regarding the impact of a change, Supplier will proceed diligently with its performance under the Agreement pending resolution of the disagreement. In addition, Buyer shall have the right to terminate the Order in whole or in part at any time and for any reason by written notice to Supplier. In such event, Supplier may claim only properly supported out-of-pocket costs plus a reasonable amount of demonstrable related charges for the work already performed, all determined in accordance with generally accepted accounting principles.

#### 12. Supplier Changes

Supplier shall make no changes to an accepted Order without Buyer's prior written consent. In addition, Supplier shall not make any changes to the design, materials, manufacturing location, sub-tier suppliers, or processes ("**Design and Process Changes**") specified in the Order or documents referenced therein, or if none, those in place at time of issuance of the Order, without the advance written approval of Buyer. Changes to a process include, but are not limited to, changes to the production process, changes in manufacturing equipment, or changes between a manual and automated process. This requirement applies whether or not there is a cost impact associated with the change, and regardless of the type of change, including product improvements.

If Supplier makes any unauthorized Design and Process Changes, unauthorized changes to the terms of the Order, or otherwise materially breaches the terms of the Agreement, in addition to Buyer's other rights and remedies under applicable law, Buyer reserves the right to terminate the Order and to cancel all or any part of the undelivered portion of the Order without any liability whatsoever, including any

claims by Supplier's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, services-in-process or raw materials that Supplier fabricates or procures in amounts exceeding those authorized in the Agreement, or general administrative burden charges from termination of the Agreement.

#### 13. Supplier Indemnification

13.1 General Indemnification. Supplier shall, at its expense, defend, indemnify and hold harmless Buyer and its subsidiaries, affiliates and agents, and its and their respective officers, directors, shareholders, employees, and customers (collectively "**Indemnitees**") from and against any and all losses, costs, expenses, damages, claims, demands or liabilities, including reasonable attorney and professional service fees and costs and the cost of settlement, compromise, judgment or verdict incurred by or demanded of an Indemnitee ("**Losses**") arising out of, resulting from or occurring in connection with (i) Supplier's negligence, willful misconduct, or breach of any representation, warranty, covenant or obligation under this Agreement, and (ii) any third party claims arising from or in relation to the Goods and/or Services supplied under the Agreement.

13.2 IP Indemnification. With respect to the Goods provided hereunder, Supplier will, at its expense, indemnify and hold harmless Indemnitees from and against any and all Losses arising out of, resulting from, or occurring in connection with any alleged: (a) patent, copyright or trademark infringement; (b) unlawful disclosure, use or misappropriation of a trade secret; or (c) violation of any other third party intellectual property right, and from expenses incurred by Indemnitees in defense of such suit, claim or proceeding. If any injunction or restraining order is issued in connection with Supplier's foregoing indemnification obligations, Supplier will, at its expense, obtain for Indemnitees either the right to continue to make, use, offer to sell, sell or import the Goods or replace or modify the Goods to make them non-infringing but with at least the same quality and functionality as the infringing Goods.

13.3 Indemnification Procedures. Buyer shall provide Supplier notice of a claim for indemnification under this Section 13 and Supplier agrees to promptly assume full responsibility for the defense of any and all suits, actions, or proceedings. Prior to service or filing of any significant pleading, motion, brief, discovery response or other document on behalf of Buyer, Supplier will provide such documents to Buyer for review and approval, which approval will not be unreasonably withheld. In no event will Supplier enter into any settlement or other dispositive agreements without Buyer's prior written consent, which will not be unreasonably withheld. The Indemnitees may participate in such defense or negotiations at their own expense to protect their interests.

#### 14. Insurance

Supplier will maintain insurance with a carrier rated a minimum AM Best rated "A", covering at least the following insurance: commercial general liability (including product liability, and for services to be performed, completed operations liability) with limits no less than one million dollars (\$1,000,000.00) for each occurrence and three million dollars (\$3,000,000.00) in the aggregate, workers' compensation in an amount no less than the applicable statutory minimum requirement and employer's liability in an amount of no less than \$1 million. Prior to the delivery of any Goods and/or Services, Supplier will provide to Buyer certificates of insurance evidencing that Supplier maintains the foregoing insurance. Except where prohibited by law, Supplier will require its insurers to waive all rights of recovery or subrogation against Buyer, its subsidiaries and affiliated companies, and its and their respective officers, directors, shareholders, employees and agents. The amount of insurance carried in compliance with the above requirements is not to be construed as either a limitation on or satisfaction of the indemnification obligations in the Agreement.

#### **15. Confidentiality and Intellectual Property.**

15.1 All information, including without limitation, specifications, samples, drawings, materials, know how, designs, processes and other technical, business or financial information, that: (a) has been or will be supplied to Supplier hereunder by or on behalf of Buyer; or (b) Supplier will design, develop or create in connection with the Order; both as to individual items and/or a combination of components and whether or not completed and all derivatives of (a) and (b) that Supplier has or will design, develop or create are deemed to be "**Confidential Information**" of Buyer. All of the foregoing Confidential Information is deemed to be work made for hire and made in the course of services rendered and all rights thereto belong exclusively to Buyer, with Buyer having the sole right to obtain, hold and renew, in its own name or for its own benefit, patents, copyrights, registrations or other appropriate protection. To the extent that exclusive title or ownership rights in such Confidential Information may not originally vest in Buyer as contemplated hereunder, Supplier irrevocably assigns transfers and conveys to Buyer all right, title and interest therein.

15.2 Buyer's Confidential Information will remain the sole property of Buyer, may not be used by Supplier for any purpose other than for performing the Order, may not be disclosed to any third party, and will be returned to Buyer upon the earlier of Buyer's written request or completion of the Order. If, with Buyer's prior written approval, Supplier furnishes Confidential Information to a sub-tier supplier, Supplier will bind the sub-tier supplier to confidentiality requirements substantially identical to this provision and Supplier will remain responsible to Buyer for any breach of this provision by its sub-tier suppliers. No disclosure, description or other communication of any sort will be made by Supplier to any third person of the fact of Buyer's purchase of Goods hereunder, the terms of the Order, the substance of any discussions or negotiations concerning the Order, or either party's performance under the Order.

#### **16. Miscellaneous**

16.1 Assignment and Subcontracting. Supplier will not assign its rights or obligations under the Order in whole or part without the prior written approval of Buyer. Any assignment without Buyer's written approval will be voidable at the option of Buyer.

16.2 Independent Contractor. The parties agree that Supplier will perform its obligations under the Order as an independent contractor. Supplier retains the right to exercise full control of, supervision over, and responsibility for, Supplier's performance under the Agreement, including the employment, direction, compensation, and discharge of Supplier's personnel, as well as compliance with workers' compensation, unemployment, disability insurance, social security, withholding and all other laws, rules, codes, regulations, and ordinances governing such matters.

16.3 Compliance with Laws. Supplier agrees to comply with all applicable laws and regulations, including, without limitation, those relating: (i) to anti-bribery and anti-corruption, including, but not limited to, the United States Foreign Corrupt Practices Act; (ii) child labor, forced labor and human trafficking; and (ii) the import/export of any Goods provided hereunder. In addition, Supplier agrees to comply with Buyer's standard Supplier Code of Conduct, a copy of which may be found at <http://www.hoshizaki.com/Docs/Hoshizaki-Supplier-Code-of-Conduct.pdf>.

16.4 Applicable Law and Forum. The construction, interpretation and performance under the Agreement and all transactions thereunder shall be governed by the laws of the State of Texas, U.S.A. without regard to or application of its principles or laws regarding conflicts of laws and excluding the United Nations Convention on the International Sale of Goods of 1980 (and any amendments or successors thereto). Any dispute not resolved by the parties shall be subject to the exclusive jurisdiction of the federal or state courts located in San Antonio, Texas, U.S.A., and the parties submit to the personal jurisdiction of such courts.

16.5 Notices. All notices relating to this Agreement ("**Notices**") must be in writing. Notices to the parties will be sent to their respective addresses appearing on the Order. Any Notice will be deemed given on the date delivered if delivered personally; the next business day if sent by recognized overnight courier; three business days after being mailed certified first-class mail, postage prepaid; or on the date of transmission if transmitted by email, provided that any notice which alleges breach of contract or any other legal claim or action must be sent to Buyer by overnight courier, Lancer Corporation, 6655 Lancer Blvd., San Antonio, TX 78219, Attn: General Counsel, in addition to email transmission or other form of notice.

16.6 Publicity. Any news release, public announcement, advertisement, publicity, or any other disclosure concerning the Agreement to any third party (except as may be necessary to comply with other

obligations stated in the Order) requires prior written approval of Buyer.

16.7 Headings and Captions. Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of these Terms.

16.8 Waiver; Severability. The failure of either party to enforce at any time any of the provisions of the Agreement will not be construed to be a continuing waiver of any provisions under the Agreement, nor will any such failure prejudice the right of such party to take any action in the future to enforce any provisions of the Agreement. If any provision of the Agreement is held to be illegal, invalid, or unenforceable by applicable law, that provision will be severed from the Agreement; the remaining provisions will remain in full force and effect; and a similar legal, valid and enforceable provision will be substituted in lieu of the severed provision.

16.9 Supply Chain Security. If applicable, Supplier will implement the Business Partner Criteria of any Supply Chain Security Program that the country of import for the Goods may adopt such as the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) or the Canadian Partners in Protection (PIP) Program.

16.10 Authorization to Perform. Each party represents that it is duly organized and authorized to enter into the Agreement and to perform its obligations; and that it is not a party to any agreement with a third party which would restrict its ability to perform its obligations under the Agreement. Supplier will promptly notify Buyer of any action taken by or against it that could result in a breach of Supplier's obligations or representations under the Agreement. Supplier represents and warrants that there is nothing that will directly, indirectly, actually or potentially restrict or prevent Supplier in any way from fulfilling all its obligations, duties, and services under the Agreement, including without limitation any exclusivity or non-compete arrangement.

16.11 Survival. All provisions of the Agreement, which by their nature should apply beyond the Term will remain in force after any termination or expiration of the Agreement.

16.12 Non-Exclusivity. Nothing in the Agreement will restrict Buyer's right to provide or perform on its own behalf, or to contract with any third party to provide or perform, products similar or related to Goods provided by Supplier pursuant to the Order. Furthermore, unless otherwise specified in the Order, there is no requirement that any minimum level of business or fees be provided to Supplier by Buyer.

16.13 Order of Precedence. In the event of any conflict between these Terms and the Order, the Order shall control. These Terms shall otherwise control over any conflicting terms in any other contract documents forming part of the Agreement. The Agreement may not be modified by Supplier except in a writing signed by an authorized representative of Buyer. Notwithstanding the foregoing, if the parties are subject to a valid, written agreement regarding

the Goods and/or Services that is the subject of the Order (a "**Signed Agreement**"), the terms of the Signed Agreement will supersede and take the place of these Terms.