



Revised Nov. 2025 [4.2]

**SAUER COMPRESSORS USA, INC.**  
**GENERAL COMMERCIAL PURCHASE ORDER TERMS AND CONDITIONS**  
**(For Purchase Orders of Goods and Resale)**

- 1. Purchase Order.** Sauer Compressors USA (“Buyer”) and Seller (“Seller” and collectively with the Buyer, the “Parties”) hereby agree to the following set of Standard Purchase Order Terms and Conditions (the “Terms and Conditions”) for the sale of any goods and/or related services that are part of the goods, unless or until specifically modified in writing signed by both Parties referencing an amendment to these Terms and Conditions, notwithstanding references in any documents from Seller to other terms and/or conditions that conflict with these Terms and Conditions. If custom or private label goods are ordered, the Parties agree to the Additional Terms, attached hereto as Exhibit A. Seller understands that Buyer may resell such goods to retailers or affiliates or their respective customers or liquidators or others for resale via catalogs, mail order, telephone order, online order, outlet stores, wholesale distribution, or other methods of resale. These Terms and Conditions apply to any repaired or replacement goods provided by Seller under the PO (as defined below). Buyer is not obligated to any minimum purchase or future purchase obligations under the PO.
- 2. Order Acceptance.** The Purchase Order (“PO”) from Buyer accompanying or incorporating these Terms and Conditions is an offer to purchase the goods described therein from Seller, not a confirmation or acceptance of any offer to sell; and acceptance of this offer is limited to the terms of that PO, accompanying or referenced documentation and these Terms and Conditions. Upon acceptance, whether expressly, by shipment or provision of goods purporting to conform to that description, or other conduct that recognizes the existence of a contract for such goods, the resulting contract will include the following, if any, and as each may be amended from time to time: the PO transmittal letter, the PO, the accompanying PO Requirements, the Product Specification(s), the Supplier Compliance Manual (a/k/a Supplier Manual) and these Terms and Conditions (collectively, “Contract Documents”). Buyer hereby objects to and rejects any terms proposed in any of Seller's quotation, order acknowledgement, invoice or other forms or correspondence that add to, vary from, or conflict with the terms of the Contract Documents. If the PO has been issued by Buyer in response to an offer and is construed as confirmation or acceptance of such offer, such confirmation or acceptance is subject to the express condition that Seller will assent to the additional and different terms of the Contract Documents as the entire agreement between Buyer and Seller with respect to the subject matter hereof. The offer made in the PO may be terminated by Buyer at any time upon written notice to Seller before Seller's acceptance of that offer.
- 3. Complete Price Warranty.** The price will be as specified in the PO, or if no price is specified, at the lowest price quoted to Buyer from Seller (the “Price”). Buyer will have the benefit of any price reduction between the order date and date of shipment. Seller warrants that Price shown on the PO will be complete, and no additional charges of any type will be added without Buyer's written consent. Such specifically listed or otherwise incorporated charges which required Buyer's written consent include shipping, packaging, labeling, customs duties, taxes, storage, insurance, boxing, crating and similar charges.



4. **Payment.** will be made per the terms on the face of the PO, except for any amounts disputed by Buyer in good faith. Discount period, if any, will begin on the later of the date of receipt of complying goods at destination or Buyer's receipt of Seller's invoice, unless expressly stated otherwise in the PO. In the absence of specific payment terms in the PO, invoices will be paid on a net 30 days basis from receipt of a proper invoice with required information, except for any amounts disputed by Buyer in good faith. Seller is responsible for accurately invoicing and correcting any errors in prior invoices sent to Buyer for the goods provided hereunder, which obligations survive any payment for incorrect invoices. Seller may not rely on payment as evidence of accuracy and Seller agrees to return any overpayment of monies paid based on inaccurate invoices. All payments hereunder must be in U.S. dollars and made by check, credit card or wire transfer. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 4. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the PO notwithstanding any such dispute.

5. **Delivery, Shipping and Risk of Loss.** Seller shall deliver the goods in the quantities and on the date(s) specified in the PO or as otherwise agreed in writing by the Parties. Time is of the essence under the PO. Seller will deliver the specific quantity ordered by Buyer, and Seller will notify Buyer before shipping any partial shipments, if allowed. Unless otherwise agreed in the PO, all goods and other materials to be provided by Seller per the PO will be delivered to Buyer F.O.B. Buyer's loading dock or, for goods and materials shipped from outside of the U.S., DDP Buyer's loading dock (as defined in Incoterms 2020), regardless of who pays for freight even for Buyer-preferred carriers. Seller assumes all risk of loss and damage until delivery to Buyer at the destination designated in the PO.

6. **Packaging.** All goods shall be packed for shipment according to the Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the goods are delivered in undamaged conditions. The seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

7. **Inspection/Testing/Nonconforming goods.** Buyer has the right to inspect and test the goods at Buyer's facility and to reject any nonconforming goods (including defective or excess). Payment by Buyer will not constitute a final acceptance of the goods, or as a waiver or limitation of any of Buyer's rights as set forth herein. Nonconforming goods may be returned to Seller at Seller's expense for a full refund, and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking, and reshipping such goods. No inspection, acceptance or payment by Buyer relieves Seller from its responsibilities for defects, testing, inspection, quality control, or failure to meet the requirements of the PO.

8. **Penalties for Non-Compliance**

- A. Late Deliveries- Deliveries that arrive after the agreed-upon delivery date will incur a standard deduction penalty of 2% of the invoice value per day, capped at



20%.<sup>1</sup> Example: If a shipment worth \$10,000 is three days late, the penalty will be \$600 (2% - \$10,000 x 3) = \$9,400.

- B. Improper Labeling- Shipments with incorrect or missing labels will incur a deduction penalty of \$50 per mislabeled package. Example: A shipment with 10 mislabeled packages will result in a \$500 deduction penalty.
- C. Incomplete Documentation- Missing or incorrect documentation will incur a deduction penalty of \$100 per shipment, with potential suspension for repeated offenses. Example: A shipment missing a packing list and an invoice will be penalized for \$100.
- D. Inventory Shortages- Suppliers failing to maintain agreed-upon on hand inventory levels will be charged a penalty equal to the revenue lost due to stockouts. Example: If a stockout causes \$5,000 in lost sales, the supplier will be penalized for \$5,000.
- E. Failure to Notify of Issues- Failure to communicate delays, shortages, or issues will result in a deduction penalty of \$500 per incident. Example: If a supplier fails to inform Sauer-USA about a production delay, they will incur a \$500 deduction penalty.

8. **Termination for Cause.** Buyer may terminate any contract resulting from the PO or the Contract Documents, or any part thereof, for cause if Seller defaults or fails to comply with any of the terms and conditions of the PO or the Contract Documents or is a party in any bankruptcy, liquidation, or insolvency proceeding. Late deliveries, deliveries of goods that are defective or do not conform to the PO or Contract Documents, or failure to provide Buyer, upon request, with reasonable assurance of future performance will allow Buyer to terminate the PO and any resulting contract for cause without Buyer liability.

9. **Termination for Convenience.** Buyer also has the right to terminate any contract resulting from the PO, or any part thereof, without cause at any time prior to delivery with written notice to Seller; and Buyer's liability for such termination will be limited to Seller's out-of-pocket cost for work and materials applicable solely to work that has been expended as of the time that notice of termination is received by Seller, reduced by the fair market resale value of such work-in-process.

10. **Stop work order.**

A. Buyer's Procurement Representative may, by written order, suspend all or part of the work to be performed under this Contract for a period not to exceed ninety (90) days. Within such period of any suspension of work, Buyer shall: (i) cancel the suspension of work order; (ii) terminate this Contract in accordance with the "Termination for Convenience" clause of this Contract; (iii) terminate this Contract in accordance with the "Termination for Default" clause of this Contract if grounds for default exist; or (iv) extend the stop work period.

B. Seller shall resume work whenever a suspension is canceled, or the period of the order or any extension thereof expires. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if: (i) this Contract is not canceled or terminated; (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Contract delivery schedule; and (iii) Seller submits a claim for adjustment within twenty (20) days after the suspension is canceled or expires.



11. **Warranties:** seller expressly warrants that all goods furnished per any contract resulting from the po will: conform to all specifications and applicable laws, regulations, and standards; will be new, not used, refurbished or reconstituted; will be free from defects in design, material and workmanship; and that seller has good title and authority to transfer title to the goods covered by the po. Seller warrants that all such goods, and the distribution, sale and use of such goods, will not infringe upon any patent, trademark, copyright or other intellectual property right in any relevant jurisdiction. Seller warrants that all such goods will conform to any statements made on the containers, labels or advertisements for such goods, and that any goods will be adequately contained, packaged, marked, and labeled. Seller warrants that all goods furnished will be merchantable and will be safe and appropriate for the purpose for which goods of that kind are normally used. If seller knows or has reason to know the particular purpose for which buyer intends to use the goods, seller warrants that such goods will be fit for such particular purpose. Seller warrants that goods furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods furnished will not affect seller's obligation under this warranty, and such warranties will survive inspection, test, acceptance, and use. Seller agrees to replace or correct defects of any goods not conforming to the foregoing warranties promptly, without expense to buyer, when notified of such nonconformity by buyer, provided buyer elects to provide seller with the opportunity to do so. In the event of failure of seller to correct defects in or replace nonconforming goods promptly, buyer, after reasonable notice to seller, may make such corrections or replace such goods and charge seller for the cost incurred by buyer in doing so. Except as expressly set forth herein, seller may not limit in any manner the type or amount of damages to which buyer is entitled for breach by seller of these warranties. The warranties herein extend to buyer, retailers, and retailers' customers. The warranties set forth in these terms and conditions, and any remedies specified in connection therewith, are consistent with and in addition to those provided by the uniform commercial code.

12. **Changes.** Buyer has the right at any time to make changes in drawings, designs, specifications, materials, packaging, time or place of delivery, or method of transportation by written notice to Seller, and Seller agrees to comply with such changes if practical. If any such changes cause a material increase or decrease in the cost or the time for the performance, the Parties will make an equitable adjustment and modify the agreement in writing accordingly. Subject to such agreed adjustments, Seller will implement such changes or other modifications.

13. **Buyer's Design or Specification Input.** Buyer's decision to place the PO with Seller was based on Seller's representation that it has expertise in the sale, design and manufacture of the same kind of goods as the goods described therein. Buyer, retailer or affiliate may provide input concerning the design or specifications for the goods covered by the PO, independently of or in collaboration with Buyer or any supplier, by reviewing or approving Seller's work-product, submitting its own work-product to Seller, inspecting or testing processes, prototypes or samples of such goods (individually and collectively, "Buyer Input"). In designing the goods covered by the PO and developing specifications therefor, Seller will not rely on any Buyer Input without independently validating all elements thereof to Seller's satisfaction. Unless otherwise stated in an amendment signed by both Parties, Seller assumes sole and absolute responsibility for the design and specifications of the



goods covered by the PO, notwithstanding any Buyer Input; and no Buyer Input affects Seller's other responsibilities with respect to such goods, whether arising out of warranty, contract, negligence or other tort or strict liability principles.

14. **Rights to Goods and Marketing.** Buyer reserves the right, for itself and retailers and affiliates, to advertise, offer the goods for sale, and sell such goods at any U.S. retail facility and/or by any medium, including electronic, catalog, or other non-traditional means. With respect to the goods, Seller grants to Buyer, retailers and affiliates, their customers and liquidators the right to use the trademarks for the goods and to photograph the goods for sale in catalogs and online. Any advertisements by the Parties for the goods will not contain any material that is indecent, misleading, deceptive, fraudulent, libelous, obscene, pornographic, or hate speech.

15. **Force Majeure.** Neither Party will be liable for failure to perform any of its respective obligations hereunder if such failure is caused by an event outside its reasonable control, including an act of God, insurrection, war, natural disaster or act of a third party not under the control of the failing party. The aggrieved party may terminate the PO and any resulting contract or portion thereof without penalties or fees if the other party's inability to perform continues for more than thirty (30) days

16. **Indemnification.** Seller agrees to and will defend (by counsel acceptable to buyer), indemnify and hold harmless buyer, retailers, affiliates and their related and affiliated companies, and all their respective officers, directors, employees, successors, assigns, agents, customers and users of its goods (collectively, "buyer's beneficiaries"), against all damages, losses, costs, claims, suits, actions, or liabilities and expenses (including reasonable attorneys' fees and expenses of litigation) arising out of or resulting in any way from: (1) any defect in the goods purchased from seller; (2) any breach by seller of the po or contract documents; (3) any act or omission of seller, its agents, employees, or subcontractors; (4) any violation of, or failure to comply with, any applicable law, code, regulation or standard by: (a) seller, its agents, employees, or subcontractors; or (b) the goods sold by seller to buyer; (5) any unfair competition by seller, its agents, employees, or subcontractors in connection with the use, possession, sale, marketing or delivery of any goods provided by seller to buyer; (6) each and every recall of any good, whether voluntary or involuntary and any resulting loss to buyer, its affiliates, retailers, or their customers; (7) any other act or omission as provided in the contract documents; and (8) any actual or alleged direct or contributory infringement of, or inducement to infringe, of any united states or foreign patent, trademark, copyright or other intellectual property right by reason of the manufacture, use or sale of the goods ordered, including infringement arising out of actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from seller's actions or those for which seller is responsible, including any judgment, settlement and/or attorneys' fees and costs for enforcing this provision. This indemnification is in addition to the warranty obligations of seller. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the attorneys' fees and costs of such representation will be paid by seller.

17. **Insurance.** During the term of the Contract Documents and for a period of five (5) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and



effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than One Million Dollars (\$1,000,000) with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms and Conditions. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Buyer Beneficiaries.

**18. Recalls.** Seller will promptly advise Buyer and retailers and affiliates to stop selling goods subject to a mandatory recall ordered by any governmental agency or a publicly-announced voluntary recall by any supplier of the goods. Seller will provide links to service recalls and safety alerts for U.S. and Canadian consumers. The Parties acknowledge that voluntary or mandatory recalls are costly for online, catalog and mail order sales where customers can be identified after the purchase of a recalled product, and where credit has been provided to customers. In the event of recall of a product (whether voluntary or involuntary), in addition to its indemnification obligations as provided under Section 15, at Buyer's sole option and discretion, Seller will: (a) at Seller's expense, subject to Buyer's request and approval, (i) prepare and send, or reimburse Buyer and retailers and affiliates for preparing and sending, adequate written notification of the recall to Buyer's and retailers' and affiliates' customers who purchased such product and/or (ii) provide any other type of notification that may be required by any applicable governmental authority and/or be reasonably required by Buyer, retailers or affiliates to provide adequate notice to its customers, and (iii) arrange (in a manner and process acceptable to Buyer, retailers or affiliates) and pay for all other costs and expenses associated with the recall and/or exchange of the product and any loss to Buyer, retailers, or affiliates or their customers; and/or (b) pay Buyer, retailers and affiliates for all their and their customers' actual direct and indirect costs, expenses (including attorney's fees) and damages incurred in connection with (i) Buyer, retailers and affiliates providing notification to their customers in a manner Buyer, retailers and affiliates reasonably deem necessary, and (ii) the recall and/or exchange of the product and any loss to Buyer, retailers, affiliates or their customers. In all recall cases, Seller will cooperate fully with Buyer, retailers and affiliates and any applicable governmental authorities concerning the recall and implementing a responsive process to: (i) prevent any loss and minimize any inconvenience to Buyer, retailers, affiliates and their customers; (ii) ensure that payments are made to Buyer, retailers and/or affiliates so that it/they may properly account to its/their customers; and (iii) account fully to Buyer, retailers and affiliates for all returned products and payments. retailers and affiliates may resell products to consumers or others on first party credit, and Seller will directly reimburse retailers and affiliates, at their option and discretion unless otherwise government mandated, for the refunds or credit account adjustments to be made by retailers or its affiliates to their customers.

**19. Compliance with Laws, Regulations and Industry Standards.** (1) Seller will comply with all applicable federal, national, state, provincial, local and other applicable laws, codes and regulations in effect at the time of shipment of goods. (2) Seller further represents and warrants that all goods covered by the PO have been produced, manufactured, and labeled for interstate sale and comply with all applicable federal, national, provincial, state, local and other applicable laws, codes and regulations (specifically including, but not limited to,



the California Safe Drinking Water and Toxic Enforcement Act of 1986, as amended [more commonly referred to as Proposition 65] and anti-corruption laws of the U.S. Foreign Corrupt Practices Act, and with the laws, codes and regulations of the country of origin. (3) Seller will comply with any other applicable laws, codes, regulations or industry standards governing the manufacture, sale, labeling, branding, packaging, shipment, importation, distribution or sale of the goods covered by the PO and the containers of such goods. (4) Seller further agrees that all goods sold comply with the applicable industry standards in effect at the time of shipment of goods, including without limitation and as applicable ASTM, IFA, UL, USP–NF, and/or NIST. (5) To the extent they are applicable to Seller's performance hereunder, Seller hereby certifies that it and all goods furnished hereunder comply with applicable provisions of the U.S. Fair Labor Standards Act of 1938, as amended; and laws relating to equal opportunity and nondiscrimination in employment.

**20. Components or Ingredients Disclosure and Special Warnings and Instructions.** If requested by Buyer, Seller will promptly furnish Buyer in such form and detail as Buyer may direct: (a) a bill of materials for or list of all ingredients, components or constituents in the goods purchased hereunder, (b) the amount of one or more ingredients, components or constituents, and (c) information concerning any changes in or additions to such ingredients, components or constituents. Prior to and with the shipment of goods purchased hereunder, Seller agrees to furnish to Buyer sufficient written warning and written notice, including appropriate labels on goods, containers and packaging, of any hazardous material that is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer and their respective employees as to how to exercise that measure of care and precaution that will best prevent bodily injury and property damage in the handling, transporting, processing, use and/or disposal of the goods, containers and packaging shipped to Buyer.

**21. Buyer's Property; Tools, Design Work, Drawings, Specifications and Technical Information.** Except as otherwise specifically provided in the PO, Buyer has no obligation to furnish or pay for any design work, drawings, tools, molds, or other equipment required for the performance of the PO or resulting contract. Any design, drawing, specification, photograph, tool or other equipment, material or part or engineering and manufacturing information furnished to Seller by Buyer, or the cost of which is paid by Buyer or included in the Price, whether or not separately itemized, will be and remain Buyer's sole and exclusive property, will be conspicuously identified as such in Seller's records and by physical marking thereon, will be promptly delivered to Buyer upon request, will not be used in processing or manufacturing goods for any person or entity other than Buyer and, while in the possession of Seller, will be Seller's responsibility and adequately insured at Seller's expense for the benefit of Buyer against loss or damage. If Buyer's property is in Seller's possession, Seller agrees to be fully responsible to Buyer for Buyer's property including the responsibility to insure such property against all insurable risks for the full insurable value thereof in accordance with Section 16. No change will be made in any design, drawing, specification, tool or other equipment furnished by Buyer without Buyer's written consent.

**22. Assignments and Subcontracting; Retailers; Affiliates.** No part of the PO or resulting contract may be assigned or subcontracted by Seller without the prior written approval of Buyer. Assignments and Subcontracting; Retailers; Affiliates No part of the PO or resulting contract may be assigned or subcontracted by Seller without the prior written approval of



Buyer. Any assignment without such approval will be void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Contract Documents upon written notice to Seller; provided, however, Buyer shall ultimately remain responsible for payment of the Price of any PO accepted by Seller. The Parties acknowledge that Buyer purchases goods for resale to retailers and affiliates and resale by each to their respective customers. All retailers, affiliates and their related or affiliated companies are third party beneficiaries of the PO and Contract Documents.

23. **Setoff.** All claims or rights by Seller for money due, or to become due, from Buyer will be subject to deduction or setoff by Buyer by reason of any sums owed or payable to Buyer, retailers or affiliates or claimed by Buyer, retailers or affiliates (including, but not limited to Charge-backs) due to Seller's obligations or breach under the Contract Documents or as otherwise arise out of the PO or any other PO transaction(s) between Buyer and Seller and/or such setoffs may be enforced as provided in the Supplier Manual.

24. **Expedited Shipment.** If Seller can fulfill its delivery obligation only by shipping by a premium method, the premium charges will be prepaid by Seller unless the necessity for such rerouting, expedited handling or increased costs is attributable to Buyer's breach of its obligations hereunder or other misconduct.

25. **No Waiver.** No waiver by any party of any of the provisions of the Contract Documents shall be effective unless explicitly set forth in writing and signed by the party so waiving. Failure to insist upon strict compliance with any of the terms, covenants or conditions of the Contract Documents will not be a waiver of any such term, covenant or condition, nor shall any single or partial exercise of any right, remedy, power or privilege under the Contract Documents preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

26. **Confidential Information.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates (the "Confidential Information"), disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Contract Documents is confidential, solely for the use of performing under the Contract Documents, may not be disclosed or copied unless authorized by Buyer in writing and all documents and other materials and shall remain the property of Buyer. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section 26. This Section 26 shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

27. **Contract Documents; Entirety; Consistent Interpretation and Cumulative Remedies.** The Contract Documents and any mutually agreed written amendments and modifications signed by the Parties constitute the entire agreement between the Parties relating to the purchase made thereunder. Buyer is not bound by or liable to Seller for any representation,



promise, or inducement not embodied therein. The Contract Documents are intended to be interpreted in a consistent and cumulative manner, and all obligations, rights and remedies provided therein are intended to be cumulative.

28. **Electronic Transmission or Signatures Binding.** Buyer and Seller agree to allow contract communications and to sign and/or transmit Contract Documents electronically (including e-mail); and the Buyer and Seller agree that they will be bound by, and not contest the validity or enforceability of, any Contract Documents on the basis that they were electronic. Buyer and Seller each represents to the other that the persons signing or transmitting any of the Contract Documents is authorized to bind their respective companies by such actions for such purposes; and such electronic transmittals will constitute valid and binding signatures on behalf of the party transmitting them. Computer maintained records of a party when produced in hard copy form constitute business records and have the same validity as any other business records.

29. **Governing Law, Jurisdiction and Venue, Language.** The Contract Documents are governed by the laws of the State of Maryland, without reference to its conflicts of laws principles. The rights and obligations of the parties hereunder are not governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. To the extent the PO entails delivery or performance of ancillary or related services, such services will be deemed "goods" within the meaning of the Uniform Commercial Code, except when doing so would result in a clearly unreasonable interpretation. Any litigation in connection with the Contract Documents, or the relationship of, or disputes arising between, the Parties related thereto may be filed in either the U.S. District Court for the District of Maryland or the Maryland Circuit Court of Queen Anne County; and the Parties hereby consent to jurisdiction and venue of those courts for any such litigation. All Contract Documents, correspondence, packing slips and other documentation provided will be in English.

30. **Limitation on buyer's, retailers' and affiliates' liability.** In no event will buyer, retailers or affiliates be liable for anticipated profits, for incidental or consequential damages or for punitive or exemplary damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the po or from the performance or breach of the contract documents will in no case exceed the price allocable to the goods that gives rise to the claim. Buyer will not be liable for penalties of any type.

31. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in the Contract Documents shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Contract Documents.

32. **Notices.** All notices, request, consents, claims, demands, waivers and other communications under the Contract Documents (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the face of the PO or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-



paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms and Conditions, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 31.

33. **Severability.** If any term or provision of the Contract Documents is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract Documents or invalidate or render unenforceable such term or provision in any other jurisdiction.

34. **Survival.** Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Contract Documents including, but not limited to, the following provisions: Warranties; Indemnification; Insurance; Recalls; Compliance with Laws, Regulations and Industry Standards; Setoff; Confidential Information; Governing Law, Jurisdiction and Venue, Language; Limitation on Buyer's, Retailers' and Affiliates' Liability; and Survival

35. **Additional terms and conditions for specially made or custom goods:** these additional terms and conditions apply for goods specially made to buyer's or retailers' or affiliates' specifications, seller waives any claim against buyer, retailers and affiliates under the uniform commercial code or otherwise, including any hold harmless or similar claim, and including claims arising out of compliance with specifications furnished by buyer related to or arising out of seller's use of buyer input:

A. **Intellectual Property.** Buyer retains all intellectual property rights in connection with the development of specially made goods. Seller hereby assigns to Buyer all right, title and interest in and to all improvements, conceptions, innovations, inventions, processes, machines, manufactures, compositions of matter, methods, techniques, systems, mask works, software, data and information, works of authorship, indications or designations of origin and the goodwill symbolized thereby, whether patentable or susceptible to copyright or trademark protection, that is conceived, created or first fixed in a tangible medium, first made, first used or first reduced to practice in connection with Seller's obligations under the PO, such as further development work, including all rights in documentation and manuals that are packaged with or accompany goods. Further, with respect to any goods required to be delivered to Buyer per the PO that are not covered by the preceding sentence, Seller agrees not to assert any claim with respect to any technical, design, configuration or product information, and grants to Buyer, retailers and affiliates a worldwide, nonexclusive, royalty-free, irrevocable license to use, modify, reproduce, decompile, copy, publish, distribute or prepare works based on such goods. This provision supplements, but does not limit, such rights as may exist based on fair use, first sale, exhaustion or related doctrines.

B. **Private Label Goods** If Seller is supplying any goods that may be categorized as "private label" in the customary meaning of such term, including using the trademarks of Buyer, retailers or affiliates, then, as to such "Private Label Goods," Seller acknowledges, understands, accepts and agrees that, as between Buyer and Seller:

i. All products supplied to Buyer will not contain dangerous or prohibited substances, minerals or animal components;



- ii. All designs, artwork, specifications, trade names, trademarks, trade dress, labels and tags as supplied by Buyer to Seller or that have been created or developed for Buyer, retailers or affiliates in connection with any Private Label Goods (the "Buyer Features") are the exclusive property of Buyer, retailers or affiliates;
- iii. Seller will not show or use Buyer Features other than for or on behalf of Buyer and then only per Buyer written instructions. Further, Seller will not manufacture or cause to be manufactured goods bearing Buyer Features for any party other than Buyer, retailers or affiliates;
- iv. Seller will not sell, distribute, or deliver or cause to be sold, distributed or delivered to any party other than Buyer, retailers or affiliates any goods bearing Buyer Features, including but not limited to overruns, seconds, irregular merchandise and Private Label Goods that Buyer has refused to accept or has returned to Seller (collectively, "Excess Merchandise"). All Excess Merchandise will be disposed of only per the written instruction of Buyer; and
- v. Private Label Goods are intended to be sold in the United States of America.

**36. Flow-Down Requirements.**

The Supplier agrees to comply with all applicable terms and conditions that are required to be passed down from the Buyer's contract with its customer ("Flow-Down Requirements"). These Flow-Down Requirements shall include, but are not limited to:

- A. Compliance with all applicable laws, regulations, and standards as specified in the prime contract.
- B. Adherence to quality assurance and inspection standards as stipulated by the Buyer or its customer.
- C. Confidentiality obligations to protect proprietary or sensitive information related to the Buyer or its customer.
- D. Intellectual property rights and restrictions as outlined in the prime contract.
- E. Compliance with any specific codes of conduct, safety procedures, or environmental requirements.
- F. Obligation to provide records or documentation required for audit or compliance purposes.

The Supplier acknowledges that failure to comply with these Flow-Down Requirements may result in termination of this Purchase Order and liability for any damages incurred by the Buyer.