



## Purchasing Terms and Conditions

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In providing to MM Solutions the good(s) and/or service(s) described in the subject purchase order, Seller agrees that the sale of such good(s) and/or service(s) to MM Solutions will be governed exclusively by these terms, the specific purchase order provisions, and any attachments to said purchase order (taken together, the "Purchase Order" or "Order").

As used herein from time to time, "Buyer" means MM Packaging Products, Inc., a Colorado business corporation d/b/a MM SOLUTIONS ("MM Solutions"), and "Seller" means the Seller of the goods ("Product" or "Products") or services ("Service" or "Services") that are subject of the Order.

- PRICE AND TERMS OF PAYMENT.** To be valid, Seller's invoices must contain the following: the MM Solutions purchase order number and part number, the manufacturer's part number, a full description of the goods/services, the quantity, unit price, the total price, and the delivery address. Valid invoices of Seller will become due for payment by MM Solutions in (30) days unless otherwise indicated on the face of the Order, in the amount shown on the invoice. Payment of invoice will not constitute acceptance of Products and will be subject to adjustment for errors, shortages, defects in the subject goods, or unsatisfactory performance of services or other failure of Seller to meet the requirements of this Purchase Order. All prices quoted in the Agreement shall be fixed prices, all quoted prices must include all packaging, crating, tariffs, and applicable taxes and are firm for the delivery period shown. Seller warrants that such prices are not in excess of the lowest prices charged by Seller to other similarly situated customers for similar quantities of goods or services of like kind and quality.
- NO MODIFICATION.** No modification of this Agreement or the Order shall be binding unless in writing and signed by an authorized representative of each party.
- PACKAGES AND SHIPPING.** With each shipment, Seller shall include an itemized packing list that contains at a minimum, the following: (a) This order number, (b) part number, (c) the quantity shipped, and (d) the product description. The information on the packing list must agree with the information on the invoice. All Products shall be prepared for shipment according to the Buyer's instructions, in a manner that follows sound commercial practice, acceptable to common carriers for shipment at the lowest rate, and adequate to ensure safe arrival. Seller shall be responsible for any loss or damage due to its failure to properly preserve, package, handle before delivery, or pack goods. Buyer shall not be required to assert any claims for such loss or damage against any common carrier involved in delivery. Unless otherwise specified herein, all shipments shall be FOB Buyer's premises set forth in the Purchase Order. Title and risk of loss shall pass to Buyer at the FOB point; provided, however, that the risk of loss shall remain with the Seller as to any Products which are not accepted by Buyer, which are rejected by Buyer, or as to which Buyer's acceptance has been revoked. Compliance with the laws and regulations of the country of origin and the country of destination must be strictly adhered to with respect to international shipments. Buyer and Seller will cooperate in obtaining all necessary approvals, licenses, and other documentation required for such international shipments.
- ACCEPTANCE.** Buyer's payment for Products shall not constitute acceptance thereof. All products are subject to Buyer's inspection and test at Buyer's premises prior to acceptance. Products not rejected by written notification to Seller within thirty (30) days of receipt shall be deemed to have been accepted. Buyer shall have the right to reject or require the replacement or repair, of any Product found to be defective. Defective Product shall be promptly replaced or repaired by Seller, or Buyer can accept such Product with a reasonable reduction in price. If Buyer returns any Products to Seller pursuant to this Section 4, Seller shall bear the entire risk of loss for, and shall pay all costs associated with the shipment of, such Products. Inspection or Acceptance of, or payment for, the Product by Buyer shall not release Seller from any of its obligations, representations or warranties under this Agreement. With respect to any Products that fail to comply with the foregoing warranties, Seller shall accept returns of such Products from Buyer and, at Buyer's option (Seller's expense), promptly: (a) repair such Products to make them conforming and return them; (b) replace such Products with conforming Products and ship to Buyer under the terms set forth herein; or (c) refund all amounts paid to Seller for such non-conforming Products. Buyer shall have no liability for any returned Products, and Seller shall bear all liability, responsibility and expenses therefor.
- DELIVERY.** Time is of the essence for the Purchase Order. The terms for the Products shall be as set forth in the Purchase Order. Seller shall furnish sufficient labor, material, services, management, plant facilities and equipment and shall work such hours, including night shift, overtime, weekend and holiday work as may be required to assure compliance with the established delivery dates, all at no additional charge to Buyer. Seller shall be responsible for paying any express delivery or similar charges necessary to meet established delivery dates.
- CHANGES.** Buyer may at any time make changes within the general scope of the Order in any one or more of the following: (i) drawings, designs or specifications where the goods to be furnished are to be specially manufactured for Buyer; (ii) method of shipment or packing; (iii) place and time of delivery; (iv) amount of Buyer's furnished property; (v) quality; (vi) scope or schedule of the Items. If any changes cause an increase or decrease in the cost, or the time required for the performance of any work under the Order, a mutually agreed upon equitable adjustment shall be made in the Order price or delivery schedule, or both, in writing. Any claim for adjustment related to obsolescence, scrap and/or rework resulting from any change shall be limited to the materials in process at the time of the change and within the Seller's normal manufacturing cycle needed to meet the Purchaser's delivery schedule. Any Seller claim for



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adjustment under this article will be deemed waived unless asserted within thirty (30) calendar days from Seller's receipt of the change or suspension notification, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change. Notwithstanding the above or any

other provision of the Order, Seller hereby agrees that any changes made to meet the performance requirements of the Order shall not entitle Seller to any adjustment in either price or delivery.

7. **QUALITY ASSURANCE.** Unless otherwise agreed to in writing, each shipment as specified by Buyer on the Order, shall contain a Certificate of Conformance (CofC) and a Material Certification with authorized signatures from Seller. Each CofC must state that all Items contained in a shipment meet all requirements of the Order (including, without limitation specification requirements), reference Buyer's Order number, part number, engineering change revision level, serial number (if applicable), and quantity represented. Raw material certifications shall accompany shipments when the Order specifies. The Material Certification must be attached to the shipping documents or incorporate sufficient information to match it with the pertinent Order and specific shipment. Notwithstanding anything to the contrary, unless otherwise mutually agreed upon in writing between the parties, Seller will provide the CofC, FAI at no charge to Buyer.
8. **TOOLS AND GAUGES.** Any tools, gauges or other materials furnished to Seller by Buyer in support of the Order (herein referred to as "Buyer Furnished Property") shall remain the property of Buyer, be used exclusively in support of the Order, and shall be identified as the property of the Buyer. Seller shall maintain and calibrate Buyer Furnished Property within calibration cycle requirements. All Buyer Furnished property shall be returned following completion or termination of the Order along with all relevant documentation. Items are to be returned in the same condition in which they were furnished to Seller, reasonable wear and tear expected, and Seller shall reimburse Buyer for the replacement cost of Buyer Furnished Property where such Buyer Furnished Property is lost or damaged beyond economic repair as determined by Buyer in its reasonable discretion.
9. **AUDIT.** Buyer may by itself and/or by engaging a reputable third-party auditor, audit the Seller's performance under these terms and/or the applicable Order. Buyer shall give the Seller reasonable prior notice of any intended audit (unless Buyer is aware of or has reasonable grounds to suspect fraud). The Seller shall provide Buyer and/or the relevant auditor access to all information, facilities, materials, installations, premises, procedures, or other resources (including staff) as it shall reasonably require to undertake the audit, subject to Buyer requiring the auditor to enter into a reasonably confidentiality agreement with the Seller restricting disclosure of the Seller's confidential information to a reasonable extent.
10. **WARRANTY; SERVICE GUARANTY.** Seller represents and warrants all Products are suitable for the intended purpose and shall be new, not refurbished, merchantable, of good quality, and free from all defects in designs, materials, construction and workmanship. All Products shall strictly comply with specifications, samples, and all other requirements under the Agreement. All Products shall possess all required licenses in relation to the goods and shall remain valid and in place, that the scope of such licenses shall properly cover the intended use of the goods and such licenses shall include the right to transfer and the right to grant sublicenses. All Products shall be free from any and all liens and encumbrances. All Products have been designed, manufactured and delivered, and all Services have been provided, in compliance with all applicable laws, and do not violate or infringe any third party domestic or foreign patent, copyright, trade secret, trademark or other intellectual property rights. All Products are provided with and accompanied by all information and instructions necessary for proper and safe use. These warranties are not exhaustive and shall not be deemed to exclude any warranties set by law, Seller's standard warranties or other rights or warranties that Buyer may be entitled to. These warranties shall survive any delivery, inspection, acceptance, payment or resale of the good, and shall extend to MM Solutions and its customers. Seller guarantees that Services will be performed by trained individuals in a professional workmanlike manner, which individuals shall have appropriate skills, experience and expertise. Seller will promptly re-perform any service that is in breach hereof at no cost. In the event non-Conforming Products are furnished and returned to Seller, and within (10) business days therefrom, Seller shall repair or replace such non-conforming Products. In the case of services, if Seller is notified of the non-Conforming Products, within (10) business day therefrom, Seller shall repair, replace, or re-perform such non-Conforming Products. The failure of the Seller to repair or replace and redeliver or re-perform such non-Conforming Products within such ten (10) business day period shall entitle Buyer, at its election and in addition to any other rights or remedies it may have at law or in equity, to have such non-Conforming Products repaired or replaced at Seller's expense. Should Buyer receive non-Conforming Products, Buyer shall always retain the right to terminate the applicable Order and any associated Orders without obligation to remit payment for Products not yet received, in such an event, upon Buyer's request. Seller shall issue to Buyer a pro-rated refund of fees paid for the non-Conforming Products. This remedy is not exclusive and shall be in addition to any other remedy available at law, in equity, or under the Order. In addition to the costs of repairing or replacing such non-Conforming Products Seller agrees that, notwithstanding the provisions of any warranties, expressed or otherwise, negotiated with respect to Products purchased from Seller by Buyer or Buyer's customers. Seller shall reimburse Buyer for labor and material costs, including but not limited to overhead and general administrative and /or inspection expenses reasonably incurred by Buyer and any other costs incurred by Buyer from its customers related to the non-Conforming Product. Seller further warrants that each of its personnel has the proper skill, training and background necessary to accomplish their assigned tasks, and all services shall be performed in a competent, workmanlike and professional manner, by qualified personnel with the degree of skill and care that is required by current, good and sound



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- professional procedures and practice and in conformance with generally accepted professional standards for the completion of such Services prevailing at the time.
11. **Hazardous Substances and Waste.** Seller shall be solely responsible for managing all wastes of any nature associated with its activities and procedures and will manage any such wastes in compliance with local, state and federal regulations. Certification and/or any other form of manifestation of compliance must accompany any regulated wastes from any remediation or clean-up of any leaks or spills; any such records must include the names and addresses of any treatment, storage or disposal facility that is receiving such wastes, the amount of waste provided to the facility along with the date(s) of the shipment(s).
  12. When present or performing work on any Buyer site, Seller will not release hazardous substances or constituents to the environment and will take all necessary measure to prevent endangerment to human health by any such hazardous substances or constituents.
  13. **HARDWARE, SOFTWARE AND FIRMWARE.** Seller warrants that any hardware, software and firmware Products delivered under the Order: (i) shall not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to :1) damage, destroy or alter any software or hardware; 2) reveal, damage, destroy, or alter any data; 3) disable any computer program automatically or d) permit unauthorized access to any software or hardware; (ii) shall not contain any third party software (including software that may be considered fee software or open source software) that: 1) may require any software to be published, accessed or otherwise made available without the consent of Buyer, or 2) may require distribution, copying or modification of any software free of charge; and (iii) shall not infringe upon any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party.
  14. **INDEMNITY.** Seller shall indemnify Buyer and Buyer's customers and hold them harmless from and against any and all costs, expenses, losses, damages or liabilities (including attorneys' fees) arising from or related to any claim, demand, threat, suit or proceeding regarding any (i) personal injury (including death) and property damage and (ii) any negligent act or omission or willful misconduct of Seller, its employees, representatives, agents or subcontractors relating to this Order; (iii) any actual or alleged infringement of any patent, copyright, trade secret, trademark, registered design, mask work, intellectual property or other third party right arising from or related to the use or sale by Buyer of any Products furnished hereunder (a "Claim"). Buyer shall notify Seller of any such Claim and Seller shall defend or settle, at its own expense, each and every such Claim. If an injunction restricting Buyer's or its customer's rights with respect to any Product is issued or appears reasonably likely to be issued as a result of any such Claim, Seller agrees at its expense, and at Buyer's sole option to promptly either: (a) procure for Buyer the right to continue using such Products; (b) replace such Products with non-infringing Products; (c) modify the Products so that they are non-infringing Products; (d) refund to Buyer the amount paid for such Products.
  15. **INSURANCE.** Seller shall fully insure all Products until full title and control have passed to Buyer. If Seller is performing Services, Seller shall maintain at all times at its expense, comprehensive liability insurance, including product liability insurance, and insurance for personal injury and property damage covering all risks associated with the performance of such Services. Said insurance shall be in a scope and amount necessary to meet the foregoing obligations and consistent with best commercial practices, and shall in no event be less than \$1,000,000.00 coverage per occurrence, with policies issued by reputable insurance companies qualified to do business in the relevant jurisdictions. Seller will furnish evidence of such insurance promptly to Buyer upon Buyer's request.
  16. **NOTICES.** Any notice, approval or consent required or permitted hereunder shall be in writing, effective only upon receipt by the party being served, and deemed to have been duly given if sent by confirmed e-mail, mailed by registered, certified mail, or delivered by overnight courier service with tracking capabilities to the respective address of parties as set forth in this Purchase Order (or other such addresses a party may designate by (10) days prior written notice).
  17. **SEVERABILITY.** If any part of this Order is found by any competent authority to be invalid or unenforceable, that part will be amended or excised to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Order will remain in full force and effect.
  18. **WAIVER.** The waiver of any term or condition of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition, or as a waiver of any subsequent breach of the same term or condition.
  19. **SUSPENSION.** Buyer may at any time, by notice to Seller, suspend performance of the work for such time as it deems appropriate. Upon receiving notice of suspension. Seller shall promptly suspend work to the extent specified, property caring for and protecting all work in progress and materials, supplies and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials, equipment and/or services regarding the suspended work and tack such action relative to such purchase orders and subcontracts as Buyer may direct. Buyer may at any time withdraw the suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal of suspension. All claims for increase or



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decrease in the cost or the time required for the performance of any work caused by such suspension shall be pursued pursuant to, and consistent with Article 6 Changes.

20. **TERMINATION.** Buyer may terminate this Order on notice with immediate effect if: (a) Seller commits a material breach of this Order and fails to remedy this breach within thirty (30) days of written notice requiring it to do so; or (b) Seller makes an assignment for the benefit of its creditors or a proposal under any applicable bankruptcy or insolvency legislation, is declared bankrupt or insolvent, has a trustee, receiver or receiver manager, liquidator or other officer with similar powers appointed for all or any material part of its property, or is the subject of an order or resolution for its winding up.
21. **ASSIGNMENT AND SUBCONTRACTING.** Seller shall not assign or subcontract any of its rights in whole or part without Buyer's prior written consent. Any attempted delegation, subcontract or assignment shall be void. Seller shall not transfer production of Products supplied under this Order, in whole or in part, to a production location outside the United States of America without prior written consent of Buyer.
22. **PROPER BUSINESS PRACTICES AND POLICIES.** Seller shall in its performance under the Order, act in a manner consistent with the highest ethical standards in the industry, comply with all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with the Order. Further, in the execution of its obligations under the Order, Seller shall take the necessary precautions to prevent any injury to persons or to property, Seller shall comply with principles contained within Buyer's Code of Business Conduct and Ethics. Seller personnel on Buyer premises shall comply with all Buyer's health and safety and security policies and procedures in effect from time to time.
23. **CONFIDENTIAL INFORMATION.** Subject further to the provisions of any subsequent written confidentiality agreement signed by the Parties, Seller agrees that, except as required to supply Product pursuant to this Order or as otherwise instructed by MM Solutions, Seller shall not use or disclose any confidential information of MM Solutions. Confidential information includes, without limitation, all information designated by Buyer as Confidential; all information or data concerning MM Solutions Products (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to any MM Solutions information assets systems, including but not limited to computers, networks and voice mail; and any other information that is of such a nature that a reasonable person would believe it to be confidential. Any Confidential Information provided hereunder shall be provided "AS IS" with no representation or warranty.
24. **INTELLECTUAL PROPERTY.** Intellectual Property or "IP" shall mean all inventions, patents, works of authorship, copyrights, trademarks, designs, processes, mask works, trade secrets, domain names, proprietary technical information and other similar proprietary information tangible and intangible, whether or not registered or not registered or registrable. Pre-existing IP means IP conceived or developed prior to or independent of performance of this Order. Buyer and Seller will retain full right, title and interest in and to any Pre-existing IP. Seller will not use any Pre-existing IP in connection with this Order without first obtaining from the owner any rights necessary to enable Seller to fully comply with the terms of this Order. All IP created or developed, if any, in connection with the performance of this Order shall be deemed the sole property of MM Solutions. Any IP provided hereunder shall be provided "AS IS" with no representation or warranty. To the degree any good or service provided hereunder includes an intellectual property component for its use and value, Seller hereby grants a perpetual, nonexclusive, worldwide, paid-up license of the same to MM Solutions and warrants that it has the right to do so.
25. **PUBLICITY.** Seller shall not, with the advance written approval of MM Solutions, which may be granted or withheld in the sole discretion of MM Solutions, publicly make reference or otherwise disclose that Seller has furnished or agreed to furnish goods/services to MM Solutions under this order or otherwise.
26. **INDEPENDENT CONTRACTORS.** The relationship between MM Solutions and Seller is one of independent contractors and neither party will at any time or in any way represent itself as being an employee, dealer, agent or other representative of the other party or as having authority to assume or create obligations or otherwise act in any manner on behalf of the other. Each party manages and controls its own assets and business independently, and has ultimate authority over such assets and business. Each party is responsible for all income, FICA, other payroll, and unemployment taxes in accordance with applicable law, and for the filing of all tax returns and associated forms and reports that may be required in connection with such tax obligations.
27. **LIMITATION ON LIABILITY.** MM Solutions shall not be liable for any consequential, special, or punitive damages, and in no event shall be liable for any loss, cost, expense, or damage to Seller in an amount exceeding fees actually paid to Seller under this Order.
28. **FORCE MAJEURE.** If the performance by either party hereto is delayed or prevented by an act of God, fire, explosion or other similar circumstances beyond the reasonable control of that party then the due time for performance will be extended by a reasonable period corresponding to the duration of the delay. The Buyer reserves the right to cancel the Order without liability if the delay continues or is expected to continue beyond a reasonable amount of time.



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29. **ENTIRE AGREEMENT.** This Order constitutes the complete agreement between MM Solutions and Seller and supersedes any prior representation, promise or proposal relating to the subject matter hereof unless expressly referenced hereunder. No other document provided by Seller, including Seller's quotation and acknowledgement forms, will be part of the Order, even if referred to, unless specifically agreed to by MM Solutions in writing.
30. **GOVERNMENT CONTRACTING.** MM Solutions is a holder, contractor, or subcontractor of certain U.S. Government contracts and may be subject to additional statutory, regulatory, and contract requirements as a result. If this Order is issued under a U.S. Government prime contract or a subcontract related to the same, Seller agrees to comply with all applicable statutory, regulatory, and contract requirements, including without limitation any supplemental terms and conditions applicable to said contract or subcontract. Copies of the applicable contract(s) and any supplemental terms and conditions shall be furnished to Seller upon advance request. The Order may contain rated order quantities certified for national defense use, and in such instances, Seller shall follow all the provisions of the Defense Priorities and Allocations System (DPAS 15 CFP part 700) as it pertains to the rated quantities.
31. **GOVERNMENT REQUIREMENTS.** Seller shall comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS), the California Transparency in Supply Chains Act of 2010, the most current European regulation for Registration, Evaluation Authorization (and Restriction) of Chemical (REACH), the most current European Restriction of the use of certain Hazardous Substances Directive (ROHS), the most current European Waste Electrical and Electronic Equipment Directive (WEEE), all EU Data Privacy Regulations relating to the protection of personal data. While any Order is in effect, Seller shall provide Buyer with status information regarding any legal or arbitral proceedings or any proceedings by or before any governmental body, now pending or threatened against Seller. Seller shall notify Buyer immediately in writing if Seller, or Seller's subcontractors, are listed as Specially Designated National, debarred, sanctioned or designated as a denied party on any denial or sanctions list published by the United States Government.
32. **INTERNATIONAL TRADE:** (i) Seller shall comply with all applicable state, federal, local, national and provincial laws, rules and regulations with respect to international trade including, without limitations, the Export Administration Regulations, the International Traffic in Arms Regulations, and any other regulations promulgated by the U.S. Office of Foreign Assets Control (OFAC), and the import and export control laws of the countries in which the parties do business. (ii) Seller shall comply with all applicable registration and licensing requirements under the export control laws of the United States and the laws of the countries in which Seller operate. Seller shall not disclose, transfer or export hardware or technical data, or perform services controlled under the ITAR or EAR to any non-US person or firm, including non US persons employed by or associated with Seller, nor to any non US government, without first complying with all requirements of the ITAR or EAR, including the requirement for obtaining an export license or other required authorization. Seller shall provide to Buyer the USML category number and /or the ECCN, as applicable for the products and technical data delivered under Order. (iii) Where Seller is the design authority for the Technical Data or Items that are subject to an Order, Seller shall provide Buyer with (i) the applicable Harmonized Tariff Schedule Number, (ii) either 1) the USML category of such Technical Data or Items that are controlled by the ITAR or 2) the ECCN of such Technical Data or Items that are controlled by the EAR. If, under any Order Seller engages in any manufacturing or exporting of USML items, or the provision of defense services (as defined in 22 C.F.R. §120.9), Seller shall maintain registration with the DDTC as may be required by Part 122 of the ITAR. Upon request, Seller shall provide Buyer annually with its DDTC registration expiration date. Seller shall provide complete and accurate customs documentation, including without limitation, documentation regarding entry requirements, classification, valuation, preferential treatment, duty drawback, and trade terms. Seller shall be liable for any penalties, fines, additional duties, or third party costs that Buyer may incur as a result of Seller's failure to promptly and accurately provide such necessary information, including the costs and fees incurred by Buyer to classify items (HTS or export classifications) and to determine country of origin. Buyer shall setoff such incurred amounts that would otherwise be due to Seller without prejudice to Buyer's other rights and remedies available to it.
33. **COUNTRY OF ORIGIN.** "Country of Origin" for purposes of this Article 28 only, shall mean either the country where an Items has been wholly obtained or, when more than one country is concerned in the production of the Item or, the country where the last substantial transformation has been carried out. The Seller shall identify the Country of Origin of all Items on the commercial invoice or pro forma invoice accompanying the shipment, and in any other format as Buyer may direct, including but not limited to, electronic and/or scan-readable format Where the Seller is not the manufacturer of the Item, it shall obtain the Country of Origin from the manufacturer of such Item. Seller shall mark all Items with the English name of the Country of Origin in accordance with the local laws of the destination country. Where the Items is exempt from the Country of Origin marking requirements of the destination country or no such markings are otherwise required, Seller shall mark the container of such Item with the name of the Country of Origin of the Item. **COMPLIANCE WITH LAW; APPLICABLE LAW.** Seller represents and warrants that all Products and Services were, are, and will be manufactured, sold, priced, and performed in compliance with all applicable law. Colorado Law will govern interpretation of this Order, and the parties submit to the jurisdiction and venue of the courts in Larimer County, Colorado. applicable law. Colorado Law will govern interpretation of this Order, and the parties submit to the jurisdiction and venue of the courts in Larimer County, Colorado.