

Indirect Procurement Terms and Conditions

1) **Scope.** These Indirect Procurement Terms and Conditions (the “Terms and Conditions”) are expressly made a part of each Order for Goods or Services that Gordon Food Service, Inc. (“GFS”) or any of its Affiliates, whether currently an Affiliate or subsequently becoming an Affiliate (each, a “Customer”) issues to the Supplier. In these Terms and Conditions, (a) “Customer” means GFS or its applicable Affiliate(s) as specified in the Order; (b) “Supplier” means the Supplier(s) named in the order; (c) “Goods” and “Services” mean the goods or services that Customer is to purchase from Supplier, as described in the Order; (d) “Agreement” means the entire agreement formed pursuant to an Order, any written agreement issued or signed by Customer pursuant to which the Order is issued (if any), and these Terms and Conditions, including any documents incorporated by reference herein; (e) “Order” means either a written request for the provision of goods or services from GFS or its Affiliate whether in the form of a purchase order or another written or electronic form of communication in which GFS or its Affiliate intends to be bound to purchase Goods or Services from Supplier or, if Supplier submits a proposal (a “Proposal”) for an Order to a Customer, then any written addendum or other communication from Customer that is intended to confirm Customer’s intent purchase the Goods and/or Services described in the Proposal shall constitute the Order, but shall always be expressly subject to these Terms and Conditions whether expressly set forth in the Order or not; (f) “Affiliate” means at any time, whether currently existing or subsequently arising, any corporation, limited liability company, partnership or other entity or individual that then controls, is controlled by, or is under common control with, Supplier, Customer or GFS, as applicable; and (g) “Canadian Orders” means any Orders or Agreement pursuant to which (i) the Customer is an Affiliate that is organized in Canada and (ii) the Goods and/or Services will be provided to Customer in Canada.

It is a condition of this Agreement and Supplier expressly agrees that Supplier shall look solely to the entity that makes an Order with regard to any matters relating thereto, and the rights and obligations of all other entities that may purchase Goods and Services hereunder shall not be affected thereby. In consideration of any Order placed hereunder, Supplier waives any legal right or other right to recourse from such other entities in connection with any and all matters arising out of such Order.

2. **Acceptance.** Acceptance by Customer of any Proposal or other offer from Supplier is expressly limited to these Terms and Conditions, the Order, and the Agreement, and Customer hereby objects to and shall not be bound by any additional, different or conflicting terms, whether printed or otherwise, in any other communication between the parties (including on any Proposal or any of Supplier’s forms, letter or papers), it being understood that the terms of the Agreement shall prevail and that any such additional, different or conflicting terms shall be stricken from the Agreement in all cases. An Order shall be deemed accepted by Supplier on the earlier of (a) the shipment of Goods or rendering of Services, in whole or in part, (b) the written acceptance of the Order by Supplier, or (c) fifteen (15) days after issuance of an Order.

3. **Pricing; Taxes.** The price for the Goods and Services shall be as set forth in the Order and shall be an all-inclusive price, including all packaging, freight, assembly, and delivery costs. The price for Canadian Orders shall be set forth in Canadian currency. All other Orders shall be priced in U.S. currency. Under no circumstances shall Customer be obligated to reimburse

Supplier for any of its expenses or other costs related to its provision of the Goods or Services under any Order unless expressly agreed to in advance by Customer in writing. No increase in the price is effective, whether due to increased material, labor, or transportation costs, or otherwise, without the prior written consent of Customer. Customer shall only be obligated to pay sales, use or other taxes, duties or other governmental fees ("Taxes") related to Goods and Services if agreed to by Customer in writing or if Customer is the party upon whom the legal incidence to pay any such Taxes is borne. Any Taxes for which Customer is obligated to pay shall be expressly included as a separate line item on any invoice and shall be timely remitted to the appropriate taxing authority for Customer's benefit.

4. **Payment/Discount Terms.** Payment terms shall be those set forth on the Order. If no terms are set forth on the Order, then payment terms shall be net ninety (90) days after receipt of a valid and undisputed invoice by Customer. Supplier shall comply with and support all invoicing requirements of Customer, including participation in any electronic invoice management or other protocols established by Customer. Customer shall have no obligation to pay any amount prior to Customer's receipt of a correct and proper invoice for such amount prepared in accordance with the Order and under no circumstances shall payment shall be due until final acceptance of the Goods or Services by Customer. If cash discounts are offered and identified, such discount periods will be computed from the date of delivery of the goods or services ordered; or the date of Customer's receipt of a correct and proper invoice, whichever is later. Payment or other terms identified on the Supplier's invoice which are contrary to those of the Order shall have no force and effect unless acted upon or approved in writing by Customer. Customer will make every effort to pay invoices within the terms prescribed in the Order, however, in no event will Customer be obligated to pay late fees or penalties for invoices paid outside the Order terms. Customer shall have the right to withhold amounts disputed by Customer in good faith, and Supplier shall continue performing its obligations under this Agreement notwithstanding such dispute. Customer shall have the right to reduce and set off against amounts payable under an Order any indebtedness or other claim which Customer or an Affiliate may have against Supplier or an Affiliate of Supplier, however and whenever arising. If an invoice is due on a non-business day or banking holiday, the due date shall be extended until the next business day. Supplier shall give Customer written notice of any claimed discrepancy in any amount paid or deducted by Customer pursuant to this Agreement or any Order within 180 days of such payment or deduction. If Supplier fails to give notice within such period, Supplier agrees that it will not thereafter assert any claim for such payment or deduction and waives any such claim.

5. **Packaging and Delivery.** Unless Customer agrees otherwise in writing, Supplier shall deliver all Goods DDP ("delivered duty paid") (Incoterms 2000) at Customer's facility identified in the Order, except that if Customer's facility and Supplier's facility from which the goods will be shipped are both located in the United States, then Supplier shall deliver the Goods F.O.B. (as that term is defined in the Michigan Uniform Commercial Code) Customer's facility identified in the Order and shall be made at Supplier's expense and risk of loss. All Goods shall be packaged and shipped in a manner acceptable to GFS and in accordance with its policies as may be amended from time to time, and in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier is solely responsible for all packing, cartage, and related expenses. Supplier must provide Customer prior written notice if it requires Customer to return any packaging material. Any return of such packaging material shall be made at Supplier's risk of loss and expense.

6. **Timeliness.** Time is of the essence in fulfillment of the Order. Supplier shall deliver the Goods on the date(s) specified in the Order or as otherwise agreed in writing by the parties. Supplier shall provide the Services to Customer as described and in accordance with the schedule set forth in the Order. If the Goods and Services are not adequately provided in accordance with an Order within the time period set forth in the Order or otherwise communicated by Customer to Supplier, Customer may, at its option, and without limitation of any of its other rights, cancel any unfilled part of the Order if complete, conforming delivery is not made within the times specified. Customer is not required to accept partial or incomplete delivery of any Goods or Services. Acceptance of any part of the Order shall not bind Customer to accept the remaining Goods or Services contemplated by an Order.

7. **Changes; Cancellation.** Customer may make changes to the Order at any time and Supplier shall accept such changes. If a change by Customer causes an increase or decrease in the cost or time required for Supplier's performance, as soon as practicable, but no later than thirty (30) days' after the notification of the change by Customer, the parties shall agree to an equitable adjustment of the purchase price and/or delivery schedule, as applicable, and incorporate such changes as a revision change to the Order. No change will be binding on Customer unless in a signed writing or electronic confirmation from an authorized representative of Customer.

8. **Inspection.** Customer shall have the right to inspect and test all Goods and Services delivered under any Order. Neither receipt nor payment for Goods or Services shall constitute acceptance. Customer may reject any or all items that are nonconforming, as determined by Customer's sole reasonable judgment. Customer's failure to inspect shall not relieve Supplier of any of its responsibilities. Material shipped in quantities in excess of Customer's stated requirements may be returned at Supplier's expense. If Goods are rejected, they will be held at Supplier's risk and expense and Supplier shall bear the risk of loss or damage to such Goods until received by Supplier. If Supplier fails to timely deliver replacement Goods, Customer may replace them with goods from a third party and charge Supplier the cost thereof. Any inspection or other action by Customer under this Section shall not reduce or otherwise affect Supplier's obligations under this Agreement, and Customer shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

9. **Warranties.** Supplier warrants that all Goods, Services, material, Work Product, and merchandise supplied under any Order (a) shall strictly conform to all specifications, drawings, samples, or other descriptions furnished to or approved by Customer, (b) shall be fit and serviceable for the purpose intended by Customer, (c) shall be merchantable, of good quality and free from defects in materials, design, and workmanship, (d) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Customer, and (e) shall not infringe any Intellectual Property Rights (as defined below), proprietary or contractual right of any third party. In addition, Supplier warrants that Customer shall have good and marketable title to all Goods (including all components thereof) purchased by Customer pursuant to the Order, free of all liens and encumbrances and that no licenses are required for Customer to use such goods. With respect to Services, Supplier warrants that (x) all Services shall be provided in a professional and workmanlike manner, with a degree of skill and care consistent with current, good and sound professional procedures and that all Work Product will be original, and (y) all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Supplier, shall be properly licensed, certified or accredited as required by applicable law and are

suitably skilled, experienced and qualified to perform the Services. Additionally, Supplier warrants to Customer that it will comply with all applicable Customer and GFS policies or requirements and general health and safety practices and procedures. Neither receipt of Goods, Services, material, Work Product or merchandise nor payment therefore shall constitute a waiver of this provision. If a breach of warranty occurs, Customer may, in its sole discretion, and without waiving any other rights, return for credit or require prompt correction or replacement of the nonconforming Goods or Services or avail itself to any other remedy available to it under the Agreement or applicable law.

10. **Damages.** Without limiting Customer's rights and remedies at law or in equity, Customer reserves the right to charge Supplier for any loss, expense (including reasonable attorneys' fees), or damage sustained as a result of Supplier's failure to deliver conforming Goods or Services or other breach of the Order, including without limitation, expenses incurred in connection with Customer's purchase of substitute goods, incidental damages and consequential damages resulting from Supplier's failure or breach.

11. **Indemnification.** Supplier agrees to indemnify, hold harmless and defend Customer and its Affiliates, officers, directors, trustees, agents and employees from and against any and all claims, damages, liabilities, expenses, or losses (including attorneys' fees) arising out of or in connection with the Goods or Services, the performance or breach of any Order or Agreement by Supplier, or the acts or omissions of Supplier or its employees or agents. Supplier shall also indemnify, defend and hold Customer harmless against all claims, liabilities, losses, damages, costs and expenses (including legal fees) resulting from or arising out of or in connection with any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, with respect to the Goods or Services provided under the Order.

12. **Proprietary Rights.** Supplier agrees that all work created by Supplier solely or in collaboration with others in the course of performing Services or providing Goods under any Order or designing or developing materials to be delivered, including all intermediate and partial versions (collectively, "Work Product") shall automatically be the sole property of Customer upon their creation or (in the case of copyrightable works) fixation in a tangible medium of expression, and Customer shall own all rights, including all proprietary and Intellectual Property Rights, title and interest. Supplier hereby assigns to Customer all of its right, title and interest in and to all of the Work Product and all copies of any of the foregoing, including, without limitation, all copyright and other proprietary rights thereto throughout the world (and all renewals and extensions). Supplier will have no rights to retain or use any of the Work Product. Supplier will disclose promptly in writing to GFS all inventions, improvements, and developments and materials. "Intellectual Property Rights" includes, but is not limited to, any domain names, company names, patents, copyrights, trademarks, trade names, trade dress, trade secrets, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property, rights in other tangible and intangible assets of a proprietary nature, and the like.

All Work Product of the categories identified in Section 101 of the federal Copyright Act of 1976 (the "Copyright Act") will be considered "works made for hire" as defined in Section 101. GFS

will own the copyright, the right to register and renew the copyright, the right of first publication, the reproduction right, the performance right, and all other rights provided by the Copyright Act in each “work made for hire.” Supplier assigns to GFS all common law and statutory copyrights, all rights to register and renew the copyrights, all rights of first publication, all reproduction rights, all performance rights, and all rights provided by the Copyright Act and by the laws of all foreign countries in all Work Product that is not described in this section.

Supplier may include preexisting work or materials in a Work Product only if they are owned or licensable without restriction by Supplier. To the extent that preexisting work or materials owned or licensed by Supplier are included in a Work Product, Supplier will identify any such work or materials prior to commencement of any Services involving such works or materials. Supplier grants to Customer an irrevocable, nonexclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, and distribute (internally and externally) copies of, and prepare derivative works based upon, such work and materials, and the right to authorize others to do any of the foregoing. Supplier will be responsible for obtaining any consent of third parties necessary for Customer to fully exercise its rights hereunder.

13. **Confidentiality.** Supplier shall preserve in strict confidence all confidential, sensitive, or proprietary information of Customer or received from Customer (“Confidential Information”), whether or not marked “Proprietary” or “Confidential,” and whether oral or written, using the same degree of care as it takes to preserve and safeguard its own confidential or proprietary information (but in no event less than a reasonable degree of care). Confidential Information shall not include information that Supplier can demonstrate by written evidence was publicly available at the time of disclosure or was independently developed by Supplier without reference to Confidential Information. Supplier will not (i) disclose or cause to be disclosed at any time any Confidential Information obtained from Customer, or (ii) use or cause to be used any of such Confidential Information for any purpose, except as required in the performance of the services required by the Order. Supplier represents, warrants and covenants that it shall maintain physical, electronic and procedural safeguards designed to (1) insure the security, integrity and confidentiality of all Confidential Information, (2) protect against any anticipated threats or hazards to the security, integrity or confidentiality of Confidential Information, and (3) protect against unauthorized access to or use or disclosure of Confidential Information.

14. **Conduct of Personnel.** Supplier will ensure that Supplier personnel visiting or accessing any Customer’s premises or systems will (a) comply with Customer’s and GFS’s then-current internal policies, procedures and rules applicable to Customer’s and GFS’s personnel at such premises, including, without limitation, any then-current policies, procedures and rules relating to environmental protection, health, safety, work and security; and (b) comply with all terms governing the access of any information or communication systems of any Customer and GFS, including, without limitation, host and personal computers, internal or external information or communication networks (including voice mail, Internet/Intranet and e-mail systems), operating systems, database systems, or hardware and software directly or indirectly accessed from any Customer’s and GFS’s systems.

Notwithstanding anything to the contrary in this Agreement, Supplier and its personnel, agents, and representatives shall not offer, directly or indirectly, any gifts, favors, entertainment,

payment, or loans to or for Customer's and GFS's personnel, agents, and representatives or their respective family members.

15. **Compliance with Laws.** Supplier represents and warrants that, in the production and sale of Goods to be delivered pursuant to any Order, and in the provision of Services under any Order, and in the operation of its business generally, Supplier will comply with all applicable federal, state, provincial and municipal laws and regulations, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of such Goods, and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity, including without limitation, the requirements of the Fair Labor Standards Act of 1938, as amended, and the rules and regulations of the Secretary of Labor issued pursuant to Executive Order Number 11246 of September 24, 1965. Supplier represents and warrants to Customer that it is not currently debarred, suspended, proposed for debarment or otherwise excluded by any governmental agency from receiving federal, state or local government contracts or participating in any federally funded health program, including, without limitation, the Medicare and Medicaid programs. Supplier shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Supplier. Supplier assumes all responsibility for shipments of Goods requiring any government import clearance.

16. **Licenses and Permits.** Supplier represents and warrants that it has obtained all licenses, authorizations, approvals, consents or permits required by applicable laws and regulations (including the rules and regulations of all authorities having jurisdiction over the manufacture and sale of the Goods and the provision of the Services) to conduct its business generally and to perform its obligations under this Agreement.

17. **Compliance with GFS's Supplier Code of Conduct.** Supplier shall promote ethical business conduct and cooperate with Customer's ethics and compliance efforts. Accordingly, Supplier further represents and warrants that it and its employees and subcontractors shall comply with GFS's Supplier Code of Conduct (available at: <https://gfs.com/en-us/supplier-code-of-conduct/>), which is incorporated here by reference.

18. **Corrupt Practices.** Supplier shall not perform any acts or make any payments in violation of graft and corruption laws of the United States of America, e.g., the U.S. Foreign Corrupt Practices Act of 1977, as amended ("FCPA"), Canada, or any other jurisdiction in which actions contemplated hereunder or under any Order may be taken (collectively, "Corruption Laws"). Supplier will not, to obtain or retain business or business opportunities, directly or indirectly facilitate the offer or payment of any money or other thing of value to any person (e.g., Prohibited Persons) in violation of applicable Corruption Laws. Supplier will not accept any improper payment or any promise to be paid any money or other thing of value in connection with any of the business activities contemplated by this Agreement, the Goods or Services, or any Order. Supplier will maintain policies and procedures ensuring compliance with all applicable Corruption Laws, including the FCPA. Any acts of Supplier that do not comply with, or that violate, any such Corruption Laws shall be (i) acts of Supplier and Supplier's alone, and

cannot be imputed to nor deemed to be acts of any Customer; and (ii) grounds for immediate termination of this Agreement and all Orders. For purposes of this Section, "Prohibited Person" shall mean the following persons or entities: (a) any foreign (i.e., non-U.S.) official, or (b) any foreign political party, officer thereof, or candidate for office.

19. **Federal Contracting Matters.** GFS is an equal employment opportunity employer and is a federal contractor. **Consequently, the parties agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that if applicable the contract clauses required by Executive Order 11246, 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) are incorporated herein by this reference. 41 CFR 60-300.5(a) and 60-741.5(a) prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.** Supplier also agrees if applicable to comply with the provisions of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

20. **No Exclusivity.** Each party acknowledges that no representation, inducement or condition not set forth in an Agreement has been made or relied upon by either party, and that no Order or Agreement will in any way be construed or interpreted to be an exclusive arrangement between Customer and Supplier or to constitute any minimum commitment to order Goods or Services by any Customer except for the specific Goods or Services set forth in the applicable Order.

21. **Termination for Cause.** Customer may, by written notice to Supplier, terminate any Order, or any part thereof, if Supplier breaches any of the terms and conditions of an Order or any Agreement, or if Supplier becomes insolvent or files for bankruptcy protection. By way of example, (a) failure by Supplier to make timely, complete and conforming delivery of Goods and Services, or (b) breach of the representations or warranties set forth in any Agreement, shall entitle Customer to terminate any Order or Agreement for cause. If Customer terminates for cause, Customer shall have no payment obligations to Supplier. Should a court of competent jurisdiction subsequently determine that Customer's termination for cause was wrongful or unjustified, then such termination shall be automatically considered a termination for convenience under Section 22 and Supplier shall have all rights under that provision, but no other rights or claims for damages. A Customer's election to terminate any Agreement, Order or portion thereof under this Section or Section 22 shall have no effect on any other Order or Agreement of Customer, GFS or any other Affiliate with Supplier, all of which shall remain in full force and effect unless terminated by the applicable Customer.

22. **Termination for Convenience.** Customer may, by written notice to Supplier, terminate all or part of any Order or Agreement, for any or no reason, for Customer's convenience. Upon notice of termination, Supplier shall immediately stop all work and cause its suppliers and/or subcontractors to stop all work in connection with the Order. If Customer terminates for convenience, Customer shall pay Supplier for Goods and Services accepted as of the date of termination, and, for Supplier's actual, reasonable, out of pocket costs incurred directly as a result of such termination (but under no circumstances shall Customer's liability exceed the

amount of the cancelled Order. Customer shall have no responsibility for work performed after Supplier's receipt of notice of termination.

23. **Limitation of Customer's Liability.** Customer shall not be liable to Supplier, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits, incidental, consequential, punitive or special damages of any kind. Without limiting the foregoing, Customer's liability for any claim arising directly or indirectly under or in connection with the Order shall in no event exceed the cost of the Goods or Services giving rise to the claim. Except for any action related to discrepancies in amounts paid or deducted, which actions must be brought within 180 days of the date of such payment or deduction, any action against Customer or GFS arising out of the Agreement, any Order, or these Terms and Conditions must be filed within one (1) year after the claim accrues.

24. **Security Interests.** Supplier shall not have and waives, and shall not file or record any document claiming, any security interest in or lien (including any statutory or common law lien) upon any Customer property or any of the Goods, related to the provisions of the Services or otherwise. When applicable, Supplier will upon request deliver to Customer contemporaneously with any payment (i) recordable partial waiver of lien for any partial payments and (ii) recordable final waiver of lien for the final payment. If any lien is filed by Supplier or any agent or subcontractor of Supplier, Supplier will remove the lien at its expense within ten (10) business days.

25. **Independent Contractor/Services.** With respect to any Services provided by Supplier under any Order, (a) Supplier is an independent contractor, and neither Supplier nor any of Supplier's employees or agents shall be considered agents or employees of Customer, and (b) Supplier shall furnish or obtain, at Supplier's expense, all labor, materials, equipment, transportation, facilities, permits, licenses, bonds and other items that are necessary to perform the Services.

26. **Insurance.** Supplier will obtain and maintain insurance at its own cost and expense during the term of any Order or Agreement in coverage amounts that are adequate and customary for the nature of the Goods and Services provided by Supplier, but in all circumstances not less than \$2,000,000 per occurrence and \$5,000,000 annual aggregate, naming all Customers as additional insureds, and covering, at a minimum, (a) general liability; (b) professional liability (to the extent professional Goods and Services are being performed under the Contract); (c) workers' compensation with statutory limits; and (d) any other coverage reasonably necessary to protect Supplier and its agents and employees from any claims arising from its obligations under any Order or Agreement. Supplier agrees to provide certificates of insurance, evidencing required insurance coverage, upon request by Customer. Certificates are to be sent in care of Van Wyk Risk Solutions via electronic mail to gfsccerts@vanwykcorp.com.

27. **Use of Customer's Name.** Supplier agrees not to use (a) any Customer's name, (b) the name of any employee, student or agent of any Customer, or (c) any trademarks, service marks or trade names owned or controlled by any Customer, in any sales, promotional, advertising or other publication, without the express prior written permission of the applicable Customer. In no event shall Supplier or its employees, agents or subcontractors represent themselves as employees or agents of any Customer.

28. **Reporting; Records.** Supplier will work with Customer to define standard reporting and metrics. Supplier shall maintain complete and accurate records of all transactions and activities of Supplier that relate to Supplier's performance under the Agreement or any SOW including any Services provided and shall permit GFS, any Customer, and its agents, upon reasonable prior notice, to enter Supplier's premises during Supplier's normal business hours to inspect the facility and those records that are reasonably asked for and are reasonably available, to the extent that GFS or any Customer believes in good faith that an inspection and/or audit of the facility and/or records is necessary to determine whether Supplier is complying or has complied with its obligations under the Agreement, under any SOW or otherwise related to the provision of any Services.

29. **Arbitration.** Customer may, at its exclusive option, require that any controversy or claim arising out of or relating to any Agreement or Order be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association by one arbitrator appointed in accordance with said rules. Any controversy or claim will be arbitrated on an individual basis and will not be consolidated in any arbitration with any claim or controversy of any other party. Any arbitration proceeding will be conducted in Grand Rapids, Michigan, unless the controversy or claim relates exclusively to a Canadian Order, in which case the arbitration proceeding will be conducted in Toronto, Ontario. The parties specifically instruct the arbitrator to consider rulings, orders, and awards (either interim, interlocutory, partial or final) of equitable relief, including directing specific performance or issuing an injunction, particularly if an award of money damages alone would not sufficiently compensate the claiming party. Judgment on the arbitrator's award may be entered in any state or federal court having subject matter jurisdiction or located in the Western District of Michigan, except with respect to an award related to a Canadian Order, in which case judgment may be entered in any court having subject matter jurisdiction or located in the Province of Ontario, and the parties hereby irrevocably consent to the jurisdiction of such courts for the purpose of enforcing any such award. The arbitrator will allocate in the final award all costs incurred in conducting the arbitration in accordance with what the arbitrator deems just and equitable under the circumstances provided that each party will pay for and bear the cost and expense of its own experts, evidence, and legal counsel.

30. **Choice of Law; Venue.** All matters arising under or related to any Order or Agreement, except for Canadian Orders, shall be construed and enforced in accordance with the laws of the State of Michigan, without regard to its conflicts of law principles. The parties agree that any dispute involving any Order or Agreement, except for Canadian Orders, shall be properly brought and heard in the state or federal courts located in Kent County, Michigan and that, by virtue of their contractual relationship with Customer under an Order or Agreement, they are subject to the personal jurisdiction of such courts and venue is proper in such courts. Canadian Orders shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein with regard to conflicts of law principles. Canadian Orders shall be properly brought and heard in the courts located in the Province of Ontario and that venue will be proper in such courts. The United Nations Convention for the International Sale of Goods shall not apply to any Agreement or Order.

31. **Entire Agreement.** The Agreement applicable to any Order represents the entire agreement between Supplier and Customer with respect to the Goods and Services described in the Order.

32. **No Assignment.** Supplier may not assign, transfer or subcontract any part of the Order or any Agreement without the prior written consent of Customer, and any assignment in violation of this provision shall be null and void.

33. **Notices.** Any notice or other communication that is required or permitted under the Agreement or an Order shall be in writing and shall be effective (a) when personally delivered or sent via telecopy or electronically to a facsimile number or an email address specified in the Agreement or Order, (b) the next business day after delivery to a nationally-recognized overnight delivery service designated for next business day delivery with all charges prepaid, or (c) three (3) days after mailing if sent by certified mail, return receipt requested, postage prepaid, addressed to Customer or Supplier, as applicable, at its address specified in the Order or to another address that a party shall specify to the other by written notice, except that a notice or other communication may be given orally, including by telephone, if it is confirmed by written notice given the same day.

34. **References to Goods and Services.** In the event that an Order or Agreement contemplates only the sale of Goods to Customer and no Services, then all references to Services in these Terms and Conditions shall be deemed stricken. Similarly, if an Order or Agreement contemplated only the provision of Services, then all references to Goods shall be limited to mean only those goods that are collateral to the provision of Services contemplated by the Order or Agreement.

35. **Severability.** If any provision of an Order or Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of the Agreement or Order remain in full force at Customer's election.

36. **Remedies; No Waiver.** The remedies in this Agreement and any Order shall be cumulative and in addition to any other remedies allowed to Customer under applicable law. No waiver by Customer of any provision of an Order Agreement or any breach of these Terms and Conditions shall be deemed a waiver of any other provision or subsequent breach, nor shall any such waiver constitute a continuing waiver. Delay or failure of Customer to insist on strict performance of any provision of any Order or Agreement or to exercise any rights or remedies hereunder shall not be deemed a waiver.

37. **Set-off.** Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other right or remedy it has or may have, Customer may, without notice to Supplier, set-off or recoup any liability it owes to Supplier against any liability for which Customer determines Supplier or its affiliates is liable to Customer or its Affiliates, whether either liability arises under this Agreement or Order.

38. **Survival.** Contract terms and rights under the Sections of titled Indemnification, Insurance, Representations and Warranties, Confidentiality, Arbitration and any other provisions Customer intended to survive termination of the Agreement or Order will survive any termination or expiration of the applicable Agreement or Order.

39. **Modification.** The Agreement may be modified only by a writing executed by Customer and accepted by Supplier in any authorized method for accepting an Order or Agreement. Electronic signatures and electronically transmitted Orders are binding.

40. **Specific Customer Requirements.** If requested by Customer, Supplier will provide a dedicated account manager to ensure the timeliness and efficiency of all work completed by Supplier under the Agreement. If requested, the account manager, in conjunction with a dedicated customer service representative will be the primary points of contact for Customer, and will take full responsibility for managing any issues that may arise related to the Goods or Services provided under this Agreement. Supplier will also if requested provide an e-commerce solution capable of storing all Customer's requirements related to the Goods and Services in catalogue format, as well as processing and tracking orders for decal prints and installation.

41. **Language.** The parties have requested that this document be drafted in English. *Les parties ont demandé que ce document soit rédigé en anglais.*