TERMS AND CONDITIONS OF PURCHASE ORDER

INTRODUCTION

By i) shipping or delivering the goods ordered on the cover page(s) of the purchase order into which these Terms and Conditions of Purchase Order are incorporated by reference (collectively, this “Purchase Order”), ii) performing the services specified on this Purchase Order, or iii) acknowledging receipt of this Purchase Order, the Seller identified on the Purchase Order (“Seller”) agrees to the terms and conditions herein. Any different or additional terms and conditions contained in Seller's acknowledgment form are hereby rejected unless specifically agreed to in writing by an authorized representative of The TJX Companies, Inc. or its relevant affiliate or subsidiary (in either case, “TJX”) having authority to approve such change.

Notwithstanding i) any prior or subsequent offer made by Seller with respect to any of the goods or services, ii) any purported acceptance of any such offer as may be created by this Purchase Order or iii) any prior or subsequent conduct of TJX (including TJX's acceptance of or payment for any of the goods or services), these Terms and Conditions of Purchase Order shall govern the transactions contemplated hereby in all respects.

IN NO EVENT SHALL THESE TERMS AND CONDITIONS OF PURCHASE ORDER APPLY TO THE PURCHASE OF ANY GOODS INTENDED FOR RESALE, ANY SUCH PURPORTED USE SHALL BE AND HEREBY IS DEEMED TO BE AUTOMATICALLY VOID AND OF NO FORCE AND EFFECT.

Seller acknowledges and agrees that it has had sufficient opportunity to review this Purchase Order, and that these Terms and Conditions of Purchase Order shall apply as follows:

- Section A below shall apply specifically to the purchase by TJX of the goods, if any, identified on this Purchase Order (the “Goods”);
- Section B below shall apply specifically to the purchase by TJX of the services, if any, identified on this Purchase Order (the “Services”); and
- Section C below shall apply generally to the purchase by TJX of all Goods and/or Services identified on this Purchase Order.

A. TERMS AND CONDITIONS FOR PURCHASE OF GOODS

1. LABOR/PERFORMANCE BOND

If the delivery dates set forth on the cover page(s) cannot be met, Seller must inform TJX in writing (in accordance with the notice requirements hereof) of Seller's best possible delivery date for TJX's acceptance or rejection. If requested by TJX, Seller will obtain and deliver to TJX a labor and materials bond as security for Seller's performance and payment for all labor and materials used in connection therewith. The cost of the aforesaid bonds, and all permits approvals and licenses necessary to perform Seller’s obligations hereunder, shall be at Seller's expense.

2. PRICE GUARANTY

If no price is shown on the cover page(s), Seller's price shall not be higher than the last price quoted or charged to TJX unless otherwise agreed in writing. Seller warrants that the prices, allowance and other terms and conditions applicable to this Purchase Order are as favorable as any currently offered by Seller to any other customer for similar quality, quantity and delivery requirements. If more favorable prices, allowances or other terms and conditions are hereafter offered by Seller to any other customer prior to completion of deliveries hereunder, Seller shall immediately notify TJX and any such prices, allowances and other terms and conditions shall apply to this Purchase Order.

3. RECEIPT OF GOODS/INSPECTION

Receipt by TJX of any Goods, irrespective of any contrary provisions upon such receipt, shall not be deemed acceptance. Such receipt shall evidence only the time and place thereof and the quantity of cartons or other shipping containers received. TJX and/or its agent shall have the right to conduct all inspections of Goods.

4. REJECTION OF GOODS

At TJX's option, Goods not in every respect as required by TJX or as warranted or not shipped in compliance with TJX's shipping directions, may in whole or in part be rejected and returned to Seller, at Seller's risk and expense, or held by TJX for Seller's account, at Seller's risk and expense, notwithstanding the acceptance or rejection of any previously received partial shipment, and in either such event TJX shall receive credit for the amount rejected or returned; or TJX may retain same for its own account and receive a credit for any shortage. Until reasonable instructions are received from Seller after notice of rejection has been given by TJX, TJX is under no duty as to Goods which are perishable or threaten to decline in value speedily.
5. WARRANTIES

Seller warrants that all Goods and/or materials delivered hereunder will be free from defect in material or workmanship and will conform strictly to any proposal, quote, invoice, order form, specifications, drawings, or sample specified or expressly accepted by TJX, furnished or otherwise communicated to Seller by TJX. Seller warrants that it is in compliance with, and that the Goods and their manufacture and shipment to TJX, will comply with, all laws, ordinances, rules and regulations and all applicable industry standards (referred to collectively as "laws") applicable to the Goods, or applicable to the advertising, design, distribution, labeling, marking, processing, pricing, production, promotion, sale or testing of the Goods, including, but expressly not limited to, laws in the following areas: anti-bribery, consumer product safety, customs, environmental, employment, labor, food and drug, foreign corrupt practices, occupational safety, product labeling, sexual harassment and transshipment. Seller warrants that the Goods and their markings, labels, design and appearance do not infringe any patents, trade dress, trademarks, tradenames, copyrights or other rights of others, nor do they unfairly compete therewith. These warranties shall survive delivery and inspection and shall not be deemed waived either by reason of TJX's acceptance of said Goods and/or materials or by payment for them. TJX's remedies for breach of the aforesaid warranties shall include the right to recover any loss or profits or other consequential, incidental, indirect or special damages caused thereby. Such rights shall be in addition to any other remedies provided by law.

6. RIGHT TO INSPECT

TJX has the right to inspect Goods being manufactured against this Purchase Order at Seller's premises. Exercise of such right to inspect at Seller's premises shall in no way interfere with TJX's right to final inspection as provided in the paragraph herein titled "Receipt of Goods/Inspection".

7. REMEDIES

In the event of any violation of any warranty or other obligation of Seller under this Purchase Order or otherwise with respect to any of the Goods, TJX shall have the right to return any or all of the Goods to Seller for full credit, or to be compensated for any and all loss or damages suffered by TJX as a result of such violation, and/or such return, including but not limited to TJX's direct damages (e.g. storage costs, freight costs and handling costs in respect of the Goods), TJX's indirect damages (e.g. incidental and consequential damages) by reason of such violation and/or any such return, and all other costs and expenses associated with such violation or any such return.

8. INDEMNIFICATION

Seller shall indemnify, defend and hold harmless TJX from and against all loss and expense, including counsel fees and costs of defending, incurred by TJX as a result of any suit or claim brought or made against TJX or any of its affiliates by any third party arising out of or resulting directly or indirectly from (a) the acts or omissions of Seller, or any failure by Seller to comply with its obligations under this Purchase Order (including, without limitation), (b) any circumstances constituting (or which if proven would constitute) a failure or alleged failure of Seller or the Goods to conform to the terms of any obligation of Seller or any warranty made by Seller hereunder, or (c) death or injuries to persons or damage to property caused, or alleged to be caused, by any defects in the Goods. TJX may request Seller to assume the defense of such third party suit or claim (it being understood that TJX shall have the right to approve any settlement). In the alternative, at TJX's option, and in TJX's sole discretion, TJX may retain full control over the defense and settlement of any such third-party suit or claim and may require Seller to cooperate in such defense and settlement, all at Seller's expense. Seller's indemnity hereunder shall be in favor of TJX, and any company or organization (including any partnership and limited liability organization) controlling, controlled by or under common control with TJX (such companies or organizations sometimes referred to herein as "affiliates"), and each of the agents of TJX and their respective affiliates.

9. INSURANCE

Seller agrees to maintain sufficient insurance for general liability coverage with an endorsement for products liability either naming TJX as additional insured, or broad form vendors coverage wherein TJX becomes a certificate holder with respect to any Goods purchased hereunder, and such a certificate shall be provided, at TJX's request. Failure of TJX to request or of Seller to provide a certificate of insurance shall not be construed to result in a waiver of any of TJX's rights or Seller's obligations hereunder.

10. RIGHT TO CANCEL/RIGHT TO MODIFY

TJX shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, testing, destinations, specifications, designs, and delivery schedule (postponements only). Seller shall immediately notify TJX of any increases or decreases in cost caused by such changes and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to this Purchase Order. TJX reserves the right, in case of fire, vandalism, malicious mischief, other casualty, war, civil commotion, embargo, governmental regulation or labor dispute, or any event beyond its reasonable control to cancel this Purchase Order in whole or part. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including, without limitation, any proceeding for reorganization, arrangement or debt settlement or compensation, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then TJX shall be entitled to cancel any unfilled part of this Purchase Order without any liability whatsoever, and TJX shall be entitled to withhold from any payments due from TJX an amount estimated by TJX to be a reasonable reserve for payment to TJX of any future claims against Seller for returns, defects and the like.

11. RISK OF LOSS

Seller shall forward to TJX, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that the shipment has been made. The risk of loss or damage to Goods, whether in transit or at rest, shall be upon Seller until receipt by TJX.

12. PAYMENT TERMS

Goods delivered before the delivery date specified will be considered delivered as of the delivery date specified on the cover page(s) hereof and the invoice for such Goods will be paid accordingly. Cash discount periods will be computed either from the date of delivery or the date of receipt of correct and proper invoices, prepared in accordance with the terms of this Purchase Order, whichever date is later. Prices and other terms noted herein include any tax that may be imposed. For payment purposes, all invoices for Goods received on or after the 20th day of the month will be considered invoiced as of the first day of the following month. No receipt, resale, payment or other action or omission by TJX shall bar TJX from at any time exercising any remedies TJX may have as a result of failure of Seller, or the Goods, to comply with the terms of this Purchase Order. TJX shall have no obligation to make any payment hereunder prior to receipt of all Goods ordered hereunder. Acceptance of any part of this Purchase Order shall not bind TJX to accept future shipment thereof.

13. SPECIFICATIONS AND DRAWINGS

Any specifications, drawings, notes, instructions, engineering notices, or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, Seller shall refer to TJX for decision or instructions or for interpretation.

14. TITLE TO DRAWINGS

TJX shall at all times own all right, title and interest in and to all drawings and specifications furnished by TJX to Seller and intended for use in
connection with this Purchase Order, and Seller shall not disclose such drawings or specifications to any person, firm or corporation other than T J X or Seller's employees to whom the same are being delivered. Subcontractors or Government inspectors who have a need to know such drawings and specifications as a necessary condition to Seller's performance of obligations hereunder. Seller shall upon T J X's request or upon completion of this Purchase Order promptly return all drawings and specifications to T J X.

15. COMMENCEMENT AND DELIVERY

No materials shall be released or work started until Seller is notified to do so by T J X unless this Purchase Order specifies otherwise. Seller shall advise T J X immediately as to the time required to make shipment after material is released.

16. ENTIRE AGREEMENT

None of these Terms and Conditions of Purchase Order may be added to, modified, superseded, or otherwise altered except by a written instrument, expressly identified as a modification of this Purchase Order, signed by an authorized representative of T J X and delivered by T J X to Seller. Each shipment received by T J X from Seller shall be deemed to be only upon these Terms and Conditions of Purchase Order, except as they may be added to, modified, superseded or otherwise altered in accordance with the foregoing, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding T J X's act of accepting or paying for any shipment or similar act of T J X.

B. TERMS AND CONDITIONS FOR PURCHASE OF SERVICES

The terms and conditions set forth in this Section B shall continue in full force and effect so long as any Services are being provided under this Purchase Order.

1. TAXES AND EXPENSES

Seller is responsible for applicable federal, state, or local sales, use, excise, export or other applicable taxes other than taxes on the net income of T J X. The actual cost of expenses incurred by Seller, if any, in connection with the Services, such as hotels, flights, telephone, faxes, rental cars and shipping, shall be reimbursed to Seller in accordance with standard T J X travel policy guidelines (the "Travel Guidelines"), a copy of which can be found at https://www.mytjx.com/mytjx/supplier.html. If the Travel Guidelines do not address a particular expense, Seller must receive the written approval of T J X prior to incurring such expense.

2. INDEMNIFICATION

Seller shall defend, indemnify and hold harmless T J X and its customers, officers, directors, employees, and agents, from and against all third party claims to the extent that such claim arises out of or relates to the Seller's acts or omissions in connection with the Services. In the event of a claim by a third party, T J X or its legal representative shall promptly notify Seller in writing of any such claim or lawsuit arising out of or in connection with the Services and forward all related documents to the Seller. Seller shall defend any such case at its sole expense. T J X shall be entitled to be kept informed of the status of such proceedings. Without limiting the generality of any other indemnity hereunder, Seller shall indemnify, defend and hold harmless T J X and its directors, officers, employees, agents, successors and assigns, from and against any and all losses and/or litigation expenses to the extent caused by, arising out of or related to third party claims caused by, arising out of or related to: (i) the failure of Seller to perform the General Background Investigations (as such term is hereinafter defined), (ii) the inaccuracy of any warranties or representations made by Seller herein, or (iii) any obligation imposed on T J X to pay any benefits under workers' compensation laws, insurance law, the Fair Work Act 2009, and any and all other applicable laws and/or regulations relating to terms and conditions of employment pertaining to Seller's Employees (as such term is hereinafter defined), or to pay any taxes or insurance, including without limitation, withholding taxes, social security and/or insurance, unemployment or disability insurance, including interest and penalties thereon, in connection with any payments made to Seller by T J X.

3. INSURANCE

At all times during the Term, Seller (and any subcontractors used by Seller to deliver Services) shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

(a) Commercial General Liability, including Broad Form Endorsement and Completed Operations Coverage, written on an occurrence basis, with limits of not less than Twenty Million Dollars ($20,000,000.00) per occurrence and in the aggregate, per location, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement;
(b) Automobile/ Vehicle Liability, for any automobile, including owned and hired automobiles, with limits for bodily injury or death of not less than Thirty Million Dollars ($30,000,000) per occurrence, and for property damage of not less than Thirty Million Dollars ($30,000,000);
(c) Workers’ Compensation with limits no less than the minimum required by applicable Law;
(d) Employers’ Liability with limits no less than One Million Dollars ($1,000,000.00) per occurrence;
(e) Employee Theft and Dishonesty or crime insurance coverage with limits no less than Five Hundred Thousand Dollars ($500,000.00) including a third party endorsement for customer property;
(f) Umbrella Liability insurance with limits no less than Five Million Dollars ($5,000,000.00) per occurrence, over and above the policies listed in items (a), (b), (c), and (d) above.

All policies of Seller shall be maintained in effect until all obligations hereunder have been discharged. All insurance required to be carried by Seller pursuant to this Section shall be issued by insurers of recognized responsibility whose “Best” rating is “A-” or better. In the event of cancellation of any insurance required to be carried by Seller hereunder, T J X shall be notified twenty (20) days prior to cancellation of same. In the event that Seller fails to obtain the above policies or such policies are cancelled, T J X shall have the right, in its sole discretion, either a) to purchase the insurance at Seller’s expense or b) terminate the Services under this Purchase Order.

Upon the engagement by Seller of any Subcontractor (as such term is hereinafter defined) to perform the Services hereunder, if any. Seller shall provide T J X with evidence of the maintenance of insurance coverage maintained by such Subcontractor in amounts not less than those provided for hereinabove, and naming The TJX Companies, Inc. and its affiliate and subsidiary entities as additional insureds on the commercial general liability and umbrella policies listed above. All policies of Subcontractors shall be maintained in effect until all obligations hereunder have been discharged.

4. WARRANTIES; SELLER EMPLOYEES

4.1. Seller shall preserve and protect all buildings, improvements, fixtures, furnishings and equipment on T J X's premises (the "Premises") and shall repair or restore any damage thereto resulting from the performance of Seller hereunder. Upon completion of any work hereunder Seller shall clean up the Premises and remove all rubbish and trash related to Seller’s performance of Services.

4.2. At no cost to T J X and prior to any payment by T J X hereunder, Seller shall promptly cause to be discharged or dismissed (either by payment or by filing of the necessary bond, or otherwise) and deliver to T J X satisfactory releases of any claims and lien(s) against T J X or any premises owned or controlled by T J X, and/or T J X’s interest therein, which lien(s) arise out of any payment(s) due for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or for T J X in connection with in connection with the Services or any other arrangement made pursuant to the provision of
4.3. Seller’s employees, agents and subcontractors engaged in the performance of Services hereunder (individually and collectively, for the purposes this section, “Seller’s Employees”) shall conduct themselves courteously and professionally, in accordance with laws, at all times while on the Premises and perform all Services in a professional and workmanlike manner using generally accepted industry standards and practices. Seller’s Employees shall comply with all building and elevator, access, security, and safety rules and procedures in effect on the Premises from time to time. Seller’s Employees shall be on and have access to the Premises at their sole risk. Based upon the results of its General Background Investigations (as said term is defined elsewhere in this Agreement), Seller represents that (i) all of its employees, agents and/or subcontractors who will be performing the Services hereunder are legally permitted, and professionally qualified, responsible and satisfactory to perform the Services for TJX consistent with the terms of this Agreement, and (ii) in particular, but without limiting the generality of the foregoing, none of its employees, agents and/or subcontractors who will be performing the Services hereunder (a) have been convicted of any crime of violence, assault and battery, murder, rape, kidnapping, sexual assault, manufacturing or delivery of a controlled substance, drug use/trafficking, theft, shoplifting, larceny, embezzlement, forgery, credit card fraud, check fraud, computer fraud or abuse, data theft, identity theft or cyber crime or (b) are the subject of any pending or outstanding warrants.

4.4. TJX shall have the exclusive right in its sole discretion to request the removal of Seller’s Employee(s) where TJX has reason to believe that (i) Seller is not in compliance with any of its obligations pertaining to its employees as contained elsewhere herein, or (ii) Seller’s Employees have caused damage and/or destruction, malicious or otherwise, and/or that injury has resulted therefrom. Seller shall promptly comply with any such request by TJX.

4.5. Without limiting the generality of the foregoing, it is an express condition of this Agreement that, prior to the commencement of any Services hereunder, and at any time thereafter upon the request of TJX, Seller perform the following background investigations with respect to Seller Employees located in Australia: (i) criminal records check; (ii) education/credential verifications; and (iii) employment history/reference checks (collectively, the “Australia Background Investigations”). TJX may reasonably modify the foregoing guidelines, subject to applicable law, in conformance with then-prevailing industry best practices.

4.6. In the event that the above background investigation is unavailable or cannot be conducted due to the location or citizenship of a Seller Employee, Seller shall immediately inform TJX and shall conduct those investigations reasonably required by TJX for persons in such location(s).

4.7. In no event shall any Australia Background Investigation results relating to any individual be provided to TJX hereunder. Furthermore, in no event shall any Australia Background Investigation i) be performed more than twelve (12) months prior to the date of inception of the Services, or ii) be construed so as to release Seller from any of its obligations hereunder. Seller shall immediately notify TJX of any non-compliance discovered by Seller in connection with any Australia Background Investigation, even if discovered after Seller’s Employee has commenced working.

5. TERMINATION

Upon five (5) business days written notice, TJX may terminate the Services for any reason or no reason without liability, except for any outstanding undisputed financial obligations. Seller shall continue to provide (and TJX shall continue to be responsible for payment for) Services performed during such notice period. If one party defaults in the performance of any of its material obligations hereunder, and such default is not fully remedied, or if significant progress is not made in remedying such default within five (5) business days of written notice to the defaulting party, then the non-defaulting party shall have the right to terminate the Services and avail itself of any and all rights and remedies to which it may be entitled by law or in equity. Either party may also terminate the Services effective immediately without liability upon written notice to the other if any of the following events occurs: (i) the other party files a voluntary petition in bankruptcy or an involuntary petition is filed against it, (ii) the other party is adjudged as bankrupt, (iii) a court assumes jurisdiction of the assets of the other party under a bankruptcy or insolvency law rule or regulation, (iv) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other party, (v) the other party becomes insolvent or suspends business, or (vi) the other party makes an assignment of its assets for the benefit of its creditors.

C. GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

1. GENERAL WARRANTIES

1.1 Neither the delivery of Goods nor the performance of Services hereunder directly or indirectly violates or interferes with the terms of any other agreement to which Seller is a party. Seller shall not enter into any agreement, the execution or performance of which would violate or interfere with the delivery of Goods or performance of Services hereunder.

1.2 Seller shall comply with all laws applicable to Seller, its work and its employees and subcontractors, including without limitation, all immigration, labor and environmental laws and regulations and all applicable anti-bribery and anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, the Canadian Corruption of Foreign Public Officials act, the Australian Criminal Code Act 1995 (Cth) and all other similar applicable laws. Seller will also require the same of each Subcontractor that provides Services in connection with the Services. Seller shall also ensure that it has procured at its own expense all licenses and permits necessary for the fulfillment of its obligations in connection with the delivery of Goods or performance of Services hereunder.

1.3 Seller will comply (and will require Seller’s Employees to comply) with all TJX policies, rules and regulations of which they have been advised either in person, in writing or by other means prior to or during the term of performance, including but not limited to (a) the TJX Global Anti-Bribery Policy; (b) the TJX Statement of Policy Concerning Gifts; and (c) with respect to Goods purchased by TJX under this Purchase Order, the TJX Vendor Code of Conduct, all of which can be found at https://www.mytjx.com/mytjx/supplier.html, and all of which are incorporated by reference herein and made part of this Purchase Order.

2. CONFIDENTIALITY

2.1 Seller (or, for purposes of this paragraph titled “Confidentiality”, the “receiving party”) shall maintain as confidential and shall not disclose any information relating in any manner to TJX (or, for purposes of this paragraph titled “Confidentiality”, the “disclosing party”) or its employees, including without limitation all information disclosed in writing, orally, or by inspection or access to the disclosing party’s computer network, systems and servers, whether directly or indirectly, or otherwise during the performance of the Services, and whether or not such information is designated “confidential” or “proprietary” or some similar designation (including but not limited to financial statements, budgets and projections, customer identities, potential customers, employees, suppliers, servicing methods, equipment, programs, strategies, analyses, profit margins, business methods, plans, designs, inventions, pricing information, product information, marketing information, any and all information that qualifies as personally
identifiable information under federal or state law, these Terms and Conditions of Purchase Order, and the existence of the business relationship contemplated by this Purchase Order, however documented (the "Confidential Information") and receiving party agrees to protect such Confidential Information with the same degree of care it exercises to protect its own confidential information (but in no event less than a reasonable standard of care) and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication of such information.

2.2 These obligations shall not apply in the event that such Confidential Information (a) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the receiving party; (b) is in the receiving party’s possession at the time of disclosure other than as a result of receiving party’s breach of any legal obligation; (c) becomes known to the receiving party through disclosure from a third party that is not bound by a similar duty of confidentiality (contractual, legal, fiduciary, or other); (d) is developed subsequently by the receiving party independent of any disclosure by the disclosing party hereunder; or (e) receiving party is legally compelled or requested to be disclosed pursuant to the requirements of a court or governmental body, or by operation of law, provided that the receiving party provides prior written notice of such required disclosure to the disclosing party.

2.3 The provisions of this Section shall survive for a period of ten (10) years after the date of this Purchase Order or ten (10) years after the date of termination of Services or delivery of Goods, whichever is later.

2.4 The receiving party agrees that breach of confidentiality may cause irreparable damage and also agrees that it would be impossible or inadequate to measure and calculate the disclosing party’s damages from any breach of the covenants herein. Accordingly, the receiving party, agrees that if such party breaches the obligations hereof, the non-breaching party will have available, in addition to any other right or remedy, the right to obtain equitable and injunctive relief, without the requirement of posting a bond, from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any such provision herein.

2.5 The disclosing party may require receiving party to return the Confidential Information to disclosing party at any time or to destroy same and to certify in writing as to said destruction. In any event, all TJX Confidential Information will be returned or destroyed upon the expiration of the confidentiality period set forth above.

2.6 Nothing herein shall be deemed to grant any rights in any Confidential Information of the disclosing party to the receiving party.

2.7 Seller agrees that it will, and ensure that its Personnel, officers, representatives and agents will, comply with all applicable privacy or data protection Laws, including the Privacy Act 1988 (Cth), that relate to the collection, use, disclose, or storage of Personal Information (as that term is defined in the Privacy Act 1988 (Cth)) that Seller collects, uses, discloses or stores under this Agreement.

3. SUBCONTRACTING/SECONDARY SOURCING

No individuals or entities other than Seller and Seller’s Employees may undertake work in connection with this Purchase Order, unless such individuals or entities are specifically approved by TJX in writing (collectively, "Subcontractors"). TJX has the right, in its sole discretion to disapprove any Subcontractor at any time and Seller shall abide by such decision. Seller shall make all appropriate arrangements with each of its employees, or Subcontractors who undertake work in connection with this Purchase Order, to comply with the intent hereof, including without limitation, instructing, informing and receiving confirmation from such individuals that they have been apprised of and will abide by those provisions hereof relating to the confidentiality and non-disclosure of TJX Confidential Information.

In connection with Subcontractors, Seller shall obtain and maintain in effect appropriate written agreements with each such Subcontractor wherein Seller shall (i) incorporate by reference all of the terms hereof, except those which are particular to TJX and Seller alone, (ii) ensure terms sufficient for Seller to comply with all provisions hereof and (iii) impose an obligation of non-disclosure and confidentiality on Seller Subcontractors with respect to TJX Confidential Information. Seller shall remain jointly and severally liable to TJX for the activities of any Subcontractor. Any purported delegation of performance in violation of this section is void and shall entitle TJX to declare Seller in default.

4. ASSIGNMENT; RIGHT OF SETOFF

Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for breach thereof, without the prior written consent of TJX, and any such attempted delegation or assignment shall be void. All claims for monies due or to become due from TJX shall be subject to deduction by TJX for any setoff or counterclaim arising out of this or any other TJX Purchase Order, whichever is later. However, such setoff or counterclaim arose before or after any such assignment by Seller.

5. MISCELLANEOUS

5.1 Any action by Seller for breach of this Purchase Order must be commenced, and TJX must be served with process in any such action, within one year of the date of breach. All suits or proceedings by Seller against TJX or any of its affiliates or any of the agents of TJX or their respective affiliates based upon or arising out of or relating to this Purchase Order or the Goods or Services shall be brought or maintained only in courts of proper jurisdiction located in New South Wales, Australia.

5.2 This Purchase Order, and any claim arising under, based upon, or relating to this Purchase Order or the transaction contemplated by this Purchase Order, shall be governed by and construed and enforced in accordance with the laws of New South Wales, Australia, but without giving effect to any choice or conflict of law provision or rule that would cause application of the law of any other jurisdiction. In the event of any dispute hereunder Seller expressly agrees that such action be filed in the state or federal courts of Australia or the courts of New South Wales in each case located in the city of Sydney. All rights and remedies of TJX provided herein shall be cumulative to one another and cumulative to any rights and remedies to which TJX is entitled by law. Nothing herein shall exclude or limit any other rights and remedies to which TJX is entitled by law.

5.3 No party shall be considered to be in default in the performance of any of the obligations hereunder if failure of performance shall be due to uncontrollable forces. The term “uncontrollable forces” shall mean any cause beyond reasonable control of the party affected, despite exercising due diligence and shall include, but not be limited to the flood, earthquake, storm, fire, lightning, epidemic, war, terrorist attack, malicious or criminal acts of third parties, riot, civil disturbance, sabotage, statutory or regulatory changes with material adverse effects or constraint by Court order or public authority. Any party which is unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch. Economic hardship of either party shall not constitute a force majeure hereunder. Labor disputes and strikes shall not constitute a force majeure hereunder. The party whose performance is prevented by force majeure must provide notice of such force majeure to the other party as soon as is reasonably possible and must use diligent efforts to remove such causes of non-performance.

5.4 Seller agrees to maintain for a period of seven (7) years from the last performance of Services or delivery of Goods hereunder accurate books and records and supporting documentation with respect to the performance of Services. Any audit to be performed by TJX hereunder shall be completed pursuant to the provisions of this section. TJX (or its authorized representative) shall have the right, at TJX’s expense, to audit Seller’s compliance with the terms hereof.
5.5 Seller will perform its obligations hereunder as an independent contractor and not as an employee or agent of TJX or any of its affiliated entities. Neither party shall have the power or authority to act for, represent, or bind the other party or any of the other party’s affiliated entities.

5.6 If any clause, term or provision hereof shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other clause, term or provision hereof.

5.7 Any notice or other communication required or permitted shall be in writing and shall be deemed to have been duly given (a) on the day of service if served personally or (b) at the time of electronic receipt if sent by facsimile or (c) upon receipt if sent via a nationally recognized overnight delivery service such as FedEx or DHL, charges prepaid, and addressed in each case to the party at the address set forth on the first page of this Purchase Order.

5.8 The headings appearing at the beginning of the sections contained herein have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation hereof.

5.9 Except as may otherwise be provided elsewhere in this Purchase Order, the terms, provisions, covenants, representations and warranties contained in this Purchase Order which by their nature, sense and context survive or are expressly intended to survive the expiration or termination of this Purchase Order will so survive and continue in full force and effect until they are satisfied or by their nature expire, including but not limited to any terms related to confidentiality or any indemnity provided hereunder.