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, or signing or agreeing in writing to 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 or other document (irrespective of the date any alternative terms and conditions are sent) are hereby rejected unless specifically agreed to in writing by an authorized representative of TJX UK, TJX Europe Buying Group Limited or TJX Ireland Unlimited Company (as applicable) or its relevant affiliate or subsidiary (in each 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. DELIVERY

If the delivery dates set out 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. Goods delivered before the delivery date specified will be considered delivered as of the delivery date specified on the cover page(s) hereof. Time shall be of the essence for delivery of the Goods.

2. PRICE GUARANTEE

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 favourable prices, allowances or other commercial terms 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 inspections of all 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 the 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 design, material or workmanship, free from all encumbrances, of satisfactory quality (within the meaning of the Sale of Goods Act 1979 (as amended) for TJX UK or TJX Europe Buying Group Limited (as applicable) and the Sale of Goods and Supply of Services Act 1980 for TJX Ireland Unlimited Company, fit for any purpose held out by Seller or made known to TJX by or of which Seller was or should have reasonably been aware 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, rules, regulations and codes of practice and all applicable industry standards (referred to collectively as "laws") applicable to the Goods, or applicable to the advertising, design, distribution, labeling, marking, processing, packing, packaging, pricing, production, promotion, sale, delivery or testing of the Goods, including, but expressly not limited to, laws in the following areas: anti-bribery, consumer product safety, customs, environmental, employment, labour, 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, trademarks, trade names, design rights, 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 and any implied by law shall include, but not be limited to, the right to recover any loss or profits or 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
At any time prior to delivery, TJX shall have the right to inspect Goods being manufactured against this Purchase Order. Exercise of such right to inspect shall in no way interfere with TJX's right to final inspection following delivery as provided in the paragraph herein titled “Receipt of Goods/Inspection”.

7. REMEDIES
In the event of any breach of any warranty or other obligation of Seller under this Purchase Order or otherwise with respect to any of the Goods, TJX may require, as Seller’s option, and at TJX’s sole discretion, TJX may retain full control over the defence and settlement of any such third-party action or claim and may require Seller to cooperate in such defence and settlement, all at Seller’s expense. Seller's indemnity hereunder shall be in favour of TJX, and any company or organization (including any partnership or limited liability company) controlling, controlled by or under common control with TJX (such partnerships or companies 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 quantities, 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, flood, vandalism, theft, criminal damage, accident, war, civil commotion, embargo, governmental regulation, industrial dispute, or any event beyond its reasonable control or for any reason on 30 days notice to the Seller, to cancel or suspend this Purchase Order in whole or part without penalty or liability. 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, liquidator, examiner or administrator, 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. TITLE AND RISK
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. Title (with full guarantee, free form all or any encumbrances and third party rights) to the Goods shall pass to TJX on delivery.

12. 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 out. In case of any discrepancies or questions, Seller shall refer to TJX for decision or instructions or for interpretation.

13. 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 company other than TJX's or Seller's employees, Sub-contractors, or Government inspectors who have a need to know such drawings and specifications as a necessary
condition to Seller’s performance of its obligations hereunder. Seller shall upon TJX’s request or upon completion of this Purchase Order promptly return all drawings and specifications to TJX.

14. COMMENCEMENT AND DELIVERY

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

B. TERMS AND CONDITIONS FOR PURCHASE OF SERVICES

The terms and conditions set out 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, duties, excise, export or other applicable taxes other than taxes on the net income of TJX. Where TJX has agreed to reimburse the cost of expenses incurred by Seller, if any, in connection with the Services, Seller must receive the written approval of TJX prior to incurring such expense. If Seller’s Personnel are required to travel and it is agreed that TJX shall be responsible for paying the related cost, Seller shall ensure that all bookings are made via TJX’s travel management company (as appointed from time to time).

2. INDEMNIFICATION

Seller shall defend, indemnify and hold harmless TJX and its customers, contractors, 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, TJX or its legal representative shall promptly notify Seller in writing of any such claim or action 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. TJX 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 TJX and its customers, contractors, officers, directors, employees, and 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 inaccuracy or breach of any warranties or representations made by Seller herein, or (ii) any obligation imposed on TJX to pay any taxes, including without limitation, withholding taxes, including interest and penalties thereon, in connection with any payments made to Seller by TJX, or (iii) any claim against TJX relating to breach of laws applying to temporary agency services.

3. INSURANCE

Prior to the commencement of the Services, Seller shall provide TJX with certificates of insurance evidencing the existence of valid and enforceable insurance policies, and naming TJX UK, TJX Europe Buying Group Limited or TJX Ireland Unlimited Company (as applicable), and its affiliate and subsidiary entities as additional insured parties, on the commercial general liability and umbrella liability policies below, all as follows:

(a) Commercial general liability insurance, including coverage for premises/operations, products/completed operations, property damage, blanket contractual liability, independent contractors, personal and bodily injury, with primary coverage limits of Two Million Pounds (£2,000,000.00) or One Million Six Hundred Thousand Euros (€1,600,000) per claim; and

(b) Employers’ Liability insurance of not less than One Million Pounds (£1,000,000.00) or Eight Hundred Thousand Euros (€800,000) per claim; and

(c) Professional Liability insurance of not less than Five Hundred Thousand Pounds (£500,000.00) or Four Hundred Thousand Euros (€400,000) per claim, including a third party endorsement for customer property; and

(d) Motor insurance, including coverage for any vehicle, including owned, non-owned and hired autos, for both bodily injury and property damage, as required by law; and

(e) Umbrella Liability insurance with limits of not less than Two Million Pounds (£2,000,000.00) or One Million Six Hundred Thousand Euros (€1,600,000) per claim, over and above the commercial general liability policy listed 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 paragraph shall be issued by insurers of recognized responsibility whose Best’s rating is “A-” or better. In the event of cancellation of any insurance required to be carried by Seller hereunder, TJX 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, TJX 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 of Seller by any Sub-contractor (as such term is herein defined) to perform the Services hereunder, if any, Seller shall provide TJX with evidence of the maintenance of insurance coverage maintained by such Sub-contractor in amounts not less than those provided above, and naming TJX UK, TJX Europe Buying Group Limited or TJX Ireland Unlimited Company (as applicable) and its affiliate and subsidiary entities as additional insured’s on the commercial general liability and umbrella policies listed above. All policies of Sub-contractors shall be maintained in effect until all obligations hereunder have been discharged.

4. SELLER’S PERSONNEL

4.1. Seller shall preserve and protect all buildings, improvements, fixtures, furnishings and equipment on TJX’s premises (the “Premises”) and shall immediately repair or restore any damage thereto resulting from the performance of Seller hereunder. Upon completion of any work or Services 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 TJX and prior to any payment by TJX 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 TJX satisfactory releases of any claims and lien(s) against TJX or any premises owned or controlled by TJX, and/or TJX’s interest therein, which lien(s) arise out of any payment(s) due for, or purported to be due for, any labour, services, materials, supplies or equipment alleged to have been furnished to or for TJX in connection with the Services or any other arrangement made pursuant to the provision of Services herein. Seller shall defend and hold harmless TJX and such premises against any such claim or lien.

4.3. Seller’s employees, agents and Sub-contractors engaged in the performance of Services hereunder (individually and collectively, for the purposes of this paragraph, “Seller’s Personnel”) shall conduct themselves courteously and professionally, in accordance with laws, at all times while on the Premises and perform all Services with all reasonable diligence, skill and care and in a professional and workmanlike manner using best industry standards and practices. Seller’s Personnel shall comply with all building and elevator, access, security, and other health and safety rules and procedures in effect on
the Premises from time to time. In relation to Services performed in Ireland, Seller shall ensure compliance with the Protection of Employment (Temporary Agency Work) Act 2012. In relation to Services performed in Germany, Seller warrants that it has and shall maintain a valid permit to act as a temporary agency service provider (“Arbeitnehmerüberlassungsverbot”) and shall provide TJX with a copy of such permit on receipt of a request from TJX. In relation to Services performed in Poland, Seller shall, if required by local labour law, appoint a health and safety officer who shall liaise with TJX or its affiliate’s locally appointed health and safety officer. If Seller’s Personnel shall be on or have access to the Premises, this shall be at their sole risk and any of Seller’s or Seller’s Personnel’s property brought onto the Premises will be and remain at Seller’s or Seller’s Personnel’s (appropriate) risk. Seller shall ensure that Seller’s Personnel perform the Services without causing any damage to TJX’s (or its affiliates’) business, public image, reputation or goodwill.

4.4. TJX shall have the exclusive right in its sole discretion to request the removal of Seller’s Personnel 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 Personnel 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. It is an express condition of this Purchase Order that Seller shall use all reasonable, legally permitted, endeavors to ensure that any and all persons utilised by Seller in providing the Services are unconditionally in compliance with all immigration legal requirements. In the case of Services performed in the UK, Ireland or Germany, Seller shall use all reasonable endeavours not to utilise any employee in providing those Services who has a criminal conviction (other than a spent conviction).

4.6. Seller acknowledges and agrees that TJX does not require Seller to assign any employee of Seller, or if applicable, procure the assignment of any employee of any Sub-contractor, wholly or mainly to the provision of the Services.

4.7. Seller agrees to arrange its staff, and, if applicable, procure that any Sub-contractor arranges its staff, in relation to the provision of the Services in such a way that no individual is at any time wholly or mainly assigned to the provision of the Services and consequently that no contract of employment of any individual will transfer from Seller (or any Sub-contractor) to TJX or to any other supplier (a “New Supplier”) which shall take over the provision of similar or the same services by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in the UK or the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 in Ireland, in either case as amended or replaced from time to time (the “Transfer Regulations”), on the cessation or partial cessation of the provision of the Services by Seller.

4.8. Notwithstanding paragraph 4.7, if as a result of the Transfer Regulations any contract of employment of any individual is transferred from Seller (or any Sub-contractor) to TJX or to any New Supplier or any person asserts that his employment has so transferred, then TJX or New Supplier may terminate the employment of any such person within thirty (30) business days of discovering this fact. Whether or not TJX or such New Supplier terminates any contract of employment in such circumstances, Seller will indemnify TJX and/or such New Supplier in respect of any Employment Liabilities (as defined in paragraph 4.9 below which may be incurred by TJX and/or New Supplier by virtue of the Transfer Regulations and/or as a result of the employment or termination of employment of any employee (actual or alleged) of Seller and which arise in connection with, or result from the employment of such individual and/or termination of their contract of employment.

4.9. For the purposes of paragraph 4.8 above Employment Liabilities means any costs, claims, demands, fines or expenses (including reasonable legal and other professional expenses) payments, wages, actions, proceedings, compensation, awards, interest, loss, damages or penalties incurred or arising in each case out of (i) the employment of any person, (ii) the termination of such employment, or (iii) any dispute which relates to such employment and any liabilities for income tax or local social security contributions.

4.10. Seller hereby assigns to TJX to the fullest extent possible and for TJX to hold absolutely, with full title guarantee and free from all third party rights and encumbrances, all intellectual property rights created through the performance of its obligations under this Purchase Order.

5. TERMINATION

5.1. 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.

5.2. If the Company commits a breach of its obligations under this Agreement which is not capable of remedy, or where capable of remedy does not remedy such breach within fourteen days of written notice given to it by TJX UK, TJX Europe Buying Group Limited or TJX Ireland Unlimited Company (as the case may be) specifying such breach and requiring its remedy, then TJX UK, TJX Europe Buying Group Limited or TJX Ireland Unlimited Company (as the case may be) may terminate this Agreement by giving seven days notice in writing to the Company.

5.3. Either party may terminate this Agreement immediately by notice in writing to the other if any of the following conditions are met: (i) the other party proposes or enters any composition or other arrangement for the benefit of its creditors or a class of creditors; (ii) anyone takes any step towards winding up or dissolving the other party; (iii) anyone takes any step towards the other party obtaining a moratorium or other protection from its creditors; (iv) anyone takes any other step towards appointing a trustee, supervisor, receiver, liquidator, examiner, administrator or similar officer or other encumbrancer of the other party or any of its assets; (v) an event occurs which would result in a floating charge crystallising over any of the other party’s assets; (vi) any person takes any step to take possession of or to levy a distress or execution against any of the other party’s assets; (vii) the other party stops carrying on business; (viii) any event analogous to any of the above happens in any jurisdiction; (ix) the other party is unable to pay its debts or admits it is unable to do so (without any need for the relevant party to prove it in court); or (x) the value of the other party’s assets are at any time less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

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

1. GENERAL WARRANTIES

1.1. The Seller warrants that neither the delivery of Goods nor the performance of Services hereunder directly or indirectly breaches 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 breach 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, Seller’s Personnel and Sub-contractors, including without limitation, all immigration, labour and environmental laws and regulations and all applicable anti-bribery and anti-corruption laws, including the U.K. Bribery Act, the U.S. Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials Act, the Irish Prevention of
Corruption Acts and all other similar applicable laws. Seller will also require the same of each Sub-contractor 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 Personnel 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. PAYMENT TERMS

2.1 No receipt, resale, payment or other action or omission by TJX shall prevent TJX from at any time exercising any remedies TJX may have as a result of failure of Seller, or the Goods or Services, to comply with the terms of this Purchase Order. Acceptance of any part of this Purchase Order shall not bind TJX to accept future shipment or performance thereof.

2.2 TJX shall pay all valid invoices within 60 days of the date of receipt of the invoice. TJX may withhold payment of any invoice which it disputes provided that it informs Seller of such dispute before such invoice becomes due and payable.

2.3 If any sum due and payable (and not disputed or set off) under this Purchase Order is not paid by TJX in accordance with the agreed payment terms, Seller shall be entitled (without prejudice to any of its other rights) following receipt by TJX of written notice from Seller, to charge interest at the rate of two per cent above the base rate of the Bank of England from time to time in force from the date of such notice until the date of actual payment. The parties agree that the right to claim interest under this paragraph is a substantial remedy for late payment and is in substitution for any statutory or other right to claim interest and/or other remedy for late payment under the Late Payment of Commercial Debts (Interest) Act 1998 in the UK or the Late Payments in Commercial Transactions Regulations 2012 in Ireland.

2.4 Prices and other terms noted on the Purchase Order are exclusive of any value added tax (VAT) (which shall be paid by to the Seller at the rate and in the manner prescribed by law from time to time, subject to prior delivery by the Seller to TJX of a valid VAT invoice in respect thereof) but inclusive of any other tax that may be imposed.

2.5 Invoices shall be submitted in the currency specified in the Purchase Order.

2.6 TJX operates a ‘No PO No Pay’ policy and shall not be required to pay any invoice issued by the Seller which does not clearly display the correct Purchase Order number on the face of the invoice.

3. CONFIDENTIALITY

3.1 Seller (or, for purposes of this paragraph titled “Confidentiality”, the “receiving party”) shall maintain as confidential and shall not disclose to any other party or prohibited access or remove, destroy or alter in any manner, or in the event of a breach of confidentiality, disclose any information relating to any manner to TJX or its affiliates (or, for purposes of this paragraph titled “Confidentiality”, “the disclosing party”) or their business, 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, development 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 personal data under the law of England and Wales or Ireland, 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.

3.2 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 or breach of confidentiality by 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 and limits the extent of such disclosure to the extent legally possible.

3.3 The provisions of this paragraph 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.

3.4 The receiving party agrees that breach of confidentiality may cause irreparable damage and also agrees that it would be impossible and/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, from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any such provision herein.

3.5 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 out above.

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

4. SUBCONTRACTING/SECONDARY SOURCING

No individuals or entities other than Seller and Seller’s Personnel may undertake work in connection with this Purchase Order, unless such individuals or entities are specifically approved by TJX in writing (collectively, “Sub-contractors”). TJX has the right, in its sole discretion to disapprove any Sub-contractor at any time and Seller shall abide by such decision. Seller shall make all appropriate arrangements with each of its employees, or Sub-contractors 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 Sub-contractors, Seller shall
obtain and maintain in effect appropriate written agreements with each such Sub-contractor 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’s Sub-contractors with respect to TJX Confidential Information. Seller shall remain jointly and severally liable to TJX for the activities of any Sub-contractor. Any purported sub-contracting of performance in breach of this paragraph shall be void and shall entitle TJX to declare Seller in default.

5. ASSIGNMENT; RIGHT OF SETOFF

Seller shall not sub-contract 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 sub-contracting 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 with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.

6. ENTIRE AGREEMENT

6.1 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 TJX and delivered by TJX to Seller. Each shipment of Goods received by TJX from Seller or Services performed by Seller for TJX 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 TJX’s act of accepting or paying for any shipment or Services or similar act of TJX.

6.2 This Purchase Order and the documents referred to in it, constitutes the entire agreement and understanding of TJX and the Seller and supersedes any previous agreement between TJX and the Seller relating to the subject matter of this Purchase Order.

6.3 Each of TJX and the Seller acknowledges and agrees that in entering into this Purchase Order, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person other than as expressly set out in this Purchase Order. The only remedy available to Seller for breach of warranty or understanding set out in this Purchase Order (whether made innocently or negligently) shall be for breach of contract under the terms of this Purchase Order. Nothing in this paragraph shall, however, operate to limit or exclude any liability for fraud and/or fraudulent misrepresentation.

7. MISCELLANEOUS

7.1 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.

7.2 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 England and Wales, and TJX and the Seller irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Purchase Order. 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.

7.3 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 force majeure. The term “force majeure” shall mean any cause beyond the reasonable control of the party affected, despite exercising due diligence and shall include, but not be limited to 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 restraint by Court order or public authority. Any party which is unable to fulfill any obligations by reason of force majeure shall exercise due diligence to remove such inability with all reasonable dispatch. Economic hardship of either party or any change in economic or market circumstances shall not constitute a force majeure hereunder. Labour 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 or mitigate such causes of non-performance.

7.4 Seller agrees to maintain for a period of five (5) 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 or delivery of Goods. Any audit to be performed by TJX hereunder shall be completed pursuant to the provisions of this paragraph. TJX (or its authorized representative) shall have the right, at TJX’s expense (unless such audit uncovers a breach of these Terms and Conditions of Purchase Order by the Seller in which case the Seller shall indemnify TJX for all costs incurred in such audit), to audit Seller’s compliance with the terms hereof.

7.5 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.

7.6 If any paragraph, 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 paragraph, term or provision hereof.

7.7 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, charged prepaid, and addressed in each case to the party at the address set out on the first page of this Purchase Order.

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

7.9 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.

7.10 Italicised wording in this paragraph 7.10 shall have the meaning ascribed to them under the Data Protection Act 1998. It is not anticipated that Seller will act as a data processor of any personal data in respect of which TJX is a data controller. To the extent that Seller is required by TJX to act as a data processor at any stage, the parties shall, prior to Seller acting in this capacity, first agree the terms of a written agreement to set out the ambit of such role. Any
processing of personal data prior to such written agreement being concluded is not authorised by TJX.

7.11 Seller hereby grants to TJX a non-exclusive, royalty free licence of its intellectual property rights (existing at or prior to the date of this Purchase Order) as is necessary to enable TJX to receive, use and enjoy the Goods and Services and for its own internal and other proper business purposes.

7.12 The failure or delay by TJX in exercising any right, power or remedy that it might have under this Purchase Order shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by TJX of any right, power or remedy under this Purchase Order shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of this Purchase Order shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Purchase Order.

7.13 Termination or expiry of this Agreement for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.

7.14 Without prejudice to the generality of paragraph 7.13, where a paragraph in this Agreement (including, without limitation, each of the indemnities) expressly or impliedly has effect on termination or other expiry of this Agreement, that paragraph shall continue in force on and after such termination or expiry.

7.15 Nothing in this Purchase Order grants the Seller any exclusivity in the supply of Goods or Services to TJX and TJX may procure the supply of Goods or Services or items or services similar to the Goods or Services from any third party supplier it wishes at its sole discretion.

7.16 Seller recognises and agrees that TJX and its affiliates own or control various trade names, logos and trademarks (the “TJX Marks”) and that the use thereof inures solely for the benefit of TJX and its affiliates. Nothing in this Purchase Order shall be construed as giving Seller any rights of ownership or otherwise in or to the TJX Marks and Seller shall not use or reproduce any of the TJX Marks without obtaining TJX’s prior written consent.

7.17 Subject to paragraph 7.18 below, a person who is not a party to this Purchase Order shall have no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any provisions of this Agreement.

7.18 Notwithstanding paragraph 7.17, each of TJX’s affiliates shall have the benefit of all rights, benefits and limitations provided for in this Purchase Order and accordingly shall be entitled to enforce this Purchase Order subject to and in accordance with its terms.