

Wheeler Fleet Solutions, Co.

Terms and Conditions of Sale

I. APPLICABILITY

The following terms and conditions of sale ("Terms and Conditions") apply to any order ("Order") for products, systems or parts offered for sale ("Product(s)") by Wheeler Fleet Solutions, Co. and its affiliates and subsidiaries ("Wheeler") to the procuring party ("Customer") unless and to the extent that a separately negotiated contract executed between the parties is cited on the procuring party's Order.

II. ORDERS

(a) If Customer orders Products from Wheeler, and Wheeler delivers Products to Customer, these Terms and Conditions will apply to all such purchase and sales transactions.

(b) Any Order of Products will be governed solely by these Terms and Conditions and any other mutually agreed upon written provisions. Verbal understandings are not binding on Wheeler.

(c) Wheeler's confirmation of Customer's Order is expressly made conditional on Customer's assent to all of these Terms and Conditions and terms contained in a Wheeler Order acknowledgement. Customer's acceptance, payment for, or use of Products constitutes its assent to these Terms and Conditions.

(d) Wheeler's order acknowledgements do not constitute Wheeler's acceptance. Wheeler does not waive any term in these Terms and Conditions if it fails to object to provisions appearing on, incorporated by reference in, or attached to Customer's Order. Any additional or different terms, which may be contained in any documents furnished by Customer, are deemed material and Wheeler hereby objects to and rejects them. Any such additional or different terms are effective only if in writing and signed by an authorized representative of both Wheeler and Customer.

(e) Customer acknowledges that Wheeler will be purchasing Products from third parties according to the specifications Customer provides to Wheeler. Wheeler makes no representation or warranty about the components, composition or sufficiency of Products to meet Customer's needs.

III. PRICES

(a) Prices are in United States Dollars. If Wheeler issues a quote for Products ("Quote") to Customer, the Quote is valid for thirty (30) days. Prices do not include any non-standard costs, including but not limited to, testing, Customer-specific certification or inspection requirements, etc., unless specifically stated on Wheeler's Quote. Wheeler reserves the right to change or withdraw quoted prices until Wheeler has accepted Customer's Order.

(b) Customer's order is subject to Wheeler's minimum order requirements. Wheeler reserves the right to limit order quantities for certain Products.

(c) Prices do not include any taxes or duties on the purchase or sale of Products, including, but not limited to, federal, state, or municipal excise, sales, use or value added taxes or import duties, if any. Any such taxes and duties that may become due and owing will be paid by Customer, excluding taxes

based upon Wheeler's gross income. Customer shall reimburse Wheeler upon demand for any such taxes, duties or similar charges that Wheeler is required to pay or collect on behalf of Customer.

IV. PAYMENT

(a) If Wheeler's Finance department has granted credit terms to Customer, Customer will pay all Wheeler invoices within 30 days of each invoice date. All payment(s) must be made in United States Dollars and must be accompanied by remittance detail containing at a minimum Wheeler's invoice number and amount paid per invoice. Wheeler reserves the right to correct any inaccurate invoices. Payments, without deduction for electronic funds transfer fees, must be in accordance with the "Remit To" or other similar field on each invoice.

(b) Wheeler may establish credit terms with Customer through application to Wheeler's Finance department. Wheeler may re-evaluate Customer's credit terms at any time. If Wheeler determines in its sole discretion that Customer fails to qualify for credit terms at any time, then Wheeler may, without notice to Customer, modify or withdraw credit terms including, but not limited to, requiring advance payment, letters of credit, guarantees, or other security.

(c) If Customer is delinquent in its payment obligations to Wheeler, Wheeler may at its option (i) be relieved of its obligations with respect to commitments, including without limitation, turnaround times, spares support and delivery lead-times; (ii) refuse to process any credit to which Customer may be entitled; (iii) set off any credit or sum owed by Wheeler to Customer against any undisputed amount owed by Customer to Wheeler; (iv) withhold future deliveries to Customer; (v) declare Customer's performance in breach and terminate the purchase order; (vi) repossess Products for which payment has not been made; (vii) make future deliveries on a cash-with-order or cash-in-advance basis; (viii) charge interest on delinquent amounts at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof; (ix) charge storage or inventory carrying fees on Products; (x) recover all costs of collection including, without limitation, reasonable attorneys' fees; (xi) if Customer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing; or (xii) combine any of the above rights and remedies as may be permitted by applicable law. The above remedies are in addition to all other remedies available at law or in equity.

(d) If Customer disputes Wheeler's invoice, or any portion thereof, Customer will so notify Wheeler within thirty (30) calendar days of the date of Wheeler's invoice. The parties will use all reasonable efforts to resolve invoice disputes expeditiously. Notwithstanding any invoice disputes, Customer shall promptly remit payment for invoices, or portions thereof, not in dispute.

(e) Wheeler may setoff payments made on a purchase order or future purchases for amounts owed on other purchases orders where payment is delinquent.

V. DELIVERY

(a) Delivery of Parts shall be Ex Works (EXW) Wheeler's facility (Incoterms 2020). Title and risk of loss will pass to Customer at delivery, which shall be defined as when Wheeler hands over Parts to the shipper for carriage from Wheeler's facility.

(b) Wheeler will schedule delivery in accordance with its standard lead time unless Wheeler agrees in writing to a separate delivery date. Customer's acceptance of late deliveries shall constitute a bar to a claim of late delivery.

(c) All shipping expenses from the EXW point to Customer, including transportation and insurance costs, shall be for the account of Customer. If Wheeler prepays such transportation charges, Customer will reimburse Wheeler upon receipt of an invoice for those charges. Wheeler may charge additional fees for any rush shipments, special routing, packing, labeling, handling or insurance requested by Customer.

VI. ACCEPTANCE

(a) Products are presumed accepted unless Wheeler receives written notice of rejection from Customer, within seven (7) calendar days of receipt, explaining the basis for such rejection. Once accepted, Customer's only recourse or remedy for non-conforming or defective Products shall be as provided through the manufacturer's warranty.

(b) Customer must request and be granted a Returned Materials Authorization ("RMA") from Wheeler prior to the return of any newly, uninstalled Products. Products returned without an approved RMA form will not be accepted and the Products will be returned at Customer's expense.

(c) If Wheeler grants permission to return Products, Customer will bear the cost of all transportation and handling charges.

(d) Products must be returned in "new" condition in the original packaging as supplied by the manufacturer. Such packaging may not be damaged, broken or in any way tampered with except for ordinary wear incurred in shipping, damage or loss of the Product incurred in transit.

(e) If Wheeler finds that Customer's rejection of Products was proper, Wheeler may either, at its option, replace the Products or credit Customer with the purchase price. If Wheeler determines that the Customer's rejection was improper, Customer will pay all expenses relating to the improper rejection.

(f) Wheeler must receive the Products within thirty (30) calendar days of the RMA issue date. Wheeler reserves the right to return the Products received beyond the 30 day window at Customer's expense.

(g) All returned Products are subject to a minimum restocking fee of fifteen percent (15%) of sales price.

VII. TERMINATION/ORDER CANCELLATION/CHANGES

Any changes to an Order by the Customer can only be made by a change order signed by the authorized representatives of Customer and Wheeler.

VIII. NONDISCLOSURE

These Terms and Conditions do not supersede any confidentiality agreement executed by Customer and Wheeler that otherwise applies to Products, services, technical data or other information delivered in connection with any Order. In the absence of such confidentiality agreement, Customer may use Wheeler's proprietary and/or confidential information ("Proprietary Information") only in relation to the use of Wheeler's Products by Customer or for purposes directly relating to these Terms and Conditions. For purposes of these Terms and Conditions, "Proprietary Information" shall mean any business records, technical information or data of any kind including, but not limited to, all financial information, costs,

quotations, price lists, designs, specifications, or drawings, that have been disclosed by Wheeler, or any other information expressly marked as “Confidential” or “Proprietary” by Wheeler or any of its suppliers. Proprietary Information shall remain the property of Wheeler and its suppliers. Customer may only disclose Proprietary Information to its employees on a need-to-know basis, will protect against its inadvertent disclosure, and will not disclose Proprietary Information to any third party without Wheeler’s prior written consent.

IX. WARRANTY

Wheeler’s Distributor Warranty:

Products Sold Via E-Commerce, Telephone or Purchase Order: Subject to the terms of this warranty, Wheeler warrants these Products will be free from defects in materials or workmanship under normal operating conditions for a period of ninety (90) days from the date of sale to Customer or the remaining portion of the Manufacturer’s warranty, whichever is greater.

Wheeler’s Manufacturer Warranty:

Wheeler Tru-Fit and Wheeler Branded Products: Subject to the terms of this warranty, Wheeler warrants these Products will be free from defects in materials or workmanship under normal operating conditions for a period of one (1) year from the date of sale to Customer.

Select Products are warranted for an extended period. A list of these Products can be provided by Wheeler upon request. This list is subject to change by Wheeler at any time without any notice required.

Wheeler’s only obligation and Customer’s sole remedy under these warranties are, at Wheeler’s option, to refund the purchase price of, or replace the Product that is suffering from a nonconformance.

1. Warranty Returns

- 1.1. Customer shall contact Wheeler for a return authorization number (RMA) by calling [855\) 252-0811](tel:8552520811) or emailing info@wheelerfleet.com.
- 1.2. Customer must have proof of purchase to be eligible for a warranty claim.
- 1.3. Customer shall return together, with its warranty claim and proof of purchase, any Product alleged to be defective and under warranty, properly packaged and prepaid to Wheeler or as otherwise directed by Wheeler.
- 1.4. If warranty claim is accepted, Wheeler will reimburse reasonable transportation costs for warranty returns in an amount not to exceed normal ground shipping charges. No other expenses incurred by Customer will be reimbursed by Wheeler without Wheeler’s prior approval.
- 1.5. Customer must disposition warranty return Products in accordance with Wheeler’s written instructions.
- 1.6. No credits will be made by Wheeler and/or no deductions are allowed by Customer until the warranty claim is approved by Wheeler and settlement has been reached.

2. Warranty Limitations

- 2.1. This warranty is only valid if such defects are discovered within the duration of the appropriate warranty periods and Customer notifies Wheeler in writing within thirty (30) days of discovery.
- 2.2. This Warranty Policy does not cover claims for product where the failure is the result of improper installation, lack of service or lack of proper maintenance.
- 2.3. Wheeler is not liable under this warranty for any defect resulting from a Product having been exposed or subjected to: (i) any alteration, modification, maintenance, repair, installation, handling, transportation, storage, operation or use, that is improper; (ii) any accident, collision, contamination, abuse, neglect or negligence; or (iii) any Products whose warranty seals or stickers are removed or tampered with in any way. This determination will be at the sole discretion of Wheeler.
- 2.4. In no event shall the obligation of Wheeler under this warranty be construed to obligate Wheeler to remedy more than the Product that is found to be defective, and does not apply to the vehicle and/or any other Equipment.
- 2.5. This warranty does not cover, and Wheeler will not pay for, or provide, any labor or materials which may be necessary to remove a product or install a replacement product. This warranty is limited to the refund or replacement of the Product only, when returned in accordance with Section 1 of this Section IX.
- 2.6. To the extent that any third party has made any oral or written statements to the Customer about the Product, such statements are not warranties, and should not be relied on by the Customer.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY WHEELER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO EXTENSION OR MODIFICATION OF THESE WARRANTIES WILL BE BINDING UPON WHEELER UNLESS SET FORTH IN WRITING AND SIGNED BY WHEELER'S AUTHORIZED REPRESENTATIVE.

X. PATENT INDEMNIFICATION

Wheeler has no control over the technology of the third party Products sold herein, and therefore cannot and does not indemnify Customer for claims that third party Products infringe any patent, copyright, trademark or trade secret. Wheeler's sole obligation, and Customer's only remedy, relating to patent, copyright, trademark or trade secret indemnification is, upon Customer request, to assign or transfer to Customer all patent, copyright, trademark or trade secret indemnifications of Wheeler's suppliers and/or manufacturers of Products to the extent such indemnities are assignable.

THE INDEMNITY, OBLIGATIONS AND LIABILITIES OF WHEELER AND THE REMEDIES OF CUSTOMER PROVIDED IN THIS SECTION ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND CUSTOMER HEREBY WAIVES, RELEASES AND RENOUNCES, ALL OTHER INDEMNITIES, WARRANTIES (EXPRESSED, IMPLIED OR STATUTORY), OBLIGATIONS AND LIABILITIES OF WHEELER AND RIGHTS, CLAIMS AND REMEDIES OF CUSTOMER AGAINST WHEELER WITH RESPECT TO ANY PATENT, COPYRIGHT, TRADEMARK OR TRADE SECRET INFRINGEMENT.

XI. INDEMNITY

Customer shall defend, indemnify and hold harmless Wheeler, its affiliates and subsidiaries and their directors, officers, employees and agents from and against any and all claims, suits, damage, loss, liability, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) resulting from, arising out of, or relating to, directly or indirectly, these Terms and Conditions, violation of any applicable law or regulation, Customer's activities or contractual relationships with third parties with respect to these Terms and Conditions, or the installation, operation, use, maintenance, repair or modification of Products, other than such claims as arise from the gross negligence or willful misconduct of Wheeler.

XII. AFTERMARKET ACTIVITY

Wheeler's sale of Products to Customer does not convey to Customer any right or license to any present or future patent, trademark, copyright, trade secret or other intellectual property owned, controlled, or licensed by Wheeler or an OEM nor any right to use Wheeler or an OEM's Proprietary Information which is incorporated or embodied in Products other than as set forth in these Terms and Conditions.

XIII. EXCUSABLE DELAYS AND FORCE MAJEURE EVENTS

Wheeler will not be liable to Customer for any failure to meet its obligations due to any cause beyond Wheeler's reasonable control and not occasioned by its fault or negligence (an "Excusable Delay or Force Majeure Event"). Excusable Delay or Majeure Events may include but are not limited to (i) delays or refusals to grant an export license or the suspension or revocation thereof; (ii) any other acts of any government that would limit the ability for contract performance; (iii) fires, earthquakes, floods, severe weather conditions, or any other acts of God; (iv) quarantines or regional medical crisis or pandemics; (v) labor strikes or lockouts; (vi) riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property); and (vii) shortages, delays, or inability to obtain materials, components or Products from any Wheeler supplier. If an Excusable Delay or Force Majeure Event causes a Wheeler delay or does not allow performance, then the date of Wheeler's performance will be extended by the period of such delay or Wheeler may cancel Customer's order with respect to such delayed Products.

XIV. CONFIDENTIALITY

Customer shall not disclose to any third party the existence of, or any information concerning, the transaction contemplated hereby, nor any pricing of Products offered hereunder, without first obtaining the written consent of Wheeler, unless required by law.

XV. ASSIGNMENT

Customer will not assign any rights nor delegate any obligations under these Terms and Conditions or any portion thereof in whole or in part, by operation of law or otherwise, without Wheeler's advance, written consent which will not be unreasonably withheld. Any attempt to assign or delegate in violation of this section will be void.

XVI. NOTICES

(a) Notices or non-routine communications between the parties, other than Orders, will be in writing, sent by prepaid overnight courier service or email and shall be effective upon receipt by the party to which notice is given.

(b) Notices shall be addressed to the following respective mailing or email addresses of the parties, or such other addresses as the parties may designate by notice from time to time:

(i) If to Wheeler: The addresses indicated on Wheeler's quotation.

(i) If to Customer: To Customer's addresses on its Order.

XVII. WAIVER

The failure or delay of Wheeler to enforce any of the provisions of these Terms and Conditions shall not be construed to be a continuing waiver of any provisions hereunder nor shall any such failure prejudice the right of Wheeler to take any action in the future to enforce any provisions hereunder.

XVIII. COMPLIANCE WITH LAWS

Customer represents and warrants that it will comply in all respects with all laws, rules, regulations, ordinances, proclamations, demands, directives, or other legal requirements that now govern or may hereafter govern the Products, including but not limited to the US Foreign Corrupt Practices Act, UK Bribery Act and those of all applicable agencies and instrumentalities of the United States and foreign countries. Customer agrees upon request to furnish Wheeler with a certificate of compliance relating to any such laws and regulations in such form as Wheeler may require. Customer agrees to indemnify and hold Wheeler harmless from any liability arising from any failure of Customer to comply with such laws and regulations.

XIX. EXPORT COMPLIANCE

(a) Customer represents and warrants that it will comply with all applicable import and export control laws and regulations, including, without limitation, the United States Export Administration Regulation ("EAR"), the United States International Traffic in Arms Regulations ("ITAR"), the United States Office of Foreign Assets Control Regulations, the United States Foreign Trade Regulations, European Union and country-specific import and export regulations including EU and/or country-specific sanctions regimes, and other applicable laws and regulations, and will retain documentation evidencing such compliance. Customer will obtain import and re-export approvals and licenses required for Products, transfers, services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations. Customer agrees to indemnify and hold Wheeler harmless from any fines, penalties, or other liability imposed by any government entity arising from any failure of Customer to comply with such laws and regulations.

(b) Wheeler will not be liable to Customer for any failure to provide Products, services, transfers or technical data as a result of government actions that impact Wheeler's ability to perform, including, but not limited to (i) any governmental failure to provide, or the cancellation of, export or re-export licenses; (ii) any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any order or commitment that has a material adverse effect on Wheeler's performance; or (iii) delays due to Customer's failure to follow applicable import, export, transfer, or re-

export laws and regulations or to assist Wheeler in acquiring same. Customer shall not be relieved of its payment obligations if any of the above events occur.

(c) If Customer designates the freight forwarder for export shipments from the United States or any another country (whichever applicable), then, unless otherwise instructed or notified by Wheeler, Customer's freight forwarder will export on Customer's behalf and Customer will be responsible for any failure of Customer's freight forwarder to comply with all applicable export requirements. Wheeler will provide Customer's designated freight forwarder with required commodity information. It is the responsibility of Customer and Customer's freight forwarder to provide an ITN number. Any delays related to receipt of an ITN number from Customer or Customer's freight forwarder will not be the responsibility of Wheeler.

(d) Where Customer holds the design authority for a Product or otherwise possesses the relevant export classification for a Product, Customer shall provide Wheeler with the relevant export classification data. At Wheeler's request, Customer shall complete all forms requested by Wheeler to facilitate the exports of Products in accordance with all applicable laws and regulations. Customer shall provide updates to Wheeler in a timely manner as changes occur.

XX. GOVERNING LAW, VENUE AND JURISDICTION

These Terms and Conditions and the transactions arising out of or related to Customer's Order will be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law principles. This choice of the governing law shall also apply to non-contractual claims, including tort claims, arising out of or related to Customer's Order. The United Nations Convention on Contracts for the International Sale of Goods, and any successor thereto, shall not apply. To the fullest extent permitted by law, Customer hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs these Terms and Conditions and the transactions arising out of or related to Customer's Order. Venue and jurisdiction for all legal proceedings of any kind or nature brought to enforce or relating to or arising from any provisions of these Terms and Conditions or the transactions arising out of or related to Customer's Order shall lie exclusively in a court of competent jurisdiction in the Commonwealth of Pennsylvania, and Customer hereby irrevocably submits to the exclusive jurisdiction of such courts in any such legal proceedings, and hereby expressly and irrevocably waives its rights to any other jurisdiction that may apply by virtue of its present or future domicile or for any other reason. This choice of jurisdiction shall also apply to legal proceedings of any kind or nature brought to enforce any non-contractual claims, including tort claims, arising out of or related to Customer's Order. If Customer is organized outside the United States, to the extent that Customer or any of its property is or becomes entitled at any time to any immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceeding, or other legal process in any jurisdiction, Customer for itself and its property does hereby irrevocably and unconditionally waive, and agrees not to assert, plead or claim, any such immunity with respect to its obligations, liabilities or any other matters resulting from or arising under or in connection with these Terms and Conditions and the transactions arising out of Customer's Order. Nothing in these Terms and Conditions are to be construed as excluding any mandatory local law which cannot be excluded.

XXI. LIMITATION OF LIABILITY

ALL LIABILITY OF WHEELER IS PRECLUDED UNLESS WHEELER IS LIABLE BECAUSE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE.

NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT WILL WHEELER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES OR USE EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. WHEELER'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS AND THE TRANSACTIONS ARISING OUT OF CUSTOMER'S ORDER IS LIMITED TO THE CONTRACT PRICE FOR THE SPECIFIC PART OR SERVICE THAT GIVES RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE. THESE EXCLUSIONS OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THESE TERMS AND CONDITIONS. THE MAXIMUM LIABILITY OF WHEELER ARISING OUT OF OR RELATED TO THE SALE OF PARTS UNDER THESE TERMS AND CONDITIONS WILL BE THE VALUE OF THE SPECIFIC PART THAT CAUSED SUCH LIABILITY AND WAS SOLD BY WHEELER TO CUSTOMER.

NOTWITHSTANDING THE PROVISIONS OF ANY APPLICABLE LIMITATIONS ACT OR OTHER STATUTE, IN NO EVENT SHALL CUSTOMER COMMENCE ANY ACTION ARISING OUT OF THE ORDER OR THE CONTRACT BETWEEN THE PARTIES LATER THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

XXII. SETOFF

Customer will not set off any amount, whether or not liquidated, against sums Customer asserts are due to Customer, Customer's parent, subsidiaries, affiliates or other divisions or units under any transaction with Wheeler, Wheeler's parent, subsidiaries, affiliates or other divisions or units, whether under these Terms and Conditions or otherwise.

XXIII. SURVIVAL

All provisions of these Terms and Conditions which by their nature should apply beyond completion of Customer's order will remain in force after the expiration or any termination of these Terms and Conditions.

XXIV. SEVERABILITY

If any provisions of these Terms and Conditions are at any time held to be invalid or unenforceable, such provisions shall be construed as severable and shall not in any way render invalid or unenforceable the remainder of the provisions which shall remain in full force and effect and, in lieu of the invalid or unenforceable provisions, there will be added as part of these Terms and Conditions one or more provisions as similar in terms as may be valid and enforceable under applicable law.

XXV. THIRD PARTY BENEFICIARIES

Except as expressly provided to the contrary in these Terms and Conditions, the provisions of these Terms and Conditions are for the benefit of the parties hereto and not for the benefit of any third party.

XXVI. INDEPENDENT CONTRACTOR

The parties acknowledge that they are independent contractors and no other relationship, including without limitation partnership, joint venture, employment, franchise, master/servant or principal/agent is intended by these Terms and Conditions. Neither party has the right to bind or obligate the other.

XXVII. HEADINGS

Headings and captions are for the convenience of reference only and do not alter the meaning or interpretation of these Terms and Conditions.