

HD Supply  
SBA Terms and Conditions  
(United States, Puerto Rico, U.S. Virgin Islands)

paid by HD Supply upon any such Order or a resulting invoice, whether claimed by reason of late payment or otherwise.

**1.0 SBA; SBA Terms and Conditions; Parties; Order**

1.1 These SBA Terms and Conditions (“SBA Terms and Conditions”), together with: (a) the terms of any Order (as defined below); (b) the Supplier Information Sheet signed by HD Supply Support Services, Inc. and Supplier (the “Information Sheet”); (c) any attachment to the Information Sheet (an “Attachment”); and (d) the Ethics Guide (see, <https://supplier.hdsupplyinc.com>) as modified from time to time, the “Ethics Guide”), are collectively referred to herein as the “Supplier Buying Agreement” or the “SBA”. Any conflict between these documents will be resolved in the following order of priority: Order; Information Sheet; SBA Terms and Conditions; Ethics Guide; and Attachment. The SBA constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, written or oral, and may not be supplemented by any course of dealing, course of performance, or trade usage.

1.2 As used herein, “HD Supply” shall mean HD Supply Support Services, Inc., HD Supply, Inc., and their respective subsidiaries, affiliates, successors and assigns (whether through sale of assets, stock, merger or similar transaction). The term “Supplier” means the Supplier designated in the SBA, and any successor thereof.

1.3 Every purchase order (“Order”), whether written, faxed, or electronically transmitted to Supplier, is subject to all terms and conditions contained in these SBA Terms and Conditions. Further, SBA Terms and Conditions shall apply to all purchases made by HD Supply whether such purchases are for resale, rental, redistribution or internal use.

**2.0 Acceptance of Orders**

2.1 Each Order shall be deemed accepted by Supplier if any shipment of products is made under the Order or if the Order otherwise is acknowledged by Supplier. Neither additional or different terms nor the furnishing by Supplier of additional documents shall modify the Order unless specifically agreed in writing by an authorized agent of HD Supply. Any such additional or different terms are rejected by HD Supply, and HD Supply’s failure to object specifically to such additional or different terms will not be a waiver of these terms. There shall be no changes or modifications to any Order unless expressly so agreed in writing by authorized agents of HD Supply and Supplier. Time is of the essence of any Order.

2.2 Supplier will not reject an Order submitted by HD Supply that complies with applicable SBA terms, unless it has provided at least 90 days prior written notice that it will not accept Orders after a specified date.

**3.0 Title and Risk of Loss; Acceptance of Products; Samples**

Unless otherwise provided in the SBA or in any Order, all Orders will be deemed “Prepaid, FOB destination” (as defined in the Georgia Uniform Commercial Code) or “DDP” Buyer’s specified Facility (as defined in Incoterms 2000), and shall be delivered through HD Supply’s core carrier program. Consequently, in such circumstances no liability for shipping, insuring, or paying duty on the products will be incurred by HD Supply and risk of loss shall not pass to HD Supply until legal title passes upon acceptance of the products by HD Supply at the designated final destination, provided that the products are delivered in good condition.

**4.0 Price Changes**

4.1 If Supplier reduces its regular selling price for any product before shipment, Supplier agrees to apply the reduced price to all unshipped Orders. Price protection also shall be provided on special quotations issued by Supplier with a valid quote number and shall be good for 120 days from date of quotation. Subject to the foregoing, unless otherwise agreed by HD Supply in writing, an increase in the prices specified on the Order shall be allowed only to the extent that the same: (a) is based only on material cost increases justified in writing by Supplier; and (b) is approved in writing and signed by an authorized agent of HD Supply. Increases will become effective on the later of: (i) 120 days after Supplier’s receipt of such approval; or (ii) in the case of any products listed in the annual catalog for the relevant business unit of HD Supply (the “Catalog”), the date of publication of the next Catalog. In no event shall Supplier’s price for any product listed in the Catalog be changed before the publication of the next Catalog.

4.2 In no instance shall HD Supply be liable to Supplier in excess of the actual Order price, less applicable discounts and/or other deductions, and no interest or other charges including freight charges, shall be recognized or

4.3 No difference between the quantities of a product actually ordered by HD Supply and those originally forecast to be ordered by HD Supply shall give rise to any increase in the price of such product. By written notice to HD Supply, Supplier may propose an increase in prices for products not covered by an accepted Order, but HD Supply need not accept any such proposed price increase. If HD Supply does not accept such proposed price increase, then Supplier need not provide and HD Supply need not purchase the affected products. Any price increase approved by HD Supply shall become effective on the later of (a) 120 days after Supplier’s receipt of HD Supply’s approval, or (b) in the case of any products listed in the Catalog, the date of publication of the next Catalog.

4.4 Supplier warrants that the net prices and warranties are no less favorable to HD Supply than those offered to any other dealer or reseller in the relevant geographic market channel served by HD Supply. If HD Supply acquires a company (the “Acquired Entity”) that also is a customer of Supplier, then effective as of the first business day following the closing date of any such acquisition the net price provided to both HD Supply and the Acquired Entity shall be adjusted to the lower net price level of the two. As used herein, “net price” shall mean the stated price for the products, less all allowances, discounts, and rebates.

**5.0 Warranties, Representations, Covenants and Guarantees**

5.1 Supplier represents that all products comply with all applicable federal, state, and local laws, codes (including building codes), statutes ordinances, rules, regulations and requirements of the country of origin, the country of transit, or any applicable country or jurisdiction, and orders of any governmental or regulatory authority, including but not limited to the Consumer Product Safety Act; the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act; the Fair Packaging and Labeling Act; the Textile Fiber Products Identification Act; the Flammable Fabrics Act; the Wool Products Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Federal Hazardous Substances Act; The Safe Drinking Water and Toxic Enforcement Act of 1986; all applicable rules and regulations regarding maximum volatile organic compound content and associated markings; all applicable rules and regulations regarding fees, assessments and recordkeeping requirements associated with the sale of pesticides; the Federal Energy Policy and Conservation Act; all applicable rules and regulations of the Federal Trade Commission, the U.S. Food and Drug Administration, and any other federal, state, or local agency (collectively, the “Law” or the “Laws”) and that any changes to the products hereafter made by Supplier shall comply with all applicable Laws.

5.2 Supplier warrants, represents and guarantees to HD Supply and to all persons purchasing or using the products (whether purchased from HD Supply, from any third party to which HD Supply sells the products, or otherwise) that: (a) all products will be furnished in accordance with these SBA Terms and Conditions and will be of the quality, form, fit, function, size and dimensions ordered under the Order; (b) all products will be new products of the latest design or model in conformity with all plans, specifications, performance standards, drawings, control samples and other data incorporated as part of the Order; (c) all products will be of good quality, merchantable, free and clear of liens and encumbrances, and free from all defects in material and workmanship and shall be fit and appropriate for their intended purposes; and (d) the design, manufacture, labels, packaging, instructions, disclaimers and warnings concerning all products will comply with these SBA Terms and Conditions and all applicable Laws.

5.3 Supplier agrees that HD Supply need not inspect products or packaging before sale, and that Supplier’s warranties shall survive any inspection, installation, acceptance, any payment by HD Supply and its customers. HD Supply’s approval of any design, material, or packaging shall not relieve Supplier of any obligations.

5.4 In addition to the foregoing, Supplier warrants, represents, covenants and guarantees the following:

(a) If reasonably requested by HD Supply or required by Law or legal precedent, the labels, packaging, instructions and warnings accompanying Supplier’s products shall be multilingual and/or contain universally accepted pictographs and/or symbols, and the packaging shall include appropriate UPC bar coding;

(b) If requested by HD Supply or required by Law, Supplier will supply HD Supply with any and all instructions, warnings, and safety sheets for Supplier’s products;

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(c) The weights, measures, signs, legends, words, particulars, or descriptions, if any, stamped, printed, or otherwise attached to the products or containers (including US required country of origin markings) or referring to the products delivered hereunder shall be true, accurate and complete and shall comply with all applicable Laws;

(d) Every product shall conform to and comply with all applicable Laws and all applicable industry standards (including all language requirements) and any other testing laboratory approved by, or reasonably specified by, HD Supply;

(e) No product shall infringe any actual or alleged patent, design, trade name, trademark, copyright, trade secret, or any right or entitlement of any third party;

(f) Neither Supplier's manufacturing plants nor any subcontracted plants use government assigned labor or forced labor or workers who are under minimum working age requirements, and in no event under the age of 14;

(g) HD Supply shall have the right, upon reasonable notice to Supplier, to inspect Supplier's manufacturing plants as well as subcontracted plants producing products being purchased by HD Supply under the SBA;

(h) All employees, agents or representatives of Supplier performing services in the U.S. for HD Supply are in compliance with the Immigration Reform and Control Act of 1986 ("IRCA"), and Supplier will comply fully with the record keeping and other requirements of IRCA. HD Supply is not responsible for sponsorship of any workers who perform services for it at the request of Supplier. Supplier will provide HD Supply only workers for whom Supplier has confirmed legal eligibility to perform services as employees in the U.S., and for whom all required record keeping under IRCA has been performed and maintained;

(i) Supplier shall provide, upon request and as promptly as practicable, certifications regarding the country of origin of all products supplied to HD Supply;

(j) If any regulatory or other agency issues an order requiring a party to the SBA to recall, replace, repair, or make refunds with respect to all or part of any products (a "Recall"), Supplier shall: (i) provide prompt notice of the Recall to HD Supply; (ii) at its own expense, comply with all Laws affecting the Recall and reasonable instructions from HD Supply concerning the manner of conducting the Recall; and (iii) indemnify HD Supply for its costs and expenses associated with the Recall, including without limit court costs and attorneys' fees. If Supplier learns (whether through other customers or otherwise) of a quality or safety problem with respect to any of Supplier's products being purchased under the SBA and these SBA Terms and Conditions, Supplier immediately shall notify HD Supply concerning such problem. If either Supplier or HD Supply determines, in its reasonable discretion, that a Recall is warranted without regard to any official proceedings (a "Voluntary Recall"), Supplier shall assume all costs and expenses of such Voluntary Recall and shall indemnify HD Supply as set forth herein. A Voluntary Recall shall be conducted in a manner reasonably agreed upon by Supplier and HD Supply;

(k) The products are not being sold under a quota basis, or if so, it has been properly disclosed to HD Supply in writing; and

(l) In the event of a natural disaster or industry-wide shortage of products ("Emergency Condition"), Supplier shall use its good faith and commercially reasonable efforts to (i) give priority to Orders placed by HD Supply for products during the duration of the Emergency Condition., and (ii) set aside an adequate quantity of products for the exclusive purchase by HD Supply for the duration of the Emergency Condition.

## **6.0 Indemnification**

6.1 Supplier shall indemnify, defend, and hold HD Supply (which for purposes of Sections 6 and 7 of these SBA Terms and Conditions shall include any affiliates or associates and their respective directors, officers, employees, and agents) harmless from and against any and all claims, lawsuits, judgments, losses, product recalls, civil penalties or actions, costs, liabilities, damages, and expenses (including attorneys' and accountants' fees and expenses) by any person, corporation, government, governmental agency, class, or any other entity whatsoever, which arise from and/or in any way relate to any: (a) acts or omissions of Supplier, its employees and agents, contractors, subcontractors and/or any other persons for whose conduct it may be or is alleged to be legally responsible; (b) products provided by Supplier hereunder or their use; (c) dispute

regarding Supplier's product warranties, guarantees, covenants or representations, any breach thereof and/or the breach of any applicable Law or otherwise; (d) dispute involving promotional or advertising matter, fixtures, displays, guarantees, representations, warranties, labels, and/or instructions, verbal or otherwise, furnished by Supplier or submitted to Supplier by HD Supply for approval; (e) dispute regarding infringement of any patent, design, trade name, trademark, copyright, trade secret, or any other right or entitlement of any third party; (f) environmental, property and/or toxic tort claim, lawsuit, judgment, loss, civil penalty or action; and (g) claim against HD Supply by Supplier's employee regarding a workers' compensation matter. This agreement to indemnify, defend and hold harmless HD Supply applies irrespective of any negligence by HD Supply, except to the extent finally determined in legal proceedings that the loss resulted from the sole fault or negligence of HD Supply.

6.2 As long as Supplier is in compliance with its defense obligations hereunder, Supplier shall have control of the defense of any action for which indemnification is sought, subject to the following requirements: (a) Supplier shall promptly provide HD Supply copies of all discovery requests as soon as they are available to Supplier; (b) Supplier shall provide HD Supply copies of all proposed pleadings and the opportunity to comment on them prior to their filing; (c) Supplier shall choose defense counsel that is reasonably satisfactory to HD Supply; (d) Supplier or its representatives shall keep HD Supply or its agents informed of all material information pertaining to a claim; (e) Supplier shall inform HD Supply of the date of any mediation, arbitration, trial or settlement conference as soon as possible after it receives such information, as well as the outcome of same; and (f) Supplier shall obtain HD Supply's prior written consent before entering into any settlement or compromise of the claim that would result in the admission of any liability by HD Supply, any financial liability on the part of HD Supply, or would subject HD Supply to injunctive relief. Notwithstanding the above, HD Supply shall have the right, but not the obligation, to participate as it deems necessary in the handling, adjustment, or defense of any claim. If HD Supply reasonably determines that a defense or defenses are available to HD Supply that are not available to Supplier and raising such defense or defenses would create a conflict of interest for the counsel defending the claim, HD Supply will be entitled to retain at Supplier's expense separate counsel for the purpose of raising these defenses.

6.3 If Supplier fails to assume its defense and indemnity obligations hereunder within 10 days after notice of any claim, HD Supply shall have the right, but not the obligation, to proceed with its own defense and thereafter to require Supplier to reimburse and indemnify it for any and all losses, costs and expenses (including attorneys' and accountants' fees and expenses) incurred by HD Supply in connection with such matter.

6.4 Supplier's agreement to defend, indemnify and hold harmless HD Supply under the terms of this Section 6 is independent of and in addition to Supplier's agreement to procure insurance as required in Section 7. Supplier's insurer's position regarding insurance coverage for HD Supply, as an additional insured, does not in any way modify or limit Supplier's agreement to defend and indemnify and hold harmless HD Supply as required in this Section 6.

## **7.0 Insurance**

Supplier shall procure and maintain commercial general liability insurance including products liability, completed operations and contractual liability coverage, all on an occurrence basis with limits of not less than the amounts specified on the Insurance Approval Request Form (included as an Attachment to the Information Sheet) for property damage and bodily injury or death. A broad form endorsement shall be maintained in said insurance policy with HD Supply, its parent, affiliates and subsidiaries named as an additional insured, requiring that Supplier's insurance be the primary policy with respect to any loss. Supplier further agrees to forward a copy of the SBA to its insurer, and as a condition precedent to HD Supply's obligations hereunder, to have delivered to HD Supply by Supplier's insurer a current certificate of insurance, including renewals before the expiration of the then-current coverage, showing the coverage required by this provision as well as a copy of the broad form endorsement evidencing HD Supply's status as an additional insured. Supplier further agrees that upon notice of a claim against HD Supply involving any product sold to HD Supply, Supplier will immediately notify all insurance carriers which issued policies to Supplier naming HD Supply, its parent, affiliates and subsidiaries as an additional insured of said claim. Thereafter, Supplier agrees to keep HD Supply fully informed of all activity, including but not limited to providing HD Supply with all correspondence and action taken with regard to any claim by any insurance carrier. Additionally, Supplier and its insurer shall provide to HD Supply 30 days prior written notice of non-renewal, cancellation or other change in coverage that may impair or otherwise affect HD Supply's rights thereunder.

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**8.0 Termination, Cancellation, and Returns**

8.1 HD Supply reserves the right to terminate or cancel any Order in whole or in part at any time before shipment of the products (other than specially fabricated products) without incurring any liability.

8.2 Notice of defects in the products or of any other breach by Supplier under the terms of any Order will be considered made within a reasonable time, if promptly made after being discovered by HD Supply or after notification is given to HD Supply by its customers or the users of the products. The return of such products shall not relieve Supplier from liability for failure to ship conforming products under any Order or for liability with respect to warranties, express or implied. Failure of HD Supply to state a particular defect upon rejection shall not preclude HD Supply from relying on unstated defects to justify rejection or establish breach. Resale, repackaging, repacking, or cutting up for the purpose of resale or for use shall not be considered acceptance of the products so as to bar HD Supply's right to reject such products or to revoke acceptance.

8.3 In addition to the terms set forth in Section 8.2 herein, Supplier authorizes HD Supply to cancel any Order in whole or in part, reject products, refuse to receive products, or return all or part of the products, paying only for any part retained at the pro-rated Order rate and returning the balance at Supplier's expense without HD Supply's incurring any liability to Supplier if, in HD Supply's reasonable opinion:

(a) Supplier breaches its express warranties, representations, covenants or guarantees set forth in the Warranties, Representations, Covenants and Guarantees Section contained herein;

(b) Products received are less than or greater than the quantity, weight or volume provided for in the Order, or vary in any respect from the samples from which or specifications for which the Order was placed;

(c) Supplier (i) shall have changed the factory or the subcontractor providing products, (ii) shall have delivered, or coordinated delivery of, the products to HD Supply at a date and/or time that differs from the specified delivery date(s) and/or time(s), (iii) fails to comply with the shipping or invoicing instructions on the Order, or (iv) fails to comply with any of the terms or conditions of the Order;

(d) A claim is made that the sale or offer of sale of said products or the use of said products by HD Supply infringes or would infringe any alleged patent, design, trade name, trademark, copyright, trade secret, right or similar entitlement of any third party;

(e) Supplier files or is the subject of a petition in bankruptcy, becomes insolvent, makes any assignment or arrangement with or for the benefit of creditors, or a receiver or person acting in a similar capacity is appointed for Supplier or its property; or

(f) Discontinuance of or substantial interference with HD Supply's business has occurred, in whole or in part, or with respect to the particular store, facility, location or department for which the Order is given by reason of fire, flood, storm, drought, hurricane, earthquake, war, strike, labor dispute, epidemic (including pandemic flu), act of God, terrorism, embargo, civil commotion, governmental regulation, or any other cause beyond HD Supply's reasonable control.

8.4 Acceptance of products in the circumstances set forth in subsections (a) through (f) of Section 8.3 shall not bind or obligate HD Supply to accept further deliveries on the Order. Acceptance in such circumstances shall not be construed as a waiver of HD Supply's right to recover for Supplier's non-compliance with these SBA Terms and Conditions.

8.5 Cure of nonconforming tender may be made only with the express written consent of a duly authorized agent of HD Supply.

8.6 Notwithstanding the absence of an exception notation on a freight receipt or any other term set forth in a freight receipt, bill of lading or other shipping document that may be executed upon the receipt of freight by HD Supply, HD Supply expressly retains its right to pursue (within a reasonable time frame or such other time frame agreed upon by the parties in writing) a claim or charge-back with Supplier for shortage, damage or other defect of delivered freight that comes to HD Supply's attention following the delivery of such freight.

8.7 HD Supply shall have the right to return to Supplier saleable products in new condition by sending the same to Supplier freight and insurance prepaid and paying Supplier a restocking charge: (a) in the amount

provided in the Information Sheet; or (b) if not so provided in the Information Sheet, in an amount equal to ten (10%) percent of Supplier's original invoice price of the products so returned.

**9.0 Intellectual Property**

9.1 Supplier grants HD Supply and its affiliates the non-exclusive, perpetual, worldwide, royalty-free right and license to use, copy and display any product information, data, images, and/or intellectual property Supplier furnishes HD Supply during the term of the Supplier Buying Agreement ("Supplier Content"). The Supplier Content shall be provided for use by HD Supply in various marketing and in-store activities including, without limitation, for use in HD Supply's Internet initiatives. Supplier acknowledges that HD Supply is reliant upon Supplier to ensure that all Supplier Content is accurate and complete. Supplier agrees to revise, update, and resubmit Supplier Content promptly upon discovering it is inaccurate or incomplete. HD Supply agrees that it will not make material modifications or alterations to Supplier's product specifications, images, intellectual property or product warranty information without prior written approval. Except for the limited license granted to HD Supply, Supplier retains all right, title and interest in and to the Supplier Content.

9.2 Supplier acknowledges and agrees that all patents, designs, trade names, trademarks, copyrights, trade secrets, or any other proprietary rights or entitlements ("Intellectual Property") owned or controlled by HD Supply and/or its affiliates shall be the sole property of HD Supply and/or its affiliates and that Supplier will assist HD Supply, or its designee, in perfecting such Intellectual Property rights by promptly responding to HD Supply's requests for data, samples, specimens, drawings and/or signed documents. Supplier shall not be entitled to use any Intellectual Property of HD Supply (including any logo of HD Supply) without HD Supply's prior written consent in each instance.

**10.0 Publicity**

Supplier shall not publicize, disclose, or discuss the existence, content, or scope, whether in generalities or details, of the Supplier Buying Agreement or make any reference to HD Supply to any third party by any means, or through any medium (including but not limited to advertising, web site references, photographs, articles, press releases or interviews, speeches or programs) without obtaining the prior written consent of HD Supply.

**11.0 Payment; Invoices**

HD Supply's payment obligation shall arise only on the later of: (a) its receipt of products; and (b) its receipt of a complete and correct invoice from Supplier for such products. Unless otherwise provided in the Information Sheet or the Order, payment terms measured from such date shall be 2% discount for payment in 60 days, and net payment required in 90 days.

**12.0 Miscellaneous Provisions**

12.1 All costs and expenses, including but not limited to, attorneys' fees, incurred by HD Supply due to Supplier's violations of or failure to follow any or all of the terms of the Order will be charged to Supplier. Supplier expressly agrees to reimburse HD Supply for all such costs and expenses as promptly as practicable, and Supplier further agrees that, at HD Supply's option, HD Supply may deduct such costs and expenses from any sum then or thereafter owing to Supplier by HD Supply under the SBA or under any other agreement between HD Supply and Supplier or any of its affiliates.

12.2 Any and all taxes, fees, imposts, or stamps, required by state, federal, local governments, or any such governmental authority in the selling, transferring, or transmitting of products to HD Supply shall be paid and assumed by Supplier. If it is ever determined that any tax included in the price paid by HD Supply was not required to be paid, Supplier agrees to refund promptly such amount to HD Supply. Supplier will release, defend, indemnify, and hold HD Supply harmless from and against any fines, penalties, costs (including attorneys' fees and court costs), losses, damages, or liabilities arising from any breach of this Section 12.2 by Supplier.

12.3 No provisions of the Order shall be waived or shall be construed to be waived by either party unless such waiver is in writing and signed by an authorized agent of the waiving party. No failure on the part of either party to exercise any of the rights and remedies granted hereunder or to insist upon strict compliance by the other party, and no acceptance of full or partial performance during the continuance of such breach, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the right to demand

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exact compliance with the terms hereof. A waiver by either party of any specific default shall not affect nor impair the rights of said party with respect to any delay or omission to exercise any rights arising from any other default. Supplier hereby waives use of the Statute of Frauds as a defense to any Order accepted under these SBA Terms and Conditions.

12.4 HD Supply shall not be bound by any assignment of any Order by Supplier, unless HD Supply has consented prior thereto in writing. HD Supply may assign any Order hereunder to a present or future affiliated entity.

12.5 Any dispute arising out of, relating to or concerning the SBA (or any document comprising the SBA) shall, as a condition precedent to any arbitration or court proceeding, be mediated by the parties. The parties shall mutually agree upon a mediator, and shall schedule and conduct mediation at a mutually convenient time and place. Each party shall bear its own costs, fees and expenses associated with such mediation, except that the parties agree to split equally the costs and expenses of the mediator and the conduct of the mediation itself. Any dispute which is not resolved by mediation and which arises out of, relates to or concerns the SBA, or any of any Order, the Information Sheet, these SBA Terms and Conditions, any Attachment or the Ethics Guide may, at the sole option of HD Supply, be resolved by arbitration administered by the American Arbitration Association under its commercial arbitration rules (except that discovery shall be permitted in accordance with the Federal Rules of Civil Procedure), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All arbitration hearings shall be conducted in Atlanta, Georgia. Each party will bear its own costs, fees, and expenses associated with any arbitration, except that the parties agree to split equally the costs and expenses of the arbitrator or panel and the conduct of the arbitration itself. If HD Supply does not elect to submit a dispute to arbitration, the parties agree that any civil action to decide such dispute shall be brought in either the US District Court for the Northern District of Georgia, Atlanta Division, or the Superior Court of Cobb County, Georgia. Notwithstanding any provision to the contrary, Supplier agrees to bring any claim or dispute against HD Supply (including payment disputes) within one year after the occurrence of the event giving rise to such dispute. The laws of the State of Georgia, excluding its conflicts of law rules, shall govern the SBA (and each document comprising the SBA), and all disputes arising out of or relating thereto. The parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to (a) the sale of goods hereunder, (b) the contractual relationship created under the SBA and its constituent documents, and (c) the construction, validity, enforcement, and interpretation of the SBA and its constituent documents.

12.6 At any time HD Supply may hire a third-party accountant to audit Supplier's books for compliance with the SBA, upon reasonable advance written notice. Such audit(s), if any, shall be during normal business hours and shall not disrupt Supplier's normal business operations. If the audit reveals Supplier's breach of any warranties, representations, covenants, guarantees or other terms contained in the SBA, then, in addition to any other remedies HD Supply may have at law or in equity, Supplier shall promptly remedy any such breach(es).

12.7 If there shall be a dispute between Supplier and HD Supply, Supplier shall continue to provide products to HD Supply pursuant to HD Supply's pending and subsequent Orders, and shall otherwise not suspend shipments of products during the time when such dispute is being resolved.

12.8 Except for changes in the Ethics Guide, no changes or modifications to these SBA Terms and Conditions shall be permitted unless made in writing as an addendum hereto and signed by both parties.

12.9 To the extent Supplier is selected by HD Supply to be a subcontractor under a United States Federal Government Contract valued in excess of \$500,000 the parties will negotiate an amendment to these SBA Terms and Conditions to incorporate, at no cost increase, the applicable Federal Acquisition Regulations.

12.10 Supplier and HD Supply are independent contractors for all purposes and neither is or shall be deemed: (a) a co-employer with the other, (b) employees of the other party for purposes of any federal or state law, including but not limited to labor laws, tax laws, workers compensation laws, or laws relating to master-servant liability; (c) a joint venturer with the other party; or (d) an agent of the other party. Without limiting the generality of the foregoing, Supplier shall not be entitled to any of the benefits provided, on or after the date of the SBA, by HD Supply to its employees, including without limitation sick leave, vacation, or health and accident insurance coverage. Supplier has no general authority to enter into any contract, assume any obligations or to make any warranties or representations on behalf of HD Supply.

12.11 If Supplier has unsatisfied liabilities to HD Supply under the SBA, HD Supply shall have the right, upon written notice to Supplier, to set off such liabilities against any sums owed or to be owed to Supplier under the SBA or any other agreement between the parties or their affiliates.