



## STANDARD TERMS OF PURCHASE

**1. ACCEPTANCE OF TERMS.** Supplier shall comply with all terms set forth herein and on the purchase order to which these terms are attached or are expressly incorporated by reference (including any specifications, samples, drawings and other documents referred to herein, transmitted via Binx's electronic data exchange or on the purchase order), (collectively, this "Order"). This Order is an offer to purchase the goods and/or services (including any deliverables, which include but are not limited to any products, articles, apparatus, compound, composition, Embedded Software, and required Documentation) described herein (collectively, the "Products"). This Order shall not constitute an acceptance of any offer to sell, quotation or other proposal from Supplier, even if referred to in this Order. Unless otherwise stated on the face of this Order or in a separate written agreement between the parties, the terms herein shall prevail over conflicting terms. **ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS OF THIS ORDER. BINX OBJECTS TO ANY TERMS AND CONDITIONS INCLUDED WITH SUPPLIER'S QUOTATION, ACKNOWLEDGMENT, WARRANTY STATEMENT, INVOICE OR OTHER DOCUMENT WHICH ARE ADDITIONAL TO OR DIFFERENT THAN THE TERMS OF THIS ORDER, AND SUCH ADDITIONAL OR DIFFERENT TERMS SHALL NOT BE PART OF THIS ORDER BETWEEN SUPPLIER AND BINX. NO PRIOR PROPOSALS, QUOTATIONS, STATEMENTS, FORECASTS, COURSE OF DEALING OR USAGE OR TRADE WILL BE PART OF THIS ORDER.** This Order shall be irrevocably accepted by Supplier upon the earlier of Supplier's: (a) issuing any acceptance or acknowledgment of this Order; (b) delivering any Products ordered; or (c) commencement of the work called for by this Order, in any manner. If these terms are part of a supply agreement between the parties, the term "Order" used herein shall mean any purchase order issued under the supply agreement.

## **2. PRICES, PAYMENTS AND QUANTITIES.**

2.1 Prices. All prices are firm and shall not be subject to change. Supplier's price includes all: (a) packaging, labeling (including date of manufacture and bar code labeling), insurance, storage, handling, interest and service charges, crating or cartage and any other expenses; (b) shipment charges if Supplier does not utilize Binx's designated carrier; and (c) taxes, fees and/or duties applicable to the Products purchased under this Order; provided, however, that any value-added tax that is recoverable by Binx, and any state and local sales, use, excise and/or privilege taxes, if applicable, shall not be included in Supplier's price but shall be separately identified on Supplier's invoice. If Supplier is legally obligated to pay value added and/or similar tax, Supplier shall invoice Binx in accordance with applicable rules to enable Binx to reclaim such tax. If Binx is legally required to withhold taxes for which Supplier is responsible, Binx shall deduct such taxes from payment to Supplier and provide Supplier a valid tax receipt in Supplier's name. Notwithstanding anything to the contrary, Supplier is responsible for all taxes based upon its real and personal property, gross receipts, business and occupation, and environmental tax fees, as well as those taxes based on Supplier's gross and/or net income. It is expressly understood that Binx has no obligation to purchase: (i) Products exclusively from Supplier; or (ii) any minimum number of Products from Supplier. Without

limitation to the foregoing, Binx may use other suppliers for any or all Products or similar products. Binx's commitment to purchase Products from Supplier is limited to those Products specified in Orders (if any) issued by Binx, which are subject to the terms of this Agreement.

2.2 Payment Terms. Unless otherwise stated on the face of this Order or restricted by applicable law, the ordinary net date ("Net Date") shall be 45 days after receiving from Supplier a proper invoice that complies with the terms of this Order. All sums to be paid by Binx under this Order will be in United States Dollars unless otherwise stated on the face of this Order. No extra charges of any kind shall be allowed without 30 days' advance written notice to Binx. Binx may withhold total or partial payment until the Products conform to the requirements of this Order only after providing written notice to Supplier and allowing Supplier a reasonable opportunity to cure. Binx's payment of an invoice shall not constitute its acceptance of the Products. Binx shall be entitled to set-off any and all amounts owed by Supplier to Binx or an Affiliate (defined herein) on this or any other order. Supplier shall also be entitled at any time to set-off any and all amounts owed by Binx to Supplier or an Affiliate (defined herein) on this or any other order. "Affiliate" for purposes of this Order shall mean, with respect to Binx and Supplier, any entity, including, any individual, corporation, company, partnership, limited-liability company or group, that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Binx or Supplier.

2.3 Quantities. Unless otherwise described in the Order, Binx is not obligated to purchase any quantity of Products except for such quantity(ies) as may be specified by Binx either on the Order or on a separate written release issued by Binx pursuant to the Order. If Supplier or its sub-tier suppliers or subcontractors ("Subcontractor(s)") plan to cease supply or production of any Products purchased hereunder and/or necessary for the production/provision of Products hereunder within 2 years from the date of this Order ("Discontinued Products"), then Supplier shall provide Binx with 12 months advance written notice of such event so that Binx may issue an Order(s) for a "last-time" buy from Supplier for such Discontinued Products. The foregoing shall not operate to waive any rights or remedies available to Binx in contract, at law, or in equity.

**3. DELIVERY AND TITLE PASSAGE.** Time is of the essence of this Order. Supplier agrees to notify Binx immediately in writing if Supplier has any reason to believe that any quantities of Products will not be delivered or completed as ordered, and/or any shipment will not be made as scheduled. If any shipment of Products is not made in time for delivery on the date and in the quantities set forth in this Order or Supplier fails to deliver all the Products and related Documentation and/or complete the services as scheduled, Binx may: (i) require delivery by fastest method at Supplier's cost; (ii) return to Supplier some or all of the Products in said shipment at Supplier's risk and expense (including all freight, warehousing, handling, shipping, and transportation costs), only after written notice to Supplier and receipt of Supplier's consent; (iii) purchase substitute goods and services from a third party and charge Supplier with the increased difference in cost thereof (if any); (iv) direct Supplier to make an expedited shipment of additional or replacement Products, with the cost of

the expedited shipment to be paid by Supplier; and/or (v) recover all damages it incurs as a result of Supplier's failure to perform as scheduled. Title to the Products shall pass from Supplier to Binx at the same point that risk of loss transfers from Supplier to Binx per the applicable Incoterms. Each shipment made by Supplier will include a packing list containing the PO number, quantity shipped, date of shipment, country of origin, Product weight, and such other information required by applicable law and/or Binx.

**4. PACKAGING & DOCUMENTATION.** Supplier is responsible, at its own expense, for: (i) the safe and suitable packaging and labeling of the Products; and (ii) complying with all applicable laws relating to the packaging, labeling, and carriage of the Products in the countries of manufacture, shipment, transit, and/or destination. Unless Binx otherwise agrees in writing, Binx will not accept partial shipments of Products ordered. Where applicable, Supplier will promptly deliver to Binx at no additional charge a complete set of reproducible master copies of all Documentation. If any change in a Product requires a change in the Documentation, Supplier will promptly notify Binx of the change, and provide at no charge to Binx a reproducible master copy of the revised Documentation without charge. "**Documentation**" means all Product-related information, including user manuals, drawings, schematics, design history files, labels, functional descriptions, Products descriptions, instructions, operator aids, promotion material, videos, and spare part lists, as well as all documentation pertaining to theories of operation, service troubleshooting diagnostics, testing protocols, and instructions necessary for the use, installation, manufacture, operation, maintenance, and repair of the Products. "Documentation" also includes all revised versions of any of the foregoing that are created or provided by Supplier.

#### **5. CHANGES.**

**5.1 Binx Changes.** Binx may at any time request changes within the scope of this Order in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; (c) place and time of delivery; (d) quality; (e) quantity; or (f) scope or schedule of Products. Supplier shall not proceed to implement any change until such change is provided in writing by Binx. If any changes cause an increase or decrease in the cost or schedule of any work under this Order, Supplier will notify Binx and the parties will agree upon an equitable adjustment that shall be made in writing to the price and/or delivery schedule as applicable. Any Supplier claim for such adjustment shall be deemed waived unless asserted within 10 days from Supplier's receipt of the change or suspension notification and may only include reasonable, direct costs that shall necessarily be incurred as a direct result of the change.

**5.2 Supplier Changes.** Changes proposed by Supplier, including material, process, or software changes, which may affect form, fit, function, reliability, serviceability, performance, approved part quality plans, functional interchangeability, regulatory compliance, safety, options or spare parts interchangeability or interface capability of a Product must be submitted along with a written change notice, for Binx's prior written approval. equipment and any similar changes that are anticipated by Subcontractors. Products affected by such changes shall not be delivered to Binx until Supplier has received written approval for the changes from Binx. Supplier shall be responsible for obtaining, completing and submitting proper Documentation regarding any and all changes, including complying with any written change procedures issued by Binx.

**5.3 Suspension.** Binx may upon notice to Supplier suspend performance of all or any part of the work under this Order for such time as it deems appropriate. Upon Supplier's receiving notice of suspension, Supplier shall promptly suspend work to the extent specified, properly caring for and protecting all work in progress and materials, supplies and equipment Supplier has on hand for performance. All claims for increase or decrease in the cost of or the time required for the performance of any work caused by suspension shall be pursued pursuant to, and consistent with, Section 5.1 above.

**6. INSPECTION/REJECTION.** If any of the Products furnished pursuant to this Order are found within thirty (30) days after delivery (the "**Inspection Period**") to be defective or otherwise not in conformity with the requirements of this Order, including any specifications, Documentation, or Binx provided specifications, whether such defect or non-conformity relates to scope provided by Supplier or a direct or indirect Subcontractor, then Binx, in addition to any other rights and remedies it may have by law, contract and/or at equity, may: (a) require Supplier, at its expense, to immediately re-perform any defective portion of the services and/or require Supplier to immediately repair or replace Nonconforming Products with Products that conform to all requirements of this Order; (b) reject and/or return at Supplier's risk and expense all or any portion of such Products to the extent Binx did not cause or contribute to Product issues; (c) withhold total or partial payment until a resolution can be reached; and/or (d) rescind this Order without liability if no other alternative resolutions can be reached following good faith discussions. For any repairs or replacements, Supplier, at its cost and expense, shall perform any tests that Binx deems necessary to verify conformance to this Order. Partial or total payment by Binx for Products under this Order prior to, or after the conclusion of, the Inspection Period will not: (i) constitute its acceptance thereof; (ii) affect Supplier's responsibilities, warranties, or representations under this Order, including those pertaining to any Nonconforming Products; or (iii) operate to waive any rights or remedies available to Binx at law or in equity. Supplier shall be liable for direct costs and expenses actually incurred by Binx as a result of any Nonconforming Products. Binx will itemize such costs and expenses and provide the information to Supplier, which may include the cost of defective materials, a handling charge equal to fifteen percent (15%) of the price of the Nonconforming Products, transportation charges, incidental material and labor costs, sorting, and rework expenses.

#### **7. WARRANTIES.**

**7.1** Supplier represents and warrants that all Products provided pursuant to this Order, whether provided by Supplier or any Subcontractor: (a) are free of all claims, liens, security interests, or encumbrances (other than liens arising through Binx); (b) are of new and merchantable quality; (c) are free from all defects in title, workmanship and material, whether latent or otherwise; (d) are free from all defects in design and are fit for the particular purpose for which they are intended; (e) are manufactured and provided in strict accordance with all specifications, samples, drawings, designs, descriptions, instructions, plans, Documentation and other requirements provided by Binx; (f) are manufactured, processed and assembled by Supplier or its approved Subcontractors under Supplier's direction; (g) are safe for their intended use, non-toxic, and present no abnormal hazards to persons or their environment; (h) comply with all Binx communicated quality requirements; and (i) do not infringe or misappropriate any patent, copyright, trade

secret, trademark, or other intellectual property right of any third party without such parties' prior written consent.

7.2 Supplier represents and warrants that all services provided pursuant to this Order, whether provided by Supplier or any Subcontractor shall: (a) be performed in a timely, professional, and workman-like manner; (b) strictly conform to all of Binx's requirements, specifications, drawings, plans, instructions, Documentation, samples, and other descriptions; and (c) not infringe or otherwise violate or misappropriate any patent, copyright, trade secret, trademark, or other intellectual property right of any third party.

7.3 Binx may, at Supplier's sole cost and expense, return or have returned to Supplier any Products, or require the re-performance of any services, that do not conform to the representations and warranties set forth in this Order ("**Nonconforming Product(s)**"). Nonconforming Products returned to Supplier's facility shall have all transportation, insurance, and handling charges (including return shipment to Binx or its customer) prepaid by Supplier. Risk of loss for Nonconforming Products will pass to Supplier when the Nonconforming Product is delivered to the carrier. Supplier will at its sole cost and expense either replace or repair the Nonconforming Product to bring it in conformity with all representations and warranties. If Supplier is unable to repair and return the Product within thirty (30) days, Supplier will (at Binx's written direction) provide Binx a complete refund in accordance with Section 8.5 below. Any repaired or replaced Product, or part thereof, or re-performed services shall carry warranties on the same terms as the original. For any repairs or replacements, Supplier, at its cost and expense, shall perform any tests that the Binx reasonably determines are necessary to verify conformance to this Order.

## 8. TERMINATION.

8.1 Termination for Convenience. Binx may terminate all or part of this Order for convenience at any time by written 30 days' notice to Supplier unless Products have already been shipped. Notwithstanding anything to the contrary, Binx's liability and Supplier's exclusive remedy for such termination by Binx is limited to Binx's payment for Products delivered and accepted by Binx prior to the effective date of said termination.

8.2 Termination for Default. Binx or Supplier, without liability, may by written notice of default, terminate all or part of this Order if the defaulting party fails to comply with any term of this Order or fails to make progress which, in Binx's or Supplier's reasonable judgment, endangers performance of this Order. Such termination shall become effective if the defaulting party does not cure such failure within 30 days of receiving written notice of default.

8.3 Termination for Insolvency. If Supplier or Binx (a) dissolves or ceases to do business; (b) fails to pay its debts as they come due; or (c) or any other entity institutes insolvency, receivership, bankruptcy or any other proceeding for settlement of Supplier's or Binx' debts, the other party may immediately terminate this Order without liability to the fullest extent permitted by applicable law, except for Products completed, delivered and accepted within a reasonable period after termination (which shall be paid for at the Order price).

8.4 Supplier's Obligations on Termination. Upon Supplier's receipt of a notice of termination of this Order, Supplier shall promptly: (a) stop work as directed in the notice, except in fulfilling outstanding Orders that have already been placed and

accepted; and (b) deliver all completed work, work in process, and material required and/or produced in connection with such work.

9. **BINX'S PROPERTY.** All tangible and intangible property, including information or data compilation of any description, tools, materials, plans, drawings, software, know-how, documents, intellectual property, equipment or material: (a) furnished or licensed to Supplier by Binx; (b) specifically paid for by Binx; or (c) created with Binx's IP Rights (as hereinafter defined) shall be and remain Binx's property (collectively, "**Binx's Property**"). Such Binx's Property furnished by Binx to Supplier shall be provided "AS IS" and shall be used by Supplier at its own risk and for the sole purpose of performing this Order for Binx. Supplier shall not substitute any other property for Binx's Property without first obtaining the express written consent of Binx. Supplier shall: (i) keep Binx's Property free of encumbrances; (ii) plainly mark or otherwise adequately identify it as owned by Binx; (iii) store it (if tangible) separate and apart from Supplier's and third party owned property under Supplier's control; (iv) maintain it properly, and in compliance with any handling and storage requirements provided by Binx and/or the original manufacturer, or that accompanied it when delivered to Supplier; (v) supervise its use; and (vi) use it only to meet Binx's Orders without disclosing or otherwise reproducing it for any other purpose. Binx shall have the right to audit all pertinent books and records of Supplier, and to make reasonable inspections of Supplier's facilities to verify compliance with this Section 9 and Section 10 below, during business hours with reasonable advance notice. Binx hereby grants to Supplier a non-exclusive, non-assignable license, without the right to sublicense, which is revocable with or without cause at any time, to use Binx's Property, and any applicable intellectual property rights of Binx, for the sole purpose of performing this Order for Binx.

## 10. INTELLECTUAL PROPERTY.

10.1 Supplier Intellectual Property. Supplier shall own intellectual property it owned prior to or developed independently of its obligations under this Order ("**Supplier Intellectual Property**"). Binx shall have an unrestricted license to use, have used, modify, have modified, distribute, have distributed, sell, and have sold all Products purchased under this Order under the Supplier Intellectual Property rights.

10.2 Binx Intellectual Property. Binx shall exclusively own all rights in ideas, know-how, inventions, works of authorship, documentation, strategies, plans, data and databases created in or resulting from Supplier's performance under this Order, including all patent rights, copyrights, moral rights, rights in proprietary information, data rights, database rights, trademark rights and other intellectual property rights (collectively, "**Binx's IP Rights**"). All Binx's IP Rights for copyrightable subject matter shall be considered as work(s) made for hire for Binx (as the phrase "work(s) made for hire" is defined in the U.S. Copyright Act (17 U.S.C. § 101)) or, should applicable law preclude such treatment, Supplier shall give Binx "first owner" status related to the work(s) under local copyright law where the work(s) was created. If by operation of law any such intellectual property is not owned in its entirety by Binx automatically upon creation, then Supplier agrees to, and hereby does, transfer and assign to Binx Supplier's entire right, title and interest throughout the world to such intellectual property. Supplier further agrees to enter into and execute any documents that may be required to transfer or assign ownership in and to any such Binx IP Rights to Binx. Supplier is prohibited from selling to any third party the Products or a

substantially similar product that is either (i) developed solely for Binx under this Order, (ii) incorporates any Confidential Information of Binx or Binx's Property, or (iii) is specifically designed or configured for use with Binx's products or applications using Confidential Information of Binx's, Binx's Property or information received or know-how developed in connection with this Order.

## 11. CONFIDENTIALITY, DATA PROTECTION AND PUBLICITY.

11.1 *Confidentiality*. Supplier may receive or have access to certain information that is Confidential Information (as hereinafter defined) of Binx or its Affiliates in performance of this Order.

(a) "**Confidential Information**" shall, whether furnished before or after the date of this Order and irrespective of the form of communication, mean: (i) the terms of this Order; (ii) all information and material disclosed or provided by Binx to Supplier, including Binx's Property; (iii) all information derived from Binx's Property; and (iv) all of Binx's IP Rights (defined in Section 10 above).

(b) Supplier shall: (i) use Confidential Information only for the purposes of fulfilling its obligations under this Order; and (ii) without limiting the requirements under Section 11 below, use the same degree of care as with its own Confidential Information, which shall be at least a reasonable standard of care, to prevent disclosure of the Confidential Information, except to its officers, directors, managers and employees (collectively, "**Authorized Parties**"), solely to the extent necessary to permit them to assist Supplier in performing its obligations under this Order. Prior to disclosing Confidential Information to any Authorized Party, Supplier shall advise the Authorized Party of the confidential nature of the Confidential Information and ensure that such party has signed a confidentiality agreement no less restrictive than the terms of this Section. Supplier acknowledges that irreparable harm shall result to the Binx if Confidential Information is used or disclosed contrary to this Section. The restrictions in this Section 11 regarding the Confidential Information shall be inoperative as to particular portions of the Confidential Information disclosed by Binx to Supplier if such information: (i) is or becomes generally available to the public other than as a result of disclosure by Supplier; (ii) was available on a non-confidential basis prior to its disclosure to Supplier; (iii) is or becomes available to Supplier on a non-confidential basis from a source other than Binx when such source is not, to the best of Supplier's knowledge, subject to a confidentiality obligation with Binx; or (iv) was independently developed by Supplier, without reference to the Confidential Information, and Supplier can verify the development of such information by written documentation;

(c) Within 14 days of the completion or termination of this Order, Supplier shall return to Binx or destroy (with such destruction certified in writing to Binx) all Confidential Information, including any copies thereof. No such return or destruction of the Confidential Information shall affect the confidentiality obligations of Supplier all of which shall continue in effect as provided for in this Order.

(d) Notwithstanding the foregoing, if Supplier is requested or required by interrogatories, subpoena or similar legal process, to disclose any Confidential Information, it agrees to provide Binx with prompt written notice (no later than 2 days following receipt of such request) of each such request/requirement, to the extent practicable, so that Binx may seek an appropriate protective order,

waive compliance by Supplier with the provisions of this Section, or both. If, absent the entry of a protective order or receipt of a waiver, Supplier is, in the opinion of its counsel, legally compelled to disclose such Confidential Information, Supplier may disclose such Confidential Information to the persons and to the extent required without liability under this Order and shall use its best efforts to obtain confidential treatment for any Confidential Information so disclosed.

11.2 *Publicity*. Supplier and its Subcontractors shall not make any announcement, take or release any photographs (except for its internal operation purposes for the manufacture and assembly of the Products), or release any information concerning this Order or with respect to its business relationship with Binx or any Affiliate, or reference any of Binx's products to any third party except as required by applicable law without Binx or its Affiliate's prior written consent. Supplier agrees that it shall not, without prior written consent of Binx or its Affiliates as applicable, (a) use in advertising, publicity or otherwise, the name, trade name, trademark logo or simulation thereof of Binx or its Affiliate or the name of any officer or employee of Binx or its Affiliates or (b) represent in any way that any Product provided by Supplier has been approved or endorsed by Binx or its Affiliate.

## 12. INDEMNIFICATION.

12.1 *Intellectual Property Indemnity*. Supplier warrants that all Products provided and/or utilized pursuant to this Order, whether provided/utilized by Supplier or a Subcontractor, will be free of any and all claims. Supplier shall indemnify, defend and hold Binx, its Affiliates and its and their customers, and each of its and their directors, officers, managers, employees, agents, representatives, distributors, resellers, sublicensees, contractors, successors and assigns (collectively, "**Indemnitees**") harmless from any and all claims against Indemnitees alleging infringement or misappropriation of any patent, copyright, trademark, trade secret or other intellectual property rights of any third party arising out of the use, sale, importation, distribution, reproduction or licensing of any Product furnished under this Order as well as any device or process necessarily resulting from the use thereof ("**Indemnified Product**"), including any use, sale, importation, distribution, reproduction or licensing in contravention of such Indemnified IP by Products as provided. Binx shall notify Supplier promptly of any such suit, claim or proceeding and give Supplier authority and information and assistance (at Supplier's expense) for the defense of same, and Supplier shall pay all damages, costs and expenses incurred or awarded therein, including reasonable attorneys' fees. Notwithstanding the foregoing, any settlement of such suit, claim or proceeding shall be subject to Binx's consent, such consent not to be unreasonably withheld. If use of any Indemnified Product is enjoined, Supplier shall, at Binx's option and Supplier's expense, either: (a) procure for Indemnitees the right to continue using such Indemnified Product; (b) replace the same with a non-infringing equivalent; or (c) if (a) and (b) are not commercially feasible, and refund the purchase price to Binx.

12.2 *General Indemnity*. Supplier shall defend, indemnify, release and hold the Indemnitees, harmless from and against any and all claims, legal actions, demands, settlements, losses, judgments, fines, penalties, damages, liabilities, costs, and expenses of any nature, resulting from, arising out of, or relating to: (i) the breach by Supplier of any covenant, representation, or warranty contained in this Order; (ii) any act or omission of Supplier or its Subcontractors; or (iii) any Products. Binx will notify Supplier of

any such claim, suit, or proceeding, and will reasonably cooperate with Supplier (at Supplier's expense) in the defense of the same.

**12.3 Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL BINX BE LIABLE TO SUPPLIER FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, REVENUE, AND BUSINESS), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, EQUITY, PRODUCT LIABILITY, FUNDAMENTAL BREACH, OR OTHERWISE ARISING OUT OR RELATED TO THIS ORDER, REGARDLESS OF WHETHER BINX HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, BINX'S LIABILITY HEREUNDER SHALL NOT EXCEED THE FEES PAID BY BINX TO SUPPLIER DURING THE 12-MONTH PERIOD PRIOR TO THE CLAIM ARISING.**

**13. INSURANCE.** For the duration of this Order and for a period of 6 years from the date of delivery of the Products or performance of the services, Supplier shall maintain, through insurers with a minimum A.M. Best rating of A-VII or S&PA or the equivalent in those jurisdictions that do not recognize such rating classification and licensed in the jurisdiction where the Products are sold and/or where services are performed, the following insurance: (a) Commercial General/Public Liability, on an occurrence form, in the minimum amount of USD \$5,000,000.00 per occurrence with coverage for: (i) bodily injury/property damage; (ii) personal/advertising injury; and (iii) products/completed operations liability, including coverage for contractual liability insuring the liabilities assumed in this Order, with all such coverages in this Section 13 applying on a primary basis, providing for cross liability, not being subject to any self-insured retention and being endorsed to name Binx, its Affiliates, and its and their respective directors, officers, and employees as additional insureds; (b) Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles used in the performance of this Order in the amount of USD \$1,000,000.00 combined single limit each occurrence; (c) Employers' Liability in the amount of USD \$1,000,000.00 each accident, injury or disease; (d) Property Insurance on an "All-risk" basis covering the full replacement cost value of all of Binx's Property in Supplier's care, custody or control, naming Binx as "Loss Payee"; and (e) Statutory Workers' Compensation Insurance. To the extent this Order is for professional services, Supplier shall maintain Professional/ Errors and Omission Liability insurance in the minimum amount of USD \$3,000,000.00 per claim. If the Products contain Embedded Software, this insurance shall include coverage for failure of IT security and data privacy breach and software copyright infringement. If such insurance is on a claims-made basis, the retro date must precede the date of issuance of this Order, and Supplier must maintain continuity of coverage for 3 years following termination, expiration and/or completion of this Order. Insurance specified in subsections 13(c), (d), and (e) above shall provide a waiver of subrogation in favor of Binx, its Affiliates and its, and their respective directors, officers, and employees for all losses and damages covered by the insurances required in such subsections. Upon request by Binx, Supplier shall provide Binx with a certificate(s) of insurance evidencing that the required insurance

hereunder is in effect. The certificate(s) of insurance shall reference that the required coverage extensions are included. Upon request by Binx, copies of endorsements evidencing the required additional insured status, waiver of subrogation provision and/or loss payee status shall be attached to the certificate(s) of insurance. Acceptance of such certificate(s), which are not compliant with the stipulated coverages, shall in no way imply that Binx has waived its insurance requirements or any other obligations set forth herein. The above-referenced insurance limits in subsections 16(a), (b) and (c) can be met either via each policy or via a combination of these policies and an excess/umbrella liability insurance.

**14. ASSIGNMENT, SUBCONTRACTING AND CHANGE OF CONTROL.** Supplier may not assign, delegate, subcontract or transfer (including by change of ownership or control by operation of law or otherwise) this Order or any of its rights or obligations hereunder, including payment, without Binx's prior written consent. Should Binx grant consent to Supplier's assignment, Supplier shall ensure that such assignee shall be bound by the terms and conditions of this Order. Supplier shall advise Binx of any Subcontractor to Supplier: (a) that shall have at its facility any parts, components or goods with Binx's or any of its Affiliates' name, logo or trademark (or that shall be responsible to affix the same); and/or (b) 50% or more of whose output from a specific location is purchased by Binx. Subject to the foregoing, this Order shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

**15. NOTICES.** All notices under an Order shall be in writing and (i) if delivered personally or by an internationally recognized overnight courier, be deemed given upon delivery; (ii) if sent by registered or certified mail, return receipt requested, be deemed given upon receipt; or (iii) if transmitted electronically, be deemed given on the date accessible electronically. All notice shall be provided to the address specified in the Order. A party may from time-to-time change its address or designee for notification purposes by giving the other party prior written notice of the new address or designee and the date upon which such notice shall become effective.

#### **16. COMPLIANCE WITH LAWS.**

**16.1 General.** Supplier represents, warrants, certifies, and ("**Covenants**") that it shall comply with all then-current laws, treaties, conventions, protocols, regulations, ordinances, codes, standards, directives, orders and rules issued by governmental agencies or authorities, which are applicable in any way to the activities relating to this Order or the manufacture, labeling, transportation, importation, exportation, licensing, certification, or approval of the Products or the chemical substances contained therein. Without limitation to the foregoing, Supplier Covenants that the Products sold to Binx and their manufacture will comply with all applicable drug and medical device laws, including regulations promulgated by the U.S. Food and Drug Administration (FDA), the U.S. Nuclear Regulatory Commission (NRC), the quality system regulations as set forth in 21 CFR part 820, and any other relevant state and federal laws, and any comparable international laws in countries where the Products are sold.

#### **16.2 Import & Export Compliance.**

(a) **General.** Supplier Covenants that it is knowledgeable regarding all applicable export, export control, customs and import laws and shall comply with such laws. Supplier Covenants that it shall not cause or permit any Products, technical data, software or

the direct Product thereof furnished by Binx in connection with this Order to be exported, transhipped, re-exported or otherwise transferred except where expressly permitted by applicable law. Supplier covenants that it is not suspended, debarred or declared ineligible to export by any government entity. If Supplier is suspended, debarred or declared ineligible by any government entity, Binx may terminate this Order immediately without liability to Binx.

(b) Trade Restrictions. Supplier covenants that it shall not source from or otherwise sell, distribute, disclose, release, receive or otherwise transfer any item or technical data provided under this Order to or from: (1) any country designated as a “State Sponsor of Terrorism” or “SST” by the U.S. Department of State, (2) any entity located in, or owned by an entity located in a SST country, or (3) any person or entity listed on the “Specifically Designated Nationals and Blocked Persons” list maintained by the U.S. Department of Treasury. This clause shall apply regardless of the legality of such a transaction under local law.

(c) International Shipments. If Products cross an international border, Supplier shall perform customs clearance, including but not limited to performing all things necessary for export trade compliance, as per the applicable Incoterm and provide a copy of the export declaration together with the commercial/pro forma invoice. The invoice shall be in English and the language of the destination country. Furthermore, all Products provided by Binx to Supplier for the performance, and not included in the purchase price, of the Order shall be identified separately on the invoice (e.g., consigned materials, tooling, free issue goods, etc.). Each invoice shall also include any reference information for any consigned Products and shall identify any discounts, credits or rebates from the base price used in determining the invoice value.

16.3 Exclusion and Debarment. Supplier covenants that it has not been debarred by the United States Food and Drug Administration under any provision of the Generic Drug Enforcement Act; or excluded by the Office of the Inspector General of the United States Department of Health and Human Services, or by any other authority, from participating in any health care program (such as Medicare or Medicaid) funded by any governmental authority. Service Provider agrees that no person or entity that has been debarred or excluded as described above will furnish any of the Services or Deliverables or perform any of Service Provider’s obligations under this Agreement.

**17. GOVERNING LAW; JURISDICTION.** This Order shall in all respects be governed by and interpreted in accordance with the substantive law of the Commonwealth of Massachusetts, U.S., excluding its conflicts of law provisions. The parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods. The parties agree that any legal action relating to this Agreement, whether in law or equity, shall be commenced and maintained exclusively before any appropriate courts in the Commonwealth of Massachusetts, and the parties hereby submit to the jurisdiction of such courts and waive any right to challenge or otherwise raise questions of personal jurisdiction or venue in any action commenced or maintained in such courts

**18. INDEPENDENT CONTRACTORS/ADDITIONAL SERVICE-RELATED PROVISIONS.**

18.1 Independent Contractor. The relationship of Binx and Supplier is that of independent contractors. Nothing in this Order shall be interpreted or construed as creating or establishing the relationship of employer and employee between Binx and Supplier or Supplier personnel (which for purposes of this Section 18, shall also include any personnel of Supplier’s Subcontractors). Supplier’s personnel are not authorized to enter into any agreements or to make any commitments financial or otherwise on behalf of Binx.

18.2 Work on Binx’s and Binx Affiliate Premises. All Supplier personnel will be subject to and will conform to the applicable site regulations, requirements and rules governing conduct of personnel while at Binx’s or its customer’s premises, location, facility or work site (each a “**Binx Site**”), including safety and security requirements. Supplier is responsible at all times for its, as well as its personnel’s, compliance with all of the foregoing. Binx or its Affiliate will have the right to remove Supplier, including any personnel, from its premises. At no cost to Binx or Binx’s customers, Supplier will immediately replace any and all personnel that are removed or violate any of the foregoing regulations, rules, and/or requirements with personnel possessing requisite skills and experience. Supplier shall defend, indemnify, release and hold harmless the Indemnitees from and against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, damages, costs, expenses, or liabilities, which may arise in any way out of Supplier personnel’s performance of any obligations on a Binx Site, including, but not limited to, personal injury, death, or property damage.

**19. MISCELLANEOUS.** This Order, with documents as are expressly incorporated herein by reference, is intended as a complete, exclusive and final expression of the parties’ agreement with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, whether written or oral, between the parties. No course of prior dealings and no usage of the trade shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. No claim or right arising out of a breach of this Order can be discharged by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. Either party’s failure to enforce any provision hereof shall not be construed to be a waiver of such provision or the right of such party thereafter to enforce such provision. Binx’s rights and remedies in this Order are in addition to any other rights and remedies provided by law, contract or equity, and Binx may exercise all such rights and remedies singularly, alternatively, successively or concurrently. The term “including” shall mean and be construed as “including, but not limited to” or “including, without limitation”. The invalidity of any section or paragraph of this Order shall not affect the remainder of such section or paragraph or any other section or paragraph, which shall continue in full force and effect. Any section or paragraph deemed invalid will be given a lawful interpretation that most closely reflects the original intention of Binx and Supplier. All provisions or obligations in this Order, which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of this Order shall survive and remain binding upon and for the benefit of the parties.