| UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE | PROOF OF CLAIM |
|---|---|
| In re<br>Allegiance Telecom Service Corporation | Case Number<br>03-13103 |

s2588

**YOUR CLAIM IS SCHEDULED AS**

$7 153 16 UNSECUPED

**FILED**
U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK
ALLEGIANCE TELECOM, INC
03-13057 (RRD)
704

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request for payment of an administrative expense may be filed pursuant to 11 U S C § 503

**Name of Creditor and Address**

03805888025136

NETIQ CORPORATION
3553 N FIRST ST
SAN JOSE CA 95134

Creditor Telephone Number ( )

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check box if you have never received any notices from the bankruptcy court in this case

☐ Check box if this address differs from the address on the envelope sent to you by the court

The amount selected above constitute your claim as scheduled by the Debtor If you agree with the amounts set forth herein and have no other claim against the Debtor you do not need to file this proof of claim EXCEPT as stated below

**If the amounts shown above are listed as Contingent Unliquidated or Disputed, a proof of claim must be filed**
If you have already filed a proof of claim with the Bankruptcy Court or BMC you do not need to file again

| CREDITOR TAX I D # | ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR | Check here if this claim ☐ replaces or ☐ amends a previously filed claim dated |
|---|---|---|
| 77-0405505 | 3001593 | |

**1 BASIS FOR CLAIM**

☒ Goods sold
☒ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☐ Other (describe briefly)
☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages salaries and compensation (Fill out below)

RECD OCT 17 2003

Your social security number _____
Unpaid compensation for services performed from _____ (date) to _____ (date)

**2 DATE DEBT WAS INCURRED** 3/10/03

**3 IF COURT JUDGMENT, DATE OBTAINED**

**4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE**

| $ 7,15316 | $ | $ | $ 7,15316 |
|---|---|---|---|
| (unsecured) | (secured) | (unsecured priority) | (total) |

**If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below**

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

**5 SECURED CLAIM**

☐ Check this box if your claim is secured by collateral (including a right of setoff)

Brief description of collateral

☐ Real Estate
☐ Motor Vehicle
☐ Other _____

Value of collateral $ _____

Amount of arrearage and other charges at time case filed included in secured claim above if any $ _____

**6 UNSECURED PRIORITY CLAIM**

☐ Check this box if you have an unsecured priority claim

Specify the priority of the claim

☐ Wages salaries or commissions (up to $4 650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor s business whichever is earlier - 11 U S C § 507(a)(3)

☐ Contributions to an employee benefit plan 11 U S C § 507(a)(4)

☐ Up to $2 100* of deposits toward purchase lease or rental of property or services for personal family or household use 11 U S C § 507(a)(6)

☐ Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)

☐ Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)

☐ Other Specify applicable paragraph of 11 U S C § 507(a) _____

** Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

**7 CREDITS** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

**8 SUPPORTING DOCUMENTS** *Attach copies of supporting documents,* such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments mortgages security agreements and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available explain If the documents are voluminous attach a summary

**9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim**

**The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4 00 p m , October 1, 2003, Eastern Daylight Time**

**BY MAIL TO** United States Bankruptcy Court
re Allegiance Telecom, Inc , et al
P O Box 95 Bowling Green Station
New York NY 10274

**BY HAND OR OVERNIGHT DELIVERY TO** Clerk of the United States Bankruptcy Cou
re Allegiance Telecom Inc et al
One Bowling Green 6th Floor
New York NY 10004-11408

**THIS SPACE FOR COURT USE ONLY**

RECEIVED
OCT 14 2003
PROCESSING CENTER
Allegiance Claim
00737

| DATE SIGNED | SIGN and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any) |
|---|---|
| 10/6/03 | Pauline Marm / collection specialist |

Penalty for presenting fraudulent claim is a fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§ 152 AND 35

***See Other Side For Instructions***

NetIQ Corporation
3553 North First Street
San Jose, CA 95134-1803
USA

# Invoice

| Invoice | Date | Page |
|---|---|---|
| **90029260** | 03/10/2003 | 1 of 2 |
| **Customer** | **Sales order** | **Quote #** |
| 3001593 | 89177 | 1-14CWXT |

**Bill To.**
ALLEGIANCE TELECOM
9201 N CENTRAL EXPY F/5B
DALLAS, TX - 75231 US
USA

**ATTENTION Kevin Williams**

**Ship To:**
ALLEGIANCE TELECOM
9201 N CENTRAL EXPY F/5B
DALLAS, TX - 75231 US
USA

| Customer Purch order | Ship Date | Terms | Currency | Payment Method | Delivery method |
|---|---|---|---|---|---|
| 71843 000 OP | -N/A- | Net 30 Days | USD | Purchase Order | N/A- |

| Item | Material/Description | Qty / Unit | Unit Price | Amount |
|---|---|---|---|---|
| 0010 | 566-1V660-I-US<br>DRA<br>Version 74<br>Platform Win NT<br>Number of units 100 Unit type Users | 2 000/each | 1600 00 | 3 200 00 |
| 0020 | 566-MNT-E-US<br>MNT - DRA<br>Maintenance type Essential<br>Maintenance effective 03/11/2003 - 03/10/2004 | 2 000/each | 288 00 | 576 00 |
| 0030 | 570-1V650-I-US<br>Exchange Administrator<br>Version 6 5<br>Platform Win NT/2000<br>Number of units 100 Unit type Users | 2 000/each | 600 00 | 1 200 00 |
| 0040 | 570-MNT-E-US<br>MNT - Exchange Administrator<br>Maintenance type Essential<br>Maintenance effective 03/11/2003 - 03/10/2004 | 2 000/each | 108 00 | 216 00 |
| 0050 | 567-1V251-I-US<br>File Security Administrator<br>Version 2 51<br>Platform Win NT/2000<br>Number of units 100 Unit type Users | 2 000/each | 600 00 | 1,200 00 |

| | |
|---|---|
| **Sub Total** | Continued... |
| **Tax** | |
| **Total** | |
| **Paid** | |
| **Due** | |

**Taxpayer ID No** 77-0405505
**Please remit payment in** USD
**By check** NetIQ Corporation
P O Box 45297
San Francisco, CA 94145-0297
USA

**By wire transfer** Account Name NetIQ Corporation
Bank Union Bank of California
Acct # 6450151759
Swift Code BOFCUS33MPK
ABA Routing 122000496

For billing inquiries please contact our Billing Dept at 408 856 3705 or ar@netiq com

NetIQ Corporation
3553 North First Street
San Jose, CA 95134-1803
USA

# Invoice

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| 3001593 | 89177 | 1-14CWXT |

**Bill To:**
ALLEGIANCE TELECOM
9201 N CENTRAL EXPY F/5B
DALLAS, TX - 75231 US
USA
**ATTENTION Kevin Williams**

**Ship To:**
ALLEGIANCE TELECOM
9201 N CENTRAL EXPY F/5B
DALLAS, TX - 75231 US
USA

| Customer Purch order | Ship Date | Terms | Currency | Payment Method | Delivery method |
|---|---|---|---|---|---|
| 71843 000 OP | -N/A- | Net 30 Days | USD | Purchase Order | N/A- |

| Item | Material/Description | Qty / Unit | Unit Price | Amount |
|---|---|---|---|---|
| 0060 | 567-MNT-E-US<br>MNT - File Security Administrator<br>Maintenance type Essential<br>Maintenance effective 03/11/2003 - 03/10/2004 | 2 000/each | 108 00 | 216 00 |

| | |
|---|---|
| **Sub Total** | 6,608.00 |
| **Tax** | 545.16 |
| **Total** | 7,153.16 |
| **Paid** | |
| **Due** | 7,153.16 |

**Taxpayer ID No** 77-0405505
**Please remit payment in** USD
**By check** NetIQ Corporation
P O Box 45297
San Francisco, CA 94145-0297
USA

**By wire transfer** Account Name NetIQ Corporation
Bank Union Bank of California
Acct # 6450151759
Swift Code BOFCUS33MPK
ABA Routing 122000496

For billing inquiries please contact our Billing Dept at 408 856 3705 or ar@netiq com

*allegiance telecom, inc.*

# *Fax Sheet*

***Purchasing Department-Rachel Maynard***
***9201 North Central Expressway 4th floor***
***Dallas, Texas 75231***
***Phone (469) 259-2257***
***Fax (469) 259-9131***

***Date:*** 3-10-03

***To:*** Steve Nunez

***Company:*** Net IQ

***Fax Number:*** 713-996-5616

***Subject:*** PURCHASE ORDERS

***Number of Pages (including Cover):*** 3

***Message:***

allegiancetelecom company worldwide

# PURCHASE ORDER

Date 3/10/2003
Time 9 16 17
Page - 1
Order Number 71843 000 OP

**Shipped From**

NetIQ Corporation PO ONLY
3553 North First Street
San Jose CA 95134

All shipments must ship 3rd party collect through Pegasus at 877-274-4764

FAXED
MAR 10 2003

**Ship To** **Branch/Plant** 0100081

Allegiance of Dallas- CORPORATE Bldg2
9201 North Central Expressway
PER CHRIS AAMOLD/DAN COX
Dallas TX 75231

Approved By Christine Longoria

REMIT TO: ALLEGIANCE TELECOM
9201 North Central Expressway
Dallas, TX 75231
PH (214) 261-7100 FX (469) 259-9133

**Ordered** 3/6/2003 **Freight**
**Requested Delivery** 3/6/2003 **Order Taken By** DSIZEMORE

| Line | Rev | Description / Supplier Item | Ordered | UOM | Unit Price | PU UM | Extended Price | Request Date | Order No | *Origin Ty |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 000 | 0 | ALLEGIANCE CENTER | 1 | EA | 0000 | EA | | 3/6/2003 | | |
| MISC | | | | | | | | | | |
| IS | | MAINTENANCE RENEWAL/ADMIN | | | | | | | | |
| 2 000 | 0 | MAIN RENEW 4/01/03 TO 3/31/04 | 1 | EA | 34,789 6800 | EA | 34,789 68 | 3/6/2003 | | |
| MISC | | | | | | | | | | |
| INVOICE NBR 50002994 | | | | | | | | | | |
| 3 000 | 0 | ADMINISTRATION LICENSE | 1 | EA | 6,608 0000 | EA | 6,608.00 | 3/6/2003 | | |
| MISC | | | | | | | | | | |
| QUOTE NBR 1 13UBCC | | | | | | | | | | |

Total Order 41 397 68

Sales Tax Total Order

**Term** Net 30 day **Tax Rate** *NA* 00 41,397 68

**Please call 469-259-2257 with any questions concerning this Purchase Order**

# ALLEGIANCE TELECOM COMPANY WORLDWIDE GENERAL PROVISIONS FOR PURCHASE

**THIS ALLEGIANCE TELECOM COMPANY WORLDWIDE ( ALLEGIANCE ) PURCHASE ORDER ( ORDER ) IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH HEREAFTER. SELLER AGREES TO FULLY COMPLY WITH THE TERMS AND CONDITIONS OF PURCHASE SET FORTH ON BOTH THE FRONT AND REVERSE SIDE OF THIS ORDER ALLEGIANCE S ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF THIS ORDER AND NONE OF SELLER S TERMS AND CONDITIONS SHALL APPLY IN ACKNOWLEDGING THIS ORDER OR IN THE ACCEPTANCE OF THIS ORDER BY ALLEGIANCE ACCEPTANCE BY ALLEGIANCE OF THE GOODS SERVICES OR WORK DELIVERED UNDER THIS ORDER SHALL NOT CONSTITUTE AN AGREEMENT OR CONSENT TO ANY OF SELLER S TERMS OR CONDITIONS SHIPMENT OR PERFORMANCE OF SERVICES BY SELLER SHALL BE DEEMED ACCEPTANCE OF THE TERMS AND CONDITIONS HEREOF SELLER MAY NOT SHIP OR PERFORM SERVICES UNDER RESERVATION WHATSOEVER**

**1 PAYMENT TERMS BILLING ADDRESS**

The following terms with respect to payment are applicable to this Order Net invoices will be paid within 30 days of the date of Seller s invoice ll Seller offers discounted payment terms Allegiance at its discretion, may pay Seller s invoices according to the terms offered and receive the offered discount Payment in accordance with the foregoing terms is based upon receipt by Allegiance of the goods or services on or prior to the invoice date and receipt of Seller s invoice within 3 days of its date. Otherwise the payment due date will be measured from the receipt of the goods or services or the invoice as applicable Invoices must be imprinted where applicable including the Purchase Order and Seller s Tax Identification Numbers corresponding to the address where payment should be mailed and payment shall be sent to such address The billing address for Allegiance is Allegiance Telecom, Attn Accounts Payable 9201 Central Expressway Bldg B 5, Dallas, TX 75231

**2. CONDITIONS OF ACCEPTANCE OF GOODS AND SERVICES**

Final acceptance of any goods materials or services by Allegiance shall not be effective until (1) arrival at the location designated in this Order (2) Allegiance has had a reasonable amount of time to inspect such goods or services and (3) the complete satisfaction of all conditions set forth in this Order Allegiance reserves the full right to inspect all goods and services in any manner deemed appropriate by Allegiance The initial inspection performed by Allegiance on receipt of goods or materials is a conditional acceptance and shall not waive the right of Allegiance to return goods or materials to Seller which exhibits or develops defects due to latent causes during or after installation or testing of the end product At Allegiance s sole option any articles goods services or materials not accepted by Allegiance may either be returned to Seller at Seller s expense for replacement or for full credit against the purchase price All articles and material returned to Seller for breach of warranty hereunder shall be at Seller s expense including costs expenses or penalties incurred by Allegiance in recalling such articles and materials which have been delivered to Allegiance s customers and expense of redelivery Seller agrees that shipment of materials against this Order constitutes certificat on that all articles or goods included in this shipment conform in all respects to the applicable requirements specifications and drawings No substitution of any materials or goods may be made without Allegiance s prior approval Seller will make process control data inspection and test reports covering the articles or goods and their parts available for review and subject to examination by Allegiance or its authorized representatives to verify conformance to such applicable specifications and drawings However a certificate of conformance must accompany individual shipments when so specified on applicable drawings or on the front of this Order Seller shall preserve all special drawings dies patterns tooling or other items supplied or paid for by Allegiance in good condition and they are the property of Allegiance unless otherwise specified and the same such items shall be returned in good condition when the work on the order has been completed or terminated or at any other time as requested by Allegiance No special drawing die pattern tool or other item supplied by Allegiance or made by Seller for the benefit of the Order shall be used by Seller for any purpose other than fulfilling the Order, without Seller first obtaining the written consent of Allegiance thereto

**3 TIME OF DELIVERY**

The delivery dates and times of performance indicated by Allegiance for the articles materials services or work to be supplied under this Order are of the essence Failure to meet such dates or times shall be considered a breach of contract, furthermore Seller agrees to pay to Allegiance any penalties costs or damages (including special or consequential damages) imposed upon or incurred by Allegiance for failure of Seller to deliver such articles materials services or work on such delivery or performance dates Unless otherwise agreed in writing Seller shall not make commitments for material or production in excess of the amount or in advance of the time necessary to meet Allegiance s delivery schedule It is Seller s responsibility to comply with this schedule but not anticipate Allegiance s requirements Goods shipped to Allegiance in advance of schedule may be returned to Seller at Seller s sole cost and expense Allegiance may reschedule the delivery of any unshipped product for later delivery at any time that Allegiance desires

**4 PRICE ADJUSTMENTS OVERSHIPMENT**

Allegiance shall not be deemed to have accepted shipment of any goods or services at any price product grade or classification or quantity other than as indicated on this Order Any general price decrease announced by Seller with respect to goods services equipment and/or materials similar to the items described on this Order shall automatically and immediately reduce the price hereof by a comparable percentage Seller s failure to comply with this provision shall give Allegiance the right, without notice to seek an appropriate reduction retroactively or through set off on this or any other transaction between the parties Seller is instructed to ship only the quantity(ies) specified in this Order However any deviation caused by conditions of loading, shipping, packing or allowances in manufacturing processes may be accepted by Allegiance according to the overshipment allowance indicated on the face of this Order If no allowance is shown it shall be 10 s (ten percent) Allegiance reserves the right to return any overshipment in excess of the allowance at the Seller s expense

**5 DISCLOSURE OF INFORMATION**

Neither party hereto shall, without the prior written consent of the other pa ty publicly announce or otherwise disclose the existence or the terms of this Order or release any publicity regarding this Order This provision shall survive the expiration, termination or cancellation of this Order

**6 REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Allegiance that all goods and materials supplied by Seller under this Order fully conform to the requirements, specifications drawings samples or other descript ons f rnished or adopted by Allegiance and that they are new (unless this Order expressly allows for rebuilt or remanufactured goods or materials) of a first class nature constructed in a good and workmanlike manner free from all defects encumbrances or deficiencies in manufacture d design and are of merchantable quality and fit for their intended purpose Seller further represents and warrants that all services performed hereunder shall be performed in a prompt professional first class manner Such warranties by Seller shall run to the benefit of Allegiance Allegiance s approval of designs furnished by Seller shall not relieve Seller of its obligation under these warranties. Seller s warranties shall be effective for a period of one year from the later of the date of acceptance of goods or services by Allegiance or the date such goods or materials are installed by Allegiance or for such longer pe od as specified by Seller Allegiance makes no representations or warranties to Seller with respect to any matter related to this Order or Allegiance's operations

**7 INTELLECTUAL PROPERTY RIGHTS**

The work product of Seller's services, including results and all ideas developments and inventions which Seller conceives or reduces to practice during the course of its performance under this Order shall be the exclusive property of Allegiance This information material and any such inventions shall be deemed Allegiance Proprietary Information and shall not be disclosed to anyone outside of Allegiance or used by Seller or others without the prior written consent of Allegiance Any article paper treatise computer program, or report prepared by Seller pursuant to this Order shall be a "work for hire" under the copyright laws of the United States Upon Allegiance's request Seller shall execute any document and render such other assistance as reasonably necessary to perfect full right title and interest worldwide in the written data including formal conveyance of copyright Seller agrees to indemnify defend and to hold Allegiance its officers directors employees agents and vendees (direct and indirect) harmless from any and all losses expenses (including but not limited to attorneys fees and court costs) damages liabilities claims monetary judgments or demands either at law or in equity for actual or alleged infringement or misappropriation of any patent invention design, trademark, trade secret or copyright arising from the purchase use or sale of materials or articles required by this Order except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by Allegiance. In the event of claimed infringement or misappropriation, Seller will use its best efforts at no cost to Allegiance to (a) obtain for Allegiance the right to use the materials or articles without restriction or (b) replace or modify the materials or articles without impairing the functionality thereof so that they no longer infringe or misappropriate any third party rights o (c) if such replacement or modification is impossible refund to Allegiance all monies paid hereunder for such materials or articles.

**8 CHANGES**

Allegiance may change from time to time any of the drawings specifications or instructions for work covered by this Order upon reasonable not ce to Seller and Seller shall comply with such change notices If such changes result in a decrease or increase in Seller s cost or in the time for performance, an adjustment in the price and time for performance may be made by the parties in writing, provided however that Seller provides at least thirty (30) days notice to Allegiance of the request for such adjustments

**9 PACKING AND SHIPPING INSTRUCTIONS**

Seller shall ship all shipments for which Allegiance is responsible for shipping charges via the least costliest method unless otherwise instructed No shipping charges of any kind including charges for boxing or cartage will be allowed under this Order unless specifically agreed to by Allegiance in writing Pricing by weight or volume, where applicable covers net weight or volume of material unless otherwise agreed. All goods or materials shall be suitably packed or otherwise prepared for shipment to prevent damage in transit and to comply with carrier requirements

**10 RETURNS**

Defective material shall be returned freight collect to Seller Replacement material shall be sent freight prepaid from Seller who will absorb the burden of premium transportation when defect or replacement material places critical time or delivery schedule constraints on Allegiance

**11 INDEMNIFICATION**

Seller shall at all times protect and hold Allegiance harmless of from and against any and all claims (whether in tort strict liability contract or otherwise) demands, expenses and liabilities for losses damage injury (including death) economic injury (including consequential and special damages) and liability of every kind and nature and however caused and taxes (of any kind) arising out of or resulting from or in any way connected with or incidental to this Order or the goods furnished or services performed hereunder by Seller its employees officers independent contractors or agents. Upon receipt of notice from Allegiance of any claim or action brought against Allegiance in which indemnity may be sought against Seller pursuant to this Section, Seller shall immediately defend such claim or action at its sole expense on behalf of Allegiance Allegiance shall have the right to join and participate in as a party if it so elects any legal proceedings or actions initiated with respect to this Order and have its attorneys fees in connection therewith promptly paid by Seller The indemnifications and protections set forth herein shall survive the delivery of any goods required under this Order or the performance of any services hereunder and shall fully extend to Allegiance's affiliates, employees directors, agents customers and invitees

**12. ASSIGNABILITY**

The obligations hereunder shall not be assigned or transferred by Seller without the prior written consent of Allegiance and any attempted assignment or transfer without such consent shall be void Seller shall not subcontract any substantial portion of the work or services to be performed under the Order without the prior written consent of Allegiance which consent may be granted by Allegiance in its sole and absolute d scretion. Subject to the restrictions on assignability above the terms covenants conditions and indemnities hereof shall inure to the benefit of and shall be binding upon Seller and its successors and permitted assigns.

**13 TERMINATION**

Allegiance may terminate the work or services to be performed hereunder at whole or in part at any time without cause or penalty upon written notice to Seller Such notice shall state the extent and effective date of such termination and upon the receipt of such notice Seller will comply with the directions pertaining to work stoppage hereunder and the placement of further orders or subcontracts hereunder Termination under this provision shall not be deemed a breach of contract The provisions of this paragraph shall not apply to a termination with cause nor limit or affect the right of Allegiance to terminate this Order for cause Seller shall mitigate its claim to the maximum extent and in any event no claims shall exceed the lesser of fair market value or actual costs of raw materials and work in progress material which Seller shows cannot be diverted to other uses No claim shall be asserted or honored for loss of expected profits or for any consequential or incidental damages due to a termination or cancellation hereunder

**14 DEFAULTS, REMEDIES**

Seller shall be deemed in default under this Order upon (1) the failure of Seller to perform any covenant condition agreement or obligation under this Order (2) any representation or warranty made by Seller proves to be false misleading or incorrect (3) the filing of a petition in bankruptcy or insolvency or for reorganization or arrangement of any bankruptcy laws the making by Seller of any assignment or arrangement for the benefit of creditors the attachment execution or other judicial seizure of any of Seller assets or (4) any material adverse change in Seller or Seller's operations or any material change in laws affecting Seller's operations Whenever Seller is in default under this Order Allegiance may (in addition to the indemnification of Allegiance by Seller hereunder) take any action at law or in equity to enforce performance or observance of any obligations agreements or covenants of the Seller under this Order including but not limited to rights and remedies set forth in the Uniform Commercial Code No remedy or election hereunder shall be deemed exclusive but shall be cumulative with all other remedies No delay or failure on the part of Allegiance to exercise or enforce any power right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise or enforcement of any power right or remedy preclude any other or further exercise or enforcement thereof

**15 ENTIRE AGREEMENT BEVERABILITY, APPLICABLE LAW VENUE**

This Order and any attachments hereto (or to be attached hereto) set forth all of the covenants promises agreements and conditions between Allegiance and Seller concerning this Order and there are no covenants promises agreements or conditions either oral or written between them This Order may not be modified or amended in any manner except by an instrument in writing duly executed by the parties hereto The invalidity or unenforceability of any provision of this Order as determined by a court of competent jurisdiction, shall in no way affect the validity of the remainder of this Order or any provision hereof The parties hereto acknowledge that this Order has been negotiated and entered into in Dallas County State of Texas. THIS ORDER SHALL BE GOVERNED BY INTERPRETED UNDER AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS Where not modified by the terms herein the provisions of Texas enactment of Article 2 of the Uniform Commercial Code shall apply to this transaction. The exclusive jurisdiction for any action or proceeding brought by Seller under this Order shall be Dallas County the State of Texas

**16 NOTICES, CONSENTS, APPROVALS**

All acceptances approvals consents notices demands or other communications required or permitted to be given or sent by either party to the other shall be deemed to have been fully given when made in writing and delivered in person or deposited in the U S mail certified, return receipt requested addressed to the parties at the address set forth on the front of this Order Either party may change such address by ten days notice Whenever in this Order Allegiance s consent or approval is required such consent or approval shall only be deemed effective if provided by a duly authorized representative by Allegiance.

**17 RISK OF LOSS, RELATIONSHIP OF PARTIES**

Risk of all loss destruction or damage to any goods provided under this Order from any and all causes whatsoever until delivery and acceptance by Allegiance shall be borne by Seller This Order does not create the relationship of principal and agent or a partnership or joint venture or of any association other than that of vendor and vendee or independent contractor.

**18. AUTHORITY, FORCE MAJEURE, ATTORNEYS' FEES, NO LIENS**

By accepting this Order Seller represents that it has the full right power and authority to bind Seller to the terms and conditions herein The parties shall be excused from the performance of their obligations under this Order for such period of time as either party is prevented from performing some by reason of act of God, war riots, final boycott or embargo, labor disputes, strikes or lockout governmental restrictions of prohibitions and any other cause beyond either party s reasonable control not including any delays caused by suppliers or subcontractors A party claiming a force majeure shall provide written notice thereof within 10 days of such occurrence If either party named herein brings an action to enforce the terms of this Order or to declare rights hereunder the prevailing party in such action on trial or appeal shall be entitled to its reasonable attorneys' fees to be paid by losing party as fixed by the court. To the extent permitted by law Seller expressly waives any common law statutory or contractual lien on the goods or services provided hereunder