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 EXHIBIT 10.33  
  
 LETTER OF AGREEMENT  
  
 The purpose of this Agreement is to establish terms and formalize  
 procedures pertaining to the sale of Visioneer products to Best Buy Co.,  
 Inc.. This agreement replaces all prior agreements and understandings  
 between the two companies. Reference to "Seller" or "Vendor" shall mean  
 Visioneer; reference to "Buyer" shall mean Best Buy Co., Inc.  
  
  
 I. GENERAL  
  
 The relationship between Visioneer and Best Buy Co., Inc. will begin on  
 the date this agreement is signed by an authorized representative of  
 Best Buy Co., Inc.. This agreement will control as to matters covered  
 herein and will continue unless and until termination. Either party may  
 terminate this agreement by giving the other party sixty (60) days  
 written notice of their request to terminate. Section III will survive  
 the termination of this agreement until all of Vendor's merchandise has  
 been sold. Section V.B. and V.C. will survive the termination of this  
 agreement until ninety (90) days following the sale to an end-user of  
 the last piece of Vendor's product.  
  
  
 II. PRICING AND PURCHASE ORDERS  
  
 A. PRICING, PRICE REDUCTIONS AND PRICE PROTECTION  
  
 For products not purchased through a Distributor, Vendor agrees  
 that all prices offered to Best Buy Co., Inc. will be no higher  
 than prices charges to any other reseller. Best Buy may audit  
 Vendor's pricing if Best Buy reasonably believes that Best Buy is  
 not receiving the lowest pricing. In the event Visioneer reduces  
 prices on its product carried by Best Buy Co., Inc., Vendor will  
 accept Best Buy Co., Inc.'s debit memo in an amount equal to the  
 price reduction times quantity on hand and in transit at the time  
 of the change. In the event of a price reduction for product  
 purchased through a distributor, Vendor will issue a credit to  
 the distributor, under the terms of Vendor's agreement with such  
 distributor.  
  
 B. PURCHASE ORDERS AND CONVEYANCE  
  
 Vendor agrees to be bound by the Purchase Order Terms and  
 Conditions set out in Exhibit 1 which is attached and  
 incorporated herein by reference. This applies regardless whether  
 orders are transmitted by delivery of a hard copy or by facsimile  
 transmission. Best Buy Co., Inc. agrees that if it revises those  
 Terms and Conditions, it will provide the text to the Vendor for  
 inspection prior to transmitting any additional purchase orders.  
  
 C. TERMS  
  
 1. Freight - All shipments to Best Buy Co., Inc. shall be  
 made F.O.B. origin; with title and risk of loss or  
 damage to pass to Best Buy Co., Inc. upon delivery by  
 Vendor to the common carrier, and insurance and handling  
 charges to be paid by Best Buy Co., Inc.. Vendor shall  
 bear all shipping charges for orders comprising one (1)  
 or more whole pallets shipped to a single location.  
  
 2. Credit Terms - Except for specially negotiated  
 purchases, Best Buy Co., Inc. will pay for ordered goods  
 within thirty (30) days of receipt of an invoice.  
  
  
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 3. Acceptance of debit memos - Vendor agrees to accept  
 debit memos issued by Best Buy Co., Inc. for price  
 protection, returns, Co-op/MDF and in fractions as  
 described in Best Buy Co., Inc.'s standard Purchase  
 Order Terms and Conditions in lieu of issuing Best Buy  
 Co., Inc. a credit. In the event Vendor disputes a debit  
 memo, Best Buy Co., Inc. agrees to provide sufficient  
 back-up detail supporting the debit memo within sixty  
 (60) days of Vendor request. Vendor must submit any  
 debit memo claims to Best Buy within sixty (60) of  
 receipt of the debit memo or shall otherwise be deemed  
 to have waived any such claims.  
  
 D. SELL-THROUGH DATA  
  
 Best Buy Co., Inc. shall provide product performance reports by  
 SKU no less frequently than weekly via electronics means to be  
 determined by Visioneer and Best Buy buyer. They will indicate  
 sales by SKU and store location, for the prior week and will  
 include on-hand inventory information. There is no charge to  
 receive this data. Best Buy will agree to provide Vendor with  
 electronic media of monthly sales out data by no less than zip  
 code.  
  
  
 III. VENDOR AUTHORIZATION  
  
 It is understood by parties that Vendor's products are authorized to be  
 sold by any Best Buy Co., Inc. location on the North American continent  
 regardless of geographic location.  
  
  
 IV. HARDWARE MODEL AND SOFTWARE VERSION CHANGES  
  
 Vendor will make best efforts to notify Best Buy Co., Inc. Merchandising  
 of all new releases and product replacements, at least thirty (30) days  
 prior to public announcement.  
  
  
 V. RETURNS/SELL THROUGH  
  
 A. STOCK BALANCE RETURNS  
  
 Best Buy Co., Inc. may exercise net returns of new goods once  
 each calendar quarter, equivalent to 10% of prior quarter's  
 purchases; at any time during each calendar quarter. Vendor will  
 accept Best Buy's debit memo for the quantity of product  
 authorized to be returned or the quantity of product actually  
 returned, whichever is less. At Best Buy Co., Inc.'s option,  
 Vendor will refund the net amount in cash (less any Co-op paid  
 for original purchases). If Vendor receives product in excess of  
 the authorized amount, the excess amount will be returned to Best  
 Buy Co., Inc. shipping location at Best Buy's expense for freight  
 and any handling charges that may be incurred; Vendor will issue  
 a debit memo to Best Buy Co., Inc. for these charges.  
  
  
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 B. CUSTOMER SATISFACTION RETURNS  
  
 Visioneer defines customer satisfaction returns as the return of  
 product with which a customer is not happy because it is  
 defective or not what the customer wanted and which is returned  
 to Best Buy within thirty (30) days of original end-user  
 purchase. If the product is new and has never been opened, Best  
 Buy Co., Inc. will return it to the shelf. If the product is not  
 resellable as new, the Vendor agrees to accept its return.  
 Returned products need to be substantially complete. That is, the  
 package must include the principle items and accessories  
 ordinarily included with the product from the Vendor. Vendor  
 agrees to accept customer satisfaction returns and to refund the  
 then current cost of goods to Best Buy Co., Inc. via debit memo  
 issued by Best Buy Co., Inc.  
  
 C. OUT-OF-BOX FAILURES  
  
 Vendor will automatically accept return of product that is  
 defective out of the box and returned by the end-user to Best Buy  
 Co., Inc. within a period of thirty (30) days after original  
 purchase date by end-user of new product. Any other defective  
 return requests will be considered on a case by case basis and  
 will require advance authorization from Vendor's customer  
 satisfaction and/or sales administration personnel.  
  
  
 VI. ADVERTISING AND MARKETING EFFORTS  
  
 A. RESPONSIBILITIES  
  
 Vendor shall have the responsibility for developing and accessing  
 demand for the Vendor's products and providing product  
 differentiation from competitive products. In pursuit of these  
 efforts, Vendor is encouraged to state in their advertising that  
 products are available at Best Buy Co., Inc. locations. Best Buy  
 Co., Inc. will be given the opportunity to pre-approve any use of  
 its name or logo in order to assure its image is maintained.  
  
 B. BEST BUY CO., INC. RESPONSIBILITIES  
  
 Best Buy Co., Inc.'s responsibilities are to take the appropriate  
 steps to cause customers to visit Best Buy locations, make a  
 pleasant and attractive retail environment conducive for the  
 purchase of the Vendor's product(s), to represent those products  
 in a positive and ethical manner and, in conjunction with  
 Vendor's marketing research recommendations, to purchase a supply  
 of the Vendor's products in adequate quantity to satisfy demand.  
  
 C. ACCOUNT REVIEWS  
  
 Regular account reviews play a valuable role in both parties  
 common objectives of selling more product to our mutual  
 customers. Best Buy Co., Inc. Buyers will make themselves  
 available for regular account reviews with its vendors. They may  
 be in person or via telephone. Requests for review should be  
 accompanied by an agenda.  
 Typical agenda might be:  
  
 - Review and analysis of past programs and promotions to  
 evaluate effectiveness  
  
 - Short, Medium and Long range product and programs   
  
 - Product performance - Inventory/Stock Levels,  
 Competitive Landscape  
  
 - Administrative Issues (Orders, Shipments, Payments,  
 etc.)  
  
  
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 D. RETAIL CO-OP PROGRAM  
  
 This section generally describes the marketing/sales program  
 relative to Best Buy Co., Inc.'s store-based retail business.  
 Vendor shall accept Best Buy Co., Inc.'s debit memo for five  
 percent (5%) based upon net receipts from the Vendor for coop  
 accrual. These funds shall be used strictly to:  
  
 - Support basic shelf merchandising of the Vendor's  
 products  
  
 - Cover the cost of line listing of Vendor's products in  
 Best Buy Co., Inc.'s retail catalog  
  
 - Newspaper ads as deemed appropriate by Best Buy Co.,  
 Inc.  
  
 - Inclusion of Vendor's products in Best Buy Co., Inc.  
 direct response marketing program  
  
 - Provide for the delivery of SKU performance data as  
 described in ll.D. above.  
  
 Marketing and/or sales development funds may be available on a  
 periodic basis at Visioneer's discretion in addition to accrued  
 coop funds.  
  
 Proof of performance - "Proof of performance" as it relates to  
 these four items shall be the responsibility of the Vendor. Best  
 Buy Co., Inc. will cooperate by 3roviding reasonable access to  
 advertising access tear sheets, copies of catalogs, etc.  
  
 Collection of funds - Best Buy Co., Inc. will collect the 5% coop  
 reimbursement via debit as described in II.C.3 above. It will be  
 collected regardless of whatever action the Vendor chooses to  
 take to verify use of these funds in the agreed upon manner.  
  
 Incremental marketing activities - Best Buy Co., Inc. may  
 periodically solicit its Vendors, from time to time, with offers  
 to participate in additional marketing activities for additional  
 costs.  
  
  
 VII. EMPLOYEE INCENTIVES  
  
 Vendor is prohibited from providing compensation, incentives, SPIFFS, or  
 gifts of any kind directly to Best Buy Co., Inc. employees without prior  
 written approval of a disinterested Best Buy Co., inc. officer.  
 Prohibited incentives would include, but not be limited to free product,  
 cash, meals or travel awards. Violations of this policy would constitute  
 grounds for the immediate discontinuance of the Vendor's product from  
 the Best Buy Co., Inc. line.  
  
  
 BEST BUY CO., INC. VISIONEER COMMUNICATIONS, INC.  
  
 By: Xxxxx De Xxxxx By: Xxxxxx Xxxxxx  
 --------------------------------- --------------------------------  
  
 Signed: /s/ XXXXX DE XXXXX Signed: /s/ XXXXXX XXXXXX  
 ----------------------------- ----------------------------  
  
 Title: Sr. Buyer Title: V.P. Sales  
 ------------------------------ -----------------------------  
  
 Date: 9/11/96 Date: 9/11/96  
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 EXHIBIT I  
  
  
 PURCHASE ORDER TERMS AND CONDITIONS  
  
 1. ACCEPTANCE  
  
 This Purchase Order ("Order") constitutes Best Buy Co., Inc.'s offer and  
 SELLER'S acceptance and is expressly subject to the terms and conditions  
 in this Order unless otherwise agreed to in writing by an officer of  
 BUYER. Any provisions in SELLER'S invoices, billing statements,  
 acknowledgment forms or similar documents which are at variance with the  
 provision of this Order shall be of no force or effect unless  
 specifically agreed to in writing by an officer of BUYER. Any request or  
 demand for or statements purporting to make SELLER'S acceptance  
 conditional on BUYER'S assent to additional or different terms are  
 hereby rejected and shall be of no effect. Any of the following acts by  
 SELLER shall constitute acceptance of this Order and all of the terms  
 and conditions; signing and returning a copy of this Order; delivery of  
 any items ordered; informing the BUYER in any manner of commencement of  
 performance; or returning SELLER'S own form of acknowledgment. This   
 Order may not be changed or terminated verbally.  
  
 2. INVOICING  
  
 Each shipment must contain a packing slip showing Order number, number  
 of cartons and quantity in each carton. Unless otherwise specified in  
 the Order, the prices, in U.S. dollars, appearing herein shall include  
 packaging, crating and are firm for the delivery period shown. BUYER  
 shall be responsible for any federal and/or local taxes imposed by the  
 jurisdiction in which the items are delivered.  
  
 3. TERMS COMMENCEMENT  
  
 Any cash discount terms will begin upon date of receipt of the items or  
 invoice, whichever is later.  
  
 4. EXTRA CHARGES  
  
 BUYER shall pay no extra charges, including but not limited to charges  
 for prepacks, cartons, handling, or minimum Order or because of any  
 taxes or excises levied on manufacturers, wholesalers or otherwise,  
 unless agreed to in writing and signed by an officer of BUYER.  
 Merchandise shipped by freight or express will be packed, marked and  
 described so as to obtain the lowest rate possible under freight or  
 express classifications, except when otherwise specified by BUYER and  
 penalties or increased charges for failure to do so will be charged to  
 SELLER.  
  
 5. DELIVERY AND ACCEPTANCE OF ITEMS  
  
 The time specified for delivery of the items covered by this Order is of  
 the essence. All items will be subject BUYER Inspection at BUYER'S  
 receiving location. In addition to other rights provided by law, BUYER  
 reserves the right to cancel any unshipped portion of this Order, and to  
 reject all or part of items shipped hereunder, which: are defective in  
 material or workmanship; differ in any way from specifications or  
 warranties herein contained or implied by law; are shipped contrary to  
 instruction, not in recognized standard containers, or not on specified  
 shipping dates. SELLER shall have no right to cure such defects or  
 failure to perform after BUYER gives notice of cancellation. At its  
 option, BUYER may return rejected items or hold items at SELLER'S risk  
 and expense, and may in any event charge SELLER with cost of  
 transportation, shipping, unpacking, examining, recapping, reshipping,  
 and other like expenses. SELLER  
  
  
  
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 may not refuse any return so made, and shall be liable for all charges,  
 costs, expenses and consequential damages resulting from or arising out  
 of said refusal. In the event BUYER shall have made payments to SELLER  
 for items so returned, SELLER shall promptly refund such payments to  
 BUYER. Notwithstanding the foregoing: BUYER shall be under no duty to  
 inspect items prior to resale and neither retention nor resale of such  
 items shall be construed as an acceptance of items not in compliance  
 with the requirements of this Order.  
  
 A. MERCHANTABILITY. SELLER represents and warrants for a period  
 of ninety (90) days after end-user purchase that all items delivered  
 pursuant to this Order will, in addition to any express warranty or  
 guarantees heretofore or hereafter made by samples or other descriptions  
 previously furnished by SELLER be free from any defect in material or  
 workmanship, be merchantable at the time of delivery to BUYER and at the  
 time of use by BUYER'S customers and be fit and safe for sale and any  
 use by BUYER, or its customers for which such items are ordinarily  
 intended and any particular intended use for which SELLER or its agents  
 should have or do have knowledge of. SELLER will maintain and carry  
 liability insurance which includes but is not limited to employer's  
 liability, workers compensation, general liability, public liability,  
 property damage liability, product liability, and contract liability in  
 amounts set forth or incorporated in this order, with insurance carriers  
 acceptable to BUYER and if no amounts are so set forth herein, amounts  
 as acceptable to and approved by the BUYER, but in no event shall such  
 amounts be less than minimum statutory requirements, if any. SELLER  
 will, at BUYER'S request, furnish certificates of insurance from its  
 carrier on the foregoing coverage's, which shall provide that such  
 coverage shall not be reduced without thirty (30) days advance written  
 notification to the BUYER from the carrier.  
  
 B. GOVERNMENTAL REQUIREMENTS. SELLER represents and warrants that  
 all items; delivered pursuant to this Order are manufactured in  
 compliance with and meet the standards of United States Consumer Product  
 Safety Act ("CPSA") and the rules, regulations and standards of the  
 United States Consumer Product Safety Commission; furnished hereunder  
 which are produced in the United States will be produced in compliance  
 with the applicable requirements of the Fair Labor Standards Act of  
 1938, as amended to the sale hereof, and regulations and orders of the  
 United States Department of Labor issued under Section 14 thereof, and  
 that all provisions of Executive Order as amended, 4 1 CFR60-250 and 4 1  
 CFR60-741 are incorporated by reference herein as though set forth in  
 full; are manufactured, sold, shipped, packaged, labeled, tagged and  
 invoiced in compliance with all applicable federal, national, state, and  
 local laws, statutes, rules, regulations or ordinances, including but  
 not limited to the Consumer Packaging and Labeling Act, the Hazardous  
 Products Act, the National Trademark and True Labeling Act and the Food  
 and Drug Act and all other warrants that it will, upon written demand,  
 furnish BUYER with Material Safety Data Sheets ("MSDS'S") for items  
 furnished hereunder. Said MSDS's are to comply with requirements of  
 Federal and State Right to Know Laws and Occupational Safety and Health  
 Acts.  
  
 C. ANTITRUST. SELLER represents and warrants that the prices  
 hereunder on the items covered by this Order are lawful under all  
 applicable laws and regulations, including but not limited to Section 2  
 of the Xxxxxxx Antitrust Act, as amended by the Xxxxxxxx-Xxxxxx Act, and  
 further specifically, expressly, and unconditionally represents and  
 warrants to BUYER that any and all payments or allowances to be made to  
 BUYER by SELLER for services or facilities to be furnished by SELLER are  
 on proportionally equal terms to other similar customers of SELLER  
 competing with BUYER in the description of the same item.  
  
  
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 6. PATENT INDEMNITY  
  
 A. REPRESENTATIONS. SELLER represents and warrants that:  
  
 1. It has the right to disclose or use, without  
 liability to others, all processes, designs and methods the  
 SELLER will disclose or use in performance of this Order.  
  
 2. The items, and BUYER'S use thereof, do not and will  
 not infringe on any U.S. patent, trademark, trade name, service  
 xxxx, trade secret, mask work, copyright, design or any other  
 proprietary right of others and  
  
 3. In connection with its performance under this Order,  
 SELLER will not knowingly infringe on any U.S. patent,  
 trademark, trade name, service xxxx, trade secret, mask work,  
 copyright, design or any other proprietary right of a third  
 party.  
  
 B. INDEMNITY BY SELLER. SELLER will indemnify, hold harmless, and  
 at BUYER'S request, defend BUYER and BUYER'S subsidiaries,  
 affiliates, and customers from and against any loss, or liability  
 or expense (including court costs and reasonable legal fees)  
 arising out of or resulting from any breach or alleged breach of  
 the above representations or from any claim that BUYER's use,  
 sale or other disposition of the items purchased hereunder  
 infringes on any U.S. patent, trademark, trade name, service  
 xxxx, trade secret, mask work, copyright, design or any other  
 proprietary property of any third party. In the event of any such  
 claim, BUYER agrees (i) to notify SELLER of claim, (ii) if BUYER  
 has not requested that SELLER defend the claim, to permit SELLER,  
 at SELLER's expense to participate in the defense thereof with  
 counsel of SELLER'S choosing, subject to BUYER'S participation  
 and supervision, and (iii) if BUYER has requested that SELLER  
 defend the claim, to provide SELLER with all needed information,  
 assistance and authority necessary for SELLER to do so. If the  
 use by BUYER or any of its customers of any of the items  
 purchased under this Order is enjoined, or in BUYER'S opinion is  
 likely to be enjoined, at BUYER'S request and option, and without  
 prejudice to BUYER'S rights and remedies SELLER at its expense  
 will: (1) procure from the person or persons claiming or likely  
 to claim infringement, a license for BUYER and its customers to  
 continue to use such items; or (2) modify such items to avoid the  
 infringement, a license for BUYER and its performance or  
 compliance with BUYER'S specifications on this Order; or (3)  
 refund to BUYER the net amounts paid by BUYER, less applicable  
 discounts and credits for infringing items returned at Seller's  
 expense by BUYER to SELLER.  
  
  
 7. PRICE PROTECTION  
  
 SELLER represents and warrants on date of this Order, that the prices  
 charged for the items covered by this Order will be as low as the lowest  
 prices charges by SELLER to any similar customers purchasing such items  
 in similar quantities and under like circumstances. This Order is not to  
 be filled at a higher price than shown on the Order unless authorized in  
 writing by an officer of BUYER. Should there be a SELLER imposed  
 reduction in price between the date of this Order and the delivery date  
 specified in this Order or the actual delivery date, whichever is later,  
 BUYER may charge back to SELLER'S account the amount of decline on any  
 items on hand or in transit at the time of the price reduction.  
  
  
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 8. TERMINATION  
  
 At its option, BUYER may terminate all or part of this Order for any  
 reason, within 24 hours prior to SELLER'S scheduled shipment to BUYER,  
 upon prior written notification being faxed, telexed or mailed to  
 SELLER, which is received no later than 24 hours prior to scheduled  
 shipment; such termination shall be at no charge, cost or expense to  
 BUYER.  
  
  
 9. FORCE MAJEURE  
  
 Neither BUYER nor SELLER shall be liable for any failure to perform in  
 accordance with the terms of this Order due to wars, strikes, fires,  
 acts of God or the public enemy, labor difficulties, freight embargoes  
 or other causes beyond their control. In the event SELLER is unable to  
 perform due to any of the foregoing events, BUYER shall be entitled,  
 except for BUYER'S monetary obligation under this Agreement and, in  
 addition to its right to terminate pursuant to paragraph 9; to (a)  
 reduce pro lento, and without any obligation to SELLER, the quantity of  
 items specified by this Order.  
  
  
 10. WAIVER  
  
 No course of dealing of BUYER nor any delay or omission of BUYER to  
 exercise any right or remedy under this Order shall operate as a waiver  
 of any rights of BUYER, and every right and remedy of BUYER provided  
 herein shall be cumulative and concurrent, unless otherwise expressly  
 provided herein, and shall be in addition to every other right or remedy  
 provided for herein or now or hereafter existing in law or equity. In  
 the event BUYER waives any term or condition, such waiver shall not  
 constitute a waiver of the same terms or conditions in prior or  
 subsequent transactions or different terms or conditions in the same,  
 prior or subsequent transactions.  
  
  
 11. ASSIGNMENT  
  
 Neither party may assign or transfer any of the rights, duties, or  
 obligations herein without the prior written consent of the other, and  
 any purported attempt to do so shall be null and void. Notwithstanding  
 anything set forth above, BUYER or SELLER may assign or transfer its  
 rights, duties and obligations under this Agreement to a subsidiary or  
 Affiliate; in the case of SELLER, to a subsidiary or affiliate of  
 SELLER, or, in the case of Buyer or Seller, to a third party in  
 connection with the merger, sale, consolidation or transfer of  
 substantially all of such party's assets or stock, provided that such  
 third party is not a competitor of the non-assigning party. The  
 provisions of this Agreement shall be binding upon and inure to the  
 benefit of the parties, their successors and permitted assigns.  
  
  
 12. SEVERABILITY  
  
 If any provisions of this Order is found to be illegal or otherwise  
 unenforceable by any court or other judicial or administrative body, it  
 shall be severed and the remaining provision of this Order shall remain  
 in full force and effect.  
  
  
 13. ENTIRE AGREEMENT  
  
 This document contains the entire agreement of the parties upon the  
 subject matter hereof. There is no agreement, oral or otherwise, which  
 is not set forth in writing. No modifications of this agreement shall be  
 binding unless in writing and signed by both parties.  
  
  
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 14. SERVICE OR PROCESS  
  
 This Agreement shall be governed by the laws of the State of Delaware.  
  
  
 15. ADDITIONAL REMEDIES  
  
 The rights and remedies herein expressly provided shall be in addition  
 to any other rights and remedies given by law or equity.  
  
  
 16. JURISDICTION  
  
 Except as otherwise specifically provided in this contract, any dispute  
 concerning a question of fact and/or law arising under this Order which  
 is not disposed of by agreement of the parties, shall be decided by a  
 court of competent jurisdiction in the United States District Courts in  
 the Northern District of California or in the Superior Court in Santa  
 Xxxxx County if Visioneer sues; jurisdiction in State of Delaware courts  
 if Best Buy Co., Inc. sues. Pending settlement or final decisions of any  
 dispute, the SELLER shall proceed diligently with the performance of  
 this Order in accordance with the directions of the BUYER.  
  
  
 17. SURVIVAL  
  
 The terms, provisions, representations, and warranties contained in this  
 Order shall survive the delivery of the items, payment of the purchase  
 price and transfer of title.