

# SALES CONDITIONS OF MOSA USA INC.

1. **Applicability.**

These Sales Conditions of Mosa USA, Inc. (these "Terms") are the sole and exclusive terms and conditions which govern the sale of goods and products ("Goods") by MOSA USA, INC., a Delaware corporation, and its wholly owned subsidiary of business located in the State of New York ("Seller"), to any contracting party whose order for Goods is accepted by Seller as provided in these Terms (such contracting party referred to herein as "Buyer"), provided, however, that if a separate written contract signed by Buyer and Seller, in evidence of the purchase of Goods, covers hereby, the terms and conditions of that contract shall prevail to the extent they are inconsistent with these Terms.
  2. **Quoted and Offers.**

The submission by Buyer, its agents or representative of any purchase order or like submission shall constitute a representation by Buyer that the person(s) submitting the order is/are duly authorized to submit the order and to bind Buyer to the terms hereof upon acceptance by Seller through the issue of the Confirmation as provided in Section 3 hereof.
  3. **Quoted and Offers.**

The submission by Buyer, its agents or representative of any purchase order or like submission shall constitute a representation by Buyer that the person(s) submitting the order is/are duly authorized to submit the order and to bind Buyer to the terms hereof upon acceptance by Seller through the issue of the Confirmation as provided in Section 3 hereof.
  4. **Quoted and Offers.**

All Quotes provided by Seller are not binding on Seller unless and until Seller has accepted the underlying order for the Goods reflected in a Quote by (i) confirming the acceptance in writing through the issuance of the Confirmation, or (ii) commencing production or delivery of the Goods contemplated thereby. Quotes are valid for six (6) weeks after the date of issue and shall be void if Seller has not issued a Confirmation prior to that date.
  5. **Price quotations for Goods are based on the information provided by Buyer with regard to the anticipated uses of and requirements applicable to the Goods. Seller shall conclusively be entitled to rely on such information as being true, accurate and complete.**
  6. **Buyer must notify Seller in writing of any requested changes to a previously submitted order. Changes shall take effect if and only if Seller has accepted such changes in writing and any additional or reduced quantities shall be subject to the terms accepted by Seller shall be payable by, or credited to, the Buyer (as applicable). Buyer acknowledges that changes to previously submitted orders may result in production and delivery delays. Seller shall not be liable for any such delays arising out of or relating to any such delays.**
  7. **With respect to Goods to be delivered (1) FCA Warehouse North Charleston, South Carolina (within the meaning of Section 3.8) and (2) Landed North Charleston, South Carolina (backorders larger than 2,000 square feet per article and wall and floor tiles and for accessory orders larger than 500 pieces:**
    - i. For those Goods described in the foregoing clause (1), Buyer shall have no right to cancel any previously submitted orders for such Goods, unless Buyer provides written notice of such cancellation to Seller no later than forty-eight (48) hours after the Confirmation has been issued; and
    - ii. For those Goods described in the foregoing clause (2), Buyer shall have no right to cancel any previously submitted orders for such Goods, unless Buyer provides written notice of such cancellation to Seller no later than forty-eight (48) hours after the Confirmation has been issued.
  8. **For purposes of this Section 2.E, "Landed North Charleston, South Carolina, (backorders)" means those orders for Goods delivered FCA Warehouse, North Charleston, South Carolina (within the meaning of Section 3.8), where the underlying Goods are not in stock in North Charleston, South Carolina, but instead are shipped first by Seller from its warehouses in the Netherlands to its warehouse in North Charleston, South Carolina.**
  9. **Samples/specimens provided by Seller are provided for convenience purposes only and Seller provides no assurances that the Goods will conform to such samples/specimens. Buyer shall not sell, use or consume any such samples/specimens.**
  10. **The contents of Seller's brochures, website and other printed materials shall not be binding on Seller unless this has been expressly stipulated by separate written agreement. In the latter case, Seller shall not be bound by any printing errors and/or omissions.**
  11. **Delivery.**

The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order and acceptance of these Terms by Seller via Seller's Sales Order Acknowledgment (the "Confirmation"), subject to availability of finished Goods. The issuance of a purchase order by Buyer shall constitute Buyer's offer to purchase the Goods pursuant to these Terms and the Quote, and no other terms. Seller shall not be liable for any loss or delay in delivery of the Goods. As stated on the Confirmation shall constitute approximations of the anticipated delivery times only and Buyer acknowledges that actual delivery times may vary from such approximations. Seller shall not be liable for any such variations nor shall Buyer be entitled to any price adjustments or damages relating thereto.
  12. **Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods, in accordance with the applicable price list either: (i) FCA (Free Carrier, Incoterms® 2010) Warehouse North Charleston, South Carolina, or (ii) FCA (Free Carrier, Incoterms® 2010) Warehouse Beek or Brunsum, (The Netherlands) or (iii) as applicable, the "Delivery Point", in each case using Seller's standard methods for packaging and shipping the underlying Goods. Buyer shall take delivery of the Goods within thirty (30) days of Buyer's written notice of acceptance of the Goods delivered to the Delivery Point. Buyer shall notify Seller at least forty-eight (48) hours prior to taking delivery of the Goods and be responsible for all transit costs. Buyer may request in writing delivery of the Goods to a location other than the Delivery Point; provided, however, that such delivery shall be at the sole expense and risk of Buyer. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Goods shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.**
  13. **For any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on the date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered, and (iii) Seller shall not be liable for any loss or damage until Buyer picks them up or otherwise disposes of the Goods, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).**
  14. **Non-delivery.**

The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer and delivery unless Buyer can provide conclusive evidence proving the contrary.
  15. **The Seller shall not be liable for any non-delivery of the Goods by Seller's carrier's negligence unless Buyer gives written notice to Seller of the non-delivery ninety (90) days after the date when the Goods would in the ordinary course of events have been received and, within a reasonable time thereafter, provides Seller with a reasonable opportunity to complete delivery of the Goods.**
  16. **Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.**
  17. **Shipping Terms.**

Delivery of the Goods shall be made as provided in Section 3 hereof. Where the Delivery Point is North Charleston, South Carolina, Seller shall put the Goods into the possession of the applicable carrier, packaged and suitable for freight, and bear the costs of loading on board, with import duties into the United States to be paid by Seller. Where the Delivery Point is in the Netherlands, Seller shall put the Goods into the possession of the applicable carrier, packaged and suitable for freight, and bear the costs of loading on board, with import duties into the United States to be paid by Buyer. Irrespective of the Delivery Point, Buyer shall bear all costs and risks involved in transporting the Goods from the Delivery Point to the ultimate destination.
  18. **Title and Risk of Loss.**

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all occasions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code applicable to Buyer.
  19. **Inspection and Rejection of Nonconforming Goods.**

Buyer shall inspect the Goods upon delivery at the Delivery Point ("Inspection Period") and shall verify the Goods as specified in the Confirmation (including that the Goods are the ordered size, shade, sort, type and quantity). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any "Nonconforming Goods" within the Inspection Period. If Buyer notifies Seller of any "Nonconforming Goods" means only the following: (i) the Goods are different than identified in Buyer's purchase order; or (ii) the Goods' label or packaging incorrectly identifies its contents.
  20. **If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at Buyer's expense and risk of loss, the Nonconforming Goods to Seller's facility located at North Charleston, South Carolina.**
  21. **Buyer acknowledges and agrees that the remedies set forth in Section 9.B, are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 9.B, all sales of Goods to Buyer are final. Goods returned to Seller shall be accepted only if the return was approved in advance by Seller and provided, further, that such Goods are in the same condition and with the original packaging provided by Seller. Goods that are returned in accordance with the immediately preceding sentence shall be credited to Buyer at the original purchase price less 30% of the minimum of U.S. \$40.00 per item as compensation for costs incurred by Seller. All returns pursuant to this Section 8.D shall be delivered to Seller at Buyer's sole expense and risk if damages occur during transit. Seller shall have no obligation to credit the purchase price as provided herein.**
  22. **Notwithstanding any other provision hereof, Buyer's installation of the Goods shall constitute Buyer's irrevocable acceptance of the Goods.**
  23. **Prices.**

Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order and issues the Confirmation (the "Acceptance Date") unless otherwise approved by Seller in writing. If the Prices are increased by Seller before delivery of the Goods to the Delivery Point, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices. However, in any event if the Buyer accepts delivery of the Goods within forty-five (45) days of the Acceptance Date, the Prices shall remain as stated on the Acceptance Date. If the Prices should be increased by Seller before delivery of the Goods to the Delivery Point but more than ninety (90) days after the Acceptance Date, the Buyer shall have the option to terminate any uncompleted portion of this Agreement by notifying Seller in writing within eight (8) days of Buyer's receipt of notification from Seller of the increased Prices. If Buyer exercises this option, Buyer shall not be entitled to any damages. All Prices are exclusive of all sales, use and excise taxes, and other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. All such sales, use and excise taxes, and any other similar taxes, duties and charges of any kind shall be payable by Buyer in addition to the Prices for the Goods. Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Further, Seller will not collect sales tax from the Buyer if Buyer timely provides Seller with a valid and complete sales tax exemption certificate valid in the appropriate jurisdiction(s).
  24. **Payment Terms.**

Buyer shall pay all invoiced amounts due to Seller: (i) within ninety (90) days, where Beek or Brunsum, The Netherlands is the Delivery Point, within thirty (30) days from the date of Seller's invoice, where North Charleston, South Carolina, or any other location not specified in clause (i) of this sentence is the Delivery Point. Buyer shall make all payments hereunder by wire or check and in US dollars. Payments shall be payable to Mosa USA Inc. and sent to:  
**Check: ACH Debit Method**  
Mosa USA Inc. Account Number: 502000850  
Dept. 3391 Fed Wire Number: 222228420  
P.O. Box 123391 Swift: RABOUSA66  
Dallas, Texas 75312-3391
  25. **Buyer shall pay interest on all late payments, including any applicable tax, at the lesser of the rate of 1.5% per month (or part thereof) or the highest rate allowed under applicable law, calculated daily and compounded monthly. In addition, Buyer shall pay Seller (i) an amount equal to the greater of fifteen percent (15%) of the unpaid invoiced amount or U.S. \$150 for each late payment, and (ii) a pay or reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' and paralegals' fees, whether incurred prior to litigation, in the course of litigation, on appeal, or after judgment. In addition to all other remedies available under these Terms and those available at law or in equity, Buyer shall not waive by the exercise of any rights hereunder. Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.**
  26. **Buyer shall not withdraw any amount or suspend the delivery of any portion of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.**
  27. **Payments from Buyer shall be applied: (i) first, to costs payable; (ii) second, to interest payable; and (iii) third, to the most aged obligation to which the foregoing shall apply notwithstanding any contrary instructions provided with Buyer's payment.**
  28. **Prior to delivery of any Goods, Seller reserves the right to require (i) advance payment for any shipments of Goods, or (ii) adequate security for Buyer's payment obligations, which security Buyer agrees to furnish as a condition precedent to delivery.**
  29. **Upon the occurrence of any of the following (each, a "Default Event"), all amounts due and payable from Buyer to Seller shall immediately become due and payable in full without notice and shall thereafter bear interest as provided in Section 10.B:**
    - i. Buyer fails to make any payment or provide adequate security as provided in Section 10.E upon request;
    - ii. If the Buyer (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due (including by filing a petition for reorganization, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (C) makes or seeks to make a general assignment for the benefit of its creditors, or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian (all or any substantial part of its property or business);
    - iii. Buyer sells all or substantially all of its assets, discontinues all or any substantial portion of its business, reorganizes, liquidates or dissolves;
    - iv. Buyer undergoes any change in control pursuant to which any third party gains voting control over Buyer; or
    - v. Buyer fails to comply with any term or condition contained herein.
  30. **Upon the occurrence of any Default Event, Seller shall be entitled to take any one or more of the following actions: (i) to suspend performance of its contractual obligations until Buyer has satisfied its obligations in full; (ii) to terminate these Terms upon written notice to Buyer, after which Seller shall have no further obligations to Buyer; and (iii) to sell any obligations of Buyer (if requested to do so by Seller) against the obligations of Buyer. The foregoing shall be in addition to, and not in lieu of, any other rights and remedies of Seller, whether at law or in equity.**
  31. **Limited Warranty.**

Seller warrants to Buyer that for a period of twelve (12) months from the date of delivery of the Goods to the Delivery Point (the "Warranty Period"), that such Goods will materially conform to the specifications set forth in Seller's published specifications in effect as of the date of delivery and will be free from material defects in material and workmanship.
  32. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND (c) WARRANTY OF TITLE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
  33. **Seller shall not be liable for a breach of the warranty set forth in Section 11.A unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within sixty (60) days of the time when Buyer discovers or ought to have discovered the defect in the exercise of reasonable care; (ii) Seller is given a reasonable opportunity after receipt of such notice to examine such Goods; and (iii) Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.**
  34. **Seller shall not be liable for a breach of the warranty set forth in Section 11.A if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; (iii) in installing the Goods, Buyer or its contractors fail to comply with U.S. generally prevailing standards with respect to the installation of ceramic, glass and stone tile, including but not limited to those published by the Tile Council of North America, Inc.; (iv) such Goods have visible defects at the time of acceptance; Buyer fails to notify Seller as provided in Section 9.B, and Buyer nevertheless has such Goods installed; (v) Buyer alters or repairs such Goods without the prior written consent of Seller; (vi) the Goods contain deviations in size and/or shade which fall within customary toleration levels for like products.**
  35. **The tiles from Seller comply with European standards NEN-EN-ISO 10451 11 on hairline crack resistance. Hairline cracks in glazed tiles are caused by stress differences, often resulting from incorrect processing. Notwithstanding the provisions of Section 11.A, Seller makes no assurances whatsoever that hairline cracks will be present or develop in the Goods. The appearance of hairline cracks after delivery shall therefore constitute no ground for rejection or compensation. Seller's wall tiles should not be installed on grouting back walls and any such installation shall void any and all warranties provided by Seller.**
  36. **Subject to Sections 11.C, 11.D and 11.E above, with respect to any such Goods during the Warranty Period, Seller shall be liable to replace or repair such Goods or to replace such Goods (or the defective portion thereof), or (ii) credit or refund the price of such Goods at the pro rata defect rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.**
  37. **THE REMEDY SET FORTH IN SECTION 11.C, 11.D AND 11.E SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.**
  38. **Intellectual Property.**

All intellectual property and proprietary rights relating to Seller's Goods and their design, any brochures and software, and to goods which Seller or one of Seller's affiliates develops and/or uses during the performance of these Terms, shall belong to Seller or its affiliates (as applicable), insofar as they are not already being held by third parties, and unless agreed otherwise in writing.
  39. **Buyer shall not be permitted to remove or change any indications about copyright, trademarks, trade names or other intellectual property rights on the products, brochures, software and/or other goods belonging to Seller or its affiliates.**
  40. **If an order for Goods is to be carried out according to the Buyer's designs, drawings or other instructions, the Buyer shall hereby represent and warrant that any such designs, drawings or other instructions shall not infringe on the intellectual property or proprietary rights of any third party and agree to indemnify, defend and hold harmless Seller, its affiliates, representatives, successors and assigns from and against any and all losses, liabilities, claims, causes of action, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any such third party claim.**
  41. **Limitation of Liability.**

**IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOSS PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER. REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, BUYER AGREES TO OBTAIN THE FOREGOING WAIVER IN WRITING IN CONNECTION WITH ANY RESALE OF THE GOODS BY BUYER. TO EXPRESSLY NAME SELLER AS A THIRD PARTY BENEFICIARY THEREOF, AND TO INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER, ITS AFFILIATES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO ANY BREACH OF THIS SECTION 13.A.**
  42. **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE INVOICE PRICE OF THE GOODS. The limitation of liability set forth in Section 13.A, above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.**
  43. **Notwithstanding any contrary provision contained in these Terms:**
    - i. Seller shall have no liability for damages or consequential or other intended purposes of Goods manufactured to order for Buyer, which damages or unsuitability are caused by design faults and/or errors in Buyer's specifications;
    - ii. Seller shall not be liable for damage if the Goods are treated or processed incorrectly;
    - iii. Seller shall not be liable for damage if the Goods are used for a purpose other than the purpose for which they are designed, manufactured and specifications of the goods, or for any purpose other than the purpose for which they are normally used;
    - iv. Seller shall not be liable for damage resulting from Buyer's failure to take the Goods in accordance with their intended purposes and/or in accordance with their specifications;
    - v. Seller shall not be liable for deviations in size and shade which fall within the usual tolerances, which shall be deemed to be conforming Goods so long as they fall within such tolerance levels;
    - vi. Seller shall not be liable for damage to, or loss of, goods belonging to the Buyer or third parties, which are made available to Seller in connection with the preparation and/or performance of the Goods under this Agreement;
    - vii. A claim against Seller for compensation under these Terms is subject to a limitation period of one (1) year and must be made against Seller in a writing containing reasonable specificity describing the basis for the claim within one (1) year from the date of the delivery of the Goods. Any failure to timely provide such notice shall constitute a waiver of any such claim.
  44. **Compliance with Law.**

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permits, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes anti-knockout or countervailing duties or any other penalties on Goods.
  45. **In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not been reformed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.**
  46. **Waiver.**

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege under this Agreement, operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
47. **Confidential Information.**

All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or other information disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is intended solely for the use of performing this Agreement. Buyer shall not disclose or be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief in the event of any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.
48. **The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from circumstances beyond Seller's reasonable control or Seller including, without limitation, acts of God, flood, fire, earthquake, lightning strikes, extreme weather, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist attacks or other civil unrest, national emergency, revolution, mobilization, collapses, subsidence, insurrection, epidemic, pandemics, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), export and import restrictions, equipment failures, or any other cause beyond Seller's reasonable control. Seller shall not be liable for any delay in the performance of its obligations or for any delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.**
49. **Assignment.**

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation releases Buyer of any of its obligations under this Agreement.
50. **Relationship of the Parties.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
51. **No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
52. **Governing Law.**

All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice of conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware.
53. **Submission to Jurisdiction.**

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the City of Wilmington and County of New Castle, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
54. **Notices.**

All notices, request, consents, claims, demands, waivers and other communications (collectively, "Notices") shall be in writing and addressed to the parties at the addresses set forth on the face of the Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
55. **Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, which shall remain valid and enforceable in such term or provision in any other jurisdiction.
56. **Survival.**

Provisions of these Terms which by their nature should apply throughout their term remain in force after any termination or expiration of this order including, but not limited to, the following provisions: Compliance with Law, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.
57. **Applicability.**

These Terms apply to all sales of Goods by Seller with respect to which delivery is made on or after June 30, 2014.