

IMPERIAL WHOLESALE STANDARD TERMS AND CONDITIONS

Terms and Conditions. These Standard Terms and Conditions ("Terms and Conditions") of Imperial Wholesale, Inc. and its affiliates ("Imperial" or "Seller"), Buyer's¹ Credit Application,² Price Quotation,³ if any, and all attachments thereto (collectively, "Agreement") govern any and all purchases made by Buyer from Seller and are incorporated herein by reference, and set forth all Terms and Conditions under which Seller will sell Product⁴ to Buyer. This Agreement, and any other documents prepared by Seller for Buyer in connection with Buyer's purchase of Product contain and represent the entire understanding between the Parties concerning the subject matter hereof, and there are no other agreements or understandings except as expressly set forth herein.

Any representations, promises, warranties, statements by Seller's agent, or additional terms or conditions contained in any writing or instrument of Buyer, whether by Purchase Order⁵ or otherwise that differ from those set forth in this Agreement, are hereby objected to by Seller and shall be given no force or effect, and shall not become part of this Agreement.

Unless Seller and Buyer enter into a separate written agreement signed by both Parties which provides separate terms and conditions for the sale of Product, this Agreement shall take precedence over, supersede and replace all conflicting terms and conditions set forth in all other documents. No Purchase Order or other form of document provided by Buyer shall alter any of the Terms and Conditions herein. No course of dealing or course of conduct between the Parties shall alter any of the Terms and Conditions of this Agreement.

The individuals executing this Agreement warrant that they have read and understand its provisions, and that they are authorized to bind their respective marital communities and the Buyer for whom they sign.

Conditions of Sale of the Product. Buyer expressly covenants, acknowledges and agrees that the following are conditions to the sale of Product to Buyer, (i) Buyer has no and shall not acquire any rights, claims, title or ownership interest in or to Seller or its Confidential and Proprietary Information,⁶ or any other rights and/or licenses implied by estoppel or otherwise relating to the Product, (ii) the proper installation of the Product is essential to preserve the reputation of Seller and the Product.

Buyer shall insure that all installation instructions provided by the manufacturer of the Product and/or Seller are disseminated to Buyer's customers and installers of the Product, and (iii) Buyer shall not a) place upon any Product sold, labels, tags, serial numbers, model numbers, or designations of its own, b) remove from any of the Product, or their respective containers, any labels, tags, serial numbers, model numbers or designations affixed thereto by Seller or the manufacturer, or c) adopt as its trade name, or as a fictitious business name, any name which includes the name of Seller, the manufacturer or the Product.

Technical Assistance. In no event shall Seller bear any responsibility for claims arising from technical advice or assistance provided to Buyer. Advice by Seller is for Buyer's guidance only and Buyer agrees to rely solely on its own technical experts.

Changes to Order. Buyer's Order⁷ and these Terms and Conditions are irrevocable and cannot be cancelled except by express written agreement executed by an authorized agent of Seller. Either Party⁸ may cancel such agreement at any time with thirty (30) days' written notice. Any changes by Buyer to quantities or specifications in any Order that constitute an additional

order for special colors, textures, etc., will (i) require written approval from an authorized officer of Seller, and (ii) be subject to an additional charge for set-up.

Characteristics of Product. Product samples related to any Order represent an average of color, shade, size, and other characteristics ("Characteristics") of such Products that are subject to variation. Products are not guaranteed after delivery against chipping, crazing, cracking or wear. Additional Characteristics may include irregularities in shape, warpage, moisture absorption, surface finish, texture and dynamic coefficient of friction. Characteristics are inherent to the manufacture of these Products and are in part what creates their distinctive beauty. Blending of the Product may be necessary. Seller shall not be responsible for installation or replacement claims related to such Characteristics and/or non-uniformity. Buyer hereby accepts the possibility of such the Characteristics being present in the Products contained in any given Order.

Quantity and Returns. Buyer acknowledges that all of Seller's Products are described by nominal, and not by precise, measurements; quantities may vary up to 5% greater than the ordered amount to fill out crates to prevent breakage. Buyer will be responsible for purchasing all quantities produced up to this 5% additional quantity.

All quantities must be verified in advance of purchase by Buyer. Seller accepts no responsibility for quantities ordered. As a service to its clients, once the design has been selected, Seller will provide takeoff quantities for estimating purposes only & will attempt to directly contact the installer for the final required quantities of each item if requested to do so.

Buyer shall have no right to return any Products and Seller shall have the absolute right to refuse returns except as so stated. Any such agreement to accept return of Products must be in writing executed in advance by an authorized officer of Seller, fees may apply.

Payment. Full payment is required on orders in stock at the time of order, unless business-to-business credit terms have been established and are in good standing. Orders less than \$2500 are charged in full at time of purchase.

Sales tax noted on the sales order is not final and subject to change based on tax code in effect on date of shipment. Tax indicated on your sales order or collected at time of sales order payment reflects the current tax rate and will be re-calculated at time of shipment and reflected at time of invoice. Buyer is responsible for payment of any increase in sales tax.

Orders for which payment is not received in accordance with payment terms will be deemed abandoned after ninety (90) days and shall become the sole and exclusive property of Seller. There will be no reimbursement of monies or return of Products for any orders that have been deemed abandoned. Seller shall remain the legal owner of all Products and no legal title to Product shall pass to Buyer until payment has been made in full pursuant to these Terms & Conditions.

Interest. Buyer shall make all payments due hereunder in accordance with the terms of this Agreement and as stated on Seller's invoices or other notices of terms, without any right of setoff or retention and without regard to any agreement Buyer may have with other parties. If Buyer fails to pay in full the invoice amount when due, Buyer agrees to pay interest on the unpaid balance from the date when due until paid in full at the rate selected by Seller, not to exceed the lesser of 18%

per annum or the highest lawful rate, specifically including post judgment. Buyer agrees to pay any and all costs and expenses incurred by Seller in collecting from Buyer any past due amounts, including but not limited to reasonable attorney fees, court costs and collection agency fees. Seller may suspend pending deliveries during any period when Buyer has overdue balances or evidence of a changed financial condition.

Price Increase. Product prices are (i) subject to material availability at the time of Delivery; and (ii) shall remain firm until the date set forth on the Price Quotation, if any, or if no such date is given, for a period of thirty (30) days after the date the order was accepted by Seller, the price was quoted by Seller or such shorter period as set forth in the Price Quotation; thereafter prices are subject to change by Seller.

Seller reserves the right to defer or cancel any Price Quotation or accepted orders in the event Seller becomes delayed or prevented from performing due to shortages or allocation of raw materials. In the event of a delay or cancellation resulting from shortages or allocations of raw materials, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or cancellation.

Security Interest and Liens. Title and ownership of any Product delivered to Buyer shall be and remain in Seller until the Total Purchase Price for the Product has been fully paid, at which time title to the Product shall pass to Buyer. To secure performance of Buyer's obligations, including without limitation Buyer's obligation to pay the Total Purchase Price, upon the terms and conditions set forth in this Agreement, Seller shall have and Buyer hereby gives to Seller (i) a secured interest in the Product and permission to perfect such secured interest in any way allowed by applicable law, including electronic filing and all other paperless methods (Seller is authorized to describe the Product in any such financing statements or amendments as "all assets" or "all personal property" of Buyer), and (ii) a Limited Power of Attorney to execute standard forms as necessary to perfect, assign, amend, continue, or terminate Seller's security interest, without Buyer's signature. The security interest provided by Buyer to Seller hereunder shall not be terminated by Buyer's subsequent resale of the Product to a sub-buyer, sub-distributor or dealer, end user or any other person. If, before the Total Purchase Price is paid, Buyer sells or otherwise transfers ownership (or other rights) to its business assets, or to the Product, Buyer shall deliver to Seller written notice of such intention at least thirty (30) days prior to the event of sale or such transfer. At the time of the sale or transfer and from the proceeds therefrom, Buyer shall pay to Seller an amount of money equal to the Total Purchase Price for all Product ordered and in transit or delivered to Buyer. Buyer agrees to timely provide in writing to Seller information regarding bonding companies, general contractors or owners for the purpose of filing preliminary notices and claims on payment bonds or mechanic's and material supplier's liens.

Pick-Up/Delivery. Buyer agrees to inspect all Products delivered to Buyer within seven (7) days of delivery to Buyer or before the same are installed, whichever occurs first. If for any reason the Products are defective or nonconforming, beyond the Products' inherent Characteristics, or the wrong Products have been shipped, Buyer shall notify Seller in writing within forty-eight (48) hours of such inspection and before installation ("Notice"). Notice shall specify all defects and nonconformities, and include, but shall not be limited to, any claim that Products shipped are incorrectly sized, shaded, packed, not matching prior shipment, etc. Seller's liability with respect to such

claims is limited to accepting the return of the Products before installation and then only after Seller has been properly notified as provided above and has conducted its own investigation and determined that the Products are in fact defective. Seller shall have no liability if Buyer fails to provide such Notice. Buyer agrees that all original shipping containers for the Products are to be kept intact until Seller concludes its investigation. Under no circumstances shall Seller have any responsibility for the improper installation of the Products or for cost of installation or removal of any defective Products or reinstallation of substitute Products.

All prices are quoted FOB Seller's distribution center or port of entry if so quoted and are exclusive of domestic freight charges. Expedited freight may have additional charges applied to be paid by Buyer. Delivery of Products to common carrier or trucker shall constitute delivery to Buyer. Title and risk of loss pass to Buyer upon Seller's transfer of the Products to Buyer or to the initial common carrier, whichever comes first. Shipping and delivery dates are estimates only and cannot be guaranteed. Seller is not liable for any delays in shipments.

Buyer is responsible for price increases due to significant fluctuations in foreign exchange rates, tariff rates, and freight. Buyer is also responsible for demurrage and detention charges resulting from port congestion out of Seller's control. These changes may affect the whole or portion of the order.

Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid by Buyer when due, without regard to subsequent deliveries. Delay of any installments shall not relieve Buyer of its obligation to accept the remaining installments.

Any orders which are not picked up within thirty (30) days receipt date at Seller facility will be subject to storage and handling fees of \$25 per pallet per month to be billed during the first week of the month for inventory on hand at the end of the previous month.

Warranty. SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER EXTENDS NO WARRANTIES BEYOND THE MANUFACTURER'S WARRANTY. ALL BUYER WARRANTIES ARE WAIVED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY. SELLER BEARS NO RESPONSIBILITY BEYOND THE PRICE PAID BY THE BUYER. TERMS & CONDITIONS INCLUDED HERE SUPERSEDE ANY TERMS PROVIDED BY BUYER VIA PURCHASE ORDER OR OTHER TYPE OF AGREEMENT.

Installation. All Products should be installed according to the approved industry standards. Installation of the Product constitutes its acceptance. Installation services are not included in this Agreement. Seller is not a contractor & does not perform or contract for the installation of any Product.

Delays. If Seller is unable to complete Delivery of any part of an order, Buyer shall accept such part of the order as Seller is able to deliver and Buyer shall pay for the part delivered pro rata at the same rate as the whole of the order agreed to be sold and on the same terms of payment. In the event Seller shall be delayed in or prevented from the performance of any act required under this Agreement, or it shall become commercially unreasonable to perform by reason of governmental allocations, priorities, restrictions or regulations now or hereafter in effect, storm, flood, fire, earthquake or other Acts of God, natural catastrophe, pandemics,

¹ "Buyer" means and includes the person or entity that signed and submitted Buyer's Credit Application to Seller.

² "Buyer's Credit Application" means and includes that certain document entitled "Credit Application and Agreement" provided by Seller to Buyer in which Buyer made financial representations about Buyer to induce Seller into approving and extending credit to Buyer.

³ "Price Quotation" means and includes that certain document entitled "Price Quotation" provided by Seller that contains the Product pricing Seller is offering to Buyer.

⁴ "Product" means and includes any article, material, or substance offered by Seller for purchase by Buyer.

⁵ "Purchase Order" means and includes that certain document provided by Buyer indicating only the type of Product and corresponding quantity Buyer desires to purchase.

⁶ "Confidential and Proprietary Information" means and includes (i) all technical and non-technical knowledge and data of any kind, whether or not in tangible form, relating to the Product, (ii) all rights, patents, designs, and other industrial property rights, as well as all other intellectual and industrial property rights (of every kind and nature and however designated), including logos, rental rights and rights to remuneration, whether arising by operation of law, contract, license, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force, which has or may have actual or potential economic value to Seller and the manufacturer of the Product, (iii) all trade names, trademarks, service marks, logos and other designations for Seller, the manufacturer and the Product, and (iv) all records, reports, notes, discoveries, developments, designs, improvements, inventions, processes, techniques, know-how, data, techniques, technical data, marketing information, customer, supplier and/or prospect lists of Seller and the manufacturer of the Product and all marketing, sales, or other financial or other business information belonging to Seller or the manufacturer of the Product.

⁷ "Order" means Buyer's order of Products from Seller.

⁸ Seller and Buyer are referred to herein individually as "Party" and together as "Parties."

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diseases, epidemics, strikes, lockouts, boycotts, other labor disruptions, adverse weather conditions, theft, war, terrorism, riot, insurrection or other civil disturbance, shortages of Product, labor, raw materials, fuel, power or production facilities, breakdown of equipment, transportation shortages, changes in market conditions or other contingencies beyond Seller's reasonable control whether of a similar or dissimilar nature to the foregoing, Seller shall not be liable to Buyer for any damages incurred by Buyer as a result of any such delay or failure. Under no circumstances shall Seller be liable to any third party for consequential damages (including, but not limited to lost sales, lost profits, delay damages, etc.) that Buyer or any third party may claim or incur as the result of any such delayed or prevented performance under this Agreement. If any delay in Delivery continues for longer than sixty (60) days in duration, at Seller's election, Seller may be completely excused from providing all or any portion of the Product.

Buyer's Claims. Buyer agrees that all claims against Seller are waived unless presented to Seller in writing within one week from the date of Delivery of the Product. Seller shall have thirty days from receipt to inspect and correct a defect if such claim is allowed. Buyer further agrees that in the event that Buyer disagrees with Seller's decision about whether to allow the claim that the Buyer's remedy is to formally adjudicate the claim, but the Buyer further agrees that Seller's invoices for all Product supplied shall be paid in the interim. No claim shall be allowed after the Product purchased hereunder is incorporated, modified or processed by Buyer in any manner. Seller's liability on any claim for loss or damage shall not exceed the price of the Product actually received by buyer from seller with regard to which such claim for loss or damage is made.

Waiver. Seller may, at its option, permit Buyer to remedy any default under this Agreement without waiving the default so remedied or any other default by Buyer. No waiver of any breach of any provision of this Agreement shall be held to be a waiver of any other provision or subsequent breach of the same provision, and the other provision or subsequent breach of the same provision, and the failure of Seller to enforce at any time any provision hereof shall not be deemed to be a waiver of any right of Seller to subsequently enforce such provision or any other provision hereof. Buyer waives notice of default of this Agreement and waives presentment, demand, protest, and notice of dishonor as to any instrument issued or delivered to Seller.

Disputes, Venue, and Governing Law. This Agreement shall be governed and construed in accordance with the law of the State of Arizona without giving effect to conflict of laws principles. The Buyer agrees that any legal actions and proceedings brought for the breach or the enforcement of this Agreement will lie in the state and county in this state of Delivery. Buyer consents and submits to the jurisdiction and venue of any state, county or federal court located within that county. As a material inducement to Seller to enter into this Agreement, Buyer waives the right to trial by jury in any proceeding arising out of or related to this Agreement.

Attorney's Fees. In the event legal action is necessary to enforce any provision of this Agreement, Seller shall be entitled to collect from Buyer any judgment or settlement sums due, reasonable attorney's fees, court costs and expenses incurred by Seller in connection therewith.

Notice. Any notice to Seller required or permitted under this Agreement shall be given in writing to Seller, either by personal service, facsimile, or by registered or certified mail, postage prepaid, addressed to the Manager of Seller at his/her then principal place of business. Any such notice to Buyer shall be given in a like manner and, if mailed, shall be addressed to Buyer at the home address then shown in Seller's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (i) on the date of service, if served personally on the party to whom notice is to be given, (ii) on the next business day after facsimile

transmission, or (iii) on the second business day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this paragraph. Notice of any change in the addresses or facsimile numbers must be provided to the other party within five (5) business days of such change.

Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The Parties agree that each term and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against any Party.

Offset/Setoff. Seller may exercise the right of set-off under this Agreement as to any sums owed by Buyer and/or its affiliates under any other contract or agreement with Seller and/or its affiliates.

Cumulative Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available under this Agreement are to be in addition to, and not a limitation of rights and remedies at law or in equity, and may be exercised successively or concurrently and without impairment. Seller does not waive or subordinate any of its contractual, common-law or statutory rights.

Time is of the Essence. Time is strictly of the essence with respect to each and every term, condition, obligation and provision under this Agreement.

Representations. Buyer represents to Seller that it is solvent and that any financial information provided reflects the present financial condition of the Buyer. If Buyer is not a corporation or limited liability entity, Buyer acknowledges that Seller is relying on the credit worthiness and financial ability of the owner(s) of Buyer. Each owner shall be joint and severally liable for all indebtedness of Buyer to Seller under the Agreement. Buyer warrants that all information supplied to Seller is accurate and complete. Each representation and the information provided by Buyer, if any, is material and given to induce Seller to provide credit to Buyer. Buyer will notify Seller by certified mail, within forty-eight (48) hours after any material change in Buyer's financial or ownership status.

Purchase Orders, Acceptance, and Cancellation. Purchase Orders issued by Buyer to Seller shall specify only the description, the quantity and the price of the Product ordered. Upon receipt of a Purchase Order from Buyer, Seller will use its best efforts to confirm in writing (i) whether all or part of the ordered Product is available, (ii) if all or part of the ordered Product is not available, provide an estimated availability date for it, and (iii) if all or part is available, provide an estimated delivery date for Delivery of the Product. Once a Purchase Order has been responded to by Seller and provided the Product ordered has yet to be shipped, Buyer may cancel a given order only if the Purchase Order does not include special order items and Buyer pays a cancellation charge of 25% of the price of all Product ordered by way of the Purchase Order. However, if the Purchase Order included special order items, Buyer may not cancel the Purchase Order and shall pay the Total Purchase Price of all ordered Product.

Material Supplier. Buyer acknowledges and agrees (i) Seller is not acting in the capacity of a contractor with respect to the sale of the Product, and (ii) Seller is merely furnishing materials or supplies without fabricating them into, or consuming them in the performance of the work of a contractor.

Survivability. All obligations arising prior to the termination of this Agreement and all provisions thereof allocating the responsibility or liability of Buyer shall survive termination of this Agreement.

No Third-Party Beneficiary. Nothing contained in this Agreement shall be construed to create a cause of action in favor of a third party against Seller, nor shall it be construed to create a dealership, distributorship or franchise relationship with Buyer. This Agreement

simply sets forth the terms and conditions under which credit will be extended (if extended) and Product will be sold to Buyer (if sold).

Insurance. Buyer shall, at Buyer's sole cost and expense, purchase and maintain in full force and effect from the date of this Agreement and continuing for a period of two (2) years following the last sale of Product by Seller to Buyer, (i) Business Liability Insurance written on an occurrence basis (claims-made policies are not acceptable) with a per occurrence limit of not less than \$2,000,000 per occurrence and a general aggregate limit of not less than \$2,000,000 and having standard products liability endorsements covering the product manufacturer and Seller (collectively, "Seller Party"), and which covers Buyer's indemnity obligations under the Application, and (ii) such other insurance in such amounts, as may from time to time be reasonably required by Seller. Buyer agrees that any deductible and/or self-insured retentions applicable to such insurance coverage shall not exceed \$25,000.00 per occurrence without prior written approval by Seller. Buyer shall be responsible for the payment of all such deductibles and/or self-insured retentions. All policies and endorsements shall be written by insurance carriers with an A.M. Best's Rating of A- or better and shall be written on forms acceptable to Seller. The policy shall stipulate that the insurance afforded the additional insured shall be primary and that any other insurance carried by or otherwise available to a Seller Party shall be excess and non-contributory. Buyer agrees to immediately notify (or cause its insurers or insurance broker to notify) Seller of any receipt of a notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which names Seller as an additional insured or which may otherwise impact the ability of Buyer to fully perform its obligations, including without limitation, Buyer's indemnity obligations under the Application. Prior to the Delivery of the Product, Buyer shall also furnish to Seller valid certificates of insurance and a copy of each additional insured endorsement, which include the primary coverage wording as required above and which show the carriers, policy numbers, names of additional insureds, applicable deductibles, self-insured retentions and expiration dates. The certificate for the commercial general liability policy must evidence "broad form" and "completed operations" coverage. All insurance policies shall contain provisions (which shall be designated on the certificate of insurance) that the coverage afforded within shall not be canceled, modified, or reduced without providing Seller at least thirty (30) days' prior written notice by regular mail. If Buyer is out of business or otherwise unavailable at the time a claim or demand is presented to Seller, to the extent permitted by law, Buyer hereby assigns each and every and all of its rights to Seller under any potentially applicable policy of insurance.

Buyer waives all rights of recovery against each Seller Party for losses within the scope of Buyer's insurance and because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or due to any other reason.

This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Assignment. Buyer shall not assign or attempt to assign any right or interest arising out of or under the Agreement, unless Buyer (i) ensures that the assignee assumes all the Buyer's obligations under this Agreement, and (ii) Buyer obtains the written approval of Seller, which may be withheld in Seller's sole and absolute discretion. Seller may, without Buyer's approval, assign any rights that it may possess or duties or obligations that it may owe under this Agreement to a person which acquires all or a portion of Seller, or to a person in which Seller has an equity interest.

Right to Independent Counsel. Buyer has read this Agreement and taken the time necessary to review completely and fully understand it. Buyer had the

unrestricted right and opportunity to have each and every paragraph, term, and/or provision of this Agreement and each and every result and consequence of its execution by Buyer fully explained to it by legal counsel selected and retained solely by Buyer.

Electronic Transmission. A facsimile copy or electronic transmission will be treated as an original.

Indemnity. To the fullest extent permitted by law, and notwithstanding the coverage limits of any insurance that Buyer may carry or provide, Buyer shall compensate, indemnify, defend, and hold harmless each Seller Party of, from and against any and all claims, damages, costs, actions, suits, legal proceedings, judgments, liabilities, assessments, charges and expenses of every kind and nature, including attorney fees and other professional fees (regardless of whether such claims were caused in whole or in part by any Seller Party), that are brought by Buyer or any third party (collectively, "Buyer Party") and which arise out of or relate in any way to (i) the purchase, sale, marketing or the installation, quality, performance, use and/or reliability of the Product purchased by Buyer from Seller, including claims for personal injury (including death) and/or property damage (including the loss of its use), and (ii) any acts, omissions, defaults, neglect, alleged misrepresentations and/or alleged breach of warranties or contracts by any Buyer Party or with respect to Buyer's operation of its business. Buyer's obligation to defend each Seller Party shall be immediate, primary, and non-contributory. This indemnity provision shall survive the expiration or termination of this Agreement.

Mediation and Arbitration. The Parties shall employ good faith efforts to amicably resolve any Dispute.⁹ If unsuccessful for any reason, the Dispute shall be submitted to non-binding mediation ("Mediation") to be conducted by AAA,¹⁰ in accordance with the AAA Construction Rules,¹¹ and the mediator and administrative fees shall be shared equally between the Parties. Seller shall be entitled to perfect all statutory claims and rights that it may possess during the pendency of the Mediation. Unless otherwise agreed to by the Parties, the Mediation shall take place within thirty (30) days of the date a request for Mediation is submitted by either Party.

If the Dispute cannot be settled informally or resolved by Mediation, the Dispute shall be submitted to binding arbitration ("Arbitration") administered by AAA in accordance with the AAA Construction Rules. The Parties consent to the consolidation of any related arbitration arising from or related to the Project. In Arbitration, each Party shall produce (i) more than ninety (90) days before the date of the Arbitration hearing, all documentation in its possession or reasonably available to it which it would be required to be produced in state court, and (ii) more than sixty (60) days before the date of the Arbitration hearing, expert disclosures required by applicable rule.

The Parties shall be finally and conclusively bound by the final decision rendered by the arbitrator in any Arbitration proceeding. The Parties hereby waive all Claims for special, indirect, incidental, exemplary, or consequential damages arising out of contract, tort (including negligence), strict liability, warranty or otherwise.

⁹ "Dispute" means and includes any claim or controversy between the Parties or arising from or related to this Agreement.

¹⁰ "AAA" means the American Arbitration Association, located at 2415 E. Camelback Rd., Suite 700, Phoenix, AZ 85016.

¹¹ "AAA Construction Rules" means AAA's Construction Industry Arbitration Rules and Mediation Procedures, as modified by this Agreement.