

## **Royal Mosa's sales conditions**

### **1. Applicability of these sales conditions**

- 1.1 These sales conditions shall apply to all offers and deliveries made by Koninklijke Mosa BV, further referred to as "Royal Mosa" and to all agreements to which Royal Mosa is a party, unless the Parties have expressly agreed otherwise in writing.
- 1.2 The terms and conditions of suppliers, customers and other contracting parties, further referred to as the "contracting party", shall not apply even if the contracting party expressly refers to such terms and conditions in its correspondence and documents.

### **2. Offers and prices**

- 2.1 An order given by the contracting party shall be binding on the contracting party, regardless of the manner in which the contracting party gave such order. This shall also apply if the order was given by agents, representatives or other intermediaries.
- 2.2 All offers/quotations shall be without any obligation for Royal Mosa. Agreements shall be formed only when Royal Mosa, after it has received the order, confirms the order in writing, or has started to carry out the order.
- 2.3 Offers/quotations shall be based on the information supplied by the contracting party with regard to its anticipated use and its (corporate) requirements etc., and it shall always be deemed that Royal Mosa can assume such information to be correct.
- 2.4 An offer/quotation shall in any case be deemed to have been rejected if an order based on this offer/quotation has not been signed and returned to Royal Mosa within six weeks.
- 2.5 The contracting party must notify Royal Mosa in writing of changes to the order. Changes to the order shall take effect only after Royal Mosa has accepted such changes in writing. Any additional or decreased costs resulting from changes to the order accepted by Royal Mosa shall be payable by, or credited to, the contracting party. Changes to the order may cause the

agreed delivery period to be exceeded. Royal Mosa shall not be liable for this in any way, notwithstanding the provisions of Article 3.4.

- 2.6 Samples/specimen copies shall always be provided as an indication, and the goods do not have to conform to such samples/specimen copies. It shall be prohibited to sell and/or use or consume such samples/specimen copies.
- 2.7 All prices are FCA (free carrier, incoterms 2000) F.O.B. North Charleston Warehouse, North Charleston, South Carolina or FCA (free carrier, incoterms 2000) Maastricht, The Netherlands, in accordance with the respective price lists drawn up by Royal Mosa, valid on the day of delivery.
- 2.8 If during the period between the date of quotation or formation of the Agreement and the date of delivery, there is an increase in one or more cost price factors, Royal Mosa shall be entitled to increase its prices accordingly, provided that:
- if the goods are delivered within 30 days of the Agreement being made, the prices mentioned in the Agreement remain unchanged;
  - if there is a price increase within three months of the Agreement being concluded, the contracting party shall be entitled to dissolve the Agreement for the part which has still to be carried out, within eight days of notification of the price increase being sent, which dissolution may take place only in writing. The contracting party shall in that case have no right to compensation.
- 2.9 The contents of Royal Mosa's brochure and its printed matter etc. shall not be binding on Royal Mosa unless this has been expressly stipulated in the Agreement or reference is expressly made thereto in the Agreement. In the latter case, Royal Mosa shall never be bound by any printing errors and/or misprints.

### **3. Delivery**

- 3.1 Risk of loss damage shall pass to the contracting party upon delivery of the products, properly packed to any common carrier FCA (free carrier, incoterms 2000) North Charleston Warehouse, North Charleston, South Carolina or FCA (free carrier, incoterms 2000) Maastricht, The Netherlands. Transport costs

shall be invoiced to contracting party directly by the shipping company and shall be the responsibility and obligation of the contracting party.

- 3.2 For FCA Charleston and Landed Charleston (back)orders larger than 2,000 square feet per article for wall and floor tiles and for accessory orders larger than 500 pieces, a non cancellation clause is in effect starting 48 hours after Royal Mosa notified contracting party of delivery time. Order cancellation will be accepted until warehouse bound container closing time. After that Royal Mosa will not accept a return.
- 3.3 The contracting party must inspect the goods for visible defects at the time of delivery, and must also check the goods for size, shade, sort, type and quantity, all insofar as applicable. If the contracting party takes possession of the goods without written criticisms or observations, the contracting party shall be deemed to have accepted the goods completely and without reservation. Complaints relating to visible defects shall in that case not be accepted and the right to dissolve the Agreement and the right to claim performance and/or compensation shall lapse.
- 3.4 The delivery periods and times stated shall be approximate and shall not be regarded as deadlines. If the delivery times stated by Royal Mosa are not met, this may not be deemed to be an attributable failure on the part of Royal Mosa, and shall not give the contracting party the right to dissolve the Agreement or to cancel the order, nor shall it constitute grounds for compensation, except on the expiry of a period of three months counting from the delivery time agreed upon, followed by a notice of default sent by registered letter or bailiff's notification, which grants Royal Mosa a reasonable period to still fulfil its delivery obligation, or to still carry out the order given. In any case, the exceeding of delivery times shall never constitute grounds for compensation. If at any time (timely) delivery proves impossible, Royal Mosa shall make this known as quickly as possible.
- 3.5 The contracting party must take possession of the goods purchased within the agreed period. If it fails to do so, Royal Mosa shall be free, at its own discretion, to dispose of the goods, without prejudice to the contracting party's obligation to pay the purchase price.

- 3.6 If no period was agreed upon for taking possession of the goods, the contracting party must take possession of the goods within one month of the delivery time stated. In the unlikely event that Royal Mosa is unable to meet the delivery time stated, the contracting party must take possession of the goods within one month of the delivery time adjusted by Royal Mosa. If the contracting party fails to do so, Royal Mosa shall be free, at its own discretion, to dispose of the goods, without prejudice to the contracting party's obligation to pay the purchase price.
- 3.7 The contracting party shall notify Royal Mosa in writing of when it intends to collect the goods at least 24 hours before taking possession of the goods. If it fails to do so, any (additional) costs arising therefrom shall be payable by the contracting party.
- 3.8 If the contracting party wishes to have the goods transported by Royal Mosa, and Royal Mosa agrees to do so, then this shall be without prejudice to the fact that the goods are delivered FCA (free carrier, incoterms 2000). The goods shall therefore be at the contracting party's risk from the time that they leave North Charleston Warehouse or Royal Mosa's factory Maastricht, The Netherlands. Furthermore, the goods shall be transported at the contracting party's expense and risk.

#### **4. Payment and security**

- 4.1 Goods will be billed by Royal Mosa, Maastricht. If any terms of sale shall deviate from this price list, they shall first be approved by Royal Mosa headquarters in the Netherlands in order to be binding upon Royal Mosa. Payments to be made out to:

Royal Mosa- c/o Community FirstBank- P.O. Box 22467 Charleston- South Carolina 29413 - 2467

Contracting party is responsible for paying each invoice sent by Royal Mosa net thirty (30) days from date of invoice on shipments from North Charleston, South Carolina. Contracting party is responsible for paying each invoice sent

by Royal Mosa next ninety (90) days from the Bill of Lading on shipments from Maastricht, The Netherlands.

- 4.2 If the invoice amount has not been paid on the due date, the contracting party shall be in default by the mere expiry of that period, without any notice of default being required. In that case, Royal Mosa's claim shall be increased by operation of law by default interest at the rate of 1.5% per month (or part thereof) on the invoice value including turnover tax, calculated from the due date. If the statutory commercial interest over a particular period should be higher than the aforementioned percentage, Royal Mosa shall have the right to charge the statutory commercial rate of interest. If the contracting party is in default, it must also pay collection costs, which shall be fixed at 15% of the invoice amount, with a minimum of EUR 115.
- 4.3 Payments made by the contracting party shall always serve to settle firstly all costs payable, secondly all interest payable and thirdly those invoices which have been outstanding the longest, even if the contracting party states that a payment relates to a later invoice.
- 4.4 Royal Mosa reserves the right to require advance payment during the performance of the Agreement.
- 4.5 During the performance of the Agreement, Royal Mosa may require suitable (which means convenient for Royal Mosa) security. At Royal Mosa's first request, the contracting party must furnish this security.
- 4.6 All of Royal Mosa's claims shall be due and payable as a lump sum immediately if:
  - a. the contracting party fails to pay or fails to pay in time;
  - b. the contracting party fails to make an advance payment or furnish suitable security after a request to that effect from Royal Mosa, as referred to in Articles 4.4 and 4.5;
  - c. a petition is filed for the contracting party's liquidation or an application is filed for debt rescheduling in respect of the contracting party, or a legal concept in the contracting party's country considered equivalent thereto applies;

- d. any part of the contracting party's property or assets is attached, or a legal concept in the contracting party's country considered equivalent thereto applies;
  - e. the contracting party applies for, or is granted, a moratorium on payments, or a legal concept in the contracting party's country considered equivalent thereto applies;
  - f. the contracting party sells or discontinues all or part of its business/company, or a legal concept in the contracting party's country considered equivalent thereto applies;
  - g. the direct or indirect control within the contracting party's organization changes;
  - h. the contracting party fails to fulfil its obligations vis-à-vis Royal Mosa.
- 4.7 In the cases described in Article 4.6, Royal Mosa shall have the right:
- a. to suspend performance of its contractual obligations until the contracting party has fulfilled its obligations in full;
  - b. to cancel and/or dissolve all or part of the Agreement by means of a simple statement, without notice of default or judicial intervention being required, and without prejudice to Royal Mosa's right to performance and/or compensation.
- 4.8 Royal Mosa shall be entitled to offset the contracting party's claims against one or more claims which the contracting party has at any time against Royal Mosa or against one or more companies within the concern to which Royal Mosa belongs.

## **5. Retention of title**

- 5.1 All goods delivered or still to be delivered shall remain the sole property of Royal Mosa until all claims which Royal Mosa has or shall obtain against the contracting party, including in any case the claims referred to in Section 3:92 paragraph 2 of the Netherlands Civil Code, have been paid in full.
- 5.2 As long as the contracting party has not paid the claims in full, the contracting party shall expressly be prohibited from disposing of or processing (or having processed) the goods delivered, other than within the context of

its normal business activities. As long as the aforementioned claims have not been paid to Royal Mosa in full, the contracting party shall not be entitled to encumber the goods delivered. The contracting party undertakes, at Royal Mosa's first request, to cooperate in the establishment of a right of pledge in respect of claims which the contracting party obtains or shall obtain against its customers as a result of it reselling goods within the context of its normal business activities.

- 5.3 The contracting party must keep the goods which are delivered subject to a retention of title with due care and as the recognizable property of Royal Mosa.
- 5.4 Royal Mosa shall be entitled to take back the goods which are delivered subject to a retention of title and which are still available to the contracting party if the contracting party fails to fulfil its payment obligations or is experiencing financial difficulties, or there is a risk that it shall experience financial difficulties. The contracting party must grant Royal Mosa (or a representative appointed by Royal Mosa) free access at all times to its grounds and/or buildings for the purposes of inspecting the goods and/or exercising its rights.
- 5.5 The stipulations contained within Articles 5.1 to 5.4 inclusive shall not affect Royal Mosa's other rights.

## **6. Intellectual property**

- 6.1 All intellectual property rights relating to Royal Mosa's products and their design, its brochures and software, and to goods which Royal Mosa develops and/or uses during the performance of the Agreement, shall belong to Royal Mosa, insofar as they do not already belong to third parties, and unless agreed otherwise in writing.
- 6.2 The contracting party 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 Royal Mosa.

6.3 If an order must be carried out according to the contracting party's designs, drawings or other instructions, the contracting party shall guarantee that this shall not entail any infringement of intellectual property rights or other third-party rights. The contracting party shall indemnify Royal Mosa against all third-party claims on account of an infringement of their intellectual property rights, whether or not such claims are for compensation.

## **7. Goods returned**

Goods returned shall be accepted only if their return was approved in advance by Royal Mosa, and provided that the goods are offered in good condition and in their original packaging. Goods returned which meet these requirements shall be credited at the original purchase price less 30% with a minimum of USD 40 as compensation for costs incurred by Royal Mosa. The contracting party must return the goods to Royal Mosa at its own expense and risk. If damage arises during transportation, Royal Mosa shall not be obliged to credit the purchase price.

## **8. Complaints and expiry period**

8.1 Complaints must be notified to Royal Mosa directly and in writing, stating the precise nature and extent of the complaints. In the case of visible defects, complaints must be submitted in accordance with Article 3.3. In the case of hidden defects, complaints must be submitted within eight days of the defect being discovered, failing which the right to dissolve the Agreement and the right to claim performance and/or compensation shall expire.

8.2 Complaints about goods delivered shall not be accepted if the goods have been treated and/or processed after any defect has become manifest.

8.3 Deviations in size and shade which fall within the usual tolerances shall give no right to complaint.

8.4 With respect to all complaints, Royal Mosa shall be given the opportunity to check such complaints. If the complaint is found to be valid by Royal Mosa, Royal Mosa shall have the choice of taking back the goods, exchanging the goods, giving a price reduction or taking other steps.

8.5 If the contracting party has not instituted a claim at law within one year from the date of delivery of the order by Royal Mosa, the right to claim dissolution of the Agreement at law and the right to claim performance and/or compensation shall lapse.

## **9. Force majeure**

9.1 Failures on the part of Royal Mosa in its performance of the Agreement as a result of force majeure, including for example and understood to mean: war, mobilization, civil commotion, flood, closed shipping, transport gridlocks, delays, restrictions or the halt in the supply by public utility companies, lack of means of generating energy, fire, cave-ins/collapse, subsidence, explosions, machine breakdowns and other accidents, strike action, lockouts, trade union action, export restrictions, pandemics, lightening strikes, other government measures, non-delivery of necessary materials (and/or semi-finished goods) and/or services which are necessary for the production, either by the government or by third parties, intentional act or gross negligence on the part of auxiliary persons, and other similar circumstances, shall in any case be regarded as not attributable to Royal Mosa, and shall therefore give the contracting party no right to dissolve the agreement or claim compensation.

9.2 If, contrary to these Terms and Conditions, Royal Mosa has agreed upon a strict delivery deadline with the contracting party, and Royal Mosa is faced with temporary force majeure, Royal Mosa shall be entitled to extend the delivery period by the duration of the force majeure situation. This extension shall therefore not constitute any failure in Royal Mosa's performance, and the contracting party shall have no right to claim dissolution or compensation. Contrary to these General Terms and Conditions, a strict delivery period may be agreed upon only in writing.

## **10. Liability**

10.1 Royal Mosa's liability for damage resulting from its attributable failure to perform to be proved by the contracting party pursuant to article 7:900 of the

Netherlands Civil Code, shall be limited to a maximum of the invoice value for the delivery concerned.

- 10.2 Royal Mosa's liability for damage caused by faults in its designs and/or errors in its advice, shall be accepted only insofar the designs and advice were supplied in writing and the work concerned was carried out entirely in accordance with the design and advice and using the material prescribed and supplied by Royal Mosa, without prejudice to the provisions of article 10.1.
- 10.3 The liability referred to in Article 10.2 shall be limited to a maximum of the invoice value of the materials recommended and supplied by Royal Mosa, which were processed in that part of a project to which any design fault or error in advice relates.
- 10.4 Royal Mosa shall not be liable for damage if the goods are treated or processed incorrectly. Royal Mosa shall not be liable for injury or damage, whether foreseen or unforeseen, and whether such injury or damage is direct, consequential or incidental to the purchase of Royal Mosa's product.
- 10.5 Royal Mosa shall not be liable for damage if the goods are used for a purpose other than the purpose for which they are suitable based on the information given by Royal Mosa, and in any case the purpose for which they are normally used.
- 10.6 Royal Mosa shall not be liable for damage resulting from non-functional properties of the goods and relating to deviations in size and shade which fall within the usual tolerances.
- 10.7 Royal Mosa shall not be liable for damage to, or loss of, goods belonging to the contracting party or third parties, which are made available to it in connection with the preparation and/or performance of the Agreement.
- 10.8 The tiles from Royal Mosa is manufactured according to ANSI A 137.1-1998 standards and comply with European standards NEN EN ISO 10545 11 on hairline crack resistance. Hairline cracks in glazed tiles are caused by stress differences, often resulting from incorrect processing. Royal Mosa gives no guarantee whatsoever for the non-appearance of hairline cracks. The appearance of hairline cracks after delivery shall therefore constitute no grounds for rejection or compensation.

- 10.9 Our wall tiles should not be installed on high shrinking water beds.
- 10.10 The contracting party shall indemnify Royal Mosa against liability towards third parties.
- 10.11 Under no circumstances shall Royal Mosa be obliged to compensate for trading loss, consequential damage, loss of sales or decreased goodwill in the contracting party's business or profession howsoever caused, including delays in the delivery of goods. The contracting party guarantees the application of this provision with respect to its buyers. Mosa is entitled to invoke this provision vis-à-vis third parties.
- 10.12 Any claim against Royal Mosa for compensation is subject to a limitation period of one year and must be made within one year from the date of the purchase order.

## **11. Disputes**

- 11.1 Dutch law shall apply to the relationship/agreement and to the legal relationships arising (in)directly therefrom between Royal Mosa and the contracting party and/or other contracting parties. The effect of any international treaty concerning the purchase of moveable goods, whose effect may be ruled out between the Parties, shall not apply and is hereby expressly ruled out. In particular, the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980) is expressly ruled out.
- 11.2 All disputes arising from an Agreement concluded with Royal Mosa shall be adjudicated exclusively by the competent court in the district of Maastricht in The Netherlands.

**These Royal Mosa's sales conditions will apply to all agreements concluded after December 31, 2009.**

Maastricht, December 31, 2009, Koninklijke Mosa BV