

**Invoice**

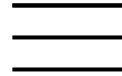


**SHIP TO**

SOMERVILLE, CITY OF/DPW  
 2023 MIX - SOMERVILLE, CITY OF/DPW  
 2023 MIX - SOMERVILLE, CITY OF/DPW  
 SOMERVILLE MA 02129

Q-506827

1866975



**Direct inquiries to:**  
 HOLCIM - NER INC  
 P.O. Box 28903  
 New York NY 10087-8903  
 Phone: 1-855-339-4900

SOMERVILLE, CITY OF/DPW  
 1 FRANEY ROAD  
 SOMERVILLE MA 02145

38555	06/14/2023	718030603
<b>CUSTOMER NO.</b>	<b>INVOICE DATE</b>	<b>INVOICE NUMBER</b>

Sales District: 3014 SETH MCNARY

Ship Date	Plant	FOB FP	Bill of Lading#	Material Description	Quantity	U/M	Unit Price	Gross Amount
06/12	WATE	FOB	178636558	48 COOLIDGE AVE ASPHALT TOP PO#: DPW	3.030	TON	70.500	213.62
				<b>Total Material Units</b>	3.030	TON		
				<b>Total Delivery Units</b>	0.000			
				<b>Total Seasonal Charge Units</b>	0.000			
				<b>Subtotal Material</b>				213.62
				<b>Subtotal Delivery</b>				0.00
				<b>Subtotal Seasonal Charge</b>				0.00
				<b>Amount Before Tax</b>				213.62
				<b>Tax</b>				0.00
				<b>Total Invoice Amount</b>				213.62
<p><b>Payment Terms: Net 45 days from invoice list date</b></p> <p><b>Finance charges will be applied on overdue accounts at the rate of 1.5% per month / 18% per annum</b></p>								
<p>FP= Freight Prepaid, ZFC= FOB Carrier Location, TON= US Tons, TO= Metric Tons, M3= Cubic Meters, EA= Each, YD3= Cubic Yards</p>								

**IMPORTANT: DETACH AND ENCLOSE THIS COUPON WITH YOUR PAYMENT**

SOMERVILLE, CITY OF/DPW  
 1 FRANEY ROAD  
 SOMERVILLE MA 02145

718030603
<b>INVOICE NUMBER</b>

**DEDUCTION REASONS**

1. Price \$ \_\_\_\_\_
2. Freight \$ \_\_\_\_\_
3. Tax \$ \_\_\_\_\_
4. Other \$ \_\_\_\_\_

**AMOUNT REMITTED \$ \_\_\_\_\_**

**REMIT** HOLCIM - NER INC  
 P.O. Box 28903  
**TO:** New York NY 10087-8903

38555	06/14/2023	213.62
<b>CUSTOMER NO.</b>	<b>INVOICE DATE</b>	<b>INVOICE AMOUNT</b>

**LIQUID ASPHALT ADJUSTMENT DEBIT MEMO**



**SHIP TO**

SOMERVILLE, CITY OF/DPW  
 2023 MIX - SOMERVILLE, CITY OF/DPW  
 2023 MIX - SOMERVILLE, CITY OF/DPW  
 SOMERVILLE MA 02129

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 New York NY 10087-8903  
 Phone: 1-855-339-4900

SOMERVILLE, CITY OF/DPW  
 1 FRANEY ROAD  
 SOMERVILLE MA 02145

38555	06/14/2023	750128754
<b>CUSTOMER NO.</b>	<b>DOCUMENT DATE</b>	<b>DOCUMENT</b>

Sales District: 3014 SETH MCNARY

Ship Date	Plant	FOB FP	Bill of Lading#	Material Description	Quantity	U/M	Unit Price	Gross Amount
	WATE	FOB		48 COOLIDGE AVE ASPHALT TOP PO#: MAY 2023 LAE	0.001	TON	0.000	84.06
				<b>Total Material Units</b>	0.001	TON		84.06
				<b>Total Delivery Units</b>	0.000			0.00
				<b>Total Seasonal Charge Units</b>	0.000			0.00
				<b>Subtotal Material</b>				84.06
				<b>Subtotal Delivery</b>				0.00
				<b>Subtotal Seasonal Charge</b>				0.00
				<b>Amount Before Tax</b>				84.06
				<b>Tax</b>				0.00
				<b>Total For Debit Memo</b>				84.06
<p><b>Payment Terms: Net 45 days from invoice list date</b></p> <p><b>Finance charges will be applied on overdue accounts at the rate of 1.5% per month / 18% per annum</b></p> <p>May 2023 Liquid Asphalt Escalation                      BOL / Invoice</p>								
<p>FP= Freight Prepaid, ZFC= FOB Carrier Location, TON= US Tons, TO= Metric Tons, M3= Cubic Meters, EA= Each, YD3= Cubic Yards</p>								

**IMPORTANT: DETACH AND ENCLOSE THIS COUPON WITH YOUR PAYMENT**

SOMERVILLE, CITY OF/DPW  
 1 FRANEY ROAD  
 SOMERVILLE MA 02145

750128754
<b>DOCUMENT</b>

**DEDUCTION REASONS**

1. Price \$ \_\_\_\_\_
2. Freight \$ \_\_\_\_\_
3. Tax \$ \_\_\_\_\_
4. Other \$ \_\_\_\_\_

**AMOUNT REMITTED \$ \_\_\_\_\_**

**REMIT** HOLCIM - NER INC  
 P.O. Box 28903  
**TO:** New York NY 10087-8903

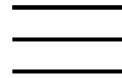
38555	06/14/2023	84.06
<b>CUSTOMER NO.</b>	<b>DOCUMENT DATE</b>	<b>DEBIT AMOUNT</b>

**LIQUID ASPHALT ADJUSTMENT DEBIT MEMO**



**SHIP TO**

SOMERVILLE, CITY OF/DPW  
 2023 MIX - SOMERVILLE, CITY OF/DPW  
 2023 MIX - SOMERVILLE, CITY OF/DPW  
 SOMERVILLE MA 02129



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SOMERVILLE, CITY OF/DPW  
 1 FRANEY ROAD  
 SOMERVILLE MA 02145

38555	06/14/2023	750128754
<b>CUSTOMER NO.</b>	<b>DOCUMENT DATE</b>	<b>DOCUMENT</b>

Ship Date	Plant	FOB FP	Bill of Lading#	Material Description	Quantity	U/M	Unit Price	Gross Amount
				178635774 717636367 178635922 717940019 178635943 717940019 178635963 717940020 178636028 717940021				

FP= Freight Prepaid, ZFC= FOB Carrier Location, TON= US Tons, TO= Metric Tons, M3= Cubic Meters, EA= Each, YD3= Cubic Yards

UNITED STATES

**TERMS AND CONDITIONS OF SALE**

1. **ACCEPTANCE.** These Standard Terms and Conditions ("Terms") govern all sales of products and materials (the "Products") by Holcim - ACM Management, Inc. ("HACM"), or any parent, member, subsidiary or affiliate of HACM ("Seller") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders or electronic orders via EDI (collectively, "Purchase Orders"). Upon receipt by Buyer of an express acceptance by Seller or upon commencement of performance by Seller, these Terms, the Purchase Order, as modified by Seller's acceptance or order acknowledgment, become a binding contract between Buyer and Seller on the terms reflected in those documents (the "Sales Agreement"). Notwithstanding the foregoing, Seller's acceptance of any order is subject to Buyer's assent to these Terms. Buyer's assent to these Terms shall be presumed from Buyer's receipt of Seller's Terms or Buyer's acceptance of all or any part of the Products ordered; no addition or modification of these Terms shall be binding upon Seller unless agreed to by Seller in writing. If a Purchase Order or other correspondence or documentation contains terms or conditions contrary to the terms and conditions contained herein, Seller's acceptance of any order shall not (i) be construed as assent to such contrary or additional terms and conditions or (ii) constitute a waiver by Seller of any of the terms and conditions contained in these Terms. Any additional, inconsistent or different "Conditions of Purchase" or the like of Buyer contained in Buyer's purchase order or other document submitted to Seller at any time, whether before or after the date hereof, are hereby expressly rejected by Seller.
2. **PRICE.** The price of the Products, as set forth in the Purchase Order, does not include sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other governmental authority, unless Seller expressly agrees otherwise. In case of dispute between verbal or faxed quotations and a written quotation provided by Seller to Buyer (a "Written Quotation"), the Written Quotation shall be the controlling document. If during the performance of this contract, the price of materials increases, through no fault of Seller, the price of Products, under this Sales Agreement shall be equitably adjusted by an amount reasonably necessary to cover any such price increases. Such price increases shall be documented through quotes, invoices, or receipts.
3. **PAYMENT.** Payments must be made to Seller in U.S. dollars within (30) days of Buyer's receipt of the Products or invoice, whichever is sooner. Payments not received when due will bear interest at the lower of 18% per annum or the maximum rate allowed by applicable law. Seller reserves the right to limit or cancel the credit of Buyer, and Seller may require or demand payment or adequate assurances of performance from Buyer prior to taking any preparatory steps for performing the Sales Agreement or beginning the manufacture of the Products. Notwithstanding the foregoing payment terms, in the event of a conflict or discrepancy between the payment terms set forth on the face of a Written Quotation and the terms set forth herein, the payment terms included on such Written Quotation shall control and govern.
4. **SPECIFICATIONS.** Seller shall manufacture the Products in substantial conformity with the drawings, data, instructions, samples and specifications, if any, that are provided by Buyer in a timely fashion and reflected by Seller in a Written Quotation. All product and product-related specifications are subject to applicable freight classification, Seller's customary manufacturing processes and industry courses of dealing and usages of trade.
5. **SHIPMENT.** Unless otherwise specified by Seller, all prices are FOB Seller's manufacturing facility. Buyer must pay all transportation costs of the Products. Seller may make partial shipments at Seller's sole discretion. Seller must endeavor to meet the shipping date specified by Buyer. If Seller is unable to meet such date, Buyer has no claim for damages resulting from any delay in delivery.
6. **TITLE AND RISK OF LOSS.** Title to the Products passes to Buyer when Seller has received full and indefeasible payment for such Products. Seller is not responsible for damage or loss in transit. All risk of loss to the Products passes to Buyer as the Products are loaded onto the carrier. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Seller.
7. **LIMITED WARRANTY.** Seller warrants that the Products will meet the specifications. **THE FOREGOING NOTWITHSTANDING, SELLER IS NOT LIABLE FOR NORMAL MANUFACTURING DEFECTS OR FOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SPECIFICATIONS. UNLESS EXPRESSLY STATED IN THE SALES AGREEMENT, SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION OF THE SALES AGREEMENT.**
8. **CONDITIONS OF APPLICABILITY OR WARRANTY.** Seller's warranty of any Product is of no effect if (i) the Product is not stored or handled appropriately, (ii) the defect of the Product resulted from damages occurring after delivery of the Product, (iii) the defect of the Product has not been reported to Seller within thirty (30) days after delivery, or (iv) the defect should have been discovered by Buyer in Buyer's inspection and it is not reported to Seller within ten (10) days after the Product's arrival at the destination
9. **DEFECTIVE PRODUCTS.** If a Product does not conform to the limited warranty in Section 7 and the warranty is not excluded by Section 8, then Buyer must promptly notify Seller. Upon receipt of a claims report, Seller must either ask Buyer for a sample of the defective Product or schedule an inspection of the defective Product. If Seller determines that the Product does not comply with the warranty provided in Section 7, then Seller must repair or replace the defective Product at no cost to Buyer. Except as provided in this Section 9, SUCH REPAIR OR REPLACEMENT IS THE ONLY REMEDY OF BUYER FOR ANY BREACH OF THE LIMITED WARRANTY PROVIDED BY SELLER IN SECTION 7.
10. **RETURNS.** No Products may be returned to Seller without providing prompt written notice of that intent and obtaining Seller's prior written consent. Returned Products must be securely packed by Buyer to reach Seller without damage. Buyer is responsible for the costs of returning the Products without being damaged.
11. **LIMITATION OF LIABILITY AND REMEDIES. IN NO EVENT IS SELLER RESPONSIBLE TO BUYER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT AND INDIRECT LOST PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE. SELLER'S TOTAL LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS SALES AGREEMENT SHALL BE LIMITED TO THE PURCHASE PRICE OF PRODUCTS SOLD UNDER THIS SALES AGREEMENT OR CORRESPONDING PURCHASE ORDER. THE SOLE AND EXCLUSIVE REMEDY OF BUYER OR ANY OTHER PARTY AGAINST SELLER FOR ALL CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, FOR ANY LOSS OR DAMAGES ARISING OUT OF, CONNECTED WITH OR RESULTING FROM, THE SALE OR FAILURE TO SELL, SHALL BE REPLACEMENT OF SUCH PRODUCT SOLD HEREUNDER, OR, AT SELLER'S OPTION, REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCT. NO OTHER REMEDY SHALL BE AVAILABLE TO BUYER. BUYER AND SELLER AGREE THAT THE EXCLUSIVE REMEDY SET FORTH HEREIN DOES NOT CAUSE THE CONTRACT TO FAIL OF ITS ESSENTIAL PURPOSE.** Except as expressly set forth herein, nothing herein or in any quotation shall (i) create any right, cause of action or claim of, for, or on behalf of the Buyer, its, heirs, successors, or assigns, or any third party under any theory, whether in contract, tort, negligence, strict liability or otherwise, other than the rights expressly set forth and created herein; (ii) create, modify or extend any express or implied warranties, or any limitations of those warranties; (iii) give the Buyer any rights to claim any direct or indirect damages of any nature, including but not limited to any incidental or consequential damages that may arise out of the use of any of the goods described herein or in such quotation or any parts thereof, or any Product replacement provided by Seller. As part of the consideration for the Product, Buyer agrees not to sue Seller in respect of these Terms or any quotation related to the Products described herein or therein (unless Seller has breached one of the duties expressly created hereunder), and Buyer further agrees to indemnify Seller from any and all claims, costs, fees and expenses, including reasonable attorneys' fees, that may be incurred or spent incident to any such claim by any party (unless Seller has breached one of the duties expressly created hereunder, and then limited only to that claim alone).
12. **ENVIRONMENTAL FEE & FUEL SURCHARGE.** Seller is committed to help ensure a clean and safe environment for our employees, our customers, and our communities. Seller also is committed to controlling and covering its costs so we can continue to provide the best overall value across all product lines. Environmentally-related costs and fuel-related costs are something we cannot fully control. Seller's environmental fee and fuel surcharge are meant to help us cover these costs and to help us achieve an acceptable operating margin. The environmental fee and fuel surcharge are separate line items on customer invoices. Seller's environmental fee helps to cover our costs and expenses to operate, on a company-wide basis, in a safe and environmentally responsible manner. The amount or percentage of the environmental component is not specifically tied to the direct or indirect costs to service Buyer's account, but instead to the Seller's overall costs and operating margin goals. Similarly, Seller's fuel surcharge is a charge to cover the Seller's overall costs associated with the delivery of products, including but not limited to the cost of fuel, and the incremental costs for unexpected mileage, wait times, and traffic patterns,

and to help meet margin goals.

**NOT A GOVERNMENTAL TAX-FUTURE CHANGES.** Seller's environmental fee and fuel surcharge are not taxes, surcharges, or fees imposed by or remitted to any governmental or regulatory agency; they are Seller's charges. The environmental fee and fuel surcharge may be changed at the discretion of Seller. To the extent required by Buyer's applicable customer service terms, the assessment of the environmental fee and fuel surcharge or any change to such charge is effective upon Buyer's acceptance of rebate payments from Seller or Buyer's payment of any such charges to Seller.

**13. DISPUTE RESOLUTION/ARBITRATION AGREEMENT AND CLASS ACTION WAIVER**

Any claims, disputes and controversies related in any way to the Sales Agreement including but not limited to Claims related to the financing of the purchase, ("Claims") shall be resolved by arbitration in the Governing State. "Claims" shall be given the broadest meaning possible and includes, without limitation, Claims against any of Seller's owners, shareholders, affiliates, subsidiaries, directors, officers, employees, representatives, agents, successors, or assigns. "Claims" does not include Seller's bond and/or lien claims, which may be enforced and/or resolved in court. BUYER AND SELLER WAIVE ANY RIGHT TO HAVE CLAIMS DECIDED BY A JUDGE OR JURY. Except as expressly stated in the Class Action Waiver, the arbitrator shall have exclusive authority to decide all issues related to the enforcement, applicability, scope, validity, and interpretation of this Arbitration Agreement, including but not limited to any unconscionability challenge. Notwithstanding this agreement to arbitrate, the Buyer and Seller may (in each party's sole discretion) elect to pursue Claims in small claims court on an individual basis only, rather than arbitrate, if the Claims fall within the jurisdiction of the applicable small claims court. This Sales Agreement evidences a transaction in interstate commerce. All issues relating to this Arbitration Agreement and Class Action Waiver will be determined pursuant to federal substantive law and the substantive and procedural provisions of the Federal Arbitration Act ("Act"), 9 U.S.C. §§ 1-16, or to the extent held applicable under federal substantive law, the law of the Governing State, without regard to conflicts of law. Buyer and Seller further agree that: (1) any dispute or claim arising out of or relating to this Sales Agreement will proceed solely on an individual, non-class, non-representative basis; and (2) the parties expressly waive any right or ability to bring, assert, maintain, or participate as a class member in, a class action, representative action, or private attorney general action (collectively, "Class Action") in court, arbitration, or any other forum regarding any Claim, and expressly waive the right for anyone to do so on our behalf. NO CLAIM WILL BE ARBITRATED ON A CLASS ACTION BASIS. The Parties agree that the enforcement, applicability, scope, validity, and/or interpretation of this Class Action Waiver shall be decided by a court of competent jurisdiction and not by an arbitrator. If this Class Action Waiver is ruled unenforceable or is interpreted to not prevent a Class Action as to any particular Claim, then the Arbitration Agreement shall be null and void as to that Claim, which shall be resolved in a court of law (and not in arbitration) after the arbitration on the other claims has ended. The Parties agree that if an arbitrator renders a decision regarding the enforcement, applicability, scope, validity, and/or interpretation of this Class Action Waiver, or determines that a Class Action may proceed in arbitration, then: (1) the arbitrator has exceeded his powers, pursuant to §10(a)(4) of the FAA, by taking such action; (2) either party may seek immediate review of that decision by a court of competent jurisdiction; and (3) a court of competent jurisdiction shall apply a "de novo" standard of review of that decision if such standard of review is allowed by the common law or statutes of that state. The arbitration shall be administered by the American Arbitration Association ("AAA"). The arbitration shall be conducted pursuant to the AAA Commercial Arbitration Rules if the Buyer is a company or other commercial entity. The arbitration shall be conducted pursuant to the AAA Consumer Arbitration Rules if the Buyer is an individual whose purchase is intended for personal, family or household use. Information on AAA and a copy of the applicable Rules may be found at the following number and URL: American Arbitration Association, (800) 778-7879, www.adr.org. Each party will pay his/her/its own attorney's fees, as well as costs relating to proof and witnesses, regardless of who prevails, unless applicable law and/or the applicable Rules gives a party the right to recover any of those fees from the other party. The arbitrator(s) is not empowered to award consequential, incidental, treble, exemplary or punitive damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved in arbitration. If a court determines that a party is making a statutory claim where such damages are provided for by the statute and cannot be waived, then that claim for statutory damages shall be resolved in court, rather than arbitration, and after the arbitration has ended, but only if the Arbitrator(s) have ruled in favor of that party on the liability of that statutory claim. If any portion of this Arbitration Agreement and Class Action Waiver is deemed invalid or unenforceable, all the remaining portions of this Arbitration Agreement and Class Action Waiver shall nevertheless remain valid and enforceable, except as provided in the Class Action Waiver.

**CONSUMER OPT-OUT PROVISION.** An individual Buyer whose purchase is intended for personal, family, or household use ("Consumer Buyer") shall have the right to opt out of this Arbitration Agreement and Class Action Waiver by providing written notice of intention to do so within thirty (30) days of the date of this Sales Agreement to: Holcim Legal Department, 6211 Ann Arbor Road, Dundee, Michigan 48131, ATTN: "Arbitration/Class Action Waiver Opt Out." Consumer Buyer must include in the opt out notice: (a) Consumer Buyer's name and address; (b) the date of this Sales Agreement.

**14. TERMINATION.** In the event of a breach by Buyer, Seller may terminate the Sales Agreement upon giving ten days' written notice of termination. If the Sales Agreement is terminated by Seller because of Buyer's breach, Seller is entitled to reasonable reimbursement from Buyer for any labor, material or other expenses incurred in connection with the Sales Agreement, plus a reasonable amount for overhead.

**15. FORCE MAJEURE AND ALLOCATION.** Seller is not liable or responsible for delay or failure to perform any of Seller's obligations under the Sales Agreement occasioned by (i) any cause beyond its reasonable control, including, but not limited to, labor disputes shortages, disputes, strike or lockouts, breakdowns or accidents, industry disturbance, fires, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, unusually severe weather conditions, earthquakes, floods, or other acts of God, or (ii) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under the Sales Agreement ("Force Majeure"). The date of delivery shall be extended for a period equal to the time lost by reason of any of Force Majeure. During times of shortage, Seller shall have the right to allocate among its customers in accordance with Section 2-615 of the UCC.

**16. INDEMNIFICATION.** To the maximum extent allowed by law, Buyer shall defend and indemnify Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Seller may incur or be obligated to pay as a result of (i) Buyer's negligence or Buyer's use, ownership, maintenance, transfer, transportation or disposal of the Products; (ii) any infringement or alleged infringement of the industrial and intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the Products ordered by Buyer; (iii) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; or (iv) Buyer's breach of the Sales Agreement.

**17. ENTIRE AGREEMENT.** The Sales Agreement comprises the complete and final agreement between Seller and Buyer and supersedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral, on its subject. No other agreement, quotation or acknowledgment in any way purporting to modify any of the terms of the Sales Agreement is binding upon Seller unless made in writing and signed by Seller's authorized agent. The Sales Agreement may not be altered or modified except by written agreement of Seller and Buyer. Any other representations or statements (whether oral or written) made by any person, including employees or other agents of Seller, that are inconsistent with the Sales Agreement must be disregarded by Buyer, do not constitute warranties and are not binding upon Seller. If any model or sample was shown to Buyer, such model or sample was used merely to illustrate the general type and quality of goods and not to represent that the Products would necessarily conform to the model or sample.

**18. SUCCESSORS AND ASSIGNS.** The Sales Agreement binds and inures to the benefit of Buyer and Seller and their respective successors and permitted assigns. Buyer may not assign any interest in, nor delegate any obligation under the Sales Agreement, without Seller's prior written consent.

**19. GOVERNING LAW.** The validity, construction and performance of the Sales Agreement is governed by, and must be construed in accordance with, the law of the state of the transaction's point of sale (the "Governing State"), without regard to such state's conflicts of law provisions.

**20. JURISDICTION AND VENUE.** Buyer irrevocably submits and agrees to the jurisdiction of the state and federal courts of the Governing State. Any action, suit or proceeding related to, or in connection with, the Sales Agreement and, to the extent permitted by applicable law, Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (i) that Buyer is not personally subject to the jurisdiction of the state and federal courts in the Governing State; (ii) that the venue of the action, suit or proceeding is improper; (iii) that the action, suit or proceeding is brought in an inconvenient forum; or (iv) that the subject matter of the Sales Agreement may not be enforced in or by the state or federal courts of the Governing State. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings by personal or prepaid mailing (air mail if international) in registered or certified form a copy of the process to the Buyer at the address set forth in Section 21.

**21. WAIVER.** The waiver by Seller of any breach by Buyer of any provision of the Sales Agreement may not be construed to be either a waiver of the provision itself as to subsequent application or any other provision of the Sales Agreement.

22. **SEVERABILITY.** If any provision of the Sales Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Sales Agreement remain in full force and effect.

23. **NOTICES.** No notice or other communication under the Sales Agreement is sufficient to affect any rights, remedies or obligations of either party unless the notice or communication is in writing and (as elected by the party giving the notice) is (i) personally delivered, (ii) transmitted by facsimile (with a receipt acknowledgment), (iii) transmitted by electronic computer mail, (iv) transmitted by a recognized courier service, or (v) mailed (air mail if international) in registered or certified form, to the party to which notice or communication is being given at the following address: (a) if to Seller, at its address designated on the face of the Written Quotation; ATTN: SALES DEPARTMENT and (b) if to Buyer, at its address designated on the face of the Written Quotation. Notices or communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) on the date of transmission if delivered by facsimile, (iii) on the date of transmission if transmitted by electronic computer mail, (iv) one day after pickup by courier if delivered by courier or (v) five days after mailing if delivered by the postal service. Either party may change its address by providing notice to the other party.

24. **CONSTRUCTION.** The headings of the Sections in these Terms are provided for convenience only and may not be considered in the interpretation of the Sales Agreement. The parties agree that the provisions of the Sales Agreement may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the Sales Agreement.

25. **SURVIVAL.** The terms of the Sales Agreement that by their nature are reasonably intended by the parties to survive the Sales Agreement's expiration or earlier termination, including, but not limited to, Sections 7, 8, 9, 10, 11, 12, 13, 16, 19, 20 and this Section 25 shall survive the expiration or termination of the Sales Agreement.