

MOSSBERG BEVERAGE TERMS AND CONDITIONS

1. **DEFINITIONS.** For purposes of these Terms and Conditions ("Terms"), "Mossberg" means Mossberg & Company Inc, headquartered at 301 East Sample Street, South Bend, IN, which does business as Mossberg Beverage and Mossbev; "Product" means any product offered for sale by Mossberg to Customer; and "Customer" means any person or entity (1) using www.mossbev.com to order Products; (2) providing artwork to Mossberg or obtaining artwork design services; or (2) purchasing Products from Mossberg.

2. **ORDER AND ACCEPTANCE.** These Terms govern all orders of Products by Customer, as well as Mossberg's provision of Products to Customer, whether directly or indirectly through a mobile canning company. The parties expressly incorporate these Terms into each and every order by Customer for Products from Mossberg, and these Terms control over any additional or different terms contained in any purchase order or any other document from Customer other than order quantity and delivery date; Mossberg expressly objects to any such different or additional terms. By signing below or by ordering Products, Customer agrees to be bound by these Terms. Mossberg's acceptance of any order for Products is expressly made conditional on Customer's assent to these Terms.

3. **CUSTOMER INPUT MATERIALS.** Customer will provide artwork, in electronic file format or hardcopy artwork, for the Products. If Customer wants Mossberg to arrange or design artwork for the Products, Customer agrees to pay Mossberg for the artwork at Mossberg's quoted prices. By providing artwork to Mossberg, Customer grants Mossberg a limited license to reproduce, resize, rearrange, modify and otherwise use Customer's artwork to prepare Product's.

4. **LABELING.** Mossberg is not responsible for a label's layout, for testing QR or bar codes provided by Customer (unless Customer requests Mossberg to test a QR or bar code) for any label, or for ensuring that any labeling complies with applicable governmental laws and regulations. A label's layout, ensuring the functionality of QR or bar codes, and a label's compliance with applicable governmental laws and regulations are Customer's responsibility. Approval of a label constitutes Customer's representation and warranty that the label has been approved by the Alcohol Tax and Trade Bureau. Customer agrees that Customer will not use a Product to sell, market, or provide any alcoholic beverage without Customer following all applicable governmental laws and regulations and having obtained all applicable governmental licenses and approvals.

5. **COLOR PROOFING.** Mossberg will provide a PDF proof for each label to Customer. Due to the variations in quality and colors that can be displayed on monitors and other digital viewing equipment, Mossberg makes no representation or promise that any PDF or other digital proof viewed on such screens or equipment will be color accurate.

At Customer's request, Mossberg can provide color-representative hard copy Epson color proofs. Due to differences in equipment, substrates, inks, and other conditions between color proofing and production pressroom operations, a reasonable variation in color between color proofs and completed Products is to be expected, and Products containing such reasonable variations shall be deemed conforming.

For color critical Products, Mossberg can provide, and highly recommends a color accurate shrink-sleeved can proof. Mossberg warrants a reasonable color match to can proofs. Mossberg will not replace Products due to color differences between PDF and Epson color proofs and final Product. Customer agrees to pay Mossberg's quoted rates for proofs.

6. OVER RUNS/UNDER RUNS. Unless otherwise agreed in job specifications, over-runs and under-runs of up to 10% percent of the quantity ordered will be considered conforming and Customer will not be entitled to object to or reject any shipment from Mossberg for such reason. Over-runs or under-runs will be billed or credited at the applicable cost per piece.

7. PICK-UP/RISK OF LOSS. Unless otherwise agreed to in a writing signed by an authorized representative of Mossberg, the price quoted is for single shipment, without storage, F.O.B. Mossberg's dock, located at 4100 Technology Drive South Bend, IN. Risk of loss passes upon Customer or Customer's agent picking up the Products at Mossberg's dock. Title passes to Customer upon Customer's payment for the Products. Mossberg will not be liable for any delays, loss, or damage in transit. Customer agrees to pay Mossberg a storage fee of \$12 per skid per month for any Products not picked up within 10 days. Customer understands that the cans are very light and can damage easily, and Customer expects that some pallets might have some damaged cans on the corners of the skids. Customer also understands that the Products are temperature-sensitive and can be damaged by excessive exposure to hot or cold temperatures. Mossberg is not responsible for any damage to the Products caused by exposure to hot or cold temperatures after the Products leave Mossberg's dock.

8. PRODUCTION SCHEDULES. All production scheduling is tentative pending: (a) receipt and inspection of final artwork by Mossberg; and (b) Mossberg's on-time receipt of Customer's approved and final proofs.

9. COPYRIGHT/TRADEMARK. It is Customer's responsibility to ensure, and Customer represents and warrants to Mossberg, that all materials supplied by Customer for reproduction (a) do not infringe or violate any copyright, trademark, or any other intellectual property or ownership right or interest; and (b) do not contain anything that is defamatory or scandalous or that threatens the right to privacy or other personal or economic rights. Mossberg reserves the right to refuse to engage in the preparation and manufacture of Products it deems illegal, defamatory, scandalous, improper, or in violation of any law or regulation.

10. WARRANTY.

A. Label: Mossberg warrants only that completed Products (excluding any portion of the Products consisting of Third Party Products as defined below), at the time of delivery, materially conform to the PDF proof, or hard copy color proof or can proof (if requested by Customer), with reasonable variation in color as described in Paragraph 5. Customer agrees that no other affirmation of fact, promise, description, sample or model of any kind has become part of the basis of the bargain between Customer and Mossberg. NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MOSSBERG EXPRESSLY DISCLAIMS ANY SUCH IMPLIED WARRANTIES.

B. No Warranty for Third Party Products: Products manufactured by a third party (collectively "Third Party Products"), including, but not limited to, steel or aluminum beverage cans, can liners such as Epoxy and BPANI, glass bottles, and beverages contained in the cans and bottles, may be incorporated into or with Products sold by Mossberg. Third Party Products are not covered by the warranty in this Paragraph 10. Customer has evaluated any perceived risk and expressly assumes all risk and liability for any non-performance of the Third Party Products, including but not limited to defects in cans and their ends, including any defects resulting in leakages or recalls, and for any resulting damages or bodily injury to Customer, its employees, or any third parties arising from the handling, filling and/or use of the Third Party Product filled with its beverage formula or from ingestion of the contents of the Third Party Products, and agrees that Mossberg will have no responsibility and no liability for any such damage or bodily injury to Customer, its employees or third parties. For the avoidance of doubt, MOSSBERG MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b)

WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

11. REMEDY/LIMITATION OF LIABILITY. Customer will have no remedy for faults relating to Third Party Products. Customer's remedy under the warranty pursuant to Paragraph 10(b) for Products manufactured by Mossberg will be limited to replacing such nonconforming Products or, at Mossberg's sole discretion, a refund of the amount, or a portion of the amount, of the invoice price attributable to such nonconforming Products manufactured by Mossberg. IN NO EVENT SHALL MOSSBERG BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST 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 CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, 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. IN NO EVENT WILL MOSSBERG'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 AMOUNTS PAID TO MOSSBERG FOR THE PRODUCTS SOLD TO CUSTOMER UNDER THE APPLICABLE ORDER. The foregoing limitations on liability apply to the fullest extent not prohibited by law.

12. NOTICE. As a condition precedent to Mossberg performing its warranty obligations under these Terms, Customer must promptly, and in no event any later than thirty days after tender of delivery, give written notice of the defect to Mossberg or be barred from any remedy. Any suit by Customer against Mossberg must be brought within one year after Customer's cause of action accrues.

13. CANNING. Customer understands that, if the Products are used in connection with canning alcoholic or other beverages, Mossberg has no responsibility for the canning process. Customer or any third-party canner utilized by Customer has sole responsibility for the canning process.

14. INDEMNIFICATION. Customer agrees to defend, indemnify, and hold harmless Mossberg and its officers, directors, employees, agents, affiliates, successors and permitted assigns from and against any and all damages, losses, liabilities, interest, awards, penalties, fines, claims, costs, expenses, awards, causes of action, lawsuits, and injuries of any kind or nature whatsoever (including costs and reasonable attorney's fees) caused by, resulting from, arising out of, or occurring in connection with, (i) Customer's breach of these Terms, (ii) Customer's acts or omissions relating to the Products, including but not limited to Customer's use of any Product in connection with the canning, sale, or provision of alcoholic or other beverages, and (iii) any Third Party Products.

15. FORCE MAJEURE. Mossberg will in all cases be excused from performance to the extent that Mossberg's failure to perform or delay in performing is caused or results from acts beyond Mossberg's reasonable control, including but not limited to (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) pandemics or epidemics; (f) actions, embargoes or blockades in effect on or after the date of Customer's order; (g) action by any governmental authority; (h) national or regional emergency; (i) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (i) shortage of adequate power or transportation facilities.

16. PAYMENT. Payment is in U.S. Dollars upon the receipt of an invoice. All orders are prepaid, and must be received before Mossberg will process any orders for Products, unless Customer is purchasing Products via

purchase order, in which case Customer agrees to pay Mossberg per the payment terms documented in an order confirmation. Mossberg's prices do not include federal, state or local taxes. Customer is responsible for paying any applicable excise, import, sales, use or similar tax, whether federal, state, provincial or local, and any transportation and other charge. Mossberg shall be entitled to charge interest for payments not made in accordance with the stated or agreed-upon Terms. A Fee of \$35.00 will be added for each payment made with insufficient funds.

17. **CANCELLATION.** Customer may cancel the order, in whole or in part, by written notice to Mossberg, provided that Customer pays Mossberg, for such cancellation: (a) the price of all quantities of the order finished ready to ship at the completed quantity volume price; (b) the cost Mossberg paid for unreturnable materials purchased for the order; and (c) the price for ordered printed labels not applied to cans; (d) other reasonable costs which Mossberg has incurred in the performance of the order.

18. **TERMINATION.** In addition to any remedies that may be provided under these Terms, Mossberg may terminate any order with immediate effect upon written notice to Customer if Customer (i) fails to pay any amount when due and such failure continues for 10 days after due date; (ii) has not otherwise performed 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 related to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

19. **COSTS OF COLLECTION.** Customer will pay Mossberg's actual costs of collection, including but not limited to court costs, litigation expenses, and reasonable attorney's fees and costs, incurred in connection with collection of any delinquent amounts owed by Customer to Mossberg.

20. **ENTIRE AGREEMENT.** Except as otherwise agreed in writing, these Terms (along with the order quantity, Mossberg's prices in effect at the time of the order, and the delivery date) constitute the entire agreement between Mossberg and Customer, superseding all prior agreements, proposals, and understandings, whether oral or written. No stipulations, representations or agreements by Mossberg, or its officers, agents, or employees shall be binding upon Mossberg unless reduced to writing and signed by an authorized representative of Mossberg. No trade custom or usage may alter or vary the terms set forth herein.

21. **ASSIGNMENT.** Customer will not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Mossberg. Any purported assignment or delegation in violation of this Paragraph is null and void. No assignment or delegation relieves Customer of any of its obligations under these Terms.

22. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms 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.

23. **RELATIONSHIP TO MOBILE CANNING COMPANIES.** Customer understands that the relationship between Mossberg and any mobile canning company is that of independent contractors. Neither Mossberg nor any mobile canning company shall have authority to contract for or bind the other party in any manner whatsoever.

24. **NO THIRD-PARTY BENEFICIARIES.** These Terms are for the sole benefit of Mossberg and Customer and their respective successors and permitted assigns and nothing in these terms, 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.

25. NO WAIVER. No waiver by Mossberg of any of the provisions in these Terms is effective unless explicitly set forth in writing and signed by an authorized representative of Mossberg. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver of any such right, remedy, power, or privilege. No single or partial exercise or waiver 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.

26. GOVERNING LAW/FORUM. Any questions, disputes, controversies, or litigation arising either directly or indirectly from any order by Customer or any of these Terms will be governed by the laws of the State of Indiana, and, in the event of litigation between Mossberg and Customer, such litigation may be commenced only in a federal or state court located in St. Joseph County, Indiana. Customer consents to personal jurisdiction in St. Joseph County, Indiana.

27. SEVERABILITY. If any provision in these Terms is determined to be invalid under applicable law, such invalidity shall be limited to such provision without invalidating any of the remaining terms and conditions contained in these Terms.

28. SURVIVAL. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of any order, including but not limited to, the following provisions: governing law/forum, labeling, copyright/trademark.

Customer agrees to be bound by the Mossberg Beverage Terms and Conditions.

CUSTOMER: _____

SIGNATURE: _____

NAME (Please Print): _____

TITLE: _____

DATE: _____