

# **IPS CERAMICS LIMITED- TERMS & CONDITIONS OF SALE – MARCH 2011**

## **1. DEFINITIONS**

1.1 "seller" shall mean IPS Ceramics Ltd (a company registered in England and Wales under number 7087943 and whose registered office is at Shelton New Road, Hartshill, Stoke-on-Trent, ST4 6EP United Kingdom and "buyer" shall mean the person, firm or company named in the purchase order.

1.2 "quotation" shall mean any tender or quotation issued by the seller including these terms and conditions, the specification, drawings or other documents annexed by the seller to the quotation.

1.3 "purchase order" shall mean the order issued by the buyer to the seller for the purchase of the goods

1.4 "goods" shall mean the goods to be supplied by the seller as identified in the quotation

1.5 "The contract" shall mean the contract between the seller and the buyer consisting of the seller's quotation, these terms and conditions of sale, the seller's website terms of use as set out in condition 2.5 below (in respect of any order placed or contract concluded online), any purchase order accepting the quotation and the seller's acceptance of a purchase order, but not any terms and conditions of purchase, other than these conditions.

1.6 "contract price" shall mean the sum stated in the quotation to be paid for the supply of goods together with such other sums as may be payable to the seller under these terms and conditions of sale.

1.8 Any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

## **2. GENERAL**

2.1 These terms and conditions supersede all other terms and conditions (whether or not inconsistent with these terms and conditions) contained or referred to in any correspondence, purchase order or documentation submitted by the buyer or elsewhere implied by custom, practice or course of dealing. The buyer's acceptance of delivery of the goods shall (without prejudice to condition 2.2 or any other manner in which acceptance of these terms and conditions may be evidenced) constitute unqualified acceptance of these terms and conditions.

2.2 The seller's acceptance of a purchase order shall be effective only where such acceptance is in writing and signed by an authorised representative of the seller. A quotation does not constitute an offer and the seller reserves the right to withdraw or revise a quotation at any time before it accepts a purchase order.

2.3 The seller's representatives or agents have no authority to agree any terms or make any representations that are inconsistent with these terms and conditions or the quotation. The seller will not be bound by any statements made by any person purporting to act on the seller's behalf as to these terms and conditions or the quotation or any statements as to the delivery, quality, performance or suitability of the goods unless any such statement is specifically confirmed in writing by a duly authorised director or officer of the seller and annexed to the contract.

2.4 The seller has available information and product literature concerning the conditions necessary to ensure the goods supplied will be safe and without risk when properly used. If the buyer is not already in possession of such literature or requires any other information or advice in connection with the safe use of the goods it should contact the seller.

## **3. SPECIFICATION AND DESCRIPTION SAMPLE AND STANDARD**

3.1 The seller undertakes the goods will conform with the quotation's provisions (except in minor respects which do not materially affect their use) and the seller's normal manufacturing standards. Such undertakings are given on the condition that the seller is not liable for a defect in the goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use, or an act, neglect or default of the buyer or a third party. The seller can change and improve the specification of goods provided they are of the same or better quality than that given in the quotation. Descriptions of goods in advertisements, catalogues or other literature are for information only and are designed to give a general idea of the goods and, as such, are not contractual terms.

## **4. QUALITY AND FITNESS FOR PURPOSE**

4.1 Goods shall be of the quality specified in the seller's quotation and, if no quality is specified, with the normal industrial quality for the type of goods in question at the contract price. The buyer acknowledges that, where goods are supplied as a replacement for other goods (whether those other goods were supplied by the seller or a third party), the goods supplied may not match in appearance or quality the goods to be replaced. No condition is made or to be implied nor is any warranty given or to be implied as to the life and wear of the goods supplied or that they will be suitable for any particular purpose or for use in any specific conditions notwithstanding that such purpose or conditions may be known or made known to the seller unless such goods are supplied with a specific written guarantee by the seller when these terms and conditions shall be subject to the terms of such guarantee. The buyer acknowledges that these provisions are fair and reasonable with regard to the refractory and industrial ceramics industry.

4.2 If the buyer expressly specifies that goods shall be suitable for a particular purpose and the seller expressly agrees in the quotation to supply goods suitable for that purpose, then the goods shall be so suitable within the limits specified by the seller in the quotation except in minor respects which do not materially affect that purpose.

## **5. DELIVERY**

5.1 Any delivery date or time given by the seller is an estimate only and not contractually binding. The seller shall not be liable for the consequences of any delay.

5.2 If a firm delivery date or period is given in the quotation, the seller undertakes as a warranty and not as a

condition of the contract that it will deliver the goods by such date or within such period or any extended date or period. Time shall not be considered to be of the essence and shall not be made so by the service of any notice and the buyer shall not have the right to reject the goods or terminate the contract by reason of any delay in delivery. If the seller is delayed in the performance of the contract by any act or default of the buyer, or any industrial dispute or any circumstance beyond the seller's reasonable control, then the date for delivery shall be extended by such period as may be reasonable.

5.3 All purchase orders are accepted by the seller subject to its right to cancel or suspend deliveries in whole or in part at its absolute discretion in the event of an act of God, fire, explosion, flood, earthquake, terrorism, riot, hostilities, war, civil commotion, acts of government, storm and tempest, work stoppages, slow-downs or other industrial disputes, strikes, lock outs, accidents, lack of power, delays by suppliers or material shortages, damage to machines plant or stock or any other circumstances of any kind beyond its control which affect or interfere with the production, shipment, transit or delivery of any goods. In any such event the seller shall be relieved from all liabilities relating to such orders unless upon normal conditions again prevailing the seller otherwise agrees in writing but in no case shall the seller be bound to obtain or deliver goods from any works or other sources than those in respect of which any purchase orders have been placed.

5.4 The seller shall deliver the goods "ex-works" and goods are so delivered when the buyer is told they are available for collection. If the buyer is unable to accept delivery on the due date the seller shall have to arrange for their storage but this will not effect the due date for payment of the invoice and the buyer shall be liable for any storage costs. If, in accordance with the quotation, goods are to be given to a carrier for onward transmission to the buyer, then delivery to the carrier shall constitute delivery to the buyer and the cost of carriage will be charged as extra

5.5 The seller may effect delivery in one or more instalments. Where goods are delivered in instalments each delivery shall constitute a separate contract and failure to deliver any one or more of the instalments in accord with these conditions or any claim by the buyer in respect of any one or more instalments shall not entitle the buyer to treat the contract as a whole as repudiated.

## **6. PASSING OF PROPERTY**

6.1 The property in the goods shall not pass to the buyer until the seller has received full payment for them and for any other goods supplied by the seller and its associated companies. The buyer undertakes that until that time it will hold the goods as a bailee, not remove, deface or cover up any identification marks on the goods that indicate the goods are the property of the seller and it will store the goods separately from its own or other parties' and will allow the seller unrestricted access to the storage place in order to remove the goods and will deliver up to the seller all or any part of the goods if requested to do so by the seller.

6.2 The buyer can sell the goods in its ordinary course of business and the seller shall be legally and beneficially entitled to the proceeds of sale and until paid over to the seller the proceeds shall be kept in a way which allows them to be separately identified. If the buyer is in default of any payment to the seller this power of sale can be revoked and the power will automatically cease if any of the circumstances in condition 14.1 below arise.

6.3 All tools patterns and moulds to enable ongoing supply of goods to the buyer will remain the property of the seller.

## **7. PASSING OF RISK, LICENCES AND CONSENTS**

7.1 The risk in the goods shall pass to the buyer on delivery as defined in condition 5.4 above. If delivery is to be other than "ex-works" then if the buyer instructs, the seller will arrange insurance of the goods for the buyer's benefit on the basis of the buyer's risk. Premium and administration costs will be added to the contract price and paid by the buyer.

7.2 If a licence or consent of any government or other authority is required for the supply, carriage or use of the goods by the buyer, the buyer will obtain such licence or consent at its own expense and produce evidence of it to the seller on demand. The buyer is not entitled to withhold or delay payment of the contract price if it fails to obtain any licence or consent, and will pay any additional costs or expenses incurred by the seller as a result of such failure.

## **8. CONTRACT PRICE**

8.1 The "ex works" price stated in the quotation and any other amounts payable under the contract will exclude Value Added Tax (VAT) and is based on production costs as at the quotation date. If any change in the law affects the seller in its performance of the contract, or there is a rise in the cost of labour, materials, fuel or transport, or a change in exchange rates, or an increase or imposition of any tax, duty or other levy, or errors in the buyer's instructions, and any of these increases the seller's cost of performing the contract as duly notified, and this necessitates an increase to the price, the amount of such increase shall be added to the contract price.

## **9. PAYMENT TERMS**

9.1 The seller shall invoice for the goods on despatch and the buyer shall pay within 5 days of the date of the invoice unless other terms have been agreed in writing. VAT where applicable shall be added to the contract price as a strictly net extra.

9.2 If the buyer fails to pay on the due date then the seller shall be entitled without further notice from that date to charge interest on the outstanding amount at the rate of 8% per annum above the Base Rate of RBS plc from time to time in force, accruing daily, without deduction of tax. Additionally, the seller can decline to

deliver any further goods under this contract or any other purchase order until payment has been received in full or require that payment is made in advance for the same in all cases without thereby incurring any liability whatsoever to the buyer. If delay in payment exceeds 30 days the seller can terminate all orders. The buyer shall not be entitled to exercise any right of set off or counterclaim. If the buyer has a bona fide dispute concerning an invoice the disputed portion of that invoice may be withheld until the dispute is resolved but undisputed amounts shall be paid on the due date.

9.3 The seller reserves the right to alter or withdraw at any time any credit allowed to the buyer. The seller may offset any amount owing to it from the buyer against any amount owed to the buyer by the seller. The seller may offset any amount owing in commission to an agent/distributor against any amount owed to the seller.

## **10. ACCEPTANCE**

10.1 The buyer shall inspect the goods on their receipt and shall be deemed to have accepted them unless within 14 days of their receipt the buyer has notified the seller that they are not in accordance with the contract. If the buyer fails to give such notice the goods shall conclusively be deemed to be in all respects in accordance with the contract and the buyer shall be bound to accept and pay for them in accordance with the contract. Defects in quality or dimensions in any delivery are not grounds for cancellation of the remainder of the contract.

10.2 If the seller is notified the goods are not in accordance with the contract the seller shall inspect the goods, and if necessary request the buyer to return the goods which are not in accordance with the contract at the seller's expense. If the seller is reasonably satisfied that the goods are not in accordance with the contract due to its fault, the seller shall, within a reasonable time, rectify or replace and redeliver such goods at its own cost or raise appropriate credit notes in full satisfaction of the seller's liability in respect of such goods. Such goods shall not then be the subject of any further claim whatsoever by the buyer whether for delay or performance, direct, contingent or consequential loss, other damage or expense incurred by the buyer directly or indirectly. The seller's liability in respect of defects in the goods shall be limited to those stated in this condition and subject to Clause 2(1) of the Unfair Contract Terms Act 1977, the seller shall not be liable whether in contract or in tort, including but not limited to negligence, or by reason of breach of statutory duty or otherwise, for any damage or loss whatsoever suffered by the buyer arising out of or attributable to such defects.

## **11. LIMITATION OF LIABILITY**

11.1 The obligations and liabilities of the seller in respect of the description, quality or fitness for purpose of the goods are limited to those contractual matters and direct losses which are expressly stated in conditions 4 and 10 above. All conditions, warranties and intermediate terms relating to the description, quality or fitness for purpose of the goods implied by common law or by statute or otherwise are hereby excluded from the contract.

11.2 Neither party shall be liable to the other for any indirect or consequential loss or damage, loss of profit, loss of use or production or of contracts which the other may suffer arising out of any breach by a party of its obligations under a contract whether this be due to the negligence of that party or not.

11.3 If the buyer cancels all or part of a purchase order at any time the buyer shall reimburse the seller for the full costs incurred by or on behalf of the seller in dealing with such cancelled order to date including the cost of the raw materials and manufacturing costs incurred to date. In such cases partly manufactured goods will be delivered to the buyer if so requested.

## **12. THIRD PARTY RIGHTS**

12.1 A person who is not a party to a contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. The buyer may not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under, a contract without the prior written consent of the seller.

## **13. LIEN AND INDEMNITY**

13.1 In addition to any statutory or other right of lien to which the seller is entitled, the seller shall also have a general lien over all the buyer's goods in the seller's possession (including any goods for which the seller has been paid) for the unpaid price of any other goods sold to the buyer by the seller under this or any other contract.

13.2 The buyer shall indemnify the seller against all damages, penalties, costs and expenses to which the seller may become liable as a result of work done in accordance with the buyer's specification which involves the infringement of any patent, registered design, copyright, trademark or other intellectual property right.

## **14. TERMINATION**

14.1 If the buyer shall commit a breach of the contract or of any other of its obligations to the seller or if the buyer becomes insolvent or bankrupt or being a company makes an arrangement or composition with its creditors or has a receiver or an administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction) or ceases or threatens to cease trade or an encumbrancer takes possession of any goods or the seller reasonably apprehends any of the above are about to occur, the seller may, without prejudice to any of its rights, terminate the contract forthwith by notice to the buyer. On termination of a contract in accordance with this condition 14.1, any indebtedness of the buyer to the seller shall immediately be due and payable and the seller is relieved of any further obligation to supply goods to the buyer pursuant to that contract.

## **15. CONFIDENTIALITY**

15.1 The buyer undertakes not to disclose any information relating to the seller's trade secrets, confidential affairs or manufacturing processes and shall sign a more extensive confidentiality undertaking than here specified if requested to do so by the seller.

## **16. LAW, DISPUTE RESOLUTION & INTERPRETATION**

16.1 These terms and conditions and the contract shall in all respects be governed by and interpreted in accordance with English law. Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with a contract.

16.2 All notices are to be in writing and are to be sent to the registered office of the recipient (or, in the case of notices given to the seller, by sending an email to [enq@ipsceramics.com](mailto:enq@ipsceramics.com) and shall be deemed to have been properly served at the time when in the ordinary course of the post or transmission it would reach its destination.

16.3 No waiver by the seller of any breach of the contract by the buyer shall be considered as a waiver of any subsequent breach of the same or other provision. No variation or alteration of any of the provisions of a contract or these terms and conditions shall be effective unless it is in writing and signed by or on behalf of each party.

16.4 If any provision of these conditions is to be held invalid or unenforceable in whole or part by the court the provision shall be deemed omitted or as the case may be reduced to the extent necessary to render such provision or part provision enforceable but the validity of the other provisions and remainder of provision in question shall not be effected thereby.