



# Terms of sale

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## HOW TO CONTACT US

### USA only.

email: [usa@ipsceramics.com](mailto:usa@ipsceramics.com)  
 post: IPS Ceramics USA, Suite 300, 8712 Lindholm Drive,  
 Huntersville, NC 28078, USA  
 tel: (704) 897-3775

### Worldwide (excluding the USA).

email: [enq@ipsceramics.com](mailto:enq@ipsceramics.com)  
 post: IPS Ceramics Ltd, Unit 6 High Carr Business Park,  
 Decade Close, Newcastle-under-Lyme, Staffordshire,  
 ST5 7UH  
 tel: +44 (0)1782 711 511

**YOU MUST INSPECT THE GOODS IMMEDIATELY UPON DELIVERY, AND REPORT ANY SHORTAGE OR DAMAGE TO US WITHIN 24 HOURS. YOUR ATTENTION IS DRAWN TO CLAUSE 8.3.**

**THESE TERMS CONTAIN CLAUSES WHICH LIMIT OUR LIABILITY TO YOU. IN THE USA, YOUR ATTENTION IS DRAWN TO CLAUSES 15.5 AND 15.6. WORLDWIDE, YOUR ATTENTION IS DRAWN TO CLAUSE 16.3.**

## 1. THESE TERMS

1.1 **What these Terms cover.** These are the terms and conditions (“**Terms**”) on which we supply goods (“**Goods**”) to you.

1.2 **Why you should read them.** Please read these Terms carefully before you submit your order to us. These Terms tell you who we are, how we will deliver the Goods to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these Terms or require any changes, please contact us to discuss.

## 2. HOW WE MAY CONTACT YOU

2.1 **How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provided to us when placing your order. For contractual purposes, you consent to receive communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing, unless applicable laws specifically require a different form of communication.

2.2 **“Writing” includes emails.** When we use the words “writing” or “written” in these Terms, this includes emails.

## 3. OUR CONTRACT WITH YOU

3.1 **These terms apply.** These Terms form a contract (“**Contract**”) for the sale of the Goods to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.1 **Your order.** Your order for the Goods constitutes an offer by you to purchase the Goods in accordance with these Terms. You are responsible for ensuring that the terms of the Order and any applicable Specification (as such term is defined in Clause 4.5 below) submitted by you are complete and accurate.

3.2 **Waiver of inconsistent terms.** You waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Terms.

3.3 **How we will accept your order.** Our acceptance of your order will take place when we send you an order acknowledgement, at which point a contract will come into existence between you and us. The decision to accept your order is at our sole discretion. We will assign an order number to your order and tell you what it is in our order acknowledgement.

3.4 **If we cannot accept your order.** If we are unable to accept your order for any reason, we will inform you of this in writing and will not charge you for the Goods. We might not accept your order because the Goods are out of stock, because of unexpected limits on our resources which we could not reasonably plan for, because we have identified an error in the price or description of the Goods, because

we are unable to meet a delivery deadline you have specified or because we cannot meet special requirements or tolerances.

3.5 **Your order number.** It will help us if you can tell us the order number whenever you contact us about your order.

3.6 **Quotations.** A quotation for the Goods given by us shall not constitute an offer by us to form a Contract for the sale of the Goods; a Contract will only be formed when we send an order acknowledgement. A quotation shall only be valid for a period of 30 days from its date of issue.

## 4. OUR GOODS

4.1 **Goods may vary slightly from their pictures.** Any samples, drawings, descriptive matter or advertising produced by us and any descriptions or illustrations contained in our catalogues or brochures are for illustrative purposes only. Your Goods or their packaging or both may vary from those images. Although we have made every effort to be as accurate as possible, unless we have agreed otherwise with you in writing, all sizes, weights, capacities, dimensions and measurements indicated will be subject to our standard tolerances as set out in our Standard Tolerances Guide as at the date of your order, available on request.

4.2 **Read and comply with manufacturer’s instructions and best practice.** You must:

(a) read all instructions supplied with the Goods (or provided by the manufacturer on its website) prior to your use of the Goods, and comply with those instructions.

(b) use the Goods in accordance with best industry practice.

4.3 **Cordierite kiln furniture.** For Cordierite kiln furniture the instructions for use are available to download from our website at <http://www.ipsceramics.com/technical-data/kiln-furniture-data/>.

4.4 **Record of use.** Where the Goods are intended for use in a kiln or furnace you must keep a record of the number of firings and the temperature of each firing to which the Goods are subjected.

4.5 **Products made to your Specification.** To the extent that the Goods are to be manufactured in accordance with any specification, including any plans, designs or drawings, supplied by you (“**Specification**”), you hereby indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with any claim made against us (whether by you or a third party):

(a) for actual or alleged infringement of a third party's intellectual property rights; or

(b) for the Goods not complying with the warranty set out in Clause 5.1,

arising out of or in connection with our use of the Specification. This Clause 4.5 shall survive termination of the Contract.

## 5. QUALITY OF THE GOODS

5.1 **Warranty.** We warrant that on delivery the Goods will (subject to the tolerances as set out in our Standard Tolerances Guide as of the date of your order):

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality for the particular type and grade of Goods described in the order acknowledgement; and
- (d) be fit for any purpose held out by us in writing.

5.2 **If the Goods do not comply with the warranty.** Subject to clause 5.3, if:

- (a) you give us notice in writing within 21 days following your receipt of the Goods that the Goods do not comply with the warranty set out in clause 5.1;
- (b) we are given a reasonable opportunity of examining such Goods;
- (c) you provide us with your records maintained in accordance with clause 4.4; and
- (d) you (if asked to do so by us) return such Goods to our place of business at your cost,

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full. The foregoing shall be your sole and exclusive remedy for failure of the Goods to comply with the warranty in Clause 5.1.

5.3 **When we will not be liable for the Goods' failure to comply with the warranty.** We shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) you make any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or, in the absence of such instructions, good trade practice regarding the same;
- (c) the defect arises as a result of our following any Specification supplied by you;
- (d) you alter or repair such Goods without our written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

(f) you do not supply us with your records maintained in accordance with Clause 4.4 or those records are not complete; or

(g) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 **No further liability.** Except as provided in this Clause 5, we shall have no liability to you in respect of the failure of the Goods to comply with the warranty set out in Clause 5.1.

5.5 **These terms apply to replacement goods.** These Terms shall apply to any repaired or replacement Goods supplied by us.

5.6 **How to tell us about problems.** If you have any questions or complaints about the Goods, please contact us. You can telephone our customer service team as set out in clause 2.

## 6. YOUR RIGHTS TO MAKE CHANGES

6.1 **Changes to the Goods.** If you wish to make a change to the Goods you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Goods, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

6.2 **Cancellation.** If you wish to cancel all or part of the Contract you must give us written notice. On cancellation, you must pay to us the full price of the Goods less any savings we make due to the Contract being cancelled.

## 7. OUR RIGHTS TO MAKE CHANGES

7.1 **Minor changes to the Goods.** We may change the Goods:

- (a) to reflect changes in relevant laws and regulatory requirements; and
- (b) to implement minor technical adjustments and improvements. These changes will not affect your use of the Goods.

7.2 **Changes to these Terms.** We reserve the right to make changes to any of our terms and conditions, including these Terms, at any time. The Contract will be subject to the terms and conditions in force at the time that you place your order.

## 8. PROVIDING THE GOODS

8.1 **Delivery by us.** We will deliver the Goods to the location set out in your order or such other location as you and we may agree ("Delivery Location") at any time after we notify you that the Goods are ready for delivery.

- 8.2 **Collection by you.** Unless you and we otherwise agree in writing, we will notify you of the location where delivery will take place and from which the Goods are to be collected by you within three business days of us notifying you that the Goods are ready.
- 8.3 **Inspection by you.** You must inspect the Goods immediately upon delivery by us or our courier to the Delivery Location or collection by you. You must report any shortage in unit number, any damaged packaging, and any damaged Goods to us in writing within 24 hours of accepting delivery of the Goods, otherwise:
- (a) the correct quantity of the Goods shall be deemed to have been delivered; and
  - (b) it shall be deemed that any damage to the Goods which could have occurred during transit in fact took place following delivery to you.
- 8.4 **When we will provide the Goods.** During the order process we will provide you with an approximate date for delivery. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 8.5 **We are not responsible for delays outside our control.** We will not be liable for any delay in delivery of the Goods that is caused by an Event Outside Our Control (as such term is defined in Clause 13.3 below) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 8.6 **Our liability for failure to deliver the Goods.** If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 8.7 **If you fail to take delivery of the Goods.** If you fail to accept delivery of the Goods within three business days of us notifying you that the Goods are ready, then, except where such failure or delay is caused by an Event Outside Our Control or our failure to comply with our obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third business day after the day on which we notified you that the Goods were ready;
  - (b) we will store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance); and
  - (c) if within ten business days after the day on which we notified you that the Goods were ready for delivery you have not accepted delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods.
- 8.8 **Variation of quantity.** Subject to Clause 8.3, if we deliver up to and including 5% more or less than the quantity of Goods ordered you may not reject them, but on receipt of notice from you that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the order invoice.
9. **TITLE AND RISK**
- 9.1 **When you become responsible for the Goods.** The Goods will be your responsibility from the time we deliver the Goods to the address you gave us or you collect them from us.
- 9.2 **When you own the Goods.** You own the Goods once we have received payment in full for the Goods and any other Goods that we have supplied to you in respect of which payment has become due.
- 9.3 Until title to the Goods has passed to you, you shall:
- (a) store the Goods separately from all other goods held by you so that the Goods remains readily identifiable as our property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
  - (d) notify us immediately if you becomes subject to any of the events listed in clause 10.2; and
  - (e) give us such information relating to the Goods as we may require from time to time.
- 9.4 Subject to clause 9.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:
- (a) you do so as principal and not as our agent; and
  - (b) title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.
- 9.5 If, before title to the Goods passes to you, you become subject to any of the events listed in clause 10.2, then, without limiting any other right or remedy we may have:
- (a) your right to resell the Goods or use it in the ordinary course of your business ceases immediately; and
  - (b) we may at any time:
    - (i) require you to deliver up all the Goods in your possession that have not been resold, or irrevocably incorporated into another Goods; and

- (ii) if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover it.

## 10. ENDING THE CONTRACT

10.1 **We may end the Contract if you break it.** We may end the Contract at any time by writing to you if:

- (a) you do not make any payment to us when it is due and you still do not make payment within 7 days of us reminding you that payment is due;
- (b) you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the Goods;
- (c) you do not, within a reasonable time, allow us to deliver the Goods to you or collect them from us; or
- (d) you breach any other term of the Contract and (if such a breach is remediable) fail to remedy that breach within 7 days of being notified in writing to do so.

10.2 **We may end the Contract if you are insolvent or cease trading.** We may end the Contract at any time by writing to you if:

- (a) you have become insolvent or bankrupt or admit in writing your inability to pay your debts as they mature, or if proceedings are commenced by or against you in any jurisdiction under a provision or chapter of any bankruptcy act, or if you suffer the appointment of a receiver or trustee or make an assignment for the benefit of creditors;
- (b) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
- (c) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

10.3 **You must compensate us if you break the Contract.** If we end the Contract in the situations set out in Clause 10.1 or Clause 10.2 you must pay to us the full price of the Goods less any savings we make due to the Contract being brought to an end.

10.4 **Consequences of ending the Contract.**

- (a) On the Contract coming to an end for any reason, you shall immediately pay to us all of our outstanding unpaid invoices and interest.
- (b) The Contract coming to an end shall not affect any of the parties' rights and remedies that have accrued prior to it ending, including the right to claim damages in respect of any breach of this Contract that existed at or before the date it ended.

- (c) Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after the end of the Contract shall remain in full force and effect.

## 11. PRICE AND PAYMENT

11.1 **Where to find the price for the Goods.** The price of the Goods will be the price set out in our quotation. We take all reasonable care to ensure that the price of the Goods advised to you is correct. However please see Clause 11.4 for what happens if we discover an error in the price of the Goods you order.

11.2 **Price increase.** We may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of you or failure of you to give us adequate or accurate information or instructions.

11.3 **Additional costs.** The price of the Goods:

- (a) excludes amounts in respect of any sales tax which, where applicable, you shall additionally be liable to pay to us at the prevailing rate; and
- (b) excludes the costs and charges of insurance and transport of the Goods, which shall be invoiced to you.

11.4 **What happens if we get the price wrong.** It is always possible that, despite our best efforts, some of the Goods we sell may be incorrectly priced. We will normally check prices before accepting your order so that, where the correct price of the Goods at your order date is less than our stated price at your order date, we will charge the lower amount. If the Goods' correct price at your order date is higher than the price stated to you, we will contact you for your instructions before we accept your order. If we accept and process your order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may end the Contract, refund you any sums you have paid and require the return of any goods provided to you.

11.5 **When you must pay and how you must pay.** Unless otherwise agreed in writing:

- (a) You must pay 50% of the price of the Goods to us before we will process your order;
- (b) When the Goods are dispatched we will invoice you for the full price of the Goods and any additional costs pursuant to Clause

- 11.3 and the invoice must be paid by you immediately upon receipt; and
- (c) Payment must be made by bank transfer. We do not accept payment by credit or debit card.
- 11.6 **What to do if you think an invoice is wrong.** If you think an invoice is wrong, please contact us promptly to let us know and, in any event, within 14 days.
- 11.7 **Interest on overdue payments.** If you fail to make any payment due to us under the Contract by the due date for payment, then, from the later of (i) 14 days after dispatch of the Goods or (ii) the due date for payment, you shall pay interest on the overdue amount at the rate of 12% per annum above Royal Bank of Scotland plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- 11.8 **No set-off.** You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by you against any amount payable by us to you.
- 11.9 **Legal costs.** You must pay to us on demand and on an indemnity basis all such legal costs or expenses which we may reasonably incur from time to time in connection with:
- (a) enforcing the payment of any sum due to us under the Contract; or
- (b) successfully defending a claim brought by you relating to the Contract.
- 11.10 **Lien.** We have a general lien over and you hereby grant a security interest to us in, all of your goods in our possession (including any Goods for which we have been paid) whilst any part of the price of any Goods remains unpaid. You authorize us to take any actions required, including the filing of financing statements, to perfect our lien and security interest in such goods.
- 12. HOW WE MAY USE YOUR PERSONAL INFORMATION**
- 12.1 **How we will use your personal information.** We will use the personal information you provide to us:
- (a) to supply the Goods to you;
- (b) to process your payment for the Goods; and
- (c) if you agreed to this during the order process, to give you information about similar Goods that we provide, but you may stop receiving this at any time by contacting us.
- 12.2 **We may pass your personal information to credit reference agencies.** Where we extend credit to you for the Goods we may pass your personal information to credit reference agencies and they may keep a record of any search that they do.
- 12.3 **Providing your information to third parties.** We will only give your personal information to other third parties where the law either requires or allows us to do so.
- 13. OTHER IMPORTANT TERMS**
- 13.1 **We may transfer this agreement to someone else.** We may transfer our rights and obligations under these Terms to another organisation.
- 13.2 **You need our consent to transfer your rights to someone else.** You may only transfer your rights or your obligations under these Terms to another person if we agree to such transfer in writing.
- 13.3 **Events Beyond Our Control.** We will not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of our obligations under this Contract if such delay or failure result from an event or circumstance beyond our reasonable control ("**Event Beyond Our Control**"). If the period of delay or non-performance continues for 4 weeks, you may terminate this Contract by giving us 2 weeks' written notice.
- 13.4 **Nobody else has any rights under this contract (except someone you pass your guarantee on to).** This Contract is between you and us. No other person shall have any rights to enforce any of its terms. Neither of us will need to get the agreement of any other person in order to end the Contract or make any changes to these Terms.
- 13.5 **Entire agreement.**
- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 13.6 **If a court finds part of this Contract illegal, the rest will continue in force.** Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

13.7 **Even if we delay in enforcing this Contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your breaking this Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Goods, we can still require you to make the payment at a later date.

13.8 **Export.** You may not export any Goods purchased from us to another country if prohibited by export control laws. If you do plan to export a Goods purchased from us to another country, you must obtain any legally required export licences prior to doing so.

#### 14. WHICH LAWS APPLY TO THIS CONTRACT

If you order Goods for delivery to an address in the USA, Clause 15 shall apply and Clause 16 shall not apply. If you order Goods for delivery to an address outside the USA, Clause 16 shall apply and Clause 15 shall not apply.

#### 15. CLAUSES WHICH APPLY TO ORDERS FOR DELIVERY IN THE USA

If this clause applies by virtue of Clause 14:

15.1 **Who we are.** We are IPS Ceramics USA Ltd, a New York corporation of 19109 West Catawba Avenue, Cornelius, NC 28031.

15.2 **When you own the Goods.** You own the Goods once we deliver the Goods to the address you gave us or you collect them from us; until full payment for the Goods we shall retain a lien on the Goods as set forth in Clause 11.10.

15.3 **Inconsistent terms.** Any terms printed on your purchase order that are inconsistent with these Terms shall be deemed to be objected to by us under Section 2-207 of the Uniform Commercial Code, and our failure to specifically object to such terms shall not be construed as a waiver by us of these Terms.

15.4 **Installments.** We may deliver the Goods by installments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an installment shall not entitle you to cancel any other installment.

15.5 **EXCEPT AS SPECIFICALLY SET FORTH IN CLAUSE 5.1, THERE IS NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTY AGAINST INFRINGEMENT OF THIRD PART RIGHTS) IT IS EXPRESSLY UNDERSTOOD THAT ANY TECHNICAL ADVICE GIVEN BY OUR REPRESENTATIVES OR SALESMEN CONCERNING THE USE OR CHARACTERISTICS OF THE GOODS SOLD HEREUNDER SHALL BE CONSTRUED TO BE MERE STATEMENT OF**

**OPINION NOT BINDING ON NOR ENFORCEABLE AGAINST US, ALL SUCH ADVICE BEING GIVEN AND ACCEPTED AT YOUR RISK.**

15.6 **Our responsibility for loss or damage suffered by you.**

(a) **What we will always be liable for.** Nothing in these Terms shall limit or exclude our liability for:

- (i) fraud or fraudulent misrepresentation; or
- (ii) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

(b) **Limitations on our liability.** Subject to clause 15.6(a):

- (i) we will under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (ii) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed \$1 million (one million United States Dollars). If you require a greater level of insurance then you must contact us in writing.

15.7 **Arbitration.** The parties agree that any claim, dispute or controversy arising from or relating to this Contract, directly or indirectly, shall be resolved by arbitration conducted in accordance with the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by a panel of three arbitrators. One arbitrator shall be selected by us, a second by you, and the third of which shall be selected by the two arbitrators selected by the parties. Unless otherwise agreed, the arbitration shall be held in Cornelius, North Carolina. Each party shall bear its own counsel and expert witness costs, and the parties shall each pay one-half of the fees of the arbitrators; provided, however, the arbitrators may, in their discretion, award fees and costs to either party. Any determination or award in arbitration rendered by all or a majority of the arbitrators shall be conclusive and binding upon the parties and may be entered as a final judgment in any court having jurisdiction. Any action to enforce the arbitration provisions herein, to enforce any determination or award resulting from arbitration, or to seek remedies not available in arbitration, may be brought only in the state and federal courts located in the State of North Carolina, and the parties hereto consent to be subject to the jurisdiction of such courts.

15.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and

construed in accordance with the laws of the United States and by the laws of the State of North Carolina without regard to its conflicts of laws provisions.

15.9 **Jurisdiction.** Both you and we irrevocably agree that the state and federal courts of the State of North Carolina shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

**16. CLAUSES WHICH APPLY TO ORDERS FOR DELIVERY WORLDWIDE (EXCLUDING USA).**

If this clause applies by virtue of clause 0:

16.1 **Who we are.** We are IPS Ceramics Limited a company registered in England and Wales. Our company registration number is 07087943 and our registered office is at Unit 6, Decade Close, High Carr Business Park, Newcastle-under-Lyme, Staffordshire, England ST5 7UH. Our registered VAT number is GB982041231.

16.2 **Instalments.** We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

16.3 Our responsibility for loss or damage suffered by you.

(a) **What we will always be liable for.** Nothing in these Terms shall limit or exclude our liability for:

- (i) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- (ii) fraud or fraudulent misrepresentation;
- (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (iv) defective Goods under the Consumer Protection Act 1987; or
- (v) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

(b) **Limitations on our liability.** Subject to clause 16.3(a):

- (i) we will under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (ii) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1

million (one million pounds sterling). If you require a greater level of insurance then you must contact us in writing.

(c) **Sale of Goods Act excluded.** (If English law applies) the conditions implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

16.4 **Expert determination.**

(a) **We may instruct an expert.** In the event of any dispute between the parties regarding whether the Goods comply with the warranty set out in clause 5.1 then we may instruct a Chartered Engineer (**Expert**) in writing to produce a written decision as to whether in his opinion the Goods comply with that warranty.

(b) **How the Expert shall produce his certificate.** Save as otherwise provided, the Expert:

- (i) shall prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of two months of the matter being referred to him;
- (ii) may as necessary determine any issue involving the interpretation of any provision of this Contract, his jurisdiction to determine the matters and issues referred to him or his terms of reference;
- (iii) shall act impartially;
- (iv) shall ensure that the certification takes place with due expedition;
- (v) may inspect or require the inspection of any document, site, property, product or process as he considers just or appropriate;
- (vi) to the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate;
- (vii) if the parties do not co-operate with the Expert then he may draw such conclusions from that lack of cooperation as it deems appropriate; and
- (viii) shall act as an expert and not as an arbitrator.

(c) **Effect of the certificate.** The certificate shall be binding on the parties until the dispute or difference is finally determined by legal proceedings or by agreement. If any sum is payable as a consequence of the Expert's certificate it shall be paid without set-off or counterclaim save for liquidated and ascertained sums and the payee shall be entitled to summary judgment in respect of any sum found to be payable as a consequence of the certificate.



(d) **Costs.**

- (i) The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs.
- (ii) The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.

(e) **Replacement of Expert.** If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

- (i) We may in writing discharge the Expert and appoint a replacement Expert with the required expertise; and
- (ii) this clause shall apply to the new Expert as if he were the first Expert appointed.

(f) **Confidentiality.** All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.

(g) **Co-operation.** Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching his determination.

(h) **Expert's liability.** The Expert shall have no liability to the parties for any act or omission in relation to this appointment save in the case of bad faith.

16.5 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

16.6 **Jurisdiction.** Both you and we irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.