

# General Terms and Conditions

## Boston Ceramics LLC



### I. Scope of Application

1. The legal relationship between Boston Ceramics LLC ("Supplier") and the Purchaser in connection with deliveries and/or services by the Supplier shall be governed exclusively by these General Terms and Conditions ("agreement"). The scope of deliveries shall be stipulated in mutually consistent declarations made in writing by both parties. Any deviations from, or supplements to, these General Terms must be established in writing.

2. These General Terms reflect all the agreements, understandings, representations, conditions, and warranties by and between the parties. Neither party shall be liable for any representation made unless it is expressly set forth in this agreement, and this agreement may not be modified or amended except in writing signed by an authorized representative of both of the parties.

3. The granting of rights or the involvement of third parties in the contractual relationship requires the prior written consent of the Supplier. This agreement may not be assigned by the Purchaser without the written consent of Supplier.

4. It is agreed that this agreement will be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to the principles of conflicts of law thereof. This also applies to legal relationships with foreign customers. Application of the UN Sales Convention is precluded.

### II. Formation of Contract

1. All offers made by the Supplier are non-binding with regard to prices, quantities, delivery terms, and additional services unless otherwise explicitly stated in the offer. A contract is formed only by a written order confirmation or by the actual performance of services, and the scope of the contract shall be limited solely to the terms on which the writings of the parties agree or the scope of the services performed.

2. Offers presented to the Purchaser may not be disclosed to third parties without the prior written consent of the Supplier to such disclosure.

3. Any commitments, agreements, representations, or warranties made by employees of the Supplier in connection with the formation of the contract take effect only upon written confirmation by an authorized representative of the Supplier.

4. The Supplier reserves the right, even after the order has been confirmed, to make modifications to the specifications of the offer for technical or legal reasons or due to future market requirements. Any such modifications, shall be in writing and written notice will be provided to the Purchaser.

### III. Prices, Payment Terms, Delays in Payment

1. Until a contract is formed, the prices presented in the offer are estimates and are for illustrative purposes only. Actual contracted prices shall be based on the prevailing cost factors at the time when the contract is formed.

2. Unless otherwise agreed, payments are due within 30 days net after the invoice is received.

3. The payment period begins as soon as delivery has been made in full and the invoice has been received.

4. In the case of overdue payment, the Supplier will charge interest from the due date at a rate equal to the lesser of (a) 8 percentage points above the relevant base rate from the due date or (b) the highest percentage allowed under applicable law. The right to claim further damages due to the delay in payment is expressly reserved. Purchaser absolutely and unconditionally guarantees to Supplier the prompt payment, when due, of all amounts owed to the Supplier of whatever nature arising under this agreement. Supplier may decline to make deliveries under this agreement, except for cash with order, and withdraw any credit terms and demand payment for any outstanding account owed by Purchaser to Supplier.

5. The Purchaser is only entitled to offset or retention if its claims are undisputed and established or explicitly recognized by the Supplier.

### IV. Delivery Terms, Delays in Performance, Partial Deliveries

1. The prerequisite for compliance with delivery deadlines is the timely provision of all documents, necessary approvals and releases, and in particular of requisite materials (documents, drawings, images, graphics, software on data storage media) to be delivered by the Purchaser, and compliance on the Purchaser's part with the agreed terms of payment and other obligations. If these prerequisites are not fulfilled, then the deadlines shall be extended for an appropriate period of time; this condition shall not apply in the event that the delay is caused by the Supplier.

2. In the event that a delay in performance becomes foreseeable, the Supplier shall promptly notify the Purchaser and the Purchaser shall, in reasonable time, inform the Supplier of its decision on how it intends to proceed. A delay in performance due to the mode of shipment does not confer upon the Purchaser the right to a reduction in the invoice amount, to rejection of the delivery, or any similar right.

3. If a delivery deadline cannot be met due to one of the events under a-d below, the deadline shall be extended by an appropriate period of time:

a. force majeure, e.g. war, acts of terrorism, riot, insurrection, energy and raw materials shortages, or similar events beyond the control of the parties (e.g. fire, flood, strikes, lockouts or other industrial disturbances, operational disruptions, or traffic obstructions),

b. viruses or other third-party attacks on the Supplier's IT system, to the extent that such attacks take place despite ordinary care on the part of the Supplier with regard to preventive measures,

c. obstacles due to Massachusetts, US or other applicable local, national or international regulations in the area of trade law, or due to other circumstances which are not under the Supplier's control, or

d. delays or deficits in supplies or deliveries to the Supplier.

4. Supplier will not be liable in any event for any loss, liability, damage, or expense arising out of this section of the agreement or its performance or non-performance, unless such loss, liability, damage, or expense shall be due to gross negligence or willful misconduct of Supplier.

5. A reasonable delay in delivery does not entitle the Purchaser to withdraw from the contract or to reject delivery.

6. Partial deliveries and partial performance within the agreed delivery and performance periods are permissible if they are reasonably acceptable for the Purchaser.

## **V. Shipment Terms, Transfer of Risk**

1. Unless otherwise agreed in writing, the place for delivery of goods is the Supplier's place of business but in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery. Parties may agree, in writing, to alternate delivery methods.

2. If shipment takes place in the form of collection by the Purchaser, goods will be handed over without verification of the Purchaser's designated collector's authorization; the Purchaser shall not have any claims against the Supplier in the event of errors in relation to the handover of goods.

## **VI. Security Interest**

1. As security for prompt payment, Purchaser hereby grants, assigns, transfers, and conveys to the Supplier continuing security interests in all of Purchaser's rights, title, and interests in the goods delivered by the Supplier to the Purchaser until all receivables due from the Purchaser arising from these transactions have been satisfied in full. The Supplier retains a security interest in any goods delivered to the Purchaser until all receivables due from the Purchaser arising from these transactions have been satisfied in full. This also applies to future and conditional receivables. In particular, as a condition of transfer of sale, ownership passes to the Purchaser only if, and to the extent that, the Purchaser releases the Supplier from all contingent liabilities which the Supplier has entered into in the Purchaser's interest, particularly in the case of payment by bill of exchange or check.

2. The Purchaser is obligated to handle the goods delivered by the Supplier, subject to Supplier's security interest, with care.

3. The Purchaser may neither pledge, nor assign as security, the goods subject to Supplier's security interest. Resale of the goods subject to retention of title is prohibited. The Purchaser specifically authorizes the Supplier to file UCC-1 financing statements in any appropriate jurisdiction and at any time and agrees to cooperate with the Supplier in the preparation and filing of such documents.

4. Purchaser agrees that in the event of insolvency or bankruptcy proceedings, the Purchaser is obligated, prior to the start of the proceedings, to designate the goods subject to Supplier's security interest as the property of the Supplier and transfer possession of the collateral to the Supplier.

5. As long as Supplier's security interest exists, the Supplier is entitled to demand information from the Purchaser at any time as to the goods subject to the security interest it still has in its possession, and where said goods are located. Furthermore, the Supplier is entitled to view the goods subject to the security interest on site, and to repossess them, at any time.

6. The Purchaser must inform the Supplier of any attachments, confiscations, or other interventions by third parties in writing, without delay. If a justified interest can be plausibly demonstrated, the Purchaser must provide to the Supplier, without delay, the information required in order for the Supplier to assert its rights against the Purchaser, and must issue the relevant documents.

7. The treatment, processing, or reconfiguration by the Purchaser of the delivered goods subject to Supplier's security interest do not give rise to any liabilities. If the delivered goods subject to the security interest are combined and processed with other goods not belonging to the Supplier, the Supplier acquires security interests in the new product.

## **VII. Warranty, Complaints**

1. Parties understand that products may vary with regard to quality of materials, coloration, dimensions, etc. Product measurements and dimensions may also vary due to shrinkage or expansion of the materials used or to the geometry of the data.

2. Product variations which subsequently emerge due to external influences such as weather conditions, light, moisture, etc. may give rise to warranty claims only to the extent that they are attributable to improperly performed work on the part of the Supplier.

3. Products which are manufactured according to designs or data provided by the Purchaser are under warranty only with regard to whether the products correspond to the Purchaser's specifications. TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAWS, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4. The warranty period is one year as from the transfer of title from the Supplier to the Purchaser. The minimum statutory warranty period shall apply where longer periods are prescribed by law. There are no warranties which extend beyond the description on the face hereof.

5. Claims of the Purchaser due to a defect can only be asserted if the Purchaser has duly complied with its obligations to inspect the product and give notice of defect in a timely manner. Purchaser acknowledges that Purchaser is making this purchase after, and in complete reliance on Purchaser's full and entire inspection of the goods to be sold under this agreement and not by reason of any representation made by or on behalf of Supplier as to the merchantability, specific attributes, or otherwise of the products and goods.

The goods supplied must be carefully examined as soon as they are delivered to the Purchaser or to a third party specified by the Purchaser. Such goods are considered to have been accepted if the Purchaser does not submit to the Supplier a complaint, in writing, regarding obvious defects, or other defects which are identifiable upon immediate, careful inspection, within seven working days after delivery of the goods supplied, or otherwise within seven working days after the discovery of the defect or the point at which the defect became apparent to the Purchaser in the course of normal use of the goods supplied, without closer inspection. The criterion for timely submission is the point at which the Supplier receives the complaint. If no complaint is submitted or if the complaint is submitted late, the Purchaser loses its right to assert claims due to any defects in the purchased goods.

6. In the case of a defect, the Supplier has the option to either remedy the defect, or to supply a product which is free from defects. The Supplier shall be given the opportunity to remedy the defect within a reasonable period of time. In the event that a replacement product is delivered, the Purchaser is obligated to return the defective item. In the event Supplier fails to remedy the defect or supply a product free from defects, the Purchaser can withdraw from the contract or claim a price reduction.

7. Claims of the Purchaser relating to costs entailed in remedying the defect, in particular transport, shipping-related, labor and material costs, are excluded where the expenses increase because the article in question was subsequently brought to a location other than the Purchaser's place of business, unless the transfer is appropriate due to the intended use of the article.

8. Rights of recourse of the Purchaser against the Supplier related to any warranty claims (whether express or implied) shall be in accordance with the Massachusetts Uniform Commercial Code – Sales and shall be restricted by the terms of this agreement.

9. Warranty claims are excluded insofar as they relate to deterioration in the goods due to natural wear and tear or to improper handling of the goods. Warranty is also excluded due to deterioration because of improper alterations made by the Purchaser or by unauthorized third parties. Liability for defects is ruled out in the case of defects due to improper handling, improper assembly, installation or processing, failure to follow operating and/or maintenance instructions, or natural wear and tear.

10. There shall be no warranty on samples and prototypes.

## VIII. Liability

1. The Supplier's liability is restricted to breach of contract damages recoverable under the Massachusetts Uniform Commercial Code – Sales. The parties specifically agree that the Supplier will not be liable in any event for any loss, liability, damage, or expense arising out of or in connection with this agreement or its performance or non-performance by Supplier, unless such loss, liability, damage, or expense is caused by the gross negligence or willful misconduct of the Supplier. The parties additionally agree that the Supplier will not be liable in any event for any incidental, indirect, special, punitive, or consequential damages.

## IX. Industrial Property Rights and Copyrights

1. By entering into this agreement, Purchaser hereby grants to Supplier, a revocable, royalty free, worldwide license to make use, sell, copy, distribute, display, prepare derivative works, or utilize in any way deemed by Supplier to be commercially reasonable for the purpose of filling Purchaser's order(s), in any and all of Purchaser's materials, written and unwritten, including but not limited to cost estimates, drawings, designs, blueprints, data, patents, copyrights, mask works, trademarks, and/or trade secrets reasonably necessary to complete Purchaser's order.

2. Purchaser represents and warrants that it is the sole owner, sole or exclusive licensee, or otherwise has authority to grant the rights referred to in Section IX Paragraph 1.

3. Purchaser agrees to hold harmless and indemnify Supplier for any and all damages, including reasonable attorney's fees, incurred by Supplier arising from any and all claims of infringement of patents, trademarks, copyrights, mask works, and/or trade secrets against Supplier by any third-party claiming rights in any of the materials or intellectual property referred to in Section IX Paragraph 1.

4. By entering into this agreement, Supplier in no way grants any ownership, license, or any other rights in any materials created by Supplier in the course of producing or completing Purchaser's order to Purchaser. Supplier shall own any and all materials it creates in the course of producing or completing Purchaser's order including but not limited to inventions, documents, data, cost estimates, drawings, designs, whether or not protectable under the intellectual property laws of any state or the United States including patent, copyright, mask work, trademark, and/or trade secret law.

5. Purchaser agrees to take reasonable steps to ensure that any of Supplier's trade secrets lawfully obtained by Purchaser are not divulged to or misappropriated by any third party.

## X. Data Storage

Personal information/data is stored and safeguarded in accordance with the requirements of M.G.L. Ch. 93H and 201 CMR 17.00.

## XI. Governing Law, Place of Jurisdiction

1. The sole venue and place of jurisdiction for all legal disputes arising directly or indirectly from the contractual relationship is Suffolk County, Massachusetts.

2. Any disputes between the Supplier and the Purchaser, including these General Terms and the orders, commissions, etc. to which they relate, and the interpretation of same, shall solely be governed by the laws of the Commonwealth of Massachusetts.

3. If any provision of this agreement is invalid, unenforceable, or not enforced, this agreement shall be considered divisible as to the provisions and the remainder of the agreement valid and binding as though the provisions were not included in the agreement.

## **XII. Export Compliance**

1. All goods sold pursuant to this agreement are subject to all applicable laws, regulations, orders, and other limitations on the export and re-export of goods, commodities, technical data, and software. PURCHASER SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE EXPORT AND RE-EXPORT CONTROL RULES THAT APPLY TO ITS RESALE ACTIVITIES AND further agrees that it will not export, re-export, resell, or transfer any export-controlled goods, commodities, technical data, or software: (i) in violation of such limitations imposed by the United States, or any other relevant national

government authority; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals; (iii) to any country or national or resident of a country to which trade is embargoed by the United States, Germany, or any other relevant national authority; (iv) to any person or firm on any relevant government agency restricted party lists, (examples: United Nations Sanctions list, United States Denial Lists, Office of Foreign Assets Control Specially Designated Nations List, etc.); or, (v) for use in, or to an entity that might engage in, any sensitive nuclear, chemical, or biological weapons, or missile technology end-uses unless authorized by the United States Government and any other relevant government agency by regulation or specific license.

2. Purchaser acknowledges that it is familiar with United States laws and regulations concerning the export or re-export of U.S. goods, materials, products, technology, and related technical data, or the direct product thereof, to unauthorized destinations and persons and Purchaser agrees to abide by all such regulations in respect of all information or technology supplied by Supplier under this agreement.