

TERMS & CONDITIONS OF PURCHASE – JANUARY 2017
 1. DEFINITIONS

- 1.1 **"Buyer"** shall mean Dyson Technical Ceramics Ltd, a company registered in England and Wales under number 8169018 and whose registered office is at Toley Works, Baslow Road, Sheffield, S17 3BL.
- 1.2 **"Contract"** shall mean the contract between the Buyer and the Seller incorporating the Purchase Order (including any documents referred to therein), these terms and conditions of purchase, and the Seller's acceptance of the Purchase Order.
- 1.3 **"Contract Price"** shall mean the sum stated in the Purchase Order to be paid for the supply of the Goods or Services.
- 1.4 **"Date for Delivery"** shall mean the date for delivery of the Goods or performance of the Services specified in the Purchase Order.
- 1.5 **"Force Majeure"** shall mean any circumstances beyond the reasonable control of the parties (such circumstances not to include raw material shortages, price increases or industrial action of the Seller's own, subcontractors' or suppliers' workforce).
- 1.6 **"Goods"** shall mean all goods supplied under the Purchase Order including labels, instructions or handbooks relating to the Goods.
- 1.7 **"IPR"** means any patent, registered design, copyright, database right, design right, topography right, trade or service mark, trade or business name, domain name, trade secret, know-how and right of confidence and any other intellectual property right of any nature, in all cases whether or not registered or registrable in any country, for the full term of such rights, including any extension or renewal of the terms of such rights and including registrations and applications for registration of any of these rights to apply for the same anywhere in the world.
- 1.8 **"Purchase Order"** shall mean the written order placed by the Buyer with the Seller for the supply of Goods or Services.
- 1.9 **"Seller"** shall mean the person, firm or company issued with the Purchase Order.
- 1.10 **"Services"** shall mean the services referred to in the Purchase Order.
- 1.11 **"Specification"** means the specification for the Goods and/or Services referred to in the Purchase Order.

 2. GENERAL

- 2.1 These terms and conditions supersede and take precedence over all other terms and conditions and no terms and conditions of sale submitted or referred to by the Seller in any quotation or tender or during the course of negotiations between the parties shall form part of the Contract unless the Buyer specifically agreed in writing to their incorporation in the Contract and confirmed such agreement in the Purchase Order.
- 2.2 In the event of any conflict between the Contract documents, the order of precedence shall be 1st: Purchase Order, 2nd: these terms and conditions.
- 2.3 Any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

 3. AMENDMENT OF CONDITIONS

- 3.1 Neither party shall be bound by any variation, waiver or addition to these conditions except as agreed by the parties in writing and signed on their behalf by one of their duly authorised officers.

 4. SPECIFICATION, DESCRIPTION, SAMPLE AND STANDARD

- 4.1 The Goods and Services shall conform in all respects to the provisions of the Contract and in particular to:
- 4.1.1 the Specification;
- 4.1.2 any drawings, descriptions or samples contained or referred to in the Purchase Order;
- 4.1.3 any advertisements, catalogues or any literature or correspondence in relation to the Goods or Services relied upon by the Buyer, including any such material appearing on the Seller's website;
- 4.1.4 any standards specified in the Purchase Order and where no standard is specified, with the relevant British Standards; and
- 4.1.5 any legislative requirements current at the Date for Delivery.
- 4.2 Packing and labelling requirements specified by the Buyer in its Purchase Order or required by law (in particular health and safety law) must be strictly adhered to by the Seller and the Seller must provide necessary information about the composition of the Goods.
- 4.3 Any instruction manuals or training as specified by the Buyer in the Purchase Order or normally required to operate the Goods must also be supplied at no additional cost.
- 4.4 Spares and after sales service must be available for at least the period specified in the Purchase Order and, if such period has not been specified, such period as is reasonable concerning the type, value and proposed use and maintenance requirements of the Goods.

 5. WARRANTIES

- 5.1 The Seller warrants in relation to the Services, that at all times:
- (a) it shall perform the Services using all reasonable skill, care and diligence in accordance with good industry practice and shall ensure that it and its employees and sub-contractors have the skill and expertise required to carry out the Services to the standards and timing required in the Contract;
- (b) the Services and the manner in which it supplies them shall comply with the Specification and all applicable laws, regulations and standards in the territories in which the Services are supplied;
- (c) it shall not act in any way which is prejudicial to the Buyer's interests or business;
- (d) the Services shall be fit for all and any express or implied purposes for which they are supplied; and
- (e) it and its employees and subcontractors shall obey all lawful and reasonable directions of the Buyer (including when at the Buyer's premises the Buyer's health and safety and security policies) and the Buyer may exclude any of the Seller's employees or subcontractors from its premises for any actual or threatened breaches of such policies.
- 5.2 The Seller warrants in relation to the Goods for a period of 12 months from delivery, that at all times they shall:
- (a) conform to the quantities and Specification set out in the Contract and any samples supplied;
- (b) be of satisfactory quality free from all defects and liens, charges and encumbrances;
- (c) be fit for all and any express or implied purposes for which they are supplied;

- (d) be properly packed, secured and labelled so as to reach their destination in good condition under normal conditions of transport, having regard to the nature and composition of the Goods;
- (e) be supplied at no additional cost with all necessary safety data sheets, instructions and training materials; and
- (f) comply with all applicable laws, regulations and standards in the countries where supplied including those relating to manufacture, supply and delivery.

 6. DELIVERY & PERFORMANCE

- 6.1 Time shall be of the essence of the Contract and the Goods and Services shall be delivered or performed by the Date for Delivery or any extended date as provided for under clause 13.1. If no Date for Delivery is specified, they shall be delivered / performed within a reasonable time of placing the Purchase Order.
- 6.2 The Seller shall supply such delivery schedule as the Buyer may reasonably require. The Seller shall give the Buyer notice immediately if such schedule is or is likely to be delayed and the Buyer shall have the right to require the Seller to take such steps (at the Seller's expense) as may be required in order to deliver the Goods and/or perform the Services by the Date for Delivery.
- 6.3 The Seller shall as part of the Contract Price deliver the Goods or perform the Services at the delivery point specified in the Purchase Order during the Buyer's normal working days and hours. Unless otherwise specified in the Purchase Order delivery shall include the off-loading of the Goods at the point of delivery and delivery shall be deemed to be complete upon completion of off-loading. If the Goods are incorrectly delivered, the Seller will be responsible for any additional expense incurred in delivering them correctly.
- 6.4 If a licence or consent of any government or other authority is required for the supply, carriage or use of the Goods, the Seller will obtain such licence or consent at its own expense and produce evidence of it to the Buyer on demand. The Buyer is entitled to withhold or delay payment of the Contract Price if the Seller fails to obtain any licence or consent, and the Seller shall pay any additional costs or expenses incurred by the Buyer as a result of such failure.

 7. PASSING OF PROPERTY

- 7.1 The Goods shall become the property of the Buyer when they have been delivered in accordance with clause 6 above without prejudice to the Buyer's right to reject the Goods under Clause 11. If payment is made prior to delivery, the Goods will become the property of the Buyer when payment is received by the Seller. When the Buyer pays the whole or part of any tool, mould or pattern costs such items will become the property of the Buyer once the item is complete and has been paid for. If any tool, mould or pattern is to remain at the Seller's premises (including those the Buyer may supply itself) to enable ongoing supply of Goods to be made or for any other reason, the Seller will immediately release such tools, moulds or patterns to the Buyer upon receipt of the Buyer's written request. Whilst any Goods or items remain at the Seller's premises the Seller shall insure them and maintain them in good order and condition.
- 7.2 The Buyer shall acquire all IPR in any original Goods or Services including computer programs which it commissions from the Seller and the Seller is to execute any documents required to vest or transfer said IPR to the Buyer.

 8. PASSING OF RISK

- 8.1 The risk in the Goods shall pass to the Buyer on completion of delivery in accordance with clause 6 provided that the risk in any Goods rejected by the Buyer under Clause 11 shall revert to the Seller immediately upon notice being given by the Buyer of such rejection.

 9. CONTRACT PRICE

- 9.1 Unless otherwise specifically stated in the Buyer's order, the price for the Goods and Services shall be fixed and firm and is to include all packaging, shipping, insurance and delivery costs. Goods imported into the UK shall be delivered on the basis of DDP (Incoterms 2010). The Seller shall provide the Buyer with all such discounts usually granted by the Seller to customers similar to the Buyer.

 10. PAYMENT TERMS

- 10.1 The Seller shall submit a VAT invoice as soon as delivery or performance has been completed in the manner described in the Purchase Order. Unless stipulated otherwise in writing by the Buyer, payment shall be made 60 days from the end of the month of receipt of an invoice properly prepared and supported by an appropriate statement of accounts unless by that time the Buyer has rejected the Goods or Services or any of them under clause 11. If the Buyer has rejected the Goods or Services without having made payment and such Goods or Services are thereafter replaced by the Seller with Goods or Services which conform to the Contract then unless stipulated otherwise in writing by the Buyer, payment shall be made for the Goods 60 days from the end of the month of receipt of a properly prepared invoice and supported by an appropriate statement of accounts. No payment made by the Buyer shall imply acceptance of the Goods or Services and is without prejudice to any claims the Buyer might have against the Seller.

- 10.2 Without prejudice to any other right or remedy, the Buyer shall have the right to withhold the payment of any sums due under the Contract or otherwise by way of set-off against other claims it may have against the Seller whether arising out of the Contract or otherwise.

 11. REJECTION

- 11.1 If any of the Goods or Services do not comply strictly with any of the terms of the Contract the Buyer may reject them within a reasonable time of delivery or performance or within a reasonable time after any latent defects in the Goods or Services become apparent and irrespective of whether they have been accepted or paid for. Section 15A of the Sale of Goods Act 1979 shall not apply. The Seller shall forthwith replace any such rejected Goods or Services with Goods or Services which conform to the Contract, failing which the Buyer shall have the right to purchase elsewhere replacement Goods or Services of the same or similar description and without prejudice to any other rights which the Buyer may have to recover from the Seller any payments made in respect of the rejected Goods or Services, including any storage costs incurred until their return and the difference between the price of the rejected Goods or Services and the replacement Goods or Services.

- 11.2 The Buyer may return any rejected Goods to the Seller carriage paid and at the Seller's risk.

 12. INSPECTION

- 12.1 Prior to delivery, the Buyer shall be entitled to check, inspect and test the Goods at the Seller's or its subcontractor's works and may as a result of this checking reject any of the Goods or parts thereof which are not or the Buyer is satisfied will not be in accordance with the Contract. Any inspection, checking, or approval under this clause shall not relieve the Seller of any of its obligations under the Contract and does not constitute acceptance of the Goods.

 13. DELAYED DELIVERY

- 13.1 If the Seller is delayed in performing the Contract by any act or default of the Buyer or any circumstance of Force Majeure, the Buyer shall grant the Seller such extension to the Date for Delivery as may be reasonable with specific regard to the Buyer's own operational and contractual requirements. Notwithstanding any such extension the Seller shall use its best endeavours to deliver the Goods or perform Services by the Date for Delivery. If the Seller fails to deliver the Goods or perform Services by the Date for Delivery or any

extended date, the Buyer shall be entitled to terminate the Contract and purchase Goods or Services of the same or similar description from elsewhere and recover from the Seller any amount paid by the Buyer above the Contract Price without prejudice to its other rights in respect of the Seller's breach of contract.

 14. DEFECTS LIABILITY

- 14.1 Without prejudice to any other remedy, the Seller shall without delay and cost to the Buyer repair or replace at the Buyer's option any of the Goods which are or become defective within 12 months from delivery or 12 months from putting into service (or any additional period the Seller normally covers the Goods for), due to any breach of the warranties set out in clause 5. Any Goods so replaced or repaired shall be subject to like obligations for a further period of 12 months from their redelivery or putting into service or for any additional period normally covered (as applicable) after repair or replacement.

- 14.2 If the Seller fails to repair or replace defective Goods in accordance with the requirements of clause 14.1, the Buyer shall have the right to have the work of repair or replacement undertaken by others and to recover the costs of so doing from the Seller.

- 14.3 The Seller shall further be liable to the Buyer for all loss or damage arising out of any defect in the Goods, or otherwise arising from the Seller's failure to fulfil any obligation under the Contract (howsoever arising and to whomsoever occurring) and the Seller shall indemnify the Buyer against all such loss or damage in full.

 15. LIMITATION OF LIABILITY

- 15.1 Subject to the Buyer's liability to pay the Contract Price to the Seller, the Buyer accepts no liability to indemnify the Seller for any loss, damage, expenses, costs, charges, claims, demands or actions incurred by the Seller whether under the Contract or otherwise, including any liability to any third party. The aggregate liability of the Buyer under the Contract or otherwise (if any) shall not in any event exceed the Contract Price. Nothing in this clause 15.1 shall operate so as to exclude or limit the Buyer's liability for personal injury or death attributable to its own negligence, or for fraud or fraudulent misrepresentation, or so as to exclude or limit any other liability of the Buyer that cannot be excluded or limited by law.

- 15.2 The Buyer shall be entitled to cancel a Purchase Order at any time prior to delivery and pay the price of the Goods or Service so cancelled less the saving in cost to the Seller from such cancellation.

 16. FORCE MAJEURE

- 16.1 Subject to the requirements of clause 13.1, neither party shall be liable to the other for its failure to perform any of its obligations under the contract to the extent that such failure is a result of an event of Force Majeure provided that the other party is notified in writing of such circumstances by the party affected as soon as they become aware of their occurrence.

 17. IPR INFRINGEMENT

- 17.1 The Seller shall indemnify the Buyer from and against all costs, claims, proceedings or demands in respect of any infringement of third party IPR arising out of the sale or use of any Goods or Services supplied under the Contract, except where such infringement results directly from any Specification submitted by the Buyer.

 18. ASSIGNMENT AND SUBCONTRACTING

- 18.1 The Seller cannot assign the Contract nor employ subcontractors for the whole Contract but can subcontract part of the Contract with the Buyer's written consent, which shall not be unreasonably withheld. Such consent is not required for the subcontracting of materials or minor items or any item which is specifically dealt with in the Contract. The Seller is responsible for all work and Goods supplied by subcontractors as if they are its own and shall ensure that the terms of all subcontracts provide for the Buyer's rights as stated in the Contract.

 19. TERMINATION

- 19.1 If the Seller 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 buyer reasonably apprehends any of the above are about to occur, the Buyer may, without prejudice to any of its rights, terminate the Contract forthwith by written notice to the Seller or to any person in whom the Contract may have become vested.

 20. CONFIDENTIALITY

- 20.1 The Seller undertakes not to make any unauthorised use of, nor disclose any information relating to the Buyer's trade secrets, confidential affairs or manufacturing processes and in certain circumstances may be required to sign a more extensive confidentiality undertaking than here specified.

 21. LAW, DISPUTE RESOLUTION & INTERPRETATION

- 21.1 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.
- 21.2 All notices are to be in writing and to be sent to the registered office of the recipient 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.
- 21.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or other provision.
- 21.4 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 the provision in question shall not be affected thereby.

- 21.5 A person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.