

1. DEFINITIONS

- 1.1 "seller" shall mean Dyson Technical Ceramics Ltd (a company registered in England and Wales under number 8169018 and whose registered office is at Tolley Works, Baslow Road, Sheffield, S17 3BL) 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, incorporating these terms and conditions and 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, incorporating the seller's quotation, these terms and conditions, any purchase order accepting the quotation and the seller's acceptance or acknowledgement of a purchase order, but not incorporating any terms and conditions of purchase.
- 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.
- 1.7 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 and take precedence over 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 otherwise implied by custom, practice or course of dealing.
- 2.2 No contract shall arise between the seller and the buyer other than by the seller's acceptance of a purchase order, which 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. The seller does not accept any liability for any loss or damage arising from any misuse of the goods.

3. SPECIFICATION AND DESCRIPTION SAMPLE AND STANDARD

- 3.1 The seller undertakes that the goods will conform to 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 that such changes do not materially affect the use of the goods. 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 The goods shall be of the quality specified in the seller's quotation and, if no quality is so specified, the goods shall be of satisfactory quality. 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 the provisions of this condition 4.1 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, however caused.
- 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. If the seller shall fail to deliver the goods by the firm delivery date or period or any extension to the same then the seller shall pay as liquidated damages such sum as may be specified in the quotation, or if no sum is so specified, at the rate of 0.25% of the value of the goods delayed for each week of delay up to a maximum of 5% of the contract price of the goods for which delivery is delayed, unless it can reasonably be concluded from the circumstances that the buyer has suffered no loss. The payment by the seller of such liquidated damages represents a genuine pre-estimate of the loss likely to be suffered by the buyer in consequence of the delay and shall be in full and final satisfaction of the seller's liability for delay and to the exclusion of any other remedy of the buyer for the delay.
- 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 by the buyer and accepted by the seller.

5.4 The seller shall deliver the goods as specified in the contract. If, in accordance with the contract, goods are to be given to a carrier for onward transmission to the buyer, then delivery to the carrier, or delivery as specified in the contract, shall constitute delivery to the buyer and the cost of carriage will be charged as extra including any duty or landing charges including any appropriate Value Added Tax (VAT). On any occasion when goods are to be sold "ex-works", such goods shall be deemed to have been delivered upon notification to the buyer that they are available for collection. If the buyer is unable to accept delivery upon notification as aforesaid, the seller will arrange for their storage but this will not affect the due date for payment of the invoice and the buyer shall be liable for any storage and associated insurance costs. Where goods are not to be sold ex-works, delivery will take place in accordance with the requirements of the corresponding Incoterm.

5.5 The seller may effect delivery in one or more instalments. Where goods are delivered in instalments each delivery shall constitute a separate contractual arrangement and any failure to deliver any one or more of the instalments in accordance 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.

5.6 If goods are delivered on pallets or with special packaging and the seller requests the return of said pallets and/or special packaging, these must be returned carriage paid in good condition within 30 days of receipt by the buyer or they will be charged at cost and the seller will be entitled to raise an appropriate invoice.

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. 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 and irrevocable access to the place at which the goods are stored 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 and the cost of removal or delivery-up as aforesaid shall be for the buyer's sole account.

6.2 The buyer may sell the goods in the ordinary course of its 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 held on trust for the seller in a separate bank account. 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. Except on those occasions when goods are sold ex works, if the buyer so instructs the seller, 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 (including any Value Added Tax (VAT)).

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, including any penalty paid or payable by the seller.

8. CONTRACT PRICE

8.1 The contract 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 any other costs of production, or a change in exchange rates, or an increase or imposition of any tax, duty or other levy, or errors or omissions 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 contract price, the amount of such increase shall be added to the contract price.

9. PAYMENT TERMS

- 9.1 The seller shall invoice the buyer for the goods on delivery and the buyer shall pay the seller for the goods in full within 30 days of the date of the invoice unless other payment 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 the seller for the goods in full by the due date for payment referred to in condition 9.1 then the seller shall be entitled without further notice from that date to charge interest on the outstanding amount at the rate of 5% per annum above the Base Rate of Lloyds Bank plc from time to time in force, accruing daily, without deduction of tax. Additionally, the seller reserves the right to refuse to deliver any further goods under this contract or any other purchase order until payment has been received in full or to require that payment is made in advance for the same in all cases without thereby incurring any liability whatsoever to the buyer. 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 by the due date.
- 9.3 The supplier reserves the right to alter, withhold 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.

10. ACCEPTANCE

10.1 The buyer shall inspect the goods upon delivery and shall be deemed to have inspected and accepted them unless within 14 days of delivery the buyer has notified the seller that they are not 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 that 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.

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.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.
- 11.3 Nothing in these terms and conditions excludes or limits the liability of the seller:
- (a) for death or personal injury caused by the seller's negligence; or
 - (b) for any matter which it would be illegal for the seller to exclude or attempt to exclude its liability; or
 - (c) for fraud or fraudulent misrepresentation.
- 11.4 Subject to condition 11.2 and condition 11.3:

(a) the seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the contract price; and

(b) the seller shall not be liable to the buyer for loss of profit, loss of business, loss of use, loss of production, loss of contracts, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for indirect or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

11.5 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 up to and including the date of cancellation, including the cost of the raw materials and manufacturing costs incurred up to and including that date. In such cases party 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 contract 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 for which the seller may become liable as a result of work done in accordance with the buyer's specification if the seller's use of said specification infringes any third party patent, registered design, copyright, trademark or other third party 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 written 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 the contract.

15. CONFIDENTIALITY

15.1 The buyer undertakes not to make any unauthorised use of, nor 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 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 the remainder of provision in question shall not be affected thereby.