

1. Definitions

In these conditions:

- “**Ceramicx**” means Ceramicx Ireland Limited of Gortnagrough, Ballydehob, County Cork, P81 H026, Ireland;
- “**Conditions**” means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by Ceramicx;
- “**Confirmation of Order**” means the confirmation of order issued by Ceramicx to the Customer on which reference is made to these Conditions;
- “**Contract**” means the contract between Ceramicx and the Customer for the sale and purchase of the Goods in accordance with the Conditions;
- “**Delivery Location**” means the location specified in the Confirmation of Order or such other location as the parties may agree;
- “**Customer**” means the person specified in the Confirmation of Order as purchaser of the Goods from Ceramicx;
- “**Dispatch Date**” means the dispatch date shown in the Confirmation of Order;
- “**Force Majeure**” means in relation to any person, any event, circumstances or causes beyond the reasonable control of that person (including, without limitation, any strike, lock-out, picket or other forms of industrial action or any threatened industrial action);
- “**Goods**” means the articles which the Customer agrees to buy from Ceramicx, as specified in the Confirmation of Order;
- “**Invoice**” means the invoice issued by Ceramicx in respect of the Goods;
- “**Order**” means the order form sent by the Customer to Ceramicx for the purchase of the Goods in accordance with the Conditions.
- “**Price**” means the price for the Goods as set out in the Confirmation of Order and subject to Clause 3;
- “**Specification**” means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Ceramicx.

2. Conditions Applicable

- 2.1. Subject to clause 2.4, the Conditions shall apply to all contracts for the sale of Goods by Ceramicx to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order or otherwise.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 2.3. The Order shall only be deemed to be accepted when Ceramicx issues a Confirmation of Order at which point the Contract shall come into existence.
- 2.4. Any variation to the Conditions shall be inapplicable unless evidenced by writing signed on behalf of Ceramicx by a duly authorised person. The Customer is notified that no person has been authorised by Ceramicx in this regard, and that no person may be taken by the Customer to have any such authority unless such person has presented to the Customer a written instrument, signed by a director of Ceramicx, conferring upon such person such authority in connection with the Goods.

3. Price and Payment

- 3.1. The Customer shall pay for the Goods in accordance with this clause 3.
- 3.2. The Price:
 - 3.2.1. excludes the cost of packaging the Goods which shall be invoiced to the Customer;
 - 3.2.2. excludes the cost of transport of the Goods which shall be invoiced to the Customer;
 - 3.2.3. excludes amounts in respect of value added tax which the Customer may be liable to pay to Ceramicx at the prevailing rate and which shall be invoiced to the Customer;
 - 3.2.4. excludes any customs, import or other duties charged in respect of the sale and importation of Goods into the country where the Customer is located or the Delivery Location is located all of which are the responsibility of the Customer.
- 3.3. Ceramicx may issue an Invoice to the Customer at any time after the date of the Confirmation of Order.
- 3.4. The Customer shall pay direct to Ceramicx's bank account the amounts specified in the Invoice, on the date for payment specified in the Invoice.
- 3.5. Time shall be of the essence of each of the Customer's obligations under this clause 3.
- 3.6. Interest on overdue payments under this Clause 3 shall accrue from the date when payment becomes due from day to day until the date of payment at the rate of 4% and shall accrue at such rate as well after as before any judgment.
- 3.7. All amounts due under the Invoice shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4. The Goods

The quantity and description of the Goods shall be as set out in the Confirmation of Order.

5. Warranties

- 5.1. Ceramicx warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:
 - 5.1.1. conform in all material respects with the Specification; and
 - 5.1.2. be free from material defects in design, material and workmanship.
- 5.2. Subject to Clause 5.1, if:
 - 5.2.1. the Customer gives notice in writing to Ceramicx during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 5.1;
 - 5.2.2. Ceramicx is given a reasonable opportunity of examining such Goods; and
 - 5.2.3. the Customer (if asked to do so by Ceramicx) returns such Goods to Ceramicx's place of business at the Customer's cost, Ceramicx shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3. Ceramicx 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:
 - 5.3.1. the Customer makes any further use of such Goods after giving notice in accordance with Clause 5.2;
 - 5.3.2. the defect arises because the Customer failed to follow Ceramicx's instructions as to the storage, commissioning, installation, use and maintenance of the Goods;
 - 5.3.3. the defect arises as a result of Ceramicx following any drawing, design or Specification supplied by the Customer;
 - 5.3.4. the Customer alters or repairs such Goods without the written consent of Ceramicx; or
 - 5.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
 - 5.3.6. the defect arises as a result of exceeding the average operating life of the Goods prescribed by Ceramicx.

- 5.4.** Except as provided in this Clause 5, Ceramicx shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 5.1.
- 5.5.** All other warranties or conditions (express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in these Conditions are excluded from the Contract to the fullest extent permitted by law.
- 5.6.** The Customer warrants that it shall be responsible for the specific process or application in which the Goods shall be used and shall ensure that the Goods are suitable for use within its process and plant environment.

6. Delivery of the Goods

- 6.1.** Ceramicx shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and:
- 6.2.** Ceramicx shall deliver the Goods to the Delivery Location. The Goods will be ready for dispatch on the Dispatch Date.
- 6.3.** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

7. Title and Risk

- 7.1.** The Goods shall be at the Customer's risk as and from their dispatch from the premises of Ceramicx.
- 7.2.** Title to the Goods shall not pass from Ceramicx until (i) the Customer has paid the Invoice in full, and (ii) no other sums are due from the Customer to Ceramicx.
- 7.3.** Until title to the Goods passes to the Customer in accordance with Clause 7.2, the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for Ceramicx. The Customer shall store the Goods (at no cost to Ceramicx) separately from all other goods in its possession and marked in such a way that they are clearly identified as Ceramicx property.
- 7.4.** For so long as the Goods remain the property of Ceramicx, the Customer shall not use the goods in any manner and shall not purport to, sell, charge, pledge, encumber or otherwise deal the Goods.
- 7.5.** Ceramicx shall be entitled to recover the amount of the Invoice notwithstanding that property in any of the Goods has not passed from Ceramicx.
- 7.6.** Until such time as the property in the Goods passes from Ceramicx, the Customer shall, upon request, deliver up the Goods to Ceramicx. If the Customer fails to do so, Ceramicx and/or its agents may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods.

8. Limitation of Liability

- 8.1.** The limits and exclusions in this clause reflect the insurance cover Ceramicx has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2.** The restrictions on liability in this Clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3.** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.3.1. fraud or fraudulent misrepresentation;
 - 8.3.2. breach of the terms as to the title of the Goods implied by law; or
 - 8.3.3. defective products under product liability laws.
- 8.4.** Subject to Clause 8.3, the following types of loss are wholly excluded:
- 8.4.1. loss of profits;
 - 8.4.2. loss of sales or business;
 - 8.4.3. loss of agreements or contracts;
 - 8.4.4. loss of anticipated savings;
 - 8.4.5. loss of use or corruption of software, data or information;
 - 8.4.6. loss of or damage to goodwill; and
 - 8.4.7. indirect or consequential loss.
- 8.5.** Subject to the foregoing, Ceramicx's total liability to the Customer for damage to property caused by the negligence of its employees and agents in connection with the supply of the Goods shall not exceed the amount then covered by Ceramicx's insurance for any one event or series of connected events.
- 8.6.** Subject to the foregoing, Ceramicx's total liability to the Customer in respect of all other losses arising under or in connection with the supply of the Goods, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed €20,000.

9. TERMINATION

- 9.1.** Without limiting its other rights or remedies, Ceramicx may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 9.1.1. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
 - 9.1.2. the Customer takes any step or action in connection with its entering examinership, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 9.1.4. the Customer's financial position deteriorates to such an extent that in Ceramicx's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2.** Without limiting its other rights or remedies, Ceramicx may suspend provision of the Goods under the Contract or any other contract between the Customer and Ceramicx if the Customer becomes subject to any of the events listed in Clause 9.1.2 to Clause 9.1.4, or Ceramicx reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3.** Without limiting its other rights or remedies, Ceramicx may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4.** On termination of the Contract for any reason the Customer shall immediately pay to Ceramicx all of Ceramicx's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Ceramicx shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9.5. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. Force Majeure

If either Ceramicx or the Customer is affected by Force Majeure, it shall forthwith notify the other party of the nature and extent thereof. Neither Ceramicx nor the Customer shall be deemed to be in breach of any of the Conditions, or otherwise be liable to the other by reason of any delay in performance, or non-performance, of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party hereto; and the time for performance of that obligation shall be extended accordingly.

11. General

11.1. Entire agreement.

11.1.1. 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.

11.1.2. 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.

11.1.3. Any samples, drawings, descriptive matter or advertising produced by Ceramicx and any descriptions or illustrations contained in Ceramicx's brochures and catalogues are produced for the sole purpose of giving an approximate idea of the goods referred to in them. They shall not form part of the Contract nor have any contractual force.

11.2. Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.3. Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.4. Intellectual Property. The Customer acknowledges that all intellectual property rights used in the manufacture of the Goods are the exclusive property of Ceramicx

11.5. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this Clause 11.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.6. 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 Ireland.

11.7. Jurisdiction.

11.7.1. Any dispute, controversy or claim arising out of or in relation to this Contract, including the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.

11.7.2. The number of arbitrators shall be one;

11.7.3. The seat of the arbitration shall be Zurich;

11.7.4. The arbitral proceedings shall be conducted in English.

11.7.5. Within 15 days from receipt of the Notice of Arbitration, the respondent shall submit to the Secretariat an Answer to the Notice of Arbitration together, in principle, with any counterclaim or set-off defence. The time-limit with respect to the designation of an arbitrator shall be 15 days. If the circumstances so justify, the Court may extend or shorten the above time-limits. The Expedited Procedure shall apply and the dispute shall be decided on the basis of documentary evidence only.

11.7.6. Notwithstanding the above, the parties may agree at any time to submit the dispute to mediation in accordance with the Swiss Rules of Commercial Mediation of the Swiss Chambers' Arbitration Institution.