



Terms and Conditions for Sale of Goods

1. Definitions and interpretation

- (a) “Conditions” mean the terms and conditions set out in this document as amended from time to time in accordance with these Conditions

“Contract” means the contract between the Seller and the Purchaser for the sale and purchase of Goods in accordance with these Conditions

“Goods” means the Goods (or any part of them) as set out in any Order

“Order” means the Purchaser’s order for the Goods as set out in Purchaser’s purchase order form or the Purchaser’s written acceptance of the Seller’s quotation as the case may be

“Purchaser” means the person with whom the Seller is contracting

“Seller” means Dynamic-Ceramic Limited (Registered Company No 02769778)

- (b) Headings in these Conditions are for convenience and shall not affect construction.
- (c) A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such a statute, provision or subordinate legislation as amended or re-enacted whether before or after the date of this Contract and, in the case of a statute, includes any subordinate legislation made under that statute from time to time.
- (d) Any phrase incorporating the terms ‘including’, ‘include’, ‘in particular’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.

2. Basis of Contract

- (a) These Conditions govern all sales of Goods made or agreed to be made by the Seller and apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order are complete and accurate. The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order or when the Seller despatches the Goods to the Purchaser at which point the Contract shall come into existence. No modifications to these Conditions (whether expressed or implied by the Purchaser) shall apply unless accepted in writing by the Seller’s Managing Director.
- (b) Quotations are not offers and are not binding. Quotations may be withdrawn at any time. Unless otherwise agreed in writing by the Seller, each quotation is automatically withdrawn thirty (30) days after it is issued by the Seller.
- (c) Any amendments to any Order require the Seller’s acceptance in writing and are subject to these Conditions.
- (d) Any samples, drawings, descriptive matter or advertising provided by the Seller and any descriptions or illustrations contained in the Seller’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

3. Performance of Contract

- (a) Delivery dates are approximate only, are not binding on the Seller and are not of the essence of the Contract. The Seller will endeavour to carry out the Purchaser's delivery requirements as set out in the Order provided that all necessary information is given to the Seller at the time the Order and is communicated to the Seller. The Purchaser shall accept delivery of the Goods.
- (b) The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment or the Contract as a whole.
- (c) The delivery by the Seller of a quantity of the Goods which is from ninety percent (90%) to one hundred and ten percent (110%) of the quantity ordered shall be accepted by the Purchaser as satisfaction of the quantity ordered and the Purchaser shall pay pro rata for the quantity accepted.
- (d) No claim for damage or shortages will be considered unless the Seller and the carrier are notified in writing within five (5) days of delivery.
- (e) Without prejudice to this Condition 3, delays in the delivery of the Goods will not entitle the Purchaser to refuse to take delivery of the Goods, claim damages or terminate the Contract (or any part).
- (f) The Seller shall have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Purchaser's failure to comply with its obligations under the Contract or the circumstances set out in Condition 3(h) below.
- (g) If the Purchaser wrongfully fails to take or refuses to accept delivery of the Goods or fails to give the Seller adequate or any delivery instructions then, without prejudice to any other right or remedy available to the Seller, the Seller may :-
 - (i) store the Goods until actual delivery and charge the Purchaser for the reasonable costs (including insurance and administration costs) of storage; or
 - (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the Contract or charge the Purchaser for any shortfall below the price under the Contract; and the Seller shall not be required to supply the relevant the Goods to the Purchaser and may terminate the Contract without penalty.
- (h) The Seller's obligations shall be suspended during the period and to the extent that the Seller is prevented, hindered or delayed from complying with them by any cause beyond its reasonable control including but not limited to strikes, acts or omissions of the Purchaser, lock-outs, labour disputes and compliance with any law or governmental order, rule, regulation or direction. The Seller shall notify the Purchaser as soon as reasonably practicable, stating the date and extent of suspension and the cause of it and shall notify the Purchaser as soon as reasonably practicable after removal of the cause.

4. Risk, Title, Property

- (a) Title in the Goods shall not pass to the Purchaser until the Seller has received payment in full (in cash or cleared funds) for the Goods and any other goods or services that the Seller has supplied to the Purchaser in respect of which payment has become due. Until title passes to the Purchaser, the Purchaser shall:

- (i) hold such Goods on a fiduciary basis as the Seller's bailee;
- (ii) store such Goods separately from all other Goods held by the Purchaser so that they remain readily identifiable as the Seller's property;
- (iii) not remove, deface or obscure any identifying mark or packaging on or relating to such Goods; and
- (iv) maintain such Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks with an insurer that is acceptable to the Seller. The Purchaser shall notify the Seller of any event which the Seller would be obliged to communicate to the insurer under the terms of the insurance policy within forty-eight (48) hours of such an event occurring. On request the Purchaser shall allow the Seller to inspect such Goods and the insurance policy;
- (v) but the Purchaser may resell or use the Goods in the ordinary course of its business subject to Conditions (b) – (h) below.
- (b) Until title in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been resold) the Seller may require the Purchaser to deliver up the Goods to the Seller and if the Purchaser fails to do so forthwith, may enter the premises of the Purchaser or any third party where the Goods are stored and repossess them. The Purchaser shall indemnify the Seller in respect of any claims, costs or damages against or incurred by the Seller as a result of entering the premises.
- (c) The Purchaser may sell any Goods in the ordinary course of business which may have been delivered but which are still owned by the Seller PROVIDED THAT the Seller may by notice given at any time terminate the right to sell. Such right shall terminate automatically upon a receiver or administrative receiver being appointed over any assets of the Purchaser or the Purchaser becoming insolvent or going into liquidation or becoming subject to an administration order.
- (d) If the Purchaser sells the Goods pursuant to the rights granted in Condition 4 (c) above, the Purchaser shall hold the proceeds of sale as trustee for the Seller until the Contract price has been paid and shall open a separate account with its bankers for the sole purpose of receiving the proceeds of sale of the Goods and paying out of it the price of the Goods to the Seller.
- (e) The Purchaser may attach the Goods to the Goods of a third party or its own but not in such a way that the Goods lose their separate identity and are not capable of being removed PROVIDED THAT the Seller may by notice given at any time terminate this right and such right shall terminate automatically upon a receiver or administrative receiver being appointed over any assets of the Purchaser or the Purchaser going into liquidation or becoming subject to an administration order.
- (f) Unless otherwise agreed in writing by the Seller, risk in the Goods shall pass to the Purchaser on despatch from the Seller's works and the Seller shall not thereafter incur any liability whatsoever for damage to the Goods, but the Seller shall, on behalf of the Purchaser, forward any claim for damage to the appropriate carrier if such claim is notified in writing to the Seller in time to enable the Seller to comply with relevant time limits in the contract of carriage.
- (g) Patterns, jigs, tools, fixtures and moulds manufactured by the Seller for carrying out the Purchaser's orders and plans, drawings and specifications submitted by the Seller to the Purchaser or prepared by the Seller for the Purchaser's requirements shall be and remain the Seller's property, notwithstanding any charge made by the Seller in respect of them. Where the Seller at the Purchaser's request uses the Purchaser's patterns, jigs, tools and/or fixtures, the

Purchaser shall pay for replacement or repairs due to normal wear and tear or to their being, in the Seller's opinion, unsuitable for production of satisfactory Goods.

- (h) No right or licence is granted to the Purchaser under any patent, copyright, trademark or other intellectual property right, except the right to use or resell the Goods (subject to these Conditions).

5. Price and Payment

- (a) The price of the Goods shall be set out in the Seller's written acceptance of the Order or if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery. Except where otherwise agreed in writing, the price is exclusive of costs of packaging, delivery, carriage, insurance, any tax (including VAT) or duties, all of which shall be paid by the Purchaser. The Seller may, by giving notice to the Purchaser at any time up to fourteen (14) days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - (i) any factor beyond the Seller's control (including foreign currency exchange rate fluctuations, increases in taxes and duties and increases in labour, material and other costs);
 - (ii) any request by the Purchaser to alter the delivery date, quantities or types or descriptions of Goods ordered; or
 - (iii) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give adequate and accurate information or instructions.
- (b) The Purchaser shall pay the Seller's invoice in full (without any deduction, set-off or counterclaim) in cash or cleared funds within twenty-eight (28) days of the date of the invoice. If the Purchaser fails to make any or full payment on the due date then, without prejudice to any other right or remedy, the Seller may charge the Purchaser compound interest (both before and after any judgment) on the amount unpaid at a rate identical to the rate set by the Secretary of State in accordance with section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 calculated from time to time from the date upon which payment became due to the date of actual payment.
- (c) Time of payment is of the essence of the Contract.

6. Delivery

- (a) Where the Seller and Purchaser agree in writing that delivery of the Goods will be C.I.F. (as defined in the international rules for the interpretation of trade terms of the International Chamber of Commerce in force at the date the Contract is made "Incoterms"), delivery will be made to the port stated in the quotation, using carriers of the Seller's choice except where specifically agreed otherwise. No lighterage, dock, wharf, customs dues or taxes are included. Freight and insurance charges are based on rates obtainable at quotation date and may be varied in accordance with Condition 5(a) above.
- (b) Where the Seller and Purchaser agree in writing that delivery of the Goods will be F.O.B (as defined in Incoterms) or to a place in Great Britain not being the Seller's works, delivery will be made to the port or to the place in Great Britain stated in the quotation except where specifically agreed otherwise. The Seller will pay costs of transport to the agreed place of delivery and the Goods will remain at the Seller's risk until delivered provided that the Purchaser notifies the Seller of any damage, shortage or loss occurring in transit in time to enable the Seller to comply with any reporting time limit imposed by the carrier.

- (c) Delivery charges which are greater than those normally incurred by the Seller and which are incurred to comply with the Purchaser's instructions will be charged extra to the Purchaser. No allowance for carriage will be made by the Seller for the Goods collected from the Seller's works by the Purchaser.
- (d) All packing cases and other containers are non-returnable except where specified and, if so, packing cases and containers will be credited if returned in good condition, carriage paid, within one month of delivery, provided that return is notified to the Seller in advance.

7. Warranties and Liability

- (a) The Seller warrants that the Goods will be manufactured in accordance with the Contract description, free from material defects in design, material and workmanship, and that on delivery they will be of satisfactory quality and in accordance with any agreed Contract quality specification, save for the situation where the Goods differ from the aforementioned description or specification in order to ensure that the Goods comply, or the method of their transport or storage complies, with any applicable statutory or regulatory requirements; but the Seller does not warrant or represent that the Goods will be fit for the Purchaser's specific purposes. If the Seller is in breach of this warranty, the Seller shall, at its option, repair or replace the Goods or repay or credit the Purchaser the net price of the Goods in question and repay the Purchaser the reasonable cost of returning the Goods to the Seller, provided that the Seller shall only be liable under this Condition 7(a) where:
 - (i) a claim has been made by the Purchaser in writing in accordance with Condition 3(d) and the Goods are returned to the Seller:
 - (a) within fourteen (14) days of delivery of the Goods if the defect would have been apparent on a reasonable examination; or
 - (b) where the defect would not have been apparent on a reasonable examination within a reasonable time after discovery of the defect, provided that the Purchaser may not make a claim more than three (3) months after the delivery of the Goods;
 - (ii) the Purchaser has given the Seller full opportunity and access to inspect the Goods at the Purchaser's premises; and
 - (iii) the Goods have not been tampered with, stored in unsuitable conditions or for an excessive period, been subject to misuse or wilful damage, negligence, accident, unauthorised repair, replacement, modification or alteration, or used otherwise than in accordance with the Seller's instructions.
- (b) The warranty contained in Condition 7(a) is given by the Seller in lieu of and to the exclusion of any other representations, guarantees, conditions or warranties whatsoever as to the quality of the Goods, their manufacture or their fitness for any purpose and all representations, guarantees, conditions or warranties expressed or implied, statutory or otherwise are excluded to the fullest extent permitted by law and the remedy available to the Purchaser in the event of breach of the warranty in Condition 7(a) is limited to the remedy set out in that Condition.
- (c) These Conditions shall apply to any repaired or replaced Goods supplied by the Seller.
- (d) Nothing in the Contract shall limit or exclude the liability of either party for:
 - (i) death or personal injury resulting from negligence; or
 - (ii) fraud or fraudulent misrepresentation; or

- (iii) breach of the terms implied by section 12 of the Sale of The Goods Act 1979; or
- (iv) breach of section 2 of the Consumer Protection Act 1987.
- (e) Without prejudice to Condition 7(d) above, the Seller shall not be liable to the Purchaser, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit, goodwill, business, business opportunity, anticipated saving, any loss or corruption of data or information or any special, indirect or consequential damage suffered by the Purchaser that arises under or in connection with the Contract.
- (f) The Seller's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the price of the Goods set out in the Contract.

8. The Goods

- (a) Any performance figures given by the Seller in respect of the Goods are given in good faith but are not guaranteed.
- (b) Unless the Seller agrees in writing to work to the Purchaser's drawings or specifications, the Seller's normal tolerances and material specifications for the Goods will apply.
- (c) Without prejudice to Conditions 7(d), 7(e) and 15(b), the Seller shall not incur any liability by reason of any (non fraudulent) misrepresentation arising from reliance on the exactness or accuracy of descriptions, drawings, data and particulars of weight and dimensions submitted by the Seller; or descriptions, illustrations or data in any literature or media or other sales or advertising matter.

9. The Purchaser's obligations

- (a) If the Goods are manufactured either partially or wholly to the design or specification of the Purchaser, the Purchaser shall indemnify and hold harmless the Seller against all losses, costs, charges, expenses and damages, including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other profit costs and expenses which the Seller might suffer as a result of any claim or allegation that:
 - (i) the Goods infringe the patents, copyright, trade marks or other intellectual property rights of any other person;
 - (ii) the Goods do not comply with any statute, directive, statutory instrument or regulation in force from time to time; or
 - (iii) the Goods are not fit for their purpose.
- (b) The Purchaser shall indemnify and hold harmless the Seller against all losses, costs, charges, expenses and damages including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other profit costs and expenses which the Seller might suffer as a result of :
 - (i) the use of the Goods supplied under the Contract (including pursuant to claims in respect of death or injury to persons); or

- (ii) any breach, non-performance, non-observation or cancellation by the Purchaser of all or any of the provisions of the Contract.
- (c) The Purchaser shall not copy or disclose to any third party or use the Seller's plans, drawings, specifications or other confidential information without the Seller's written permission and shall return the same to the Seller, and delete any remaining electronic copies immediately following the Seller's request.
- (d) The Purchaser shall co-operate with the Seller in all matters relating to the performance of the Contract.

10. Confidentiality

- (a) The Purchaser agrees to treat and keep confidential and shall not disclose to any third party all information including technical and commercial information, advice, know-how, drawings, designs and specifications supplied by the Seller in connection with the Contract or which becomes known to the Purchaser through performance of the Contract.
- (b) The Purchaser shall not use any of the information referred to in Condition (a) above except in connection with the execution of the Contract and shall on completion of the Contract or earlier termination in accordance with these Conditions return all such information to the Seller.
- (c) All such information as referred to in Condition 10(a) above shall remain the exclusive property of the Seller and save as stated in the Contract no licence or rights are granted by the to the Purchaser.
- (d) The Contract shall be treated as confidential and no reference to the existence of the Contract or the Seller's name shall be made or disclosed in any publicity material or other similar communications to third parties without the Seller's prior consent in writing.

11. Suspension/termination

- (a) The Seller, without prejudice to any other right or remedy, shall be entitled to:
 - (i) suspend delivery of the Goods (whether ordered under the relevant Contract or any other contract with the Purchaser) to the Purchaser; and or
 - (ii) terminate the Contract with immediate effect by giving written notice to the Purchaser if;
if:
 - (iii) the Purchaser fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment; or
 - (iv) the Purchaser commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after receipt of notice in writing requiring it to do so; or
 - (v) the Purchaser commits a series of persistent minor breaches which when taken together amount to a material breach; or
 - (vi) the Purchaser suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (vii) the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
 - (viii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Purchaser; or
 - (ix) a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or
 - (x) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser; or
 - (xi) a floating charge holder over the assets of the Purchaser has become entitled to appoint or has appointed an administrative receiver; or
 - (xii) a person becomes entitled to appoint a receiver over the assets of the Purchaser or a receiver is appointed over the assets of the Purchaser; or
 - (xiii) any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events outlined in conditions (vi) - (xii) (inclusive); or
 - (xiv) the Purchaser ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
 - (xv) there is a change of control of the Purchaser (within the meaning of section 1124 of the Corporation Tax Act 2010); or
 - (xvi) any event prevents the Purchaser from performing its obligations under the Contract for any continuous period of three months;
 - (xvii) the Seller reasonably believes that any of the events outlined in conditions (iv) – (xv) inclusive is about to occur.
- (b) Termination of the Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination.
 - (c) On termination of the Contract the Purchaser shall promptly:
 - (i) return to the Seller all documents and materials (and any copies) containing confidential information belonging to the Seller and all other equipment, materials and property belonging to the Seller that the Purchaser had supplied to it in connection with the supply and purchase of the Goods under the Contract;
 - (ii) erase all confidential information belonging to the Seller from its computer systems (to the extent possible); and
 - (iii) on request, certify in writing to the other party that it has complied with the requirements of this Condition.

12. Subcontracting

- (a) The Purchaser shall not, without the prior written consent of the Seller, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Seller may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.
- (c) Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

13. Notices

- (a) All notices or other documents to be given under the Contract shall be in writing and in the English language and shall be delivered by hand or sent by registered post or facsimile or by electronic mail (e-mail) to the registered office of the party concerned or such other address as one party may from time to time designate by written notice to the other. Any such notice or other document shall be deemed to have been received by the addressee if delivered, upon delivery; if posted, on the 5th working day following the date of posting; and if sent by facsimile, when the communication is transmitted to the recipient's fax number PROVIDED THAT a copy of the communication is sent by registered post or delivered by hand as soon as practicable after transmission; and by e-mail after the sender's e-mail server has acknowledged receipt by the other party.

14. Jurisdiction

- (a) The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- (b) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- (c) Nothing in the Contract shall limit the right of either party to take any proceedings, suit or action against the other party in any other court of competent jurisdiction in the domicile of that other party, nor shall the taking of them in one or more jurisdiction preclude the taking of them in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

15. Entire Agreement

- (a) The Contract and any documents referred to in it constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- (b) Each party acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract or the documents referred to in it.
- (c) Nothing in this Condition 15 shall limit or exclude any liability for fraud.

16. Third Parties

- (a) No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

17. Miscellaneous

- (a) If any Condition or part of a Condition is held by any court or other competent authority to be void or unenforceable in whole or part, the other Conditions and remainder of the affected Condition shall continue to be valid.
- (b) Any waiver of a breach of any provision of the Contract shall only be effective if set out in writing and shall not be considered as a waiver of any subsequent breach of the same or any other provision of it.