

Terms and Conditions of Sale Thermal Ceramics Inc.

- 1. Applicability.** All shipments, services, sales and quotations between Thermal Ceramics Inc., a Delaware corporation (“Seller” or “us” or “we”), and its Buyer (the “Buyer” or “you”) are subject to these general terms and conditions of sale (these “Terms”). They are, therefore, also valid for all future business transactions between Seller and Buyer, even in cases where they are not expressly specified or re-agreed upon.
- 2. Dissenting or Additional Terms.** Dissenting or additional terms or conditions of business that may be proposed from time to time by Buyer are not binding upon Seller, unless they are expressly confirmed by Seller in writing. The mere acceptance of a purchase order containing such dissenting or additional terms and conditions shall not bind Seller to the same, and Seller expressly rejects all of Buyer’s general terms and conditions of business that are opposed to or in addition to these Terms.
- 3. Oral Terms Not Binding.** Agreements, supplements or understandings made by phone or orally that deviate from these Terms are not binding, unless they have been confirmed in writing by the party to be bound.
- 4. Issuance of Purchase Orders.** All quotations are without obligation and are not binding upon Seller. Buyer will submit to Seller one or more purchase orders substantially in the form attached hereto as Exhibit A (each, a “Purchase Order”) identifying the products Buyer desires to purchase for sale and distribution, for inventory, or otherwise. Each Purchase Order may include other terms and conditions that are consistent with these Terms or that are necessary to place the Purchase Order, such as billing and shipping information, target delivery dates, the delivery location, quantities, and the purchase price or charges for the products. Buyer will place Purchase Orders by email, telephone, fax, or mail, and will promptly follow orders placed by telephone with a written Purchase Order.
- 5. Acceptance of Purchase Orders.** Each Purchase Order shall be subject to the acceptance by Seller in its sole discretion. Seller will indicate its acceptance of Purchase Orders or alterations to Purchase Orders by providing to Buyer a written acceptance of such Purchase Orders (whether by mail, email, telecopy or other means). In the absence of any written acknowledgement or written acceptance of the Purchase Order, shipment of goods ordered shall be deemed acceptance of such Purchase Order.
- 6. Purchase Order Alteration and Cancellation.** Prior to shipment of the products ordered by Buyer, Seller will accept an alteration to a Purchase Order that: (i) changes a location for delivery; (ii) modifies the quantity or type of products to be delivered; or (iii) corrects typographical or clerical errors. Buyer may cancel a Purchase Order without charge or penalty if Buyer provides Seller with a written notice of such cancellation at least ninety (90) days prior to the scheduled or anticipated date of shipment of the products specified in such Purchase Order. Except as otherwise provided in this Section 6, a Purchase Order once placed with and accepted by Seller cannot be cancelled or amended, including any amendment that changes drawings and specifications as to any goods and/or work covered by the Purchase Order except with Seller’s written consent and upon terms that reflect any changes in price or time for performance and that will indemnify Seller for all losses incurred by Seller associated with the Buyer’s amendment or cancellation, including but not limited to the costs already incurred by Seller in the performance of its contractual duties and any profits that Seller would have received had the contract been completed.
- 7. Price and Discounts.** Unless otherwise agreed or provided herein, the prices to Buyer of products sold hereunder by Seller shall be based on the price list established by Seller from time to time (“Suggested Price List”). Seller reserves the right to change the Suggested Price List in its sole discretion from time to time. All prices reflected in any order accepted by Seller or quoted by Seller shall be on a net basis F.C.A. (*Incoterms 2010*) Seller’s loading dock. Unless otherwise specified on the face of the Purchase Order, all packaging and cartage charges special containers, packaging, crating, palletizing, applicable taxes and duties, freight, insurance or other incidental expenditures and taxes payable in the country of manufacture shall be paid by Buyer and are deemed excluded from the purchase price. If Seller is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction on the material or equipment or services covered hereby, then such amount of tax shall be paid by the Buyer in addition to the prices provided for herein. All prices are in U.S. Dollars and all payments shall be in U.S. Dollars.
- 8. Payment.** Unless otherwise agreed to in writing by Seller, payment of the total purchase order price is due and payable within thirty (30) calendar days from the date of shipment. Time is of the essence with respect to all of Buyer’s payment obligations hereunder. Seller reserves the right to change any credit terms offered to Buyer at any time, when in Seller’s opinion, Buyer’s financial condition or previous payment record so warrants. Buyer grants Seller a continuing security interest in the products purchased by Buyer from Seller and the proceeds thereof. Such security interest secures all obligations of Buyer to Seller with respect to products bought and sold from Seller. Buyer agrees from time to time to execute such documents as Seller deems necessary to perfect Seller’s security interest.
- 9. Interest.** No products shall be shipped to Buyer if Buyer has an outstanding invoice over ten (10) days past due. All amounts on invoices that are overdue shall bear interest from the due date until the payment is received by Seller at a rate of interest equal to the lesser of one and one half percent (1½%) per month or the maximum rate permitted by applicable law.
- 10. Account Information.** All payments shall be remitted to Seller’s account communicated to Buyer from time to time. Seller shall have the right to change such account from time to time upon a written notice to Buyer.
- 11. Credit.** In the event that Buyer fails to pay any sum Buyer owes as set forth herein, in addition to the interest due Seller as set forth in Section 9 hereof, Seller may require Buyer to provide Seller with such additional security of performance as Seller deems appropriate, which security may include without limitation: (i) imposition of credit limits; (ii) requiring Buyer to pay for the products prior to Seller’s acceptance of the Purchase Order for such products or Seller’s shipment of any products; (iii) requiring Buyer to obtain a letter of credit or like security; (iv) requiring Buyer’s principal owners or other third parties to guarantee payment personally of any sums Buyer

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owes Seller; (v) requiring Buyer to provide Seller with other collateral or security; and (vi) requiring Buyer to execute such documentation, or to cause designated third parties to execute such documentation, as Seller deems appropriate to effect the foregoing.

12. Delivery or Performance Dates. Seller will use commercially reasonable efforts to meet specified delivery or performance dates; however, all terms and dates are estimates only and are not binding, unless a written agreement to the contrary is made. Delays in delivery or performance do not entitle Buyer to cancel any order, refuse any items, or claim damages.
13. Delay Caused by Force Majeure. Even if binding terms or dates are agreed upon, Seller shall not be liable for damages occasioned by a delay in performance or delivery caused by force majeure or similar circumstances that make delivery or service difficult if not impossible for Seller. This includes problems caused in whole or in part by an act of God, war, insurrection, civil commotion, strike, flood, fire, earthquake, domestic violence, terrorism, lockout, embargo, lack of water, materials, power, or telephone transmissions specified or reasonably necessary in connection with these Terms, hurricanes, unavoidable casualties, and any other occurrence, event, or condition beyond the reasonable control of Seller (a "Force Majeure Event"). Seller shall promptly notify Buyer of such Force Majeure Event. Such circumstances entitle Seller to postpone delivery by the period of their duration plus a reasonable starting up time or to cancel any Purchase Order or part thereof not yet fulfilled. In the case of a restriction lasting longer than three (3) months, Buyer shall have the right to terminate all or any unshipped part of the Purchase Order not yet filled. Such right of cancellation shall be Buyer's exclusive remedy.
14. Product Shortage, Partial Shipment and Back Orders. Seller will notify Buyer of product shortages and will use commercially reasonable efforts to fill the open Purchase Orders. Seller may, on notice to Buyer and with Buyer's consent, make partial shipments of Buyer's orders, which Seller may invoice separately, and which shipments Buyer will pay for when due. Delay in delivery of any installment will not relieve Buyer of its obligation to accept the remaining deliveries, unless Buyer cancels such shipments as set forth in Section 6 hereof. Seller will use commercially reasonable efforts to fill all Purchase Orders placed by Buyer but does not guarantee it will have sufficient products to fill all orders in a timely manner. The parties agree that Seller is not liable for its failure to timely fill all Purchase Orders and for delays in shipment.
15. Over shipments. Seller may ship and Invoice for overages as follows:
- | Number of Pieces or Sets
Specified on Order | Allowable Overage
Extra Pieces or Sets |
|--|---|
| 1 to 10 | 1 Shape
If in sets, 1 complete set |
| 11 to 100 | 10% |
| 101 to 250 | 7% |
| 251 to 750 | 5% |
| 751 to 1,500 | 4% |
| 1,501 to 5,000 | 3% |
| 5,001 to 10,000 | 2% |
| Over 10,000 | 1% |
16. Non-Returnable Containers. Since Seller's shipments are made in "single trip" non-returnable containers, Seller makes no allowances for the return of any container.
17. Molds. Mold charges do not convey title to or right of possession of molds. Seller will maintain in molds, provided there is no change in Buyer's specifications or design, but reserves the right to discard them if no orders are received within a period of three years.
18. Title and Risk of Loss: Transportation. Title to and all risks of loss and liability for damages shall pass to Buyer upon delivery by Seller to a common carrier at the F.C.A. point (i.e., Seller's loading dock). Buyer shall be responsible for all insurance and transportation charges from the F.C.A. point. Seller will from time to time and as the Buyer's agent, make all necessary shipping arrangements, and unless the Buyer specifies otherwise in writing, purchase full value insurance for the items while in transit. Unless instructed by Buyer on shipping method, placement of values and carrier, Seller will use its own discretion thereon. Seller will invoice Buyer and Buyer agrees to reimburse Seller for all charges incurred on behalf of Buyer, including insurance, transportation costs and any packaging costs that may result from Buyer specifying a particular mode of transportation. If Seller delivers the products to Buyer from the F.C.A. point using Seller's trucks and/or drivers, Seller does so only as a courtesy and accommodation to Buyer and the terms of sale remain F.C.A. Seller's loading dock.
19. Insurance During Transit. Buyer shall insure the items for their full value during transit from the F.C.A. point, with such insurance to contain a provision waiving all rights of subrogation against Seller and its employees, agents, and representatives with respect to losses payable under such policy. Buyer hereby waives and releases Seller and its employees, agents, and representatives of and from any and all rights of recovery, claim, action or cause of action for any loss or damage that may occur to the products during transit regardless of cause or origin, including the negligence of Seller or its employees, agents, or representatives, and Buyer acknowledges that the foregoing waiver and release is intended to result in any such loss or damage being borne by the insurance carrier of Buyer, or by Buyer if Buyer fails to obtain and maintain the insurance required hereunder.
20. Drop Shipment: Buyer's Duty to Inspect. From time to time Buyer may request Seller to drop ship the products directly to the buyers of Buyer. In such event Buyer shall bear all credit risks associated therewith. Buyer (or its buyer in the case of a drop shipment by Seller to such Buyer) shall inspect the products upon receipt. Failure of Buyer (or its buyer in the case of a drop shipment by Seller to such buyer) to inspect the products and/or failure to notify Seller in writing of any noncompliance, shortage or other reason for its rejection of any of such goods within such period as set forth in Section 19 hereof and the specific grounds for rejection shall constitute irrevocable acceptance of such goods. Seller accepts no responsibility for breakage, damage or losses occurring after delivery by Seller to the carrier. All claims in such regard should be made direct to the carrier.
21. Returned Products. Seller shall not be required to accept products for return. If Buyer desires to return any products, it shall seek the prior written approval of Seller for such return. All products accepted for return must be in a re-saleable condition when delivered to Seller and must be returned to Seller within thirty (30) days of the delivery of the products by Seller to Buyer or to the buyers of Buyer in the case of a drop shipment set forth in Section 20 hereof. Returned products are subject to a 20 percent (20%) restocking fee. Buyer shall bear all freight costs and other charges for the return of the products. Upon the receipt of the returned products, Seller shall credit the account of the Buyer (subject to the restocking fee), and

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such credits shall be applied towards outstanding invoices or future purchases if no invoices are then outstanding.

22. Nonconforming Products. All materials shall be furnished subject to Seller's standard manufacturing variations and practices. Buyer may provide written notice of acceptance of the products to Seller. However, in the absence of Buyer's written acceptance, acceptance shall be deemed to occur thirty (30) days after delivery of the products to Buyer or buyers of Buyer in the case of a dropped shipment to such buyers by Seller (the "Inspection Period"). If Buyer does not notify Seller of any defects or non-conformities within the Inspection Period, the products shall be deemed accepted by Buyer, and Buyer shall be deemed to have waived any claim relating to defects or non-conformities in the products that would have been apparent upon a reasonable inspection of the products. If any products covered by the purchase order are determined by Buyer during the Inspection Period to be defective or otherwise not in conformity with the requirements of the purchase order, Buyer will promptly notify Seller of such defects or non-conformities and either return the products to Seller or dispose of the products at Seller's request, direction and expense. In such event, Seller shall, at its option, either (i) refund the full purchase price of the non-conforming or defective products; or (ii) replace the non-conforming or defective products with conforming products without defects. The foregoing shall be the sole and exclusive remedy of Buyer for nonconforming products. In no event is Buyer entitled to retain payments due Seller, except upon the written consent of Seller.
23. Unsold Products. Upon the expiration, cancellation or termination of these Terms for any reason, Seller shall have the option (but not the duty) exercisable by written notice, to purchase from Buyer within thirty (30) days after the effective date of such expiration, cancellation or termination, all of the products in Buyer's inventory that remain unsold by Buyer on the effective date of such expiration, cancellation or termination, at the same price at which such products were purchased by Buyer from Seller, provided that such products are in good and saleable condition. Buyer will ship such inventory to Seller as Seller reasonably directs, freight prepaid.
24. Limited Warranty. Seller warrants that all goods sold hereunder shall be free from defects in material and workmanship and shall conform to Seller's applicable specifications at the time of their delivery to the F.C.A. point and for a period of ninety (90) days thereafter (the "Warranty Period"). THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED. Determination of the suitability of the products for the uses and applications contemplated by Buyer shall be the sole responsibility of Buyer. Buyer assumes all risks and liabilities for the results obtained by the use of the products, whether used alone or in combination with other material. Seller makes no warranty or guaranty with respect to the results to be obtained by the use of the products. Any warranty claims must be made within the Warranty Period, and any warranty claims not made during the Warranty Period shall be deemed waived by Buyer.
25. Liability of Seller. In the event of a warranty claim made during the Warranty Period and accepted by Seller, Seller shall have the option to either (i) replace the product(s) allegedly failing to comply with such warranty by delivering a like quantity of the product(s) meeting the descriptions and specifications referenced in the purchase order for such product(s), or (ii) refund the total purchase price for the

product(s) allegedly failing to comply with such warranty. The foregoing shall be the sole and exclusive remedy of Buyer for breach of warranty by Seller. Defective products shall be returned or disposed of as directed by Seller. IN NO EVENT SHALL THE LIABILITY OF SELLER TO BUYER, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE, EXCEED THE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH SELLER'S LIABILITY IS CLAIMED, AND IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE, THAT ARISE IN CONNECTION WITH THE PRODUCTS OR IN CONNECTION WITH EITHER SELLER'S FAILURE TO DELIVER OR ITS LATE DELIVERY OF THE PRODUCTS (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PRODUCTS AND LOSS OF PROFITS). Buyer acknowledges that the remedies provided herein are exclusive and in lieu of all other remedies available to Buyer at law or in equity.

26. Assignment. Buyer may not assign these Terms without the express prior written consent of Seller. These Terms shall be binding upon and shall inure to the benefit of Seller and its successors and assigns, and shall be binding upon and inure to the benefit of Buyer and its permitted assignees.
27. Entire Agreement. Except as otherwise expressly provided in a written document signed by Seller and Buyer, these Terms contain the complete and final agreement between Buyer and Seller with respect to the subject matter herein contained and supersede all prior agreements and communications between Seller and Buyer, whether oral or written.
28. No Implied Waivers. No modification, limitation, waiver or discharge of these terms or conditions shall bind Seller unless in writing and signed by an authorized officer, agent, or employee of Seller. No waiver or failure of Seller to insist, in one or more instances, on performance by Buyer in strict compliance with of any provision of these Terms hereof on any one occasion shall be deemed to be a waiver of the same or of any other right granted hereunder with respect to any succeeding breach of the same or other provision hereof.
29. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given only if and when (i) personally delivered; (ii) five (5) business days after mailing, postage prepaid, first class air mail; (iii) when delivered (and receipted for) by an express delivery service; or (iv) when first sent by telex, telecopy or other means of instantaneous communication, provided such communication is properly confirmed by personal delivery, mail or an express delivery service as provided above, addressed in each case at the address set forth as the communications address on the Purchase Orders or at such other address as either party may specify from time to time in writing in accordance with this provision.
30. Governing Law. These Terms and any agreement resulting from the acceptance of a Purchase Order shall be construed pursuant to the laws of the state of Georgia without giving effect to its conflicts of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply.
31. Arbitration and Submission to Jurisdiction. All disputes and claims relating to any provision hereof or relating to or arising out of the

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parties' relationship or creation or termination thereof (including, without limitation, any claims that any provision of these Terms, any specification, standard or operating procedure or any other obligation of Seller or of Buyer is illegal or otherwise unenforceable or voidable under law, ordinance or ruling) shall be resolved by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration will be conducted at the offices of the AAA in Atlanta, Georgia before an independent and impartial arbitrator. Each party consents and submits to the personal jurisdiction and venue of the state or local trial courts located in Atlanta, Georgia and also to the personal jurisdiction and venue of the United States District Court for the Northern District of Georgia for purposes of enforcing this provision. All awards of the arbitration shall be binding and non-appealable except as otherwise provided in the United States Arbitration Act (9 U.S.C., § 1, et seq.). Judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place at a time noticed by the AAA regardless of whether one of the parties fails or refuses to participate. The foregoing provision shall not preclude either party from bringing an action in any court of competent jurisdiction for injunctive or other provisional relief as necessary or appropriate. The arbitrator may award attorneys' fees and costs in connection with the arbitration proceeding in addition to any other relief that may be granted.

32. Severability. In case any terms or conditions contained herein should be or become invalid or unenforceable under applicable law, such terms and conditions shall be deemed to be severable from the remainder of these Terms and shall not cause the invalidity or unenforceability of the remainder of these Terms.
33. Section References and Headings. Any reference in these Terms to a section or subsection shall be deemed to include a reference to

any subsidiary sections whenever the context requires. The headings are for convenience only and are not to be used in the construction or interpretation of these Terms.

34. Compliance with Law. Buyer and Seller shall comply with all applicable local, state and federal laws, order, rules and regulations. Buyer represents and warrants Seller that it is, and shall continue to be, in compliance with all applicable export controls of the United States Government. Buyer shall also comply with all Seller policies communicated to Buyer by Seller.
35. Indemnity. Buyer agrees to indemnify and hold Seller, its affiliates, officers, directors, employees and agents, harmless from and against all liability, loss, damage, costs and expenses including, but not limited to, costs and expenses of litigation and reasonable attorneys' fees, that Seller hereafter may incur or that Seller may reimburse to a third party as the result of any claim, action or right of action, at law or in equity, arising out of (A) Buyer's non-compliance or breach of these Terms and any representation or warranty contained herein; (B) any infringement or alleged infringement of any license, patent, copyright or any other intellectual property right; or (C) any injury (including death) to any person or damage to any property occurring as a result of, or caused in whole or in part by, acts or omissions of Buyer or its agents, officers, directors, employees, any subcontractor or its employees, or any person, firm or corporation employed or engaged by Buyer. Buyer hereby waives and releases Seller from any and all rights of recovery, claims, actions or causes of action that Buyer may have against Seller with respect to those matters that Buyer has agreed to indemnify Seller hereunder. Buyer shall not be liable to Seller for loss, damage, costs and expenses which are the direct result of the gross negligence or intentional conduct of Seller.

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EXHIBIT A

PURCHASE ORDER

BUYER: **PURCHASE ORDER**

Phone: Fax:

Vendor Number: PO Date:

SELLER: THERMAL CERAMICS INC. P.O. BOX 923 2102 Old Savannah Road, 30906 Augusta, Georgia 30903	SHIP TO	
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SHIP COLLECT VIA:

F.C.A.
SHIPPING POINT

ITEM	QTY	U/M	DESCRIPTION	TARGET DELIVERY DATE	UNIT PRICE
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SHIPPING INSTRUCTIONS:

This Purchase Order is subject to the Thermal Ceramics Inc. Terms and Conditions of Sale, which are incorporated into this Purchase Order by reference. By executing this Purchase Order, the Buyer identified above represents and warrants to Seller that it has received and read such Terms and Conditions and that it understands and agrees to be bound by the terms and conditions contained therein.

BUYER:

Accepted as of this ____ day of _____, 20__.

THERMAL CERAMICS INC.

By: _____
 Name:
 Title:

By: _____
 Name:
 Title: