



Terms and Conditions of Sale

This is Subject to the Following terms and Conditions as Well as Those Appearing on the Attached.

- 1. Agreement of Sale; Acceptance:** Any acceptance contained herein is expressly made conditional on Buyer's assent to any terms contained herein that are additional to or different from those proposed by Buyer in its purchase order and, hence, any terms and provisions of Buyer's purchase order which are inconsistent with the terms and conditions hereof shall not be binding on the Seller. Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt hereof, acceptance of the terms and conditions hereof by Buyer shall be deemed made and; in the absence of such notification, the sale and shipment by the Seller of the goods covered hereby shall be conclusively deemed to be subject to the terms and conditions hereof.
- 2. Entire Contract:** This contract constitutes the final and entire agreement between Seller and Buyer and any prior or contemporaneous understandings or agreements, oral or written, are merged herein.
- 3. Prices:** The price to be paid by Buyer shall be the price in effect at the date of actual delivery of the goods unless otherwise specified in writing by Seller.
- 4. Taxes:** The price of the goods does not include sales, use, excise, ad valorem, property or other taxes now or hereafter imposed, directly or indirectly, by any governmental authority or agency with respect to the manufacture, production, sale, delivery, consumption or use of the goods covered by this contract. Buyer shall pay such taxes directly or reimburse Seller for any such taxes which it may be required to pay.
- 5. Payment:** The specific terms of payment are as specified in writing by Seller. If the Buyer shall fail to make any payments in accordance with the terms and provisions hereof, the Seller, in addition to its other rights and remedies, but not in limitation thereof, may, at its option, defer shipments or deliveries hereunder, or under any other contract with the Buyer, except upon receipt of satisfactory security or of cash before shipment.
- 6. Shipment; Risk of Loss; Title:** The goods shall be shipped FOB Seller's shipping points. Risks of loss pass to Buyer at Seller's shipping point. Title shall pass to Buyer at Seller's shipping point.
- 7. Deliveries:** The date of delivery provided herein is an approximation based on Seller's best judgment and prompt receipt from the Buyer of all necessary data regarding the goods. Unless otherwise expressly stated, Seller shall have the right to deliver all of the goods at one time or in portions from time to time within the time of delivery herein provided. The delivery of non-conforming goods, or a default of any nature, in relation to one or more installments of this contract shall not substantially impair the value of this contract as a whole and shall not constitute a total breach of the contract as a whole.
- 8. Delays in Deliveries:** Seller shall be excused for delay in delivery, may suspend performance and shall under no circumstances be responsible for failure to fill any order or orders when due to: acts of God or of the public enemy; fires; floods; riots; strikes; freight embargoes or transportation delays; shortage of labor; inability to secure fuel, material supplies, or power at current prices or on account of shortages thereof; any existing or future laws or acts of the Federal or of any State Government (including specifically but not exclusively any orders, rules or regulations issued by any official or agency of any such government) affecting the conduct of Seller's business; any cause beyond Seller's reasonable control.
- 9. Overshipment:** On orders for special shapes (non stocked items), Seller may ship quantities produced to cover possible losses in manufacturing and invoice the same up to an amount representing 10% of the initial order quantity.
- 10. Laws, Code, Regulations, Safety Devices:** Compliance with laws, codes and regulations relating to the goods and their use is the sole responsibility of Buyer, and Seller makes no warranty or representation with respect thereto. Buyer assumes the responsibility for providing and installing any and all devices for the protection of safety and health and shall indemnify and hold harmless Seller against any expense, loss or damage which Seller may incur or sustain as a result of Buyer's failure to do so.
- 11. Patents:** Seller warrants that the use or sale of the goods delivered hereunder will not infringe the claims of any United States patent covering the goods, but does not warrant infringement by reason of the use thereof in combination with other material or equipment in the operation of any process. Seller shall, at its own expense, assume the defense of any claim, suit or other proceeding brought against Buyer upon a claim that the goods furnished under this contract constitutes an infringement of any patent of the United States. Buyer agrees to cooperate in the defense of any such proceedings and to provide information, assistance and authority necessary therefor. Should the goods in such suit be held to constitute infringement and the use of the goods enjoined, the Seller shall, at its own expense and at its option, procure for the Buyer the right to continue using such goods or replace them with substantially equivalent goods or modify them so they become non-infringing. Buyer shall defend, hold harmless and indemnify Seller against all judgments, decrees, costs and expenses arising out of any action against Seller or its suppliers based on a claim that the manufacture or sale of goods hereunder constitutes infringement of any United States letters patent, if such goods were manufactured pursuant to Buyer's proprietary designs, specifications and/or formulae and were not normally offered for sale by seller, provided, however, Seller shall give prompt written notice of the claim or action and Seller shall give Buyer authority, information and assistance at Buyer's expense.



12. **Liability:** In no event shall Seller's obligation and liability under this contract extend to indirect, punitive, special, incidental or consequential damages or losses Buyer may suffer or incur in connection therewith, such as but not limited to loss of revenue or profits, damages or losses as a result of Buyer's inability to operate, or shut down of, its plant or operations, loss of use of the goods or associated goods or cost of substitute goods, facilities or services, inability to fulfill contracts with third parties, injury to good will, claims of customers and the like, nor shall it extend to damages or losses Buyer may suffer or incur as a result of claims, suits or other proceedings made or instituted against Buyer by third parties, whether public or private in nature.

13. **Buyer's Default; Termination:** Buyer shall be liable to Seller for all damages or losses, including loss of reasonable profits, and for costs and expenses, including attorney's fees, sustained by Seller and arising from Buyer's default under, or breach of, any of the terms and conditions of this contract. In the event of any such default or breach, Seller may, without any obligation or liability to Buyer, terminate this contract forthwith by written notice to Buyer and such action by Seller shall not be deemed a waiver of any right or remedy with respect to such default or breach.

14. **Assignment:** No right or interest in this contract shall be assigned by Buyer without prior written agreement by the Seller. No delegation of any obligation owed, or the performance of any obligation by the Buyer shall be made without prior written agreement by the Seller.

15. **Law Governing:** The interpretation and performance of this contract shall be in accordance with and shall be controlled by the laws of the State of Ohio without regard to principles of conflicts of law, except that the United Nations Convention on the International Sale of Goods shall not apply to this contract or to the transactions between Buyer and Seller. Buyer consents to the exclusive jurisdiction and venue of the federal and state courts located in Columbiana County, Ohio.

16. **Modifications; Waiver:** No waiver, alteration or modification of any of the provisions hereof shall be binding on the Seller unless made in writing and agreed to by a duly authorized official of the Seller. No waiver by the Seller of any one or more defaults by the Buyer in the performance of any provisions of this contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

17. **Mold Design Charge:** The term "Molds" means molds, patterns, dies, tools, tooling, plates, stamps, jigs, fixtures, machinery, documentation (including without limitation engineering specifications and test reports) and all related materials used in the manufacturing of the goods or any component thereof, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto. Seller may charge Buyer for a Mold design charge to cover a portion of the engineering services, tooling design and procurement services, and other preparatory operations required to manufacture quoted goods to Buyer's particular designs and specifications. This is a one-time service charge and does not constitute payment for the engineering work product, tooling and work product resulting from other preparatory operations. All such items shall remain the sole property of Seller and/or its affiliates and in the custody of Seller and/or its affiliates. No charge for maintenance of special parts or assemblies will be made unless design modifications by Buyer necessitate charges, for which an additional design charge will be quoted prior to the production of the special parts or assemblies.

18. **Mold Ownership:** Seller and/or its affiliates shall at all times own all right, title and interest in and to all Molds and any software or programs used to create Molds, and all intellectual property therein, in each case whether or not developed, manufactured or acquired specially to produce goods for Buyer, and all such Molds and other items shall remain in Seller's and/or its affiliates' possession, even though Buyer is charged for such fabrication. Buyer will have no right, title or interest in or to any Molds, any software or programs used to create Molds, or any intellectual property therein, under any circumstances unless Seller provides Buyer with a clear writing executed by Seller and/or its affiliates evidencing the transfer of such title from Seller and/or its affiliates to Buyer. If Buyer for three (3) years does not order goods produced with a Mold, Seller may dispose of such Molds or software or programs related thereto at its own discretion and Seller shall in no manner or way be required to replace them.

19. **Seller Entities:** The term "Seller" means the seller of the goods to Buyer hereunder, which may include one or more of the following entities (as applicable): CeramSource, Inc.
P.O. Box 6026
East Brunswick, NJ 08816