

# MANTEC TECHNICAL CERAMICS LIMITED

## TERMS AND CONDITIONS OF PURCHASE

### Definition of Terms.

**Contract** means the contract formed by the Vendor's acceptance of the Order in accordance with these conditions.

**Delivery** means up to and including the successful off loading of the goods at MTCL.

**Goods** means the goods or services specified on the Order (including any part or part of them).

**MTCL** means Mantec Technical Ceramics Limited.

**Order** means MTCL's written instruction to supply the Goods incorporating these conditions.

**Vendor** means the supplier of the Goods.

### 1. General

- 1.1 Goods shall only be purchased when ordered on an official order which is dated and signed by a duly authorised representative of MTCL. Orders are subject to the following Conditions of Purchase ("**conditions**").
- 1.2 The Order including these conditions and any special conditions constitute the entire agreement between the parties.
- 1.3 Where the Order quotes special conditions they shall supplement these conditions and when in conflict, such special conditions shall override these conditions.
- 1.4 Each Order shall be deemed to be an offer by MTCL to purchase Goods subject to these conditions.
- 1.5 Acknowledgement of the Order must be made by return of email, post or fax confirming delivery dates.
- 1.6 Any commencement of work or written acknowledgement (whether or not referring to conditions inconsistent with these conditions unless clearly stated on its face to be a counter-offer) in connection with any Order shall constitute an unconditional acceptance of the Order and these conditions.
- 1.7 These conditions and any special conditions agreed in writing and signed by a duly authorised representative of MTCL shall apply to the Contract to the exclusion of all other terms and conditions endorsed upon, delivered with or contained in the quotation given to MTCL or any other terms and conditions subject to which the Order is accepted or purported to be accepted by the Vendor.
- 1.8 Any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of MTCL.
- 1.9 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.10 In these conditions references to the masculine include the feminine and the neuter and the singular include the plural and vice versa as the context admits or requires.
- 1.11 In these conditions the headings will not affect the construction of these conditions.
- 1.12 Each right or remedy of MTCL under the Contract is without prejudice to any other right or remedy of MTCL whether under the Contract or not.
- 1.13 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability, or unreasonableness, be deemed severable and the remaining provisions shall continue in full force and effect.
- 1.14 No one other than a party to the Contract shall have any right to enforce any of its terms.

### 2. Price

- 2.1 Unless otherwise stated in the Contract or any amendment thereof made in accordance with these conditions, prices are fixed for the duration of the Contract inclusive of all charges including packaging, carriage, insurance and delivery but exclusive of any applicable value added tax.

### **3. Payment**

- 3.1 Terms of payment are sixty days from date of invoice or delivery of the Goods whichever is the later unless other terms have been agreed by MTCL in writing.
- 3.2 Invoices must be received within seven days of the Delivery of the Goods.
- 3.3 Without prejudice to any other right or remedy, MTCL reserves the right to set off any amount owing at any time from the Vendor to MTCL against any amount payable by MTCL to the Vendor under the Contract or any other contract between MTCL and the Vendor.

### **4. Passing of Title and Risk**

- 4.1 Title in the Goods shall pass to MTCL on the earliest of:
  - 4.1.1 Delivery of the Goods;
  - 4.1.2 payment for the Goods; or
  - 4.1.3 appropriation of the Goods to the Contract.
- 4.2 Risk in the Goods shall pass to MTCL on Delivery at the location stated in the Contract.

### **5. Exclusivity**

- 5.1 Unless agreed to in writing by MTCL the supply of Goods in whole or part in which IPR ownership is vested in MTCL to any party other than MTCL shall be deemed as a breach of the Contract.

### **6. Obsolete Parts**

- 6.1 Prior to the termination of the production of any component previously supplied to MTCL for use as original equipment the Vendor shall agree to a defined and given period which shall not be less than three years during which it will maintain the supply of obsolete parts and non-current parts to MTCL.

### **7. Modifications**

- 7.1 MTCL reserves the right, at any time by 30 days written notice to make changes in the specifications applicable to the Goods, the method of packaging or the times or places for delivery or performance and if any such changes affect the cost or performance of the Contract, MTCL may make such adjustments as it considers equitable in the purchase price or the delivery schedule or both.

### **8. Assignment and Sub-Contracting**

- 8.1 The Vendor shall not without prior written consent of MTCL assign or sub-contract any of its obligations under the Contract in whole or in part.
- 8.2 If MTCL consents to any such assignments or sub-contract the Vendor shall nevertheless continue to be responsible to MTCL for all the Vendor's obligations under the Contract.
- 8.3 MTCL may assign the Contract or any part of it to any person, firm or company.

### **9. Warranty**

- 9.1 The Vendor warrants that all Goods shall:
  - 9.1.1 be new and unused, free from defects in design, materials and workmanship;
  - 9.1.2 be of satisfactory quality and fit for the purpose for which they are intended;
  - 9.1.3 correspond in all respects with the Contract, all specifications, drawings, samples or other descriptions furnished or specified by or on behalf of MTCL; and
  - 9.1.4. comply with all statutory requirements and regulations relating to the manufacture, labelling, packaging, storage, handling, delivery and sale of the Goods.
- 9.2 The Vendor warrants that where the Goods (whether in whole or in part) comprise the provision of services they shall be performed by appropriately qualified and trained personnel, with due care and diligence.
- 9.3 These warranties are in addition to any obligation implied by law, trade usage or otherwise and shall extend for the useful life of such Goods.

## **10. Inspection and Quality**

- 10.1 All goods shall have been properly inspected and tested by the Vendor prior to Delivery. A representative of MTCL or an independent inspection authority or nominee shall however be allowed to inspect and test the Goods and any material to be used in the manufacture thereof during any stage of manufacture processing or storage if MTCL so require. The Vendor shall provide MTCL with all facilities reasonably required for such inspection and testing.
- 10.2 If as a result of inspection or testing MTCL is not satisfied that the Goods will comply in all respects with the Contract and MTCL so informs the Vendor within seven days of inspection or testing the Vendor shall take such steps as are necessary to ensure compliance.
- 10.3 The Vendor shall at its sole cost issue to MTCL such test certificates as MTCL may reasonably require within seven days of being required to do so by MTCL.
- 10.4 MTCL's rights to reject any Goods shall not be affected by the carrying out or any failure to carry out any inspection or testing of the Goods or any approval given by or on behalf of MTCL or by any payment being made for them.
- 10.5 MTCL's rights under the conditions are in addition to the statutory conditions implied in favour of MTCL by the Sale of Goods Act 1979 and by the Supply of Goods and Services Act 1982.
- 10.6 The Vendor shall ensure that:
  - 10.6.1 at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods; and
  - 10.6.2 it shall not do or omit to do anything which may cause MTCL to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

## **11. Delivery**

- 11.1 The Goods shall be delivered to the MTCL premises stated in the Contract in the United Kingdom.
- 11.2 The Goods shall be sufficiently protected to ensure safe transit and storage to their intended destination.
- 11.3 MTCL will not accept liability for Goods supplied without being accompanied by numbered advice/delivery notes showing MTCL's purchase order number, part number, quantity, Vendor's name and a certificate of conformity where requested.
- 11.4 It is the Vendor's responsibility to supply MTCL with appropriate health & safety information prior to Delivery of any materials or substance.
- 11.5 Palletised Delivery will be on pallets fit for the purpose for which they are being used.
- 11.6 The quantity of Goods delivered shall not be exceeded or have a shortfall without the written authority of MTCL before such Delivery. Any excess Goods so delivered will be and will remain at the Vendor's risk and will be returnable at the Vendor's expense.
- 11.7 Goods cannot be accepted during the lunch period 1.00 - 1.30p.m. or after 4.00p.m. Monday to Friday except by prior arrangement. No deliveries can be accepted on Saturdays, Sundays or bank holidays (being days when the banks in the City of London are closed for business) unless otherwise agreed.
- 11.8 When requested the Vendor will provide "Certification of Conformity", "Materials Analysis Certificates" and such other certificates or reports as MTCL may reasonably require on Delivery of the Goods.
- 11.9 The signature of any of MTCL's employees on the delivery note or similar documentation shall not be evidence that the Goods delivered are in good condition or that MTCL accepts any change to the terms of the Contract that may be included on such delivery note.
- 11.10 If the Vendor requires MTCL to return any packaging material the Vendor must so inform MTCL in writing and any such packaging material will only be returned to the Vendor at the cost of the Vendor.
- 11.11 Where MTCL agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Vendor to deliver any one instalment shall entitle MTCL at its option to treat the whole Contract as repudiated.

## **12. Export/Import**

- 12.1 Where referred to in an Order the latest version of the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (currently Incoterms® 2010) shall apply. Where those terms conflict with these conditions, these conditions shall prevail.
- 12.2 The Vendor shall be responsible for compliance with any legislation or regulations for both the export of the Goods from the Vendor's country and the import of the Goods into the country of destination and for the payment of any duties thereon.

## **13. Time**

- 13.1 The Vendor shall deliver the Goods at the time specified in the Contract. Time shall be of the essence and shall begin to run from the date that the Order is placed if no other time is specified.

## **14. Rejection**

- 14.1 Without prejudice to any other of its rights, in case of any early, late, partial, excessive, defective or otherwise incorrect delivery or performance or any failure by the Vendor to comply with the Contract and these conditions MTCL shall be entitled, at its discretion, to exercise some, all or any of the following rights:
- 14.1.1 to reject such delivery or performance and, where any Goods so rejected are the same as other goods supplied by the Vendor which are held by MTCL at any location, to reject those goods also;
- 14.1.2 to require the Vendor at its expense to immediately supply in substitution for any Goods, which MTCL notifies the Vendor do not conform to the Contract or these conditions, goods or services which do so conform or, at MTCL's option, to carry out repairs or remedial work; and/or
- 14.1.3 at the Vendor's expense, to carry out or have carried out any work which MTCL considers necessary to conform any Goods to the Contract.
- 14.2 Goods rejected by MTCL shall be collected by the Vendor within ten days of notice of rejection being sent by MTCL. Pending collection the Goods shall be held at the expense and risk of the Vendor who shall also pay all expenses incurred by MTCL in packing, handling and sorting rejected Goods. If the Vendor fails to collect the rejected Goods MTCL reserves the right, at the Vendor's expense, to destroy or otherwise dispose of the rejected Goods in any manner it thinks fit without liability to MTCL. Any benefits derived from the disposal of such rejected Goods shall be retained by MTCL.

## **15. Remedies**

- 15.1 If any Goods are not delivered on the due date, or are not in accordance with the Contract (MTCL being deemed not to have accepted any Goods until it has had reasonable time to inspect them following delivery or performance, or if later within a reasonable time after any latent defect in the Goods has become apparent) then, without prejudice to any other rights which it may have, MTCL reserves the right (without liability) to:
- 15.1.1 cancel the Contract and any other outstanding contract between MTCL and the Vendor, in whole or in part;
- 15.1.2 refuse to accept any subsequent delivery of the Goods which the Vendor attempts to make;
- 15.1.3 recover from the Vendor any expenditure reasonably incurred by MTCL in obtaining the Goods in substitution from another supplier;
- 15.1.4 where MTCL has paid in advance for Goods which have not been delivered, to have such sums refunded by the Vendor; and
- 15.1.5 claim damages for any costs, loss or expenses (in each case resulting directly or indirectly) incurred by MTCL or otherwise resulting from any such delay which are in any way attributable to the Vendor's failure to deliver the Goods in accordance with the Contract.
- 15.2 Without prejudice to any other right or remedy which MTCL may have, if any Goods are not supplied in accordance with, or the Vendor fails to comply with, any of the terms of the Contract or if any defect shall materialise within a period of 12 months after delivery, MTCL shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by MTCL:

- 15.2.1 to reject the Goods (in whole or in part) and return the Goods to the Vendor at the risk and cost of the Vendor on the basis that a full refund for the Goods so rejected shall be paid forthwith by the Vendor;
  - 15.2.2 to terminate the Contract with immediate effect;
  - 15.2.3 at MTCL's option, to give the Vendor the opportunity at the Vendor's expense to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
  - 15.2.4 to refuse to accept any further deliveries of the Goods but without any liability to the Vendor;
  - 15.2.5 to carry out at the Vendor's expense any work necessary to make the Goods comply with the Contract; and
  - 15.2.6 to claim such damages as may have been sustained in consequence of the Vendor's breaches of the Contract and require the repayment of any part of the price which has already been paid.
- 15.3 This condition 15 shall extend to any repaired or replacement Goods as from the date of their Delivery.

## **16. Termination**

- 16.1 MTCL may at its discretion, without prejudice to any other remedy and without incurring any liability to the Vendor, terminate or suspend the Contract in whole or in part by written notice to the Vendor at any time if the Vendor :-
- 16.1.1 fails to comply with any provision of the Contract or delivery schedule or of any other agreement with MTCL or fails to make progress so as in the reasonable opinion of MTCL to endanger the performance of the Contract and in either of such cases such failure is unremediable or if remediable the Vendor does not remedy the same to MTCL's satisfaction within a period of ten days after the date on which MTCL has given written notice thereof; or
  - 16.1.2 becomes insolvent, has a receiver, manager, administrative receiver, administrator or trustee in bankruptcy appointed in respect of any of its undertaking, assets or income, is the subject of any bankruptcy order or has any petition presented to any court of resolution passed for its winding up, whether compulsory or voluntarily, or is dissolved, has any distraint or execution levied on any of its assets, enters into any composition or arrangement with its creditors or suffers any similar action in consequence of debt under the laws of any jurisdiction, or MTCL bona fide believes that any of the foregoing events may occur.
- 16.2 No failure or delay by MTCL to exercise its rights in respect of any default under the Contract shall prejudice MTCL's rights in connection with the same or any subsequent default.
- 16.3 Any waiver by MTCL of any breach of, or any default under, any provision of the Contract by the Vendor will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 16.4 MTCL shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Vendor written notice whereupon all work on the Contract shall be discontinued and MTCL shall pay to the Vendor fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any indirect, special or consequential loss.
- 16.5 The termination of the Contract, however arising, will be without prejudice to the rights and duties of MTCL accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **17. Force Majeure**

- 17.1 MTCL reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods if it or the Vendor is prevented from or delayed in the carrying on of its or their business due to circumstances beyond its or their reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either parties' workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **18. Tooling**

- 18.1 The Vendor shall maintain and make available for inspection by MTCL or its appointed nominee a register of all tooling required to manufacture the parts and identify each item by a distinctive number and shall mark on each item its distinctive identification number and such identifications as to ownership as MTCL directs and furnish such photographic or other evidence as MTCL requests as to the existence location and condition of the tooling.
- 18.2 Ownership of such tooling and the intellectual property rights in it shall be deemed to rest with MTCL.
- 18.3 The Vendor will take all reasonable care of such tooling and inform MTCL of their condition when requested.
- 18.4 The Vendor shall bear all risks of loss of or damage to and adequately insure MTCL property whilst in the Vendor's possession or control.
- 18.5 The Vendor shall not permit MTCL property to be removed from the Vendor's premises.
- 18.6 The Vendor shall not use or permit the use of MTCL property except for the purpose of the Contract.
- 18.7 The Vendor shall immediately return MTCL property on demand in good condition and at no cost to MTCL.
- 18.8 The Vendor shall pay to MTCL on demand the full value (or, where MTCL's property consists of tooling less than the full cost of which has been contributed by MTCL, the proportion of such value which MTCL's contribution bears to its cost) of any of MTCL's property which is not returned in good condition or accounted for to MTCL's satisfaction.
- 18.9 The Vendor shall permit or procure the permission for MTCL or its representatives a right of access at any reasonable time to any premises where MTCL's property is located for the purpose of inspecting it or to collect the same.
- 18.10 The Vendor shall waive any lien which the Vendor might otherwise have (whether at the date of the Contract or subsequently) on any of MTCL's property for work done thereon or otherwise.
- 18.11 Vendor's performing secondary work on free of charge goods for MTCL will forward a stock statement on demand and must agree to a witnessed physical count on the Vendor's premises after reasonable notice. Such free of charge goods shall remain the property of MTCL, be identified as the property of MTCL whilst on the Vendor's premises and shall be fully insured by the Vendor against any loss or damage which may occur through fire or any
- 18.12 The Vendor shall be solely responsible for and shall indemnify MTCL against any claims, liabilities, damages, costs and expenses arising from any accident or damage resulting from the improper use or use without MTCL's proper authority of any property of MTCL by the Vendor or its authorised sub-contractors or its or their employees or representatives.

## **19. Work on Site**

- 19.1 Where the Vendor requires access to MTCL's premises for the purposes of installation of the Goods and/or performance of the Contract MTCL shall provide reasonable access and all services necessary to permit the Vendor to fulfil its obligations under the Contract at mutually convenient times.
- 19.2 Whilst at MTCL's premises the Vendor shall and shall ensure that its employees and its authorised subcontractors commit no acts or omissions which would render MTCL liable to any person and the Vendor shall observe all regulations and provisions in force relating to health and safety and any other security requirements that MTCL may notify to the Vendor.
- 19.3 The Vendor shall notify MTCL immediately on becoming aware of any damage caused in the performance of the Contract by the Vendor or its authorised sub-contractors or its or their employees or representatives to any property of MTCL or to any of MTCL's premises.
- 19.4 MTCL may refuse to grant access to, and remove, any of the Vendor's employees or the employee's of its authorised sub-contractors who do not comply with MTCL's regulations and provisions in force relating to health and safety and MTCL's other security requirements.
- 19.5 The Vendor shall replace and shall procure that its authorised sub-contractors replace any of its or their employees who MTCL reasonably believes have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Vendor's employees or the employees of its authorised sub-contractors the Vendor shall ensure such person is

replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.

## **20. IPR**

20.1 The ownership of any patent, design, copyright or other intellectual property rights in connection with the Goods and all drawings, specifications, technical data, computer software or the like prepared by or (including by the Vendor) on behalf of MTCL shall be and remain vested in MTCL.

## **21. Patents and Royalties**

21.1 The Vendor shall pay all royalties and fees on patented articles, processes and registered designs and indemnify and keep indemnified MTCL from all claims in respect thereof.

## **22. Confidentiality**

22.1 The Vendor shall treat the Order, the specifications and all designs, drawings, and information supplied therewith as confidential and shall not disclose the same to any third party without MTCL's consent in writing or infringe any copyright, patent, trade mark or registered design vested in MTCL.

22.2 All such Orders, specifications, designs, drawings and information supplied by MTCL to the Vendor shall be returned upon MTCL's request without retention of copies.

22.3 The Contract shall be confidential to the parties and neither shall disclose the terms thereof except as provided for herein and insofar as they may be required to do so by law or government regulation.

22.4 The Vendor shall not use MTCL's name or logo in any announcement, advertisement or publication or on any website without the prior written consent of MTCL.

## **23. Indemnities**

23.1 The Vendor shall indemnify and shall keep MTCL indemnified in full against all direct, indirect or consequential liability, loss (including loss of profit and increased production costs), damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by MTCL as a result of or in connection with:

23.1.1 the Vendor's negligence or the negligence of its employees or authorised subcontractors or the Vendor's breach of contract;

23.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture, importation, supply and/or resale of the Goods;

23.1.3 any claim made against MTCL in respect of any liability, loss, damage, injury, cost or expense sustained by MTCL's employees or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the supply, delivery and/or installation of the Goods and where the Goods (in whole or in part) comprise services such liability, loss, damage, injury, cost or expense was caused by, relates to or arises in connection with the performance of such services; and

23.1.4 any liability under the Consumer Protection Act 1987 in respect of the Goods which is attributable to the Vendor.

## **24. Insurance**

24.1 The Vendor shall effect and maintain with reputable insurers such insurance policies as are appropriate and adequate having regard to the Vendor's obligations and liabilities under the Contract including but not limited to product liability insurance, public liability insurance and employers' liability insurance. The Vendor shall not do or omit to do anything that would invalidate any of the policies maintained in force in accordance with the provisions of this condition. The Vendor shall produce the relevant policies and evidence of payment of premium from time to time upon request from MTCL. Neither the compliance nor failure to comply with this condition shall relieve or limit the Vendor's liabilities and obligations under the Contract.

**25. Language**

25.1 The language of the agreement is English. All communications and information shall be in English.

**26. Notices**

26.1 Any notice given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business.

**27. Law**

27.1 This agreement 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 the laws of England and the parties submit to the exclusive jurisdiction of the English courts save to the extent that MTCL invokes the jurisdiction of any other country or state.

Last updated June 2015

Mantec Technical Ceramics Limited

Registered in England

Company registration number: 05330054

Registered office: Albion Works, Uttoxeter Road, Longton, Stoke on Trent, ST3 1PH.

VAT registration number: 857 2744 92