

TERMS AND CONDITIONS OF SALE

1. **(Interpretation)** In these terms and conditions:
 - (a) **ACE** means Australian Ceramics Engineering Pty Ltd (ABN 89 153 041 975) of 67 Excellence Drive, Wangara WA 6065.
 - (b) **Agreement** is defined in condition 3.
 - (c) **Business Day** means a business day other than a Saturday, Sunday or public holiday on which banks are open for business generally in Perth, Western Australia;
 - (d) **Buyer** means the buyer identified in the Invoice and includes any person that purchases Goods from ACE under a Credit Account with ACE.
 - (e) **Delivery Date** means the date specified in the Invoice for the delivery of the Goods or as otherwise agreed.
 - (f) **Goods** means the goods or services identified in the Invoice.
 - (g) **Invoice** means the document to which these terms and conditions are attached.
 - (h) **Invoice Due Date** means the invoice due date specified in the Invoice or if none is specified, 30 days after the date of the Invoice.
 - (i) **Liquidator** includes a provisional liquidator, administrator, controller, receiver and receiver and manager.
 - (j) **Loss** includes any direct or indirect, special or consequential loss, damage or liability.
 - (k) **Manufactured Goods** means Goods to be manufactured by ACE to a specification prepared by or on behalf of the Buyer.
 - (l) **Order Acceptance** means a notice given by ACE to the Buyer agreeing to supply the Goods in the absence of any Quotation.
 - (m) **Parties** means ACE and the Buyer or either of them and their successors and assigns.
 - (n) **PPSA** means the *Personal Property Securities Act 2009* (Cth) (as amended from time to time).
 - (o) **Price** means the price for the Goods specified in the Invoice inclusive of GST.
 - (p) **Purchase Money Security Interest** has the meaning given to it in the PPSA.
 - (q) **Quotation** means a quote for the supply of the Goods given by ACE to the Buyer.
 - (r) the singular includes the plural and vice versa.
2. **(Formal written agreement)** These terms and conditions do not apply where the Parties have executed a separate formal written agreement for the Goods.
3. **(Binding)** An agreement for the supply of the Goods shall be formed between the Parties on the sooner of the Buyer accepting a Quotation, ACE giving an Order Acceptance and the issue of the Invoice, and shall be comprised of the Invoice, these terms and conditions and, where applicable, the Quotation or Order Acceptance (**Agreement**). These terms and conditions prevail over any purchase order from the Buyer and, save as otherwise stated, supersede all prior negotiations and communications.
4. **(Price)** Unless otherwise expressly stated, the Price excludes all freight, insurance, packing, storage, handling, demurrage, delivery, export and similar charges and all taxes (save for GST), and the Buyer shall pay and indemnify ACE for those charges or taxes. If ACE expressly agrees in writing that the Price includes any of these charges or taxes, the Price may be adjusted for increases in those charges or taxes after giving any Quotation or Order Acceptance. In the case of Manufactured Goods, ACE may adjust the Price for increases in labour costs after the date of the Quotation or Order Acceptance and otherwise in accordance with any price variation formula in any Quotation or Order Acceptance.
5. **(Payment)** The Buyer must pay the Price on or before the Invoice Due Date. Interest capitalized monthly and calculated monthly at the rate of 1.5% is payable and applies to the outstanding balance of this Invoice from the Invoice Due Date until the date payment is received in full by ACE.
6. **(Acceptance of Invoice)** The Buyer will be deemed to have accepted the Invoice as correct (absent manifest error), unless the Buyer otherwise gives written notice to ACE within 7 days of receiving the Invoice, in which case the Buyer agrees to pay the undisputed amount.
7. **(Debt collection)** Any expenses and/or costs or disbursements incurred by ACE in recovering any outstanding monies including debt collection agency fees and legal costs (on a full indemnity basis) shall be paid by the Buyer within 7 days of demand by ACE.
8. **(Delivery)** ACE will use all reasonable endeavours to deliver the Goods on or before the Delivery Date, but will not be liable for any delay caused by an event beyond ACE's control and will not be liable for any Loss cause by any delay in delivery for any reason.
9. **(Delivery in instalments)** ACE may deliver the Goods in instalments.
10. **(Risk)** The Goods shall be entirely at the risk of the Buyer from the time the Goods are dispatched from ACE's premises. The carrier of the Goods shall be taken to be the agent of the Buyer even if engaged or paid for by ACE.
11. **(Acceptance of Goods)** The Buyer will be deemed to have unconditionally accepted the Goods unless within 7 days of delivery, the Buyer gives written notice to ACE as to the extent to which the Goods do not comply with their order or are defective.
12. **(Buyer's Patterns)** Where any patterns or core boxes are provided by or on behalf of the Buyer for use by ACE to produce Manufactured Goods (**Buyer's Patterns**):
 - (a) ACE shall not be liable for any non-conformity of the Buyer's Patterns to any specifications for the Manufactured Goods and the Buyer irrevocably releases ACE From any claims in relation to such non-conformity;
 - (b) the Buyer must satisfy itself as to and ensure that the Buyer's Patterns meet the requirements of the Buyer;
 - (c) the Buyer acknowledges that ACE will not insure the Buyer's Patterns and that ACE shall not be liable for any loss of or damage to the Buyer's Patterns or any other goods or materials provided by the Buyer to ACE in connection with the Manufactured Goods; and

Document Number: ACE-IMS-TEM-046	Revision Number: 1	Revision Date: 09/10/2018
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- (d) the Buyer agrees to pay ACE, in addition to the Price for the Manufactured Goods, any costs incurred by ACE in storing the Buyer's Patterns or in carrying out repairs or alterations to the Buyer's Patterns.
13. **(Testing)** Where Manufactured Goods are required to be tested or inspected by ACE prior to supply to the Buyer, the Buyer shall pay the costs of that testing or inspection (including the cost of obtaining certificates) in addition to the Price for the Manufactured Goods, and the results of tests and inspections (including as to weight, size, quantity or composition of Manufactured Goods) shall be final and binding on the Buyer.
 14. **(Buyer's Information)** Where the Buyer has provided to ACE any design, specification, process, method of working, or any other information in connection with the Manufactured Goods **(Buyer's Information)**:
 - (a) ACE shall be under no obligation to check or confirm the conformity, accuracy or adequacy of the Buyer's Information;
 - (b) the Buyer grants to ACE an irrevocable licence to use all copyright, design right or other intellectual property in the Buyer's Information for any purpose connected with the Manufactured Goods;
 - (c) the Buyer indemnifies ACE, its officers, agents and employees against all claims, demands, actions, costs (including legal costs on a full indemnity basis), charges, expenses, Loss or other liability arising out of or in connection with any claim against ACE in connection with the use of the Buyer's Information (including for infringement of any intellectual property rights); and
 - (d) ACE shall have no liability to the Buyer (whether in contract, tort or otherwise) in connection with any error, omission or inaccuracy in the Buyer's Information.
 15. **(Returns)** Manufactured Goods and Goods manufactured by ACE to the specific requirements of the Buyer cannot be returned to ACE and are non-refundable. Generic Goods can be returned only with the prior written approval of ACE, at the cost of the Buyer and subject to payment of 50% handling/restocking fee.
 16. **(PPSA)** ACE retains full title to the Goods until ACE receives payment in full for those Goods. ACE claims a Purchase Money Security Interest in the Goods so as to secure payment of the Price. The Buyer grants to ACE a Purchase Money Security Interest in the Goods and any proceeds of their sale to secure payment of the Price. The Buyer agrees not to do anything that may result in the Purchase Money Security Interest granted being subjected to any other personal property security interest granted by the Buyer to any other party.
 17. **(Intellectual Property)** All patent, design rights, trade marks, copyright, original works and other intellectual property in any design, specification, process, method of working or other information relating to the Goods (other than that provided by the Buyer to ACE) shall vest for all time in ACE. ACE only grants to the Buyer a nonexclusive and irrevocable licence to use the Goods.
 18. **(Warranty)** ACE warrants that the Goods will, subject to ACE's general tolerance standards (available on the Buyer's request), conform to the specification for the Goods expressly agreed to in writing by ACE and be free from defects in materials or workmanship, save for any non-conformity or defect relating to any matter addressed in conditions 12(a), 14(a) and 14(d).
 19. **(Statutory terms)** If, under any law, any terms which apply to the supply of the Goods cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law and all terms which would otherwise be implied are excluded.
 20. **(Limitation)** To the extent permitted by law ACE's liability for any breach of any term of the Agreement is limited to one of the following as determined by ACE:
 - (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or acquiring equivalent Goods; or
 - (d) the payment of the cost of having the Goods repaired; or
 - (e) in the case where only services are supplied, the supply of the services again or the payment of the cost of having the services supplied again.
 21. **(No reliance)** The Buyer warrants that it has not relied on any representation or warranty made by or on behalf of ACE which is not expressly set out in the Agreement.
 22. **(No liability)** Subject to condition 18, ACE is not liable for any Loss, including any personal injury or death, arising out of a breach of the Agreement, or suffered as a result of the negligence or any act or omission of ACE.
 23. **(Liquidator appointed)** Where a Liquidator is appointed to the Buyer or, in the case of an individual, the Buyer goes into bankruptcy, ACE may refuse to supply all or some of the Goods unless payment of the Price is made in full prior to delivery.
 24. **(Subcontracting)** ACE may engage subcontractors to carry out the whole or any part of the supply and manufacture of the Goods.
 25. **(Trustee)** Where the Buyer is a trustee, the Buyer warrants that it has full power and authority to agree to enter into the Agreement and be bound by these terms and conditions on behalf of the trust and that it shall be bound by the Agreement both personally and as trustee.
 26. **(Jurisdiction)** The laws of Western Australia shall apply to the Agreement.
 27. **(Giving documents)** In addition to any other method of delivery, ACE may give the Invoice and either Party may give a notice to the other Party, by email or prepaid post, and the recipient will be deemed to have received it if sent by email, at the time sent, and if sent by prepaid post, 2 Business Days after posting, save that where the Invoice or notice would be deemed to be received after 5pm on a Business Day, it is to be treated as having been given at 9am on the next Business Day.

Document Number: ACE-IMS-TEM-046	Revision Number: 1	Revision Date: 09/10/2018
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