

DFC CERAMICS, LLC
TERMS AND CONDITIONS

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the exclusive terms governing the sale of the goods (“**Goods**”) by DFC Ceramics, LLC, a Colorado limited liability company (“**Seller**”) to the Buyer named in the Purchase Order (the “**Purchase Order**”) to which these Terms and Conditions are attached (“**Buyer**”). These terms and conditions can only be amended by a written agreement signed by Seller.

(b) The Purchase Order and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

2. Delivery; Shipping Terms.

(a) Seller’s estimated date of delivery of the Goods takes account of the Goods ordered and inventory levels in accordance with Seller’s standard procedures. If the Purchase Order includes a delivery date that was not provided by Seller, Seller shall separately provide Buyer with Seller’s estimated delivery date for the Goods ordered by Buyer and Seller shall endeavor in good faith to deliver the Goods by such estimated date. If, either (i) within three (3) days of the date Seller provides Buyer with its estimated date of delivery, or (ii) Seller is unable to deliver any of the Goods within forty-five (45) days of Seller’s estimated date, then as Buyer’s exclusive remedy exercisable within five (5) days of receipt of written notice from Seller thereof, Buyer may terminate the Purchase Order. If Buyer does not terminate the applicable Purchase Order in accordance with the preceding sentence, the Purchase Order shall remain valid and binding. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed by Seller, Seller shall deliver the Goods to a common carrier selected by Seller or otherwise designated by Buyer and specified in the Purchase Order at Seller’s manufacturing warehouse in Canon City, Colorado (the “**Delivery Point**”). The Goods will be delivered packaged suitable for shipping. In addition to the purchase price for the Goods, Buyer shall pay all shipping costs paid or incurred by Seller in shipping the Goods to Buyer. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer.

3. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. Buyer shall bear all liability for risk of loss and Buyer shall obtain insurance deemed appropriate by Buyer to insure against such loss. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Colorado Uniform Commercial Code, and shall be released upon Seller’s receipt of full payment of the purchase price for the Goods.

4. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within ten (10) days of receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in Buyer’s purchase order; or (ii) product’s label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility located at Canon City, Colorado. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in **Section 4(b)** are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 4(b)**, all sales of Goods to Buyer are final and Buyer has no right to return Goods purchased under this Agreement to Seller.

5. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the “**Prices**”) set forth in the Purchase Order accepted by Seller, or if the Purchase Order does not include the prices accepted by Seller, at the prices quoted by Seller to Buyer.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, export or import duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel or real or personal property or other assets.

6. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller upon the terms set forth in the Purchase Order. If no payment terms are set forth in the Purchase Order, all amounts shall be due in full upon delivery of the Goods to the common carrier in accordance with Section 2 above. Buyer shall make all payments hereunder by check, electronic payment, or immediately available funds and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Buyer shall be responsible to Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.

7. Limited Warranty.

(a) Seller provides a manufacturer’s limited warranty for its furnaces (the “**Furnace Warranty**”). Seller’s Furnace Warranty is published in the applicable product manual for each furnace, and may be published on Seller’s website from time to time. Other than the Furnace Warranty, Seller disclaims and Buyer acknowledges that has not relied upon any express warranties from Seller regarding the Goods.

(b) **EXCEPT FOR THE FURNACE WARRANTY, SELLER MAKES NO EXPRESS WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, AND DOES HEREBY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE FOLLOWING IMPLIED WARRANTIES: (A) WARRANTY OF MERCHANTABILITY; AND (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND DOES FURTHER DISCLAIM OTHER WARRANTIES WHETHER ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the Furnace Warranty. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, AND OTHER EXPRESS OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the Furnace Warranty unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller prior to the end of the Warranty Period; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such furnace and Buyer (if requested to do so by Seller) returns such furnace to Seller’s place of business at Seller’s cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the furnace is defective.

(e) With respect to any warranted furnaces, Seller shall, in its sole discretion, either: (i) repair or replace such furnaces (or the defective part) or (ii) credit or refund the price of such furnace at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller’s expense, return such furnace to Seller.

(f) **THE REMEDIES SET FORTH IN SECTION 7(e) SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE FURNACE WARRANTY.**

8. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS**

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

(c) The limitation of liability set forth in **Section 8(b)** above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

9. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances relating to Buyer's purchase and use of the Products. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

10. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

11. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

12. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

13. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) pandemics, epidemics or viral outbreaks; and (j) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 13, either party may thereafter terminate this Agreement upon ten (10) days' written notice.

14. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

15. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise,

employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

17. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Colorado.

18. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Colorado or the State of Utah, in each case located in either Fremont County, Colorado or Salt Lake City, Utah, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

19. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

20. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

21. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, and Survival.