

**§ 1 General provisions**

1. The terms used in these general terms and conditions of sale shall have the following meaning:

**Seller:** Polska Ceramika Ogniotrwała „Żarów” Sp. z o.o. (Ltd.) having its registered office in Żarów, at ul. Hutnicza 1, 58-130 Żarów, Poland whose register files are kept by the District Court for Wrocław-Fabryczna in Wrocław, 9th Commercial Division of the National Court Register (KRS), entry number 0000763040, VAT EU: PL5223144767, BDO: 000091518, share capital PLN 2.000.000,00,

**Buyer:** any entity purchasing goods or services provided by the Seller, with whom the Seller has entered into any Contract.

**Offer:** an offer that is made by the Seller to the Buyer in response to the request for quote or without such request, which includes information about the Parties, item of sale and sale price, and which is accompanied by the Seller's General Terms and Conditions of Sale or by a link to the website on which they are posted.

**Order:** an order relating to the Product, as placed by the Buyer with the Seller; if the Order is placed in response to the Offer, such Order shall include the number of the respective Offer and a statement that the Seller's General Terms and Conditions of Sale had been delivered to the Buyer before entering into the Contract.

**Order Confirmation:** a declaration made by the Seller to the Buyer, that contains the confirmation of the conditions of the Contract

**Contract:** an agreement entered into between the Seller and the Buyer pursuant to the Offer and the Order or pursuant to the trade agreement, a content of which shall be defined in the Order Confirmation.

**Trade Contract:** a trade agreement entered into in writing (as a single document) between the Seller and the Buyer.

**Product:** any tangible property, movables, energy and rights (including any necessary additional materials and documentation) or services, whose sale constitutes the subject matter of the Contract.

**General Terms and Conditions of Sale (GTCS):** these General Terms and Conditions of Sale.

**Instruments:** a technical kit produced in order to manufacture the Product, including moulds used for production.

**Parties:** The Buyer and the Seller.

2. The General Terms and Conditions of Sale shall govern the sales of the Products manufactured by Polska Ceramika Ogniotrwała „Żarów” Sp. z o.o. (Ltd.) in Żarów.
3. Unless the Parties agree otherwise in writing in a separate trade agreement, the General Terms and Conditions of Sale shall govern any and all Sale Agreements entered into by the Seller.
4. In the case of any discrepancy between the General Terms and Conditions of Sale and the trade agreement, the provisions of a respective trade agreement shall prevail.
5. The General Terms and Conditions of Sale shall apply exclusively to any and all Agreements entered into by the Seller. Unless the Parties agree otherwise in writing, standard contracts used by the Buyer shall not apply to the Contract.
6. Any announcements, advertisements, price lists and other information about the Products offered by the Seller shall be

provided as a convenience only and shall not constitute an offer.

7. The Seller hereby informs that it is a large enterprise within the meaning of the Commission Regulation (EU) No. 651/2014 of June 17, 2014.

**§ 2 Orders and conditions for entering into agreements**

1. Offers and Orders shall be made and placed in writing, via registered mail, courier service, e-mail or facsimile. Oral statements shall not be binding upon the Parties unless they are confirmed using one of the methods described above.
2. Except where there are negotiations carried out between the Parties with a view to entering into a trade contract, the Seller shall make an offer to the Buyer that shall specify specifying information about the Parties, item of sale, sale price and including the General Terms and Conditions of Sale. In response to such offer, the Buyer places an Order with the Seller (the Order shall refer to that offer, e.g. by quoting the number of such offer, and shall include a statement that the Seller's General Terms and Conditions of Sale had been delivered to the Buyer before entering into the Contract). If there is no such statement, the GTCS shall nevertheless apply if the offer includes a link to the website on which they are posted. The Contract shall be deemed to be entered into when the Seller issues an Order Confirmation.
3. The Offer made by the Seller shall be accepted without any reservations. If the Ordering Party makes any reservations or modifications, the Contract shall be deemed to be entered into following the Seller's submission of an offer that takes account of modifications resulting from the contents of the Order, or following the Seller's approval of such modified Order. The delivery times indicated in the Offer shall be of indicative nature only and are subject to change until the Order Confirmation is made. The binding delivery times shall be determined by the Seller in the Order Confirmation.
4. The Offer made by the Seller may be cancelled before entering into the Contract if a cancellation statement had been communicated to the Buyer before the Order was placed by the Buyer.
5. If the Order is placed by the Buyer, and no prior offer has been made by the Seller, the Order placed by the Buyer shall include Buyer's full name (as it appears in the appropriate register), name, type and quantity of the Products, time of delivery, as well as any other information that are relevant to the ordered item.
6. The Order placed by the Buyer may not be cancelled.
7. In response to the Order, the Seller issues an Order Confirmation which includes information about the Parties, item of sale and sale price, and which is accompanied by the GTCS or by a link to the website on which they are posted, and shall submit it to Buyer. The Contract shall be deemed to be entered into when the Order confirmation is received by the Buyer.
8. The provisions of Article 661 § 1-3 of the (Polish) Civil Code shall not apply to offers made electronically.
9. The General Terms and Conditions of Sale shall be submitted together with the Offer or with the Order confirmation. If these terms and conditions have not been submitted as described above, the General Terms and Conditions of Sale

posted on [www.pco.pl](http://www.pco.pl) or indicated in the Offer or in the Order confirmation, shall apply.

10. Oral arrangements made with the Seller, its employees or representatives shall not be deemed binding, unless they are confirmed by the Seller in writing.

### **§ 3 Delivery conditions and times**

1. Unless the Parties agree otherwise in writing, all Products shall be delivered on an FCA basis, INCOTERMS 2020. Upon Buyer's request, the Seller may arrange transport of Products to the place indicated by the Buyer, at the Buyer's risk and expense.
2. Order fulfilment time shall be counted as from the date the Contract is entered into; however where the provisions of the Contract require the Buyer to submit any documents necessary to perform the Contract (e.g. technical drawings) to the Seller, or to make a pre-payment prior to commencement of production, order fulfilment time shall be counted as from the date such documents or pre-payment are received.
3. If the Contract contains the cost of transport of Products to the place indicated by the Buyer, the determined value shall be valid for one month from Contract conclusion. In case the delivery is made after one month from Contract conclusion, the Seller may request the Buyer pays the transport costs according to the actual amount charged to the Seller.
4. The Buyer shall have no claims whatsoever against the Seller with respect to the payment of contractual penalties resulting from the delayed delivery.
5. The Buyer shall collect the Products no later than 1 month from the delivery time as agreed upon by the Parties. Upon ineffective expiration of the above term, the Seller shall charge the Buyer with the costs of storing the Products in the amount of 20 PLN for each pallet of Products for each commenced week of storage.
6. If the Buyer fails to collect the Products pursuant to section 5 above, the Seller may declare the contract avoided in the 12 month period from the date when the Products should have been collected by the Buyer. In such a case, the Seller may request the Buyer to pay the full price of the Products as well as the cost of storage until the date of contract avoidance.

### **§ 4 Prices and pricing conditions**

1. Prices of the Products are net prices, to which VAT tax shall be added in accordance with the applicable tax provisions.
2. If the payment date is not indicated in the receipt/invoice, the price shall be paid within 7 days from the date such receipt/invoice is received. If the Buyer is in arrears with payment, the Seller is entitled to demand statutory interest of pursuant to the statutory interest rates in force in Poland.
3. The day on which the Seller's bank account is credited or the day on which the Seller's cash desk receives monies shall be considered the payment date.
4. The Seller shall be entitled to suspend the deliveries of subsequent batches until the payment for the already delivered goods is made.
5. In order to secure the claims for the payment of the price specified in the sale agreement, the Buyer shall establish collateral at the request of the Seller. Such collateral shall

in particular be established as a pledge, mortgage, blank promissory note, surety bond or assignment of receivables.

6. Unless the Parties agree otherwise, the Buyer shall accept and pay for the extra Products that must be manufactured during the production process (overproduction). The number of such Products shall not exceed 5% of the total volume of ordered goods.
7. Payment of price prior to the contractually agreed term shall not entitle the Buyer to any rebates or discounts.

### **§ 5 Packaging and marking**

1. Unless the Parties agree otherwise in writing, the Products shall be packaged in accordance with the provisions and standards applied by the Seller.
2. Unless the Parties agree otherwise in writing, packaging costs shall be borne by the Buyer. Rules relating to the payment for goods shall also apply to the payment for the packaging.
3. Unless the Parties agree otherwise in writing, if the Buyer wants the Products to be packaged in a way that differs from the standards accepted by the Seller (e.g. belts, strengthening of the edges), the Buyer shall pay extra costs relating to the packaging.

### **§ 6 Documentation**

1. The following documents shall make an integral part of each Contract: a. material data sheets which determine the typical and guaranteed parameters of Products, b. PCO Standard Tolerance Cards which determine the acceptable tolerance level for physical properties of Products.
2. The Contract may also contain other documentation (drawings, calculations, MSDS cards, certificates of origin etc.).
3. Unless agreed otherwise, the documentation shall be made in Polish or English. The translation into other languages may be executed at the Buyer's request and expense.
4. All drawings, projects, weights and dimensions, thermal calculations, etc. are of an approximate character only and shall be binding upon the Parties only in case they are expressly referred to in the Order Confirmation.
5. Unless the Parties agree otherwise in writing, tolerances of the particular products shall be based on the Standard Tolerance Sheets. If the Product is compliant with the values set out in the Standard Tolerance Sheets, it shall not be possible to exercise the rights under the warranty (with respect to the parameters covered by the tolerances).
6. Unless the Parties agree otherwise in writing, the acceptable quality limit (AQL) shall be 6.5%, pursuant to ISO 5022 international standard, as established by the Polish Committee for Standardization on 24 October 1996 (Resolution No 38/96-0). If the above standard is complied with, it shall not be possible to exercise the rights under the warranty with respect to the rejection rate of the Products.
7. Discrepancies from Products specification shall be admissible in the scope described in the documentation.

### **§ 7 Examination of Products**

1. Prior to delivery, the Products shall be examined pursuant to the Seller's standards. The examination may be confirmed by the Seller's quality certificate. The Seller may allow the Buyer

to participate in Product examination pursuant to the agreed procedures.

2. Other specifications of quality control may be applied only in case of express written agreement.
3. The Buyer's examination of Products prior to delivery at the Seller's premises, and in case of lack of such examination, the Seller's examination confirmed by the quality certificate shall be the final confirmation of the Products qualitative and quantitative conformity with the Contract.
4. The time needed for Buyer's examination of Products at the Seller's premises shall extend the delivery time accordingly.
5. The Buyer shall bear his own costs connected with Product examination. Destructive tests of Products, if required by the Buyer, shall be made at the Buyer's expense at the Seller's premises.

#### **§ 8 Warranty and implied warranty**

1. The Seller declares that at the moment of delivery the Products conform with their specification. The Seller's obligation shall cover only quality defects, i.e. the inconsistency between the physical and chemical parameters of the Product and the guaranteed values stated in the Materials Data Sheet and/or the Standard Tolerance Cards at the moment of delivery, as well as the inconsistency between any given shape or format with the order that is confirmed together with the drawing.
2. If it is ascertained that the Product has a defect that is covered by the warranty, the Seller may, at their own discretion, either replace the Product with a defect-free one or refund the price of such part of the Product that is affected by the defect. The Seller's liability shall not cover the transport cost, costs of removal or reinstallation of Products or any other costs.
3. Immediately upon the release of the Products, the Buyer shall inspect them both with respect to their quantity and quality. Any discrepancies with respect to the quantity shall be notified by the Buyer to the Seller in writing, within 3 days from the day the Products are released. A failure to do so shall result in the loss of the right to lodge any complaints about the quantity of the goods. Any complaints about the quality of the goods (defects) shall be lodged within 14 days. A failure to do so shall result in the loss of the right to lodge any complaints about the quality of the goods.
4. The warranty obligation shall enter into force at the moment of payment of the full price of the Products by the Buyer.
5. The Buyer shall conduct continuous monitoring of the Products working conditions that include in particular: temperature level, chemical composition of the input and exhaust fumes and shall present the monitoring results together with any warranty claim, otherwise the warranty shall expire.
6. The warranty does not cover:
  - a. defects resulting from external causes, including mechanical damage,
  - b. defects caused by force majeure or weather conditions (rain – hydration),
  - c. defects caused by improper use, handling, storage or installation of the Product,
  - d. changes of the Product resulting from normal wear and tear,
  - e. defect caused by the use of the Product after its expiry date,

- f. defects visible during examination pursuant to § 7 and not reported to the Seller immediately thereafter,
  - g. prototype Products, including those made at the Buyer's request,
  - h. defects caused by the improper quality of raw materials provided by the Buyer to the Seller,
  - i. defects resulting from the use of material, products, methods and solutions at the Buyer's request.
7. The Seller does not warrant the lifetime of Products.
8. In case of international sales, the Seller shall not be liable for the lack of conformity of Product with the binding law in the country of its application.
9. The Seller's warranty obligation shall be enforceable only under the following conditions:
  - a. if the Product is to be applied in a kiln, its operating conditions have been disclosed to the Seller in writing prior to Contract conclusion,
  - b. the defect is reported to the Seller in 3 days upon its discovery,
  - c. the Buyer provided the Seller all available data to allow the discovery of the cause of the defect, in particular the monitoring data, as described in section 5 above.
10. If a Product defect is discovered and the Parties cannot reach an amicable settlement, any disputes relating to the quality of the Product shall be resolved by the Quality Committee. The Quality Committee shall inspect the quality of the Product. The results of such inspection shall constitute the basis for pursuing warranty claims. The Inspection Committee shall comprise 3 (three) members: one representative of the Seller, one representative of the User and one expert of the Institute of Refractory Materials in Gliwice. If the inspection proves that the Product is not affected by any physical defect resulting from an element inherent in the Product, the costs of such inspection shall be borne by the Buyer. Otherwise, the costs of the inspection shall be borne by the Seller.
11. It is hereby agreed that the Buyer's exercise of any warranty claim shall not constitute the basis of termination of the Contract, and shall not exclude the obligation to pay for the delivered Products. Repairs made by the Seller under the warranty shall not influence the warranty term.
12. It is hereby agreed that the claims under statutory warranty for defects cannot be pursued.

#### **§ 9 Liability for damages**

If the Seller fails to fulfil any obligation under the Sale Contract or fulfils such obligation improperly, the Seller shall be liable towards the Buyer only for the damage being the normal consequence of their faulty actions or omissions, and only with respect to the Buyer's actual damage. The Seller's liability for indirect losses, lost profits and loss of production is expressly excluded. The amount of damages cannot under any circumstances exceed the price specified in the Sale Contract.

#### **§ 10 Force majeure**

1. The Seller shall not be liable for non-performance caused by the events of force majeure. An event of force majeure shall be any unexpected circumstances that concern the Seller or his subcontractors or suppliers that lie beyond the Seller's control, in particular:



- a. war, martial law, the danger of war or terrorist attacks, state of emergency,
  - b. strike, lockout or other circumstance that materially restricts the ability to conduct entrepreneurial activity, import or export restrictions,
  - c. fire, flood, earthquake, volcano eruption, snowstorm and other sudden weather events, regardless of whether a state of natural disaster has been proclaimed or not,
  - e. restrictions (incl. administrative restrictions) in gas or electricity supply or consumption that last over 48 hours.
2. In case of an occurrence of force majeure, the Seller shall be entitled to extend the date of delivery by the duration of the event of force majeure and an additional term no longer than 6 months.
  3. If an event of force majeure lasts for at least 30 days, the Seller shall be entitled to terminate the Contract with immediate effect.
  4. Pecuniary obligations of the Buyer that were incurred prior to the occurrence of force majeure shall remain in force and are enforceable also during the occurrence of force majeure.

#### **§ 11 Change of circumstances**

1. If, after Contract conclusion, one or more price factors, in particular the cost of raw materials, energy, foreign currency exchange rate, the minimum wage is increased, the Seller may increase the Product price accordingly to the increase of the respective price factor.
2. If the Seller renders additional services in Contract performance, the Buyer shall cover the cost of such services pursuant to the hourly rates listed in the current price list of the Seller.

#### **§ 12 Reservation of title**

1. Unless the Parties agree otherwise in writing, the delivered Products shall remain the Seller's property until the payment is made. During the term of reservation of title, the Seller may not encumber the Products with any third party rights.
2. If the Products are joined with the Buyer's immovables or movables in such a manner that it would be extremely difficult or costly to restore them to their previous condition, the Seller and the Buyer shall become co-owners of the whole. Shares in the co-ownership shall be set as a proportion of the value of the things joined. The Seller shall lose the title to these movables when the whole payment for the delivered Products is made.
3. Moulds and instruments required to manufacture the Products (fittings) shall remain the property of the Seller also if the Buyer is charged with the costs of their manufacture and if they are manufactured in accordance with the instructions given by the Buyer.

#### **§ 13 Transfer of claims**

1. No claims that are available to the Buyer against the Seller in connection with the Contract shall be transferred to any third party without written approval of the Seller.
2. The Buyer shall not, without the Seller's approval, deduct any receivables against the Seller from the Seller's receivables resulting from the sale price.

#### **§ 14 Intellectual property law and confidentiality**

1. Any information disclosed by the Seller to the Buyer or to their representatives and affiliates, including in particular technical, technological, industrial, trade or financial information, drawings, calculations, descriptions and other irrespective of how it is disclosed, shall be deemed trade secrets of the Seller and shall be confidential both while this Contract is being performed and after it is terminated. Such information shall not be disclosed to any third party without written approval of the Seller.
2. The Seller hereby reserves the title to any documentation submitted to the Buyer in connection with the performance of the Contract as well as the intellectual property rights to the solutions presented in such documentation. Such documentation shall in particular include designs, photographs, drawings, calculations and instrumentation necessary to perform the Contract. Such documentation shall not be made available to any third party without written approval of the Seller.
3. The intellectual property to all solutions used for any Product made in performance of the Contract, as well as the Instruments shall remain exclusively with the Seller, even if such solutions have been developed at the Buyer's request.

#### **§ 15 Dispute resolution and governing law**

1. Any dispute that may arise between the Parties in connection with entering into or performing Product Sale Agreements, to which these General Terms and Conditions of Sale are applied, shall be resolved, at the discretion of the Seller, by the polish common court of competent subject matter jurisdiction in Katowice or by the court competent for the Seller's registered office.
2. The Polish law shall be the law governing the Contract. In case of international sales, the United Nations Convention on contracts for the international sale and goods (CISG 1980) shall apply.

#### **§ 16 English translation**

In case of discrepancies between the English translation and the original Polish language version of this document, the Polish version shall be binding upon the Parties