

## TERMS AND CONDITIONS OF SALE

All sales of goods by SELEE Corporation, acting through its Engineered Ceramics division ("Seller") are made subject to the terms and conditions appearing below.

1. **CONSTRUCTION AND LEGAL EFFECT** - Seller's sale to Buyer is expressly conditioned upon Buyer's acceptance of the terms and conditions set forth in this quotation. They supersede and reject any conflicting terms and conditions of Buyer, any statement therein to the contrary notwithstanding. Exceptions to or modifications of any of Seller's terms and conditions, at any time, must be contained in a written or typed (not printed) statement received from Buyer. Seller shall not be deemed to have waived any of its terms and conditions or to have assented to any exception to or modification of such terms and conditions unless such waiver or assent is in writing and signed by Seller's authorized officer.

No representation of any kind is made by Seller except as set forth herein. The Agreement formed upon these terms conclusively supersedes all prior writings and negotiations with respect to the goods or services to be furnished hereunder and Seller shall furnish only quantities and goods or services specifically listed on the face hereof or the pages attached hereto; Seller assumes no responsibility for furnishing other equipment or material shown in any plans or specifications for a project to which the goods or services ordered herein pertain. Seller's published or quoted prices, terms and conditions are subject to change without notice.

2. **PRICES** - Prices quoted are firm for 30 days from the date of quotation, and are thereafter subject to adjustment as stated in the Seller's quotation or as provided in the Buyer's order and accepted in writing by the Seller. In the event of any changes in specifications after receipt of the Buyer's order, the Seller may adjust the selling price to cover such charges.

3. **CREDIT AND TERMS OF PAYMENT** - Buyer's orders are accepted by the Seller subject to credit investigation and approval. Unless other terms are specified on the quotation of Seller, or accepted by Seller in writing, payment shall become due 30 days from date of invoice. If shipment is delayed by the Buyer, the date of readiness for shipment shall be deemed to be the date of invoice for payment purposes. If manufacture is delayed by the Buyer, a payment shall be made within 30 days from date of commencement of such delay, in an amount determined by the purchase price and percentage of completion of the order; the balance shall be payable within 30 days from the date of invoice, or readiness for shipment, as the case may be. If, in the Seller's judgment, the Buyer's financial condition at anytime does not justify the terms specified, the Seller may require full or partial payment as a condition to commencing or continuing manufacture, or in advance of shipment, or, if shipment has been made, recover equipment from the carrier. A service charge of 1.5% per month (18% per annum), or the maximum allowed by law, whichever is less, shall be added to past due balances.

4. **TAXES** - Any tax or other governmental charge now or hereafter levied upon the production, sale, use or shipment of goods ordered by Buyer or sold by Seller will be charged to and paid by the Buyer unless Buyer promptly provides Seller with an appropriate exemption certificate. Such taxes are not covered in the Seller's price unless expressly so stated on Seller's quotation form.

5. **CANCELLATION OF ORDERS** - All orders accepted by Seller are considered to be firm commitments on the part of Buyer. If necessary for Buyer to cancel or modify all or part of undelivered balance or order, Buyer may do so only upon written notice to and acceptance by Seller and upon payment to Seller of all costs of labor, material and supplies applied to the production of such items, plus overhead expenses, and plus 15% of such costs and expenses, provided that such amount shall in no event exceed the selling price of the goods.

6. **FREIGHT** - Unless otherwise stated on Seller's quotation form, prices are F.O.B. original shipping point, without freight allowance. Delivery to the initial carrier shall constitute delivery to the Buyer. The Seller's responsibility ceases upon delivery in good order to such carrier, and all goods are shipped at Buyer's risk. A claim for loss or damage in transit must be entered with the carrier and prosecuted by the Buyer.

For all goods exported by Seller from the U.S., however, legal title to the goods shall pass at the first port of entry in the country of ultimate destination but all risk of loss and damage to products and liability for shipment shall nevertheless transfer F.O.B. Seller's shipping point.

7. **DELIVERY AND DELAY** - Shipping dates are approximate and are based on prompt receipt of all necessary information from the Buyer as well as availability of raw materials and/or components purchased by Seller for Buyer's order. The Seller has no obligation to deliver goods against any order unless and until it has accepted the order by issuance of its acknowledgment of order based on this quotation. In the event the Seller shall not be liable for any delay or failure in the delivery of shipment of goods against an accepted order, or for any damages suffered by reason thereof, when such delay or failure is, or such damages are, directly or indirectly, due to accident (in manufacture or otherwise), fire, flood, riot, war, embargo, labor stoppages, inadequate transportation facilities, shortage of materials or supplies, delay or default on the part of its vendors, regulation by any governmental authority or any like or dissimilar cause or causes beyond its control, which affects Seller or any of its subcontractors or suppliers. The Seller shall have no liability for any liquidated damages or penalty whatsoever unless specifically agreed to in writing by an authorized officer of Seller. If delivery is delayed beyond originally scheduled dates due to delays by the Buyer in furnishing the Seller with technical information or approvals, or manufacturing releases, and additional costs are incurred by the Seller due to such delays, then Buyer shall reimburse Seller for such added costs plus reasonable profit thereon.

8. **STORAGE** - Refractories or equipment on which manufacture or delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller, for the Buyer's account and risk, and regular charges therefor and expenses in connection therewith shall be paid by Buyer; but if, in Seller's opinion, it is unable to obtain or continue such storage, the Buyer will, on request, provide or arrange for suitable storage facilities and assume all costs and risks in connection therewith.

9. **INSTALLATION** - Unless otherwise stipulated in Seller's quotation, Buyer's order does not include installation of refractories or equipment or costs attendant thereto.

10. **TESTS** - If tests are requested by the Buyer and quoted by Seller to determine the performance of equipment, the test procedure to be used must be acceptable to the Seller, and Buyer agrees to abide by Seller's terms concerning, without limitation, items to be supplied by Buyer, items to be supplied by Seller, and Seller's charges for such tests which shall be paid by Buyer.

11. **WARRANTY** - Except where a written warranty has been issued by an authorized officer of Seller with respect to the sale of a particular product, no warranty of any kind, express or implied, is extended to any person by the Seller except warranty of title to the goods. The Seller shall not be liable for any cost or expense, including, without limitation, labor expense, in connection with the removal or replacement of alleged defective refractories or equipment, or any part or portion thereof nor for incidental or consequential damages of any kind, nor under any circumstances for any damage beyond the price of the goods sold. The Seller neither assumes nor does it authorize any other person on its behalf to assume, any other liability in connection with the sale of its products. Goods of other manufacturers sold by the Seller

are not warranted except by express warranties which may be issued in writing from time to time by the manufacturer with respect to a particular product or a particular sale, but Seller will endeavor to secure for its direct Buyers the benefit of warranties extended by manufacturers of such goods sold but not manufactured by the Seller. THE FOREGOING OBLIGATIONS ARE IN LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES INCLUDING ALL WARRANTIES OF FITNESS OR MERCHANTABILITY OR OTHERWISE, EXPRESS OR IMPLIED IN FACT OR BY LAW, and state Seller's entire and exclusive liability and Buyer's exclusive remedy for any claims in connection with the sale or furnishing of service, goods or parts, their design, suitability for use, installation or operations. Buyer agrees that if goods sold hereunder are resold by Buyer, Buyer will include in its contract for resale provisions which limit recoveries against Seller in accordance with this contract. In case of Buyer's failure to include in any such contract for resale terms providing for such limitations, Buyer agrees to indemnify and hold Seller harmless against any liability, loss, cost, damage, or expense (including reasonable attorneys fees) arising out of or resulting from such failure. No employee or agent of Seller is authorized to make any warranty other than that which is specifically set forth herein. The provisions in any specification or chart issued by Seller or attached hereto are descriptive only and are not warranties.

12. **LIMITATION OF LIABILITY**: Except as specifically provided in Section 13 below, Seller shall in no event be liable for any direct, indirect, special or consequential damages whatsoever, whether grounded in tort (including negligence), strict liability or contract, and under no circumstances will Seller's liability exceed the contract price for goods and services upon which liability is claimed. Any action for breach of contract must be commenced within one year after the cause of action has accrued.

13. **PATENTS, COPYRIGHTS AND MASK WORKS** - If Buyer receives a claim that any product or part thereof (herein called "Product") manufactured by Seller infringes a U.S. Patent, Copyright or Mask Work, Buyer shall promptly notify Seller in writing and give Seller information, assistance and exclusive authority to evaluate, defend, and settle such claim. Seller shall then at its own expense and option (1) settle such claim; (2) procure for Buyer the right to use such Product; (3) replace or modify it to avoid infringement; (4) remove it and refund the purchase price less accrued depreciation or (5) defend against such claim. Provided such timely notice, information, assistance and authority has been given by Buyer to Seller, should any court of competent jurisdiction hold such product to constitute an infringement, Seller shall pay any costs and damages finally awarded on account of such infringement and, if the use of such product is enjoined, Seller shall take at its option one or more of the actions under (2), (3) or (4) above. With respect to any product not manufactured by Seller, the patent indemnity, if any, given by the manufacturer thereof shall apply in place of the foregoing indemnity.

The foregoing indemnity shall not apply to any claim that arises out of Seller's compliance with the specification or design of Buyer and it shall not apply to any claim of infringement resulting from the use of Product in combination with other equipment and materials not furnished by Seller. Buyer shall hold Seller harmless and indemnified against all claims described in this paragraph. The sale of any goods hereunder does not carry with it any license to use such goods in combination with other goods not purchased from Seller and which combination is the subject of any patent owned or controlled by Seller.

The rights and obligations of the parties with respect to Patents, Copyrights and Mask Works are solely and exclusively as stated herein.

14. **SUBSTITUTES, CHANGES AND IMPROVEMENTS** - Factors beyond Seller's control and the need for continuing improvement of products may require changes in products from time to time. The Seller reserves the right to make reasonable changes in products of any kind without notice, and to deliver designs or types of products against any order, unless the right is specifically waived by it in writing. The Seller shall have no responsibility whatever with respect to changes made by the manufacturer of products sold but not manufactured by Seller.

15. **VARIANCES** - No claims for variances or shortages in orders will be considered by Seller unless presented to it within 30 days after receipt of goods. The following variance, plus or minus, is allowable on all shipments of refractories and if available, shall be shipped and charged to customer's account, if desired by Seller.

<u>Number Ordered:</u>	<u>Variance:</u>
1 to 9 pieces or One Set	None unless authorized*
10 to 49 pieces	2 pieces or 2 Sets*
50 to 99 pieces	10%
100 to 499 pieces	5%
500 to 999 pieces	3%
1000 to 4999 pieces	2%
5000 or more pieces	1%

\*No minus variance allowed

Any shipping weights given or estimated herein are approximate, for the Buyer's convenience only, and not guaranteed by the Seller. Allowable variations from specified dimensions are those deemed commercially acceptable as proposed by the Refractories Institute.

16. **RETURNS** - Goods may not be returned for credit until and unless Seller has given prior consent in writing to accept them. Materials returned without Seller's written approval may be rejected or credited at Seller's sole discretion. When returned goods are accepted, a minimum deduction of 25% will be made for rehandling and/or reconditioning. All transportation costs for returned goods must be paid by Buyer. In no event may other than salable goods of standard manufacture be returned for credit.

17. **TOOLING** - All fixtures, patterns, molds and die equipment remain the property of Seller even though Buyer has partially or completely paid for this equipment. All molds and dies will be stored, maintained in good condition and replaced when necessary without further cost to Buyer, but Seller shall have the right to discard and scrap them without credit to Buyer after they have been inactive for three (3) years.

18. **INSPECTION, LICENSES, CERTIFICATES** - All charges for inspection, licenses, certificates and other special requirements shall be paid by the Buyer.

19. **APPLICABLE LAW** - All rights and duties of the parties to any contract resulting herefrom shall be governed by the laws of the State of Illinois, without reference to principles of conflicts of law and excluding any application of the United Nations Convention on Contracts for the International Sale of Goods.

20. **NON-WAIVER** - Seller's failure at any time to require strict performance by Buyer of any of the provisions herein shall not waive or diminish our right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default.