

# Specialty Grains and Powders

## Terms and Conditions



### **SELLER.**

The Ceramic Materials business unit of Saint-Gobain Ceramics & Plastics, Inc. is hereinafter referred to as "Seller," as applicable.

### **FINAL AGREEMENT.**

The terms and conditions set forth herein shall constitute the final, complete and exclusive terms and conditions of sale. Purchaser shall be bound by the terms and conditions herein when it executes and returns an acknowledgment copy to Seller, or when it otherwise indicates acceptance of these terms and conditions, or when it accepts delivery from Seller of, or pays Seller for any of the products or services specified herein. Seller's obligations are expressly limited to the terms and conditions stated herein and any additional or different terms and conditions proposed by Purchaser in any offer, order, acceptance or other writing, or otherwise, are rejected by Seller unless expressly assented in writing by Seller. Seller reserves the right to correct all typographical or clerical errors which may be present in the prices or specifications herein.

### **PRICES AND OTHER CHARGES.**

Prices and other terms and conditions of sale are subject to change without prior notice. All shipments will be invoiced at prices in effect at the time of shipment. A minimum charge of \$150 applies to all orders, except that orders for Amplex Diamond products have a \$75 minimum charge. On palletized shipments, a pallet charge will be added to the invoice. A packaging fee will be added to ZirPro invoices.

### **PAYMENT TERMS.**

Payment terms are 1%, 15 days, net 30 days for customers with approved credit (unless otherwise stated on the front of this document). For ZirPro customers, payment terms are net 30 days. **NOTE:** Payments must be RECEIVED by Seller within 15 days of invoice date in order to qualify for discount. Late payments are subject to a finance charge of 1.5% per month, or the maximum charge allowed by law if less than 1.5% per month. In the event that Seller incurs costs and expenses, including but not limited to reasonable attorneys' fees to collect what is owed hereunder, and to otherwise enforce any of its rights hereunder, such costs and expenses shall be paid by Purchaser.

### **TAXES.**

Seller's prices do not include sales, use, excise or similar taxes. Thus, in addition to the prices specified herein, any present or future sales, use, excise or similar taxes applicable to the products or services sold hereunder shall be added to the price and paid by Purchaser.

### **DELIVERY TERMS.**

F.O.B. Seller's Factory, unless otherwise agreed in writing by Seller and Purchaser and/or noted on the front of this document. In all cases risk of loss or damage to products in transit shall be on Purchaser, who shall file any resulting claims with the carrier. Shipping dates reflect Seller's best estimate based on production requirements. Seller shall not be liable for delay in delivery or failure to manufacture due to causes beyond its reasonable control, nor shall Seller be required to allocate production and deliveries, in this event, among customers. For export orders, shipment date is subject to extensions of time as required to obtain any necessary export license. Seller reserves the right to make partial shipments, unless other written instructions are given by Purchaser.

### **ORDERS CONSIDERED COMPLETE.**

Total shipments made within the range of 10% over and 10% under the order quantity will be considered complete fulfillment of the order by Seller. The invoice value will be for the quantity shipped.

### **HOLD FOR RELEASE AND WILL CALL ORDERS.**

Unless specific written instructions are given by Purchaser, the order will be entered into Seller's normal production schedule for immediate shipment upon completion of manufacturing. For orders held for release or shipping

instructions, Seller will contact Purchaser. Disposition of the order must be made 10 days after such contact or the Purchaser will be subject to assessment of a handling charge of 5% of the total value of the order. In addition, orders held for release or shipping instructions beyond 90 days after completion may be subject to storage charges.

### **RETURNS POLICY.**

The decision to accept product for return rests solely with Seller. With Seller's prior written approval, Seller's standard products which are in saleable condition, all as determined by Seller, may be returned to Seller for a refund of product price, less a restocking charge of 25% of original invoice price. Purchaser must pay for return freight to Seller's origin factory and Purchaser shall be responsible for risk of loss or damage to the products in transit.

### **CANCELLATION.**

Purchaser may cancel an order provided written notice is given to Seller prior to the commencement of production or processing of the products. If production or processing has started, Seller will charge up to the full invoice price for the products to be determined by Seller based upon the stage of production or processing which has been performed. Cancellation of orders for Seller's standard stock products may be made in writing by Purchaser at any time prior to shipment by Seller.

### **WARRANTY.**

Seller warrants that the products to be delivered shall be of the type specified and conform to Seller's specifications, or to Purchaser's specifications if agreed to in writing by Seller, and shall be free from defects in material and workmanship when compared to the applicable specifications. **SELLER MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT OF ANY PATENT, EXCEPT THAT THE IMPLIED WARRANTY OF TITLE IS NOT DISCLAIMED.**

Seller's only liability and obligation under the above warranty shall be to correct any defects in, or at Seller's option, to replace any defective products which fail to comply with above warranty. Seller shall not be liable for any breach of the above warranty unless it receives written notice of such breach within one year from the date of shipment of the products to which the breach relates.

### **LIMITATION OF LIABILITY AND DAMAGES.**

Seller shall not, in any event, be liable in contract, tort, warranty, strict liability, or otherwise, for any special, indirect, incidental, or consequential damages, such as, but not limited to, loss of anticipated profits or revenue. Further, any liability of Seller arising in connection with any product or service shall not exceed the sales price of such product or service.

### **PATENTS.**

Purchaser shall defend, indemnify, and hold Seller harmless against any expense, loss or cost from any infringement of any patent or trademark arising out of Seller's compliance with Purchaser's designs, specifications or instructions with respect to products or their manufacture. Seller shall not be liable for any use made by Purchaser or those taking, directly or indirectly, from Purchaser, of any product furnished to Purchaser by Seller which is covered by an adversely held patent.

### **APPLICABLE LAW.**

The rights and duties of the parties hereto and the validity, construction and interpretation of this agreement shall be governed by the laws of the Commonwealth of Massachusetts, U.S.A., without giving effect to its conflicts of laws provisions.

### **ASSIGNMENT.**

Purchaser may not assign its rights or duties under this agreement, by operation of law or otherwise, without the prior written consent of Seller.