

Morgan Advanced Ceramics, Inc. – Terms and Conditions of Sale

1. Applicability. All shipments, services, sales and quotations between Morgan Advanced Ceramics, Inc., a Delaware corporation (“Morgan” or “us” or “we”), and its Buyer (the “Buyer” or “you”) are subject to these general terms and conditions of sale (these “Terms”). They are, therefore, also valid for all future business transactions between Morgan and Buyer, even in cases where they are not expressly specified or re-agreed upon.

2. Dissenting or Additional Terms. Dissenting or additional terms or conditions of business that may be proposed from time to time by Buyer are not binding upon Morgan, unless they are expressly confirmed by Morgan in writing. The mere acceptance of a purchase order containing such dissenting or additional terms and conditions shall not bind Morgan to the same, and Morgan expressly rejects all of Buyer's general terms and conditions of business that are opposed to or in addition to these Terms.

3. Oral Terms Not Binding. Agreements, supplements or understandings made by phone or orally that deviate from these Terms are not binding, unless they have been confirmed in writing by the party to be bound.

4. Issuance of Purchase Orders. All quotations are without obligation and are not binding upon Morgan. Buyer will submit to Morgan one or more purchase orders substantially in the form attached hereto as Exhibit A (each, a “Purchase Order”) identifying the products Buyer desires to purchase for sale and distribution, for inventory, or otherwise. Each Purchase Order may include other terms and conditions that are consistent with these Terms or that are necessary to place the Purchase Order, such as billing and shipping information, target delivery dates, the delivery location, quantities, and the purchase price or charges for the products. Buyer will place Purchase Orders by email, telephone, fax, or mail, and will promptly follow orders placed by telephone with a written Purchase Order.

5. Acceptance of Purchase Orders. Each Purchase Order shall be subject to the acceptance by Morgan in its sole discretion. Morgan will indicate its acceptance of Purchase Orders or alterations to Purchase Orders by providing to Buyer a written acceptance of such Purchase Orders (whether by mail, email, telecopy or other means). In the absence of any written acknowledgement or written acceptance of the Purchase Order, shipment of goods ordered shall be deemed acceptance of such Purchase Order.

6. Purchase Order Alteration and Cancellation. Prior to shipment of the products ordered by Buyer, Morgan will accept an alteration to a Purchase Order that: (i) changes a location for delivery; or (ii) corrects typographical or clerical errors. Buyer may cancel a Purchase Order if Buyer provides Morgan with a written notice of such cancellation at least ninety (90) days prior to the scheduled or anticipated date of shipment of the products specified in such Purchase Order, provided that Buyer pays to Morgan all amounts due to Morgan for products already shipped or delivered by Morgan to Buyer prior to Morgan's receipt of the termination notice and reimburse Morgan for all of Morgan's out-of-pocket costs and expenses (including raw materials, cancellation costs with suppliers, work-in-progress, machinery and equipment purchases, and finished inventory) incurred by Morgan prior to receipt of Buyer's termination notice. Except as otherwise provided in this Section 6, a Purchase Order once placed with and accepted by Morgan cannot be cancelled or amended, including any amendment that changes drawings and specifications as to any goods and/or work covered by the Purchase Order except with Morgan's written consent and upon terms that reflect any changes in price or time for performance and that will indemnify Morgan for all losses incurred by Morgan associated with the Buyer's amendment or cancellation, including but not limited to the costs already incurred by Morgan in the performance of its contractual duties and any profits that Morgan would have received had the contract been completed.

7. Price and Discounts. All prices reflected in any order accepted by Morgan or quoted by Morgan shall be on a net basis FOB (*Incoterms 2010*) Morgan's loading dock. Unless otherwise specified on the face of the Purchase Order, all packaging and cartage charges special containers, packaging, crating, palletizing, applicable taxes and duties, freight, insurance or other incidental expenditures and taxes payable in the country of manufacture shall be paid by Buyer and are deemed excluded from the purchase price. All prices are in U.S. Dollars and all payments shall be in U.S. Dollars.

8. Payment. Unless otherwise agreed to in writing by Morgan, payment of the total purchase order price is due and payable within thirty (30) calendar days from the date of invoice. Time is of the essence with respect to all of Buyer's payment obligations hereunder. Buyer grants Morgan a continuing security interest in the products purchased by Buyer from Morgan and the proceeds thereof. Such security interest secures all obligations of Buyer to Morgan with respect to products bought and sold from Morgan. Buyer agrees from time to time to execute such documents as Morgan deems necessary to perfect Morgan's security interest.

9. Interest. No products shall be shipped to Buyer if Buyer has an outstanding invoice over ten (10) days past due.

10. Account Information. All payments shall be remitted to Morgan's account communicated to Buyer from time to time. Morgan shall have the right to change such account from time to time upon a written notice to Buyer.

11. Delivery or Performance Dates. Morgan will use commercially reasonable efforts to meet specified delivery or performance dates. If Morgan has delayed shipment of all or any products for more than thirty (30) days after the specified delivery date, and if such delay is not due to any action or inaction by Buyer or otherwise excused in accordance with the terms and conditions of these Terms, Buyer may terminate the Purchase Order or request that Morgan reship the products to Buyer (expedited delivery) and pay all shipment costs related to the expedited delivery. Subject to Buyer's rights under this section, no delay in shipment or delivery of any products relieves Buyer of its obligations under these Terms, including accepting delivery of any remaining installment or other orders of products.

12. Delay Caused by Force Majeure. Even if binding terms or dates are agreed upon, Morgan shall not be liable for damages occasioned by a delay in performance or delivery caused by force majeure or similar circumstances that make delivery or service difficult if not impossible for Morgan. This includes problems caused in whole or in part by an act of God, war, insurrection, civil commotion, strike, flood, fire, earthquake, domestic violence, terrorism, lockout, embargo, lack of water, materials, power, or telephone transmissions specified or reasonably necessary in connection with these Terms, hurricanes, unavoidable casualties, and any other occurrence, event, or condition beyond the reasonable control of Morgan (a “Force Majeure Event”). Morgan shall promptly notify Buyer of such Force Majeure Event. Such circumstances entitle Morgan to postpone delivery by the period of their duration plus a reasonable starting up time or to cancel any Purchase Order or part thereof not yet fulfilled. In the case of a restriction lasting longer than three (3) months, Buyer shall have the right to terminate all or any unshipped part of the Purchase Order not yet filled. Such right of cancellation shall be Buyer's exclusive remedy.

13. Product Shortage, Partial Shipment and Back Orders. Morgan may make partial shipments of Buyer's orders, which Morgan may invoice separately, and which shipments Buyer will pay for when due. Delay in delivery of any installment will not relieve Buyer of its obligation to accept the remaining deliveries, unless Buyer cancels such shipments as set forth in Section 6 hereof.

14. Title and Risk of Loss; Transportation. Title to and all risks of loss and liability for damages shall pass to Buyer upon delivery by Morgan to a common carrier at the FOB point (i.e., Morgan's loading dock). Buyer shall be responsible for all insurance and transportation charges from the FOB point. Unless instructed by Buyer on shipping method, placement of values and carrier, Morgan will use its own discretion thereon. Morgan will invoice Buyer and Buyer agrees to reimburse Morgan for all charges incurred on behalf of Buyer, including insurance, transportation costs and any packaging costs that may result from Buyer specifying a particular mode of transportation.

15. Insurance During Transit. Buyer shall insure the items for their full value during transit from the F.C.A. point, with such insurance to contain a provision waiving all rights of subrogation against Morgan and its employees, agents, and representatives with respect to losses payable under such policy. Buyer hereby waives and releases Morgan and its employees, agents, and representatives of and from any and all rights of recovery, claim, action or cause of action for any loss or damage that may occur to the products during transit regardless of cause or origin, and Buyer acknowledges that the foregoing waiver and release is intended to result in any such loss or damage being borne by the insurance carrier of Buyer, or by Buyer if Buyer fails to obtain and maintain the insurance required hereunder.

16. Nonconforming Products. Buyer may provide written notice of acceptance of the products to Morgan. However, in the absence of Buyer's written acceptance, acceptance shall be deemed to occur thirty (30) days after delivery of the products to Buyer (the “Inspection Period”). If Buyer does not notify Morgan of any defects or non-conformities within the Inspection Period, the products shall be deemed accepted by Buyer, and Buyer shall be deemed to have waived any claim relating to defects or non-conformities in the products that would have been apparent upon a reasonable inspection of the products. If any products covered by the purchase order are determined by Buyer during the Inspection Period to be defective or otherwise not in conformity with the requirements of the purchase order, Buyer will promptly notify Morgan of such defects or non-conformities and either return the products to Morgan or dispose of the products at Morgan's request, direction and expense. In such event, Morgan shall, at its option, either (i) refund the full purchase price of the non-conforming or defective products; or (ii) replace the non-conforming or defective products with conforming products without defects. The foregoing shall be the sole and exclusive remedy of Buyer for nonconforming products. In no event is Buyer entitled to retain payments due Morgan, except upon the written consent of Morgan.

17. Limited Warranty. Morgan warrants that all goods sold hereunder shall be free from defects in material and workmanship and shall conform to Morgan's applicable specifications at the time of their delivery to the F.C.A. point and for a period of one (1) year thereafter (the “Warranty Period”). THE FOREGOING WARRANTY IS IN

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LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED. Determination of the suitability of the products for the uses and applications contemplated by Buyer shall be the sole responsibility of Buyer. Buyer assumes all risks and liabilities for the results obtained by the use of the products, whether used alone or in combination with other material. Morgan makes no warranty or guaranty with respect to the results to be obtained by the use of the products. Any warranty claims must be made within the Warranty Period, and any warranty claims not made during the Warranty Period shall be deemed waived by Buyer.

18. Liability of Morgan. In the event of a warranty claim made during the Warranty Period and accepted by Morgan, Morgan shall have the option to either (i) replace the product(s) allegedly failing to comply with such warranty by delivering a like quantity of the product(s) meeting the descriptions and specifications referenced in the purchase order for such product(s), or (ii) refund the total purchase price for the product(s) allegedly failing to comply with such warranty. The foregoing shall be the sole and exclusive remedy of Buyer for breach of warranty by Morgan. Defective products shall be returned or disposed of as directed by Morgan. IN NO EVENT SHALL THE LIABILITY OF MORGAN TO BUYER, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE, EXCEED THE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH MORGAN'S LIABILITY IS CLAIMED, AND IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE, THAT ARISE IN CONNECTION WITH THE PRODUCTS OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE PRODUCTS AND LOSS OF PROFITS). Buyer acknowledges that the remedies provided herein are exclusive and in lieu of all other remedies available to Buyer at law or in equity.

19. Assignment. Buyer may not assign these Terms without the express prior written consent of Morgan. These Terms shall be binding upon and shall inure to the benefit of Morgan and its successors and assigns, and shall be binding upon and inure to the benefit of Buyer and its permitted assignees.

20. Entire Agreement. Except as otherwise expressly provided in a written document signed by Morgan and Buyer, these Terms contain the complete and final agreement between Buyer and Morgan with respect to the subject matter herein contained and supersede all prior agreements and communications between Morgan and Buyer, whether oral or written.

21. No Implied Waivers. No modification, limitation, waiver or discharge of these terms or conditions shall bind Morgan unless in writing and signed by an authorized officer, agent, or employee of Morgan. No waiver or failure of Morgan to insist, in one or more instances, on performance by Buyer in strict compliance with any provision of these Terms hereof on any one occasion shall be deemed to be a waiver of the same or of any other right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

22. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given only if and when (i) personally delivered; (ii) five (5) business days after mailing, postage prepaid, first class air mail; (iii) when delivered (and receipted for) by an express delivery service; or (iv) when first sent by telex, telecopy or other means of instantaneous communication, provided such communication is properly confirmed by personal delivery, mail or an express delivery service as provided above, addressed in each case at the address set forth as the communications address on the Purchase Orders or at such other address as either party may specify from time to time in writing in accordance with this provision.

23. Governing Law. These Terms and any agreement resulting from the acceptance of a Purchase Order shall be construed pursuant to the laws of the state of New York without giving effect to its conflicts of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply.

24. Arbitration and Submission to Jurisdiction. All disputes and claims relating to any provision hereof or relating to or arising out of the parties' relationship or creation or termination thereof (including, without limitation, any claims that any provision of these Terms, any specification, standard or operating procedure or any other obligation of Morgan or of Buyer is illegal or otherwise unenforceable or voidable under law, ordinance or ruling) shall be resolved by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration will be conducted at the offices of the AAA in New York, New York before an independent and impartial arbitrator. Each party consents and submits to the personal jurisdiction and venue of the state or local trial courts located in Manhattan and also to the personal jurisdiction and venue of the United States District Court for the Southern District of New York for purposes of enforcing this provision. All awards of the arbitration shall be binding and non-appealable except as otherwise provided in the United States Arbitration Act (9 U.S.C., § 1, et seq.). Judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place at a time noticed by the AAA regardless of whether one of the parties fails or refuses to participate. The foregoing provision shall not preclude either party from bringing an action in any court of competent jurisdiction for injunctive or other provisional relief as necessary or

appropriate. The arbitrator may award attorneys' fees and costs in connection with the arbitration proceeding in addition to any other relief that may be granted.

25. Severability. In case any terms or conditions contained herein should be or become invalid or unenforceable under applicable law, such terms and conditions shall be deemed to be severable from the remainder of these Terms and shall not cause the invalidity or unenforceability of the remainder of these Terms.

26. Section References and Headings. Any reference in these Terms to a section or subsection shall be deemed to include a reference to any subsidiary sections whenever the context requires. The headings are for convenience only and are not to be used in the construction or interpretation of these Terms.

27. Compliance with Law. Buyer and Morgan shall comply with all applicable local, state and federal laws, order, rules and regulations. Buyer represents and warrants to Morgan that it is, and shall continue to be, in compliance with all applicable export controls of the United States Government.

28. Indemnity. Buyer agrees to indemnify and hold Morgan, its affiliates, officers, directors, employees and agents, harmless from and against all liability, loss, damage, costs and expenses including, but not limited to, costs and expenses of litigation and reasonable attorneys' fees, that Morgan hereafter may incur or that Morgan may reimburse to a third party as the result of any claim, action or right of action, at law or in equity, arising out of (A) Buyer's non-compliance or breach of these Terms and any representation or warranty contained herein; (B) any infringement or alleged infringement of any license, patent, copyright or any other intellectual property right; or (C) any injury (including death) to any person or damage to any property occurring as a result of, or caused in whole or in part by, acts or omissions of Buyer or its agents, officers, directors, employees, any subcontractor or its employees, or any person, firm or corporation employed or engaged by Buyer. Buyer hereby waives and releases Morgan from any and all rights of recovery, claims, actions or causes of action that Buyer may have against Morgan with respect to those matters that Buyer has agreed to indemnify Morgan hereunder. Buyer shall not be liable to Morgan for loss, damage, costs and expenses which are the direct result of the gross negligence or intentional conduct of Morgan.

EXHIBIT A

PURCHASE ORDER

BUYER:

PURCHASE ORDER

Phone:

Fax:

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Vendor Number:

PO Date:

SELLER: MORGAN ADVANCED CERAMICS, INC. [ADDRESS]	SHIP TO	
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SHIP COLLECT VIA:

F.C.A.
SHIPPING POINT

ITEM	QTY	U/M	DESCRIPTION	TARGET DELIVERY DATE	UNIT PRICE
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SHIPPING INSTRUCTIONS:

This Purchase Order is subject to the Morgan Advanced Ceramics, Inc. Terms and Conditions of Sale, which are incorporated into this Purchase Order by reference. By executing this Purchase Order, the Buyer identified above represents and warrants to Morgan that it has received and read such Terms and Conditions and that it understands and agrees to be bound by the terms and conditions contained therein.

BUYER:

Accepted as of this ____ day of _____, 20__.

MORGAN ADVANCED CERAMICS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title: