

§ 1 General provisions

1. The definitions used in the present general terms and conditions of purchase shall have the following meaning:

Purchaser: 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,

Seller: each entity selling goods or rendering services for the Purchaser,

Purchase Order: order made by the Purchaser to the Seller after an Offer Inquiry has been made or without such Inquiry, that includes data of the Parties, subject of sale, sale price, with Purchaser's General Terms and Conditions of Purchase of Goods and Services attached or with indication of the website address, where the General Terms and Conditions of Purchase of Goods and Services may be accessed,

Purchase Order Confirmation: confirmation of an order for Goods and/or Services made by the Seller to the Purchaser. If the confirmation has been made in reply to a Purchase Order, it shall indicate the Purchase Order number, and a confirmation that the General Terms and Conditions of Purchase of Goods and Services have been delivered to the Seller prior to Contract conclusion,

Contract: a contact made between the Seller and the Purchaser on the basis of the Purchase Order, Purchase Order with Purchase Order Confirmation or a commercial contract,

Goods: all material goods, movables, commodities, energy and rights (including necessary additional material, specifications, certificates, manuals and warranties),

Services: all services and related performance, a provision of which shall constitute the subject of a Contract,

General Terms and Conditions of Purchase or GTCP: the present General Terms and Conditions of Purchase of Goods and Services,

Offer Inquiry: an inquiry of the price or other terms of sale of Goods or Services made by the Purchaser to the Seller,

Parties: Purchaser and Seller

2. General Terms of Purchase govern the purchase of Goods or Services by the Purchaser.
3. Purchaser's General Terms of Purchase shall apply exclusively to all offers made to the Purchaser, offers made by the Purchaser and Contracts of purchase of Goods or Services made by the Purchaser. Any general terms and conditions of the Seller shall be excluded from the Contract, unless the Parties agree differently in writing. All other general terms and conditions of sale or purchase of the Seller, which have not been expressly accepted by the Purchaser in writing shall not be binding on the Purchaser.
4. In case of discrepancies between the present GTCP and a trade agreement, the provisions of a trade agreement shall prevail.
5. By commencing performance of the Contract, the Seller accepts the present GTCP.
6. The Purchaser 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 contract conclusion

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1. Delivery of any Goods or Services to the Purchaser must be a subject of a Purchase Order.
2. The Seller is obliged to issue a Purchase Order Confirmation in 3 days upon receipt of the Purchase Order. Absent delivery of the Purchase Order Confirmation to the Purchaser in the term specified above, the Order shall not be binding, unless the Parties agree differently in writing .
3. Purchase Orders and Purchase Order Confirmations shall be made in writing, by registered mail or courier, e-mail or fax. Oral statements shall not be binding on the Parties unless confirmed in one of the ways indicated above.
4. Apart from the situations where the Parties conduct negotiations in order to conclude a trade agreement, a conclusion of the Contract shall occur by the means of the Purchaser's Purchase Order, that includes the Parties' data, subject of the order, quantity and a purchase price together with the GTCP and the Sellers Purchase Order Confirmation relating to the Purchase Order, e.g. by indication of the Purchase Order number and a statement that the Purchaser's GTCP have been delivered to the Seller prior to Contract conclusion. Absent the statement the GTCP shall be binding if the Purchase Order indicates the website address where the GTCP may be accessed. The Contract is concluded after the Seller makes the Purchase Order Confirmation.
5. A Purchase Order made by the Purchaser may be accepted only in its entirety, without reservations. In case of reservations or amendments to the Purchase Order made by the Seller, the Contract is concluded only after the Purchaser files a Purchase Order that includes the reservations or amendments made by the Seller or if the Purchaser confirms in writing the reservations and amendments made by the Seller.
6. The Purchase Order made by the Purchaser may be revoked before Contract conclusion if the statement of revoke was made to the Seller before the Seller issued the Purchase Order Confirmation.
7. In case of electronic offers, the rules of art. 661 § 1-3 of the Polish Civil Code shall not apply.
8. The GTCP shall be delivered with the Offer Inquiry or Purchase Order. If the GTCP have not been delivered pursuant to the previous sentence, the GTCP available on the www.pco.pl website or indicated in the Purchase Order shall apply.
9. An Offer Inquiry does not create any obligations of the Purchaser.
10. If the Parties are bound by a framework agreement for delivery of Goods or rendering Services, the GTCP shall be binding upon the Parties without the need to indicate the fact in the particular orders made under the base agreement.
11. If the Parties are bound by a framework agreement for delivery of Goods or rendering Services or remain in permanent business relations absent a framework agreement, lack of immediate reply to the Purchase Order made by the Purchaser shall be deemed the acceptance of the Purchase Order (art. 682 of the Polish Civil Code).

§ 3 Terms and conditions of delivery

1. Unless the Parties agreed differently in writing, the Goods shall be

delivered and Services shall be rendered on the DDP basis (Incoterms 2020).

2. The term for performance commences from the date of Contract conclusion. In case that pursuant to the Contract the Purchaser shall provide the Seller with documents necessary for Contract performance (e.g. technical drawings), the term for performance shall commence from the date the Seller has received such documents.
3. No later than 3 days before the Goods are dispatched, the Seller shall inform the Purchaser about the dispatch, providing the Contract/Purchase Order no., mode and the expected date of dispatch, dispatch specification with the amounts, weight, dimensions and package contents and all instructions necessary for the proper transport and unloading of the Goods, unless the Parties agree differently in writing.
4. The Seller shall deliver the following documents with the Goods:
 - dispatch specification with the amounts, weight, dimensions and package contents
 - a complete technical documentation necessary for the proper installation of Goods in their place of use and proper start up, operation and maintenance,
 - required certificates of analyses, tests and clearances required by the law of Poland and the European Union,
 - storage instruction,
 - the warranty document, if the Seller grants warranty.
5. The delivery date is the date of handing over the Goods to the Purchaser in the place indicated in the Contract or GTCP together with all necessary documents and certificates, confirmed by a document signed by the Purchaser.
6. Change of the agreed delivery date may occur only upon written consent of the Purchaser.
7. Partial deliveries may be made only upon written consent of the Purchaser. In such a situation the delivery date is the date of handing over the last partial delivery, unless the Parties agree differently in writing.
8. In case of delay in delivery of Goods or Services for reasons other than force majeure, the Seller shall pay the Purchaser a contractual penalty of 1% of the value of the Goods delivered late for each commenced 7 days of delay in delivery, no more than 20% of the value of the Goods delivered late. The Purchaser may claim damages exceeding the contractual penalty if the damage inflicted upon the Purchaser as a result of the delay exceed the amount of the contractual penalty.
9. In case there are grounds to claim contractual penalty, the Purchaser may set off his claims for contractual penalty with the Seller's claim for payment of the price under the Contract.

Regardless of the form of settlement – set off or payment to the Purchaser – Purchaser shall issue a debit note for the amount of contractual penalty.
10. In case of delay in delivery of Goods or Services of more than 30 days for reasons other than force majeure, the Purchaser may, at its discretion, declare the contract avoided, or, if fungibles are the Contract subject – may confer Contract performance to a third party at the Seller's cost (substitute performance).
11. The Purchaser shall check the Goods in reasonable time upon its delivery. The delivery of Goods shall be confirmed by a

protocol. Lack of claims for defects of the Goods in the delivery protocol does not preclude the Purchaser from advancing such claims afterwards, if such defects are discovered after the delivery or have been concealed by the Seller.

§ 4 Conditions of rendering Services

1. The Seller shall keep order in the place of rendering Services on the Purchaser's premises and shall dispose of and recycle at his own expense all materials and waste remaining after the services have been rendered.
2. The Seller bears lone and full liability for the safety of his employees and the conformity of technical condition of equipment used for rendering services with relevant laws and HSSE norms.
3. While rendering Services, the Seller shall comply with the Purchaser's instructions.
4. The Seller shall immediately notify the Purchaser of the necessity to perform any additional services that exceed the agreed scope of Services. In case such additional services are commenced without the Purchaser's written consent, the Seller may not claim remuneration for the additional services.
5. The Seller shall obtain a written consent of the Purchaser prior to mandating part or all rendered Services to a subcontractor. The Seller shall bear liability for the subcontractors acts and omissions as for his own acts and omissions.

§ 5 Prices and conditions of payment

1. Unless the Parties agreed differently in writing or it has been indicated on the receipt or the invoice, the prices of Goods or Services indicated in the Purchase order are gross prices.
2. Unless the Parties agreed differently in writing or it has been indicated on the receipt or invoice, payment for Goods or Services shall be made to the Seller's bank account indicated in the invoice in 60 days upon the Purchaser's receipt of the VAT invoice and a final acceptance protocol signed by both Parties.
3. In case the Purchaser receives a VAT invoice prior to the Parties' signing of the final acceptance protocol, the term for payment of the VAT invoice shall begin at the date of receipt of the final acceptance protocol signed by both Parties.
4. The date of payment is the date of charging the Purchaser's bank account. In case of cash payment the date of payment is the date of cash receipt by the Seller.
5. Unless the Parties agreed differently in writing the indicated price for Goods or Services is final and may not be raised regardless of the cause, even when at the moment of contract conclusion the scope or costs of the works could not have been envisaged, and shall encompass all costs connected with the sale of Goods or rendering Services, including in particular moulds, forms, and other equipment necessary to produce the Goods or render Services, transport and insurance.

Unless the Parties agreed differently in writing, the Purchaser is not obliged to receive or pay for any additional Goods that have been produced as a result of technological necessity.

7. Payment of sums due to the Seller shall be made to the bank account indicated on the invoice. If the Seller is VAT-registered in Poland – the Seller hereby affirms that the bank account will be evidenced in the VAT payer list kept by the Ministry of Finance (the “white list of VAT payers”). The purchaser may verify the bank account indicated on the invoice and withhold payments in case the bank account indicated on the invoice is not present on the VAT payer list. In such a situation, the Purchaser may make payment to any other bank account of the Seller evidenced on the white list, and if no bank accounts are evidenced on the white list – to withhold payments for the time necessary to verify the indicated bank account. In such a case, the Purchaser is not liable for late payment.

§ 6 Packaging, information

1. The Goods shall be packed in accordance with the Purchaser’s norms and standards, unless the Parties have agreed a different way of packaging in writing.
2. Unless the Parties agreed differently in writing, the packing costs shall be borne by the Seller. In case the Purchaser is obliged to pay for the packing, the payment shall be governed by the rules for payment of Goods.
3. Each package shall include the following information: the Seller’s full name and address, the amount delivered (incl. net and gross weight), indication of the quality class, sort, format and production date. Lack or illegibility of the abovementioned information constitute grounds for the Purchaser to refuse acceptance of delivery.

§ 7 Warranty and implied warranty

1. The Seller guarantees that the Goods delivered or Services rendered in the performance of the Contract conform with the Purchase Order, specifications, drawings and all other requirements of the Contract or Purchase Order.
2. The Seller guarantees that the the Goods delivered or Services rendered are new (unless the Contract expressly refers to used goods), of good quality, free of defects (including legal defects), checked, suitable for use according to its purpose and conditions of the Contract or the Purchase Order, properly designed and made of an appropriate material.
3. The Seller guarantees that the Goods are made, and, if it follows 1. from the Purchase Order or the Contract, assembled or installed in a manner consistent with the binding law, including HSSE norms, fire regulations, environmental rules, and the Polish Norms and the norms binding in the European Union.
4. In case the Goods or Services are not consistent with any of the norms indicated in sections 1-3 above, the Purchaser may 2. refuse to accept the Goods or Services and withhold payment for such Goods or Services.
5. Unless the Parties agreed differently in writing, the warranty for Goods or Services shall last for 24 months from the date of signing the final acceptance protocol by both Parties. The Seller’s warranty for Goods or its part that has been exchanged or repaired pursuant to the present section, shall last for 24 3. months from the date of the exchange or repair completion.
6. The Seller shall immediately consider the Purchaser’s claims

made under warranty or implied warranty, no later than in 10 days after the claims were raised by the Purchaser. Lack of a written response as to the way of handling the warranty or implied warranty claims shall be understood as recognizing the Purchaser’s claim in full.

7. Unless the Parties agreed differently in writing, in case of defective Goods, the Seller shall immediately exchange or repair the defective Goods at his own expense, including in particular costs of travel disassembly and assembly. The exchanged goods shall be delivered DDP Purchaser’s plant pursuant to Incoterms 2010.
8. Performance of claims under warranty does not preclude the Purchaser to raise claims under implied warranty for physical or legal defects of the Goods or Services.

§ 8 Liability of the Seller

1. The Seller is liable for any damage arising from non-performance or the losses which the Purchaser has suffered as a result of non-performance or improper performance of the Contract, and the benefits which the Purchaser could have obtained had it not suffered the damage.
2. The Seller shall release the Purchaser from any obligation to perform towards third parties in case of any damage to persons, things, or natural environment caused by the Goods or Services or in connection with its use, as a result of defects of the Goods or Services.
3. Each instance of breach of the Seller’s obligations under the Contract or the GTCP shall entitle the Purchaser to declare the Contract avoided, after on request to remedy the breach in a reasonable term was made to the Seller.

§ 9 Transferability of claims

1. The transferability towards third parties of any claims of the Seller against the Purchaser connected with the Contract, made delivery of Goods or Services is strictly excluded without the Purchaser’s written consent.
2. The Seller may not set off his price claim against any claims of the Seller against the Purchaser without the Purchaser’s written consent.

§ 10 Intellectual property and confidentiality

Any and all information disclosed by the Purchaser to the Seller, its representatives and related entities, in particular technical, technological, industrial, commercial or financial information, regardless of the manner of disclosure shall be treated as confidential in the course of Contract performance and after its termination and may not be disclosed to third parties without the Purchaser’s written consent.

The Purchaser reserves the ownership and intellectual property rights of all documentation provided to the Seller in connection with the performance of the Contract, in particular projects, drafts, photographs, drawings and calculations and all instrumentation that serve the Contract performance. Such documentation shall not be disclosed to third parties without the Purchaser’s written consent.

Goods and Services delivered by the Seller in the performance of the Contract are free from all third party intellectual property

claims, and its use by the Purchaser does not require payment of licensing fees or other performance.

§ 11 Dispute resolution and the applicable law

1. All contracts concluded by the Purchaser, including the contracts concluded with entrepreneurs with their place of central administration outside the territory of Poland shall be exclusively governed by the law of Poland. The application of the UN Convention on Contracts for the International Sale of Goods made in Vienna on April 11, 1980 (CISG) is excluded for contracts concluded with entrepreneurs that have their place of central administration outside the territory of Poland and in the CISG Contracting States.
2. All disputes that may arise between the Parties in connection of conclusion or performance of Contracts for sale of Goods or Services that are governed by GTCP shall be solved – at the Purchaser's discretion, by a competent court in Katowice (Poland) or a court competent for the Purchaser's place of central administration. In contracts with entrepreneurs with their place of central administration outside Poland, the courts of Poland shall have exclusive jurisdiction.
3. Any The GTCP have been drafted in two language versions: Polish and English. In case of any discrepancies, the Polish version shall apply.