

TERMS & CONDITIONS OF SALE

In these Terms and Conditions of Sale, Caesar Ceramics USA, Inc., is referred to as “**Caesar**”, Ceramiche Caesar S.p.A. is referred to as “**Manufacturer**” and the customer or person or entity purchasing Caesar’s or Manufacturer’s products (the “**Goods**”) from Caesar is referred to as the “**Buyer**”. For purposes of these Terms and Conditions of Sale, order confirmation and pro-forma invoice shall be interchangeable.

These Terms and Conditions of Sale, and Caesar’s order confirmation (usually in the form of a pro-forma invoice) constitute the complete and exclusive agreement and understanding governing the sale of Goods by Caesar to Buyer (the “**Agreement**”) and supersede all prior agreements, understandings or representations, whether written or oral, among the parties with respect to such matters. Provided, however, that if any term, provision or condition of Caesar’s order confirmation should conflict or be inconsistent with any term of these Terms and Conditions, then the terms of Caesar’s order confirmation shall prevail and control over such conflicting and/or inconsistent terms.

BY ACCEPTING CAESAR’S ORDER CONFIRMATION – PRO FORMA INVOICE AND/OR INSTRUCTING CAESAR TO SHIP GOODS (EITHER BY FACSIMILE OR E-MAIL COMMUNICATION), BUYER WILL MANIFEST ITS ACKNOWLEDGMENT, ACCEPTANCE AND AGREEMENT TO THESE TERMS AND CONDITIONS.

Caesar reserves the right to refuse any order, in its sole discretion. No order is accepted by Caesar until: (i) Caesar provides Buyer with a written order confirmation, and (ii) Buyer duly signs the order confirmation in acknowledgement, acceptance and agreement, and returns the signed order confirmation to Caesar.

1. **PRICES:** All prices for Goods, including, but not limited to, those specified in Caesar’s price list or schedule, website or written quotation, are subject to change without notice. Such prices shall be automatically adjusted to reflect Caesar’s prices for Goods as in effect at the time of the requested shipment date, and each shipment will be invoiced at such adjusted prices. Unless otherwise expressly agreed by Caesar in writing, all prices are EX WORKS (which shall have the same meaning as in the Incoterms 2000 published by the International Chamber of Commerce), exclusive of any applicable taxes, duties, sales taxes, transportation and insurance costs or charges (collectively “**Charges**”), which Charges are to be borne exclusively by Buyer.

2. **TERMS OF PAYMENT:** Unless otherwise expressly agreed by Caesar in writing in Caesar’s order confirmation, the purchase price for all orders shall be paid in full in advance of shipment.

All payments must be made in U.S. currency. In the event Buyer fails to make any payment when due, Caesar shall have the right, in addition to all other remedies available to Caesar either at law or in equity, to either terminate this Agreement immediately, without notice, or to suspend further performance under this Agreement. Buyer shall be liable for all expenses, including reasonable attorneys’ fees, relating to the collection of past due amounts. If any payment owed to Caesar is not paid when due, it shall accrue interest at the rate of the lesser of 15% per annum, or the maximum amount permitted by applicable

law, from the date on which such past due amount is due until the past due amount is paid in full. Should Buyer’s financial responsibility become unsatisfactory to Caesar, cash payments or security satisfactory to Caesar may be required by Caesar for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Caesar’s other rights and remedies, Caesar may discontinue deliveries.

3. **SHIPMENT AND DELIVERY:** Unless otherwise expressly agreed in writing by Caesar, shipments are made EX WORKS (which shall have the same meaning as in the Incoterms 2000 published by the International Chamber of Commerce). Risk of loss or damage and responsibility shall pass from Caesar to Buyer upon delivery of the Goods to carrier. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Caesar will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Caesar, all shipping dates are approximate and not guaranteed. Caesar reserves the right to make partial shipments. Caesar, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided accurate shipping instructions. If the shipment of the Goods is postponed or delayed by Buyer for any reason, including but not limited to, Buyer providing Caesar with inaccurate shipping instructions, then Buyer agrees to reimburse Caesar for any and all transport and/or storage costs and other additional and incidental expenses resulting therefrom.

4. **LIMITED WARRANTY:** Subject to the limitations set forth in Section 5 below, Caesar and Manufacturer warrant that Goods sold by Caesar as “first choice goods” are manufactured in accordance with Manufacturer’s published technical standards. This limited warranty is valid only: (i) for a period of one hundred and eighty (180) days from the date of shipment of the Goods by Caesar, or (ii) for the period from the date of shipment of the Goods by Caesar until installation or attempted installation of the Goods, whichever is less. This limited warranty applies only to “first choice goods” sold by Caesar. **ALL GOODS SOLD BY CAESAR OTHER THAN “FIRST CHOICE GOODS” ARE SOLD AS IS. THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY CAESAR AND THE MANUFACTURER WITH RESPECT TO THE GOODS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO CAESAR OR MANUFACTURER, AND WHETHER OR NOT CAESAR’S OR MANUFACTURER’S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY CAESAR AND/OR MANUFACTURER FOR BUYER’S (OR ANY SUBSEQUENT TRANSFEREE’S, AS DEFINED BELOW) USE OR PURPOSE.**

OTHER THAN REPRESENTATIONS OR WARRANTIES MADE BY CAESAR OR MANUFACTURER IN THEIR RESPECTIVE LITERATURE AND/OR PACKAGING, NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE GOODS MADE BY ANY PERSON OR ENTITY INCLUDING, BUT NOT LIMITED TO,

INDEPENDENT DISTRIBUTORS AND SALES REPRESENTATIVES, SHALL BE BINDING UPON CAESAR OR MANUFACTURER.

IF YOU ARE A CONSUMER, AND SHOULD ANY APPLICABLE LAW PROHIBIT THE DISCLAIMER OF IMPLIED WARRANTIES SET FORTH ABOVE, THEN ANY IMPLIED WARRANTIES FOUND TO EXIST WILL BE STRICTLY LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE.

Notwithstanding the foregoing, this limited warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Caesar's or Manufacturer's), unauthorized modification or alteration, use beyond rate capacity, improper installation, maintenance or application. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Caesar or Manufacturer in the selection or design of the Goods and the preparation of Caesar's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

Buyers must notify Caesar of any defects in the Goods in writing, via certified mail to Caesar Ceramics USA, Inc., at 527 Industrial Way West, Eatontown, New Jersey 07724 and via fax to Ceramiche Caesar S.p.A. at 011 39 0536 817298, within thirty (30) days of Buyer's receipt of the Goods. Upon receiving Buyer's notice of defect, Caesar shall, at its option, repair, correct or replace the Goods EX WORKS (which shall have the same meaning as in the Incoterms 2000 published by the International Chamber of Commerce), or refund the purchase price for that portion of the Goods found by Caesar to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer. Notwithstanding the provisions contained in the preceding sentences of this paragraph, Buyer shall be deemed to have accepted the Goods and absolutely and unconditionally waived its rights to claim for any defects: (i) upon installation or attempted installation of the Goods, or (ii) if the Goods are otherwise used or altered in any way.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

This Section 4 also applies in the event that any entity or person (other than Buyer) buys, acquires or uses the Goods, including, but not limited to, any entity or person who obtains the Goods from Buyer (any of them a "*Subsequent Transferee*"). Buyer hereby covenants and agrees to provide such Subsequent Transferee with conspicuous written notice of the provisions set forth in Sections 4 and 5 of these Terms and Conditions of Sale, by providing each such Subsequent Transferee with a copy of the notice attached hereto as Exhibit "A". Buyer, furthermore, covenants and agrees that it shall not make any representation or warranty whatsoever regarding the Goods to any third party (either on behalf of Caesar or Manufacturer or on its own account), other than the limited warranty of Caesar and Manufacturer set forth in this Section 4. **BUYER HEREBY COVENANTS AND AGREES THAT, SHOULD IT FAIL TO COMPLY WITH THE PROVISIONS OF THIS LAST PARAGRAPH OF SECTION 4, BUYER SHALL DEFEND,**

INDEMNIFY, AND HOLD CAESAR AND/OR MANUFACTURER, ITS OFFICERS, EMPLOYEES, AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES), OR CLAIMS FOR INJURY OR DAMAGES (INCLUDING, BUT NOT LIMITED TO GENERAL, CONSEQUENTIAL, INCIDENTAL AND PUNATIVE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH BUYER'S OR BUYER'S EMPLOYEES', AGENTS', REPRESENTATIVES' AND/OR INDEPENDENT CONTRACTORS' BREACH OF THESE TERMS AND CONDITIONS OF SALE.

5. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE IN ACCORDANCE WITH SECTION 4 ABOVE.

NEITHER CAESAR NOR MANUFACTURER SHALL BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL CAESAR'S OR MANUFACTURER'S LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY CAESAR OR MANUFACTURER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AND ANY SUBSEQUENT TRANSFEREE AGREES THAT IN NO EVENT SHALL CAESAR'S OR MANUFACTURER'S LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, loss of business opportunity, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by Caesar or Manufacturer with respect to the use of the Goods is given without charge, and Caesar and Manufacturer assume no obligation or liability whatsoever for the advice given, or results obtained, all such advice being given and accepted at Buyer's own risk.

6. EXCUSE OF PERFORMANCE: Neither Caesar nor Manufacturer shall be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; material fluctuations in the exchange rate between the U.S. Dollar and Euro; or unforeseen circumstances or any events or causes beyond Caesar's or Manufacturer's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Caesar upon notice to Buyer in the event of any of the foregoing, but the balance of the Agreement shall otherwise remain unaffected as a result of the foregoing.

If Caesar determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made

impracticable due to causes set forth in the preceding paragraph, Caesar may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among its purchasers on such basis as Caesar determines to be equitable without liability for any failure of performance which may result therefrom.

7. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Caesar of Caesar's cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made by Caesar or Manufacturer and a reasonable profit thereon. Caesar's determination of such cancellation charges shall be conclusive. **PROVIDED, HOWEVER, THAT ANY CANCELLATION MUST BE MADE BEFORE THE GOODS HAVE BEEN SHIPPED.**

8. **CHANGES:** Buyer may request changes or additions to the Goods consistent with Caesar's specifications and criteria. In the event such changes or additions are accepted by Caesar, Caesar may revise the price and dates of delivery accordingly. Caesar reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer.

9. **INDEMNIFICATION:** Buyer hereby covenants and agrees to defend, indemnify and hold harmless Caesar, Manufacturer, their officers, directors, employees, agents, advisers, representatives and affiliates (collectively, the "**Indemnitees**") from and against, and pay or reimburse the Indemnitees for any and all claims, liabilities, obligations, losses, fines, costs, royalties, proceedings, deficiencies or damages (whether absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including out-of-pocket expenses and reasonable attorneys' and accountants' fees incurred in the investigation or defense of any of the same or in asserting any of their respective rights hereunder (collectively, "**Losses**"), resulting from or arising out of: (i) Buyer's breach of any provision or covenant set forth in this Agreement, and/or (ii) Buyer's making of any representation to any third party regarding the Goods other than the limited warranty set forth in Section 4 above.

10. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Caesar, and any such assignment, without such consent, shall be void.

11. **GENERAL PROVISIONS:** No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions of Sale shall be binding upon Caesar or Manufacturer unless made in writing and signed on its behalf by a duly authorized representative of Caesar or Manufacturer. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these Terms and Conditions of Sale shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Caesar's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Caesar in any quotation, acknowledgment or publication are subject to correction.

12. **SEVERABILITY:** If any provision of this Agreement shall be held invalid or unenforceable by competent authority, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

13. **GOVERNING LAW AND JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflicts of laws principles. Buyer, Caesar and Manufacturer agree to submit all disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the State and Federal courts of the State of New York, located in New York County. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH SUCH PARTY CERTIFIES THAT THEY HAVE NOT RELIED UPON ANY REPRESENTATION OR INDUCEMENT OF THE OTHER PARTY IN AGREEING TO THIS PROVISION AND THAT THEY FREELY, KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO A JURY TRIAL. **The Convention for the International Sale of Goods shall not apply to this Agreement.**

14. **U.S. EXPORT CONTROL REGULATIONS:** All Goods sold to Buyer are subject to the export control laws of the United States and Buyer agrees not to re-sell or divert any Goods contrary to such laws.

15. **RETURNED GOODS:** Except as otherwise provided in the fourth paragraph of Section 4 above with respect to warranty defects, no Goods may be returned to Caesar.

16. **NO THIRD PARTY RIGHTS:** These Terms and Conditions of Sale create no third party rights between Caesar, Manufacturer and any person other than Buyer, including but not limited to any Subsequent Transferee. It is understood and agreed that the parties do not intend that any third party be a beneficiary of these Terms and Conditions of Sale.