

## GENERAL TERMS OF SALE

### 1 General Provisions

- 1.1 In addition to the terms and expressions defined elsewhere in these General Terms of Sale, the terms and expressions listed below – starting with a capital letter – shall have the meaning conventionally ascribed to them or specified in this art. 1.1:
- “Buyer”: refers to the natural or legal person from which the Seller receives the order;
  - “Contract”: refers to the Buyer’s purchase order accepted by the Seller, comprehensive of the General Terms of Sale;
  - “EXW”: (also known as Ex Works – Franco Fabbrica) refers to the relevant rights and obligations of Buyer and Seller provided for in the Incoterm 2020 of the International Chamber of Commerce of Paris;
  - “Parties”: refers to the Buyer and the Seller jointly;
  - “Products”: refers to the products of the Seller resulting from the price list and sales catalogs year by year in force;
  - “Seller”: refers to Emilceramica S.r.l. a socio unico, with registered office at Via Ghiarola Nuova, 29 - 41042 Fiorano Modenese (MO), Italy.
- 1.2 The terms and conditions set out below (the “General Terms of Sale”) shall form part of any and all the agreements entered into between the Seller and the Buyer for the sale of the Products, and they shall prevail over every general terms of the Buyer, unless expressly accepted upon in writing by the Seller.
- 1.3 The Seller shall reserve the right to modify, supplement or amend the General Terms of Sale, by indication of such variations in the offers or any other written communication to the Buyer. If the Buyer does not accept the modifications, supplements or amendments of the General Terms of Sale within 15 days from the date of communication, the previous General Terms of Sale shall apply, without prejudice to the Seller’s right to terminate the Contract entered into with the Buyer, if any, within 30 days thereafter.

### 2 Offers and Orders

- 2.1 The offer to the Buyer made and/or the order to the Seller sent by agents, brokers or other intermediaries shall not be binding upon the Seller until the order of the Buyer is accepted by the Seller according to art. 2.2 of the General Terms of Sale.
- 2.2 No order submitted by the Buyer shall be deemed to be accepted unless and until confirmed in writing by the Seller. If an order is not confirmed in writing by the Seller, the issuance by the Seller of the relevant invoice or the performance by the Seller shall be deemed to be an acceptance of the order.

### 3 Terms of Delivery

- 3.1 The delivery of the Products shall be EXW. The Seller shall deliver the Products by making them available to the Buyer according to the terms and at the place as specified in the Contract (the “Delivery”). Upon Delivery, the Seller shall only assume the obligation to load the Products on the load vehicle, any other obligation being excluded.
- 3.2 The Seller shall not be liable for any loss or damage to the Products after Delivery to the Buyer; under no circumstances shall the Buyer be released from its obligation to pay the price of the Products upon the Delivery.
- 3.3 Without prejudice to the remedies set forth under art. 9, if the Buyer does not fulfill the obligation to pay the price of the Products, the Seller shall be entitled to suspend the Delivery.
- 3.4 All the deadlines in connection with Products’ delivery and return - although defined as mandatory - shall be considered as merely indicative, and binding on the Seller within the normal tolerance range. The Delivery terms - even though indicative - are only, and exclusively, those specified in the order confirmation of the Seller.
- 3.5 In case of delay in the Delivery that exceeds the normal tolerance, the Buyer may only cancel the part of the order relating to Products not delivered within 30 days following the date of receipt by the Seller of the cancellation notice of the Buyer to be sent through registered letter with return receipt.

- 3.6 The Buyer cannot cancel its order or withdraw from the Contract in case the Delivery is delayed due to the occurrence of events of force majeure referred to under art. 6 if the delay of the Delivery does not exceed 60 days.
- 3.7 In case of occurrence of events of force majeure referred to under art. 6, the Seller may terminate the Agreement by written notice to the Buyer.
- 3.8 In case the Delivery does not take place for any reason related to the Buyer, upon simple communication to the Buyer that the Products are at its disposal, the Delivery is considered performed for all purposes (including to the effect of the terms of payment and the issuance of the invoice). After 15 days from the communication warehouse, expenses are applied and the Seller is relieved from any responsibility for destruction, damage or loss of value of the Products.
- 3.9 In case of non-delivery of the Products at the place of destination indicated in the transport document, or in case the Products are delivered in a place other than that indicated in the transport document, the Buyer undertakes to inform the Seller within 120 hours after the scheduled date for delivery at the place of destination through registered letter with return receipt also containing the copy of the signed transport document. Following the receipt of the communication including the documentation, the Seller provides to the regularization of invoices issued charging VAT according to Italian Presidential Decree no. 600/1973. The Buyer shall indemnify the Seller for any taxes, surcharges, interest and penalties of any kind – as well as legal expenses - should any amounts be charged by tax authorities as a result of failure to provide such notification in writing or, however, the delivery of Products at the place of destination other than that indicated in the transport document. The Buyer, having acknowledged the notice that the Seller requires the carrier to sign, undertakes to communicate to the carrier any change or modification of the destination of the Products. In case the Buyer fails to comply with the aforementioned obligation, the Seller shall charge the Buyer for any taxes, surcharges, interest and penalties of any kind - as well as legal expenses - should any amounts be charged by tax authorities as a result of said failure.
- 3.10 Except in cases of willful misconduct or gross negligence, the Seller shall not be liable in any way for damages arising from late Delivery or non-Delivery (total or partial) of Products.

#### **4 Prices and Terms of Payment**

- 4.1 The prices of the Products indicated in the price list year by year are EXW; therefore, any other charges or expenses related to shipping, delivery and / or transport of the Products are the sole responsibility of the Buyer. The funding necessary to deal with any Buyer's charges and expenses is anticipated by the latter to the Seller; by way of example only, such expenses and charges comprise costs of additional packaging, shipping cost, accessories, tax charges, stamp duties, customs fees, and any additional charges not including the prices. The prices of the Products may be subject to corrections due to printing errors.
- 4.2 Prices of the Products are exclusive of VAT at the rate applicable by law, to be paid in accordance with the invoice.
- 4.3 The place of payment is at the registered office of the Seller even in the case of drafts, cash orders or bills. The acceptance by the Seller of payment in the form of bills, promissory notes, endorsed bills or bank cheques shall always be «subject to collection» and without scope for novation of the debt. Payment is due in full upon Delivery of the Products, unless otherwise agreed in writing.
- 4.4 In addition to other remedies provided by law and / or the Contract, the Seller shall apply default interest on late payments in accordance with the provisions of Legislative Decree. no.231 of 2002.

#### **5 Terms of Warranty**

- 5.1 The Seller warrants that the Products are free from defects and flaws for a period of 12 months from Delivery. The warranty operates within the limits of art. 1495 of the Italian Civil Code, subject to the additional restrictions provided for in this article and in the provincial collection of uses of 2005 foreseen by the Chamber of Commerce of Modena for the ceramics and the normal tolerances. Any indications of weights, measures, dimensions, colors, shades and other data contained in catalogs, brochures, folders, of the Seller are merely indicative and not binding. The warranty of the Seller is in any case limited to first choice Products - as indicated by the 2005 principles and rules set out by the Chamber of Commerce of Modena for ceramic products – i.e. with a percentage of defective tiles not exceeding 5%, for the part exceeding that percentage. The warranty does not operate for Products different from those of first choice. Except in cases of willful misconduct or gross negligence, the Buyer cannot claim differences in tone as vice of Products.
- 5.2 Pursuant to the warranty obligation of the Seller, the latter undertakes to replace the defective and / or damaged product within the limits of the Contract and without any further obligation of



indemnification for direct and / or indirect and / or consequential damages caused by defective Products to the Buyer and / or third parties, save for the mandatory provisions of law. The Parties acknowledge and agree that the Seller's aggregate liability to the Buyer hereunder shall, in all cases, be limited to the amount of the price paid by the Buyer for the Products giving rise to the Supplier's liability.

- 5.3 The liability for defects and flaws no longer applies following the installation of the Products; any claims must be made before the installation through registered letter with return receipt to be addressed to the Seller, and must indicate in detail the vices and defects found. The complaint does not give the Buyer the right to suspend or delay, in whole or in part, the payment.
- 5.4 It is understood that the warranty referred to in this article is excluded from the installation as well as where the flaw and / or defect of the Products is caused by incorrect use, modification or alteration of the same Products attributable to the Buyer.

## **6 Force Majeure**

- 6.1 The Seller may suspend the execution and / or withdraw from the Contract if performance is objectively impossible or excessively burdensome because of unforeseeable events beyond its control, such as, for example, strikes, labor disputes, accidents, explosions, boycott, lockout, fire, war, civil war, riots, revolutions, requisitions, embargo, energy, flood, acts or omissions of law or government, acts of terrorism, delay or failure to supply of its suppliers, equipment or essential equipment breakdowns, and other causes similar to those listed above.

## **7 Anti – Bribery. Code of Ethics**

- 7.1 The Buyer shall comply with any law, regulation, directive and applicable law of any authority, governmental entity, and any other national and international institution relating to practices and offences of corruptive nature (the "Applicable Law"), including, rules concerning illegal payments or offers or promises of money or other benefits to public officials or persons in charge of public services for the performance of their duties or powers.
- 7.2 In particular, Buyer shall comply with the US Foreign Corrupt Practices Act, the Convention on Combating Bribery of Foreign Officials in International Business Transactions of 1997, and any other Applicable Law relating to bribery.
- 7.3 The Buyer shall, and shall procure that its officers, directors, employees, contractors or consultants shall, not undertake, directly or indirectly, any action in the performance of any Contract and supply provided for therein, which may constitute a breach of any Applicable Laws, and, in particular, the Buyer shall, and shall procure that its officers, directors, employees, contractors or consultants shall, not: a) offer, make or authorize any contribution, payment or gift or other benefits to public officials or persons in charge of public services officials, employees or agents of any authority, governmental entity, and any other national and international institution; (b) make any contribution, of any nature, to any candidate to a public office.
- 7.4 The Buyer shall comply with the provisions of Legislative Decree no. 231/2001, as subsequently amended and supplemented. For these purposes, the Buyer represents to have examined the Code of Ethics of the Seller (the "Code of Ethics"), and the Model of Organization, Management and Control pursuant to Legislative Decree no. 231/2001 (the "Model"). The Code of Ethics and the Model may be consulted on the following web site: <https://www.emilgroup.com/downloadarea/>  
The Seller undertakes to perform the supplies under the Contract in compliance with the rules provided under the Code of Ethics and the Model.
- 7.5 The Buyer shall, and shall procure that its officers, directors, employees, contractors or consultants which will be in contact with the Seller in the performance of the supplies under the Contract shall, promptly inform the Supervisory Body of the Seller of any act, fact or action of which it became aware, and may constitute a crime included in the scope of Legislative Decree no. 231/2001, and may imply the administrative liability of the Seller.
- 7.6 If during the execution of the Contract, the Buyer incurs in a conduct described in art. 2635 of the Italian Civil Code, the Seller has the right to terminate the Contract.
- 7.7 In case of breach of the Buyer of its undertakings under articles 7.3 and 7.5, the Seller has the right to terminate the Contract pursuant to art. 1456 of the Italian Civil Code.
- 7.8 The Buyer represents and warrants that it is not designated on, owned by or associated with, any party designated on any U.S., E.U. or other government restricted parties' lists, including without limitation, the U.S. Treasury Department Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, and the Buyer agrees that it will not sell or transfer any goods to such persons. The Buyer shall comply with all applicable U.S., E.U. or other applicable economic sanctions and



export control laws and regulations, including without limitation, the regulations administered by the Office of Foreign Assets Control.

- 7.9 In case of breach of the Buyer of its undertakings, representations and warranties under art. 7.8, the Seller has the right to terminate the Contract pursuant to art. 1456 of the Italian Civil Code.

## **8 Personal Data Protection**

- 8.1. For the purpose of executing the Contract, the Parties undertake to comply with all the obligations set out in the General Data Protection Regulation (UE) 2016/679 on "the protection of natural persons with regard to the processing of personal data and on the free movement of such data" (hereinafter "GDPR"), as well as, within the limits of its applicability, Italian Legislative Decree 196/2003 ("Privacy Code"), as most recently amended by Italian Legislative Decree 101/2018 and in the provisions of the Italian Data Protection Authority.

- 8.2 By signing this Contract, the Parties, each to the extent of its respective competence, acknowledge that their own personal data and/or of their employees and/or collaborators involved in the activities referred to the Contract, will be communicated to the other Party and processed by the latter as an autonomous Data Controller for purposes strictly functional to the setting up and execution of the Contract.

- 8.3 In particular, the Buyer acknowledges that the Seller will process his personal data and/or of its employees and/or collaborators, involved in the activities referred to the Contract, as autonomous Data Controller for the purposes and in accordance with the modalities specified in the information notice provided pursuant to Articles 13 and 14 of the GDPR available on the website [www.emilgroup.com](http://www.emilgroup.com) under Privacy , which the Buyer undertakes to bring to its employees' and/or collaborators' knowledge.

## **9 Termination of the Contract**

- 9.1 The Seller has the right to terminate any Contract with the Buyer, with immediate effect, in accordance with art. 1456 of the Italian Civil Code, by notice sent through registered letter in the following cases:

- a) if the Buyer fails to fulfil its obligations under articles 3.9, 4 and 7 of these General Terms of Sale;
- b) if the Buyer is in material breach of the Contract.

- 9.2 The Seller has the right to withdraw with immediate effect by each Contract by notice sent through registered letter to the Buyer in the following cases:

- a) the Buyer fails to fulfil its obligations under articles 1.3, 3.7, 6.1;
- b) the Buyer is subject to enforcement, insolvency or liquidation proceedings;
- c) the Buyer's economic and financial situation can be reasonably considered a situation of crisis;
- d) shares and / or quotas representing the majority or the Buyer's control of share capital - in case of corporate - are directly or indirectly sold, disposed of, or restricted in guarantee.

## **10 Retention of Title**

- 10.1 The Seller shall retain title in the Products sold until it has received full payment of the agreed price from the Buyer. Consequently, the Buyer undertakes i) to make good use of them, according to their intended use; ii) not to transfer their title to third parties, unless expressly and previously authorized by the Seller. In the event that the Buyer fails to pay all or part of the Products by the due date, the Seller may retake possession of the Products delivered, at its simple request. Notwithstanding the above, the Buyer shall be liable for any damage and loss occurring to the Products after Delivery, even if caused by force majeure or other events not attributable to the Buyer.

## **11 Applicable Law – Competent Jurisdiction**

- 11.1 These General Terms of Sale and each Contract entered in to by the Buyer with the Seller shall be governed by Italian law.

- 11.2 Any dispute arising between the Parties concerning the interpretation, validity or enforcement of these General Terms of Sale and any Contract shall be referred to the exclusive jurisdiction of the Court of Modena.

- 11.3 Only the Seller, at its discretion, has the right to waive the exclusive jurisdiction of the Court referred to in previous art.11.2 to take legal action against the Buyer at his residence and at the Court therein competent.



11.4 In order to interpret the terms of return of the Products and other commercial terms used by the Parties, reference is made to the Incoterms 2020 of the Chamber of Commerce of Paris and 2005 principles and rules set out by the Chamber of Commerce of Modena for ceramic products.

## **12 Seller's trademarks and distinctive signs**

12.1 The Buyer is obliged to use the Seller's trademarks, names and other distinctive signs, but only for the purpose to identifying and advertising the Products, it being understood that such use is of the exclusive interest of the Principal. In all events, any use of the Seller's trademarks, names or other distinctive signs on the Buyer's headed paper, on advertising material or on any other material however intended for third parties, must be agreed to beforehand in writing with the Seller.

12.2 The Buyer undertakes not to insert the Seller's trademarks, names and distinctive signs in their firm or company name as well as web sites. The Buyer shall not register the Seller's trademarks and/or distinctive signs, including web domain names.

12.3 The Buyer's right to use the Seller's trademarks, names or other distinctive signs, as provided for in article 12.1 above, shall immediately terminate with the expiry or termination, for whatever reason, of this General Terms of Sale or any Contracts entered in to between the seller and the Buyer.

12.4 The Buyer shall inform the Seller of any violation of its trademarks, names or other distinctive signs of which they become aware.

## **13 Final Provisions**

13.1 The invalidity in whole or in part of any provision of these General Terms of Sale shall not affect the validity of the remaining provisions.

13.2 These General Terms of Sale may be amended, supplemented, varied, only in writing by the Seller.

