

condizioni generali di vendita italia

1. NORMATIVA CONTRATTUALE

1.1. Le presenti condizioni generali (qui di seguito "le Condizioni") costituiscono parte integrante di tutti i contratti di vendita a cui sia parte Coem S.p.A. (qui di seguito anche il "Venditore e/o Fornitore"). Salvo singoli casi in cui esse siano state derogate con espresse pattuizioni scritte a firma del Venditore, esse costituiranno la disciplina esclusiva di tali vendite, anche se non specificatamente richiamate. Se una o più parti delle presenti Condizioni o dei singoli contratti che le includono risultassero invalide, le Condizioni generali o particolari resteranno valide nel loro complesso; le parti invalide saranno sostituite con pattuizioni che si avvicinino quanto possibile alla originaria volontà delle parti.
1.2. Le condizioni generali, qualsiasi esse siano, riportate sulla corrispondenza e/o conferma dell'Acquirente, non possono in nessuno caso essere opposte a quelle del Venditore né prevalere ad esse. Per Acquirente e/o Ordinate si intende la società/persona fisica che acquisterà da Coem S.p.A. un bene o un servizio.

2. OGGETTO DELLA FORNITURA

2.1. La fornitura comprende le piastrelle in ceramica, gli altri materiali, le prestazioni (qui di seguito i "Prodotti") nei quantitativi specificati nella nostra conferma d'ordine.

3. CONCLUSIONE DEL CONTRATTO DI VENDITA

3.1. Il contratto si intende concluso al momento in cui il proponente o l'ordinante vengano a conoscenza del consenso scritto della controparte.
3.2. L'ordine non confermato per iscritto in nessun caso potrà intendersi accettato salvo esecuzione del medesimo da parte del Venditore mediante spedizione o consegna dei Prodotti. La consegna parziale di Prodotti ordinati non comporta l'accettazione dell'intero ordine, ma solo di quella parte di Prodotti effettivamente consegnata.
3.3. Il testo della conferma d'ordine di Coem S.p.A. prevarrà in ogni caso sul testo difforme della eventuale offerta o della ordinazione.
3.4. Qualora nella conferma d'ordine di Coem S.p.A. esistano differenze nei singoli elementi che la compongono rispetto alle intese od alle ordinazioni, l'Acquirente che non abbia contestato per iscritto entro 7 giorni dalla ricezione della conferma s'intende che l'abbia accettata così come è stata redatta.
3.5. Tutte le richieste di riprogrammare o cancellare in tutto o in parte qualsivoglia ordine saranno invalide a meno che non siano state accettate per iscritto da parte del Venditore. Nella eventualità in cui, fermo restando qualsiasi altro diritto del Venditore, tale consenso venga conferito, il Venditore avrà diritto di imporre un corrispettivo per la riprogrammazione o per l'approvazione alla cancellazione di detto ordine.

4. PREZZI

4.1. I prezzi di vendita dei Prodotti sono quelli indicati nel listino del Venditore in vigore al momento della conferma dell'ordine. Tali prezzi non sono impegnativi e di conseguenza il Venditore si riserva il diritto di modificarli prima dell'accettazione dell'ordine. In casi di contratti di vendita a consegne ripartite il prezzo, se non convenuto fermo per iscritto, sarà quello del listino prezzi in vigore al momento delle singole consegne.
4.2. Per tutti i Prodotti destinati all'estero i prezzi potranno essere calcolati, a scelta del Venditore, nella valuta estera del paese di destinazione o in Euro.
4.3. I prezzi pattuiti per ogni singola vendita si intendono al netto di imposte sul valore aggiunto, imposte similari e spese accessorie, per consegna franco Fabbrica del Venditore (Ex Works), salvo diversa pattuizione scritta.
4.4. Se fra la data di ordinazione (anche dopo la conferma d'ordine) e quella di consegna si verificassero aumenti nei costi delle materie prime, della manodopera, dei combustibili, nelle spese di produzione, di trasporto, ecc., Coem S.p.A. potrà aumentare il prezzo convenuto dandone comunicazione scritta all'Acquirente anche a mezzo fax o posta elettronica.
Tuttavia qualora detto prezzo superi del 20% quello convenuto al momento dell'ordinazione, l'Acquirente potrà recedere dal contratto notificando al Venditore per raccomandata tale sua volontà entro il termine perentorio di 10 gg dal ricevimento dell'avviso dell'aumento di prezzo. In difetto, il nuovo prezzo s'intenderà accettato.
4.5. In caso di specifiche richieste di materiale "spallettizzato" sarà applicata un'ulteriore maggiorazione del 10% sui listini in vigore.
4.6. Gli imballaggi come casse, gabbie, ecc. vengono fatturati al prezzo di costo e si intendono "a perdere". Palette normali incluse nei prezzi, Euro palette al costo.

5. CONSEGNE

5.1. Salvo diverso accordo scritto, la consegna dei Prodotti e la resa degli stessi in Italia e all'estero avverrà secondo la resa Franco Fabbrica del Venditore o "Ex Works". Tale formula, come anche nelle formule di resa che fossero convenute per iscritto in alternativa ad essa, faranno riferimento agli "Incoterms" della Camera di Commercio Internazionale di Parigi, nella edizione vigente al momento della vendita.
5.2. Lo spedizioniere che dovrà effettuare il trasporto verrà indicato dall'Acquirente.
5.3. In ogni caso, dal momento in cui i Prodotti sono consegnati dal Vettore e/o Spedizioniere, viaggiano a rischio e pericolo dell'Acquirente. Ogni responsabilità di Coem S.p.A. cessa con la consegna al Vettore, nei confronti del quale l'Ordinate effettuate le opportune verifiche, dovrà sporgere eventuali reclami.
5.4 L'Acquirente sarà il solo responsabile per un corretto deposito o stoccaggio del Prodotto, che dovranno essere realizzati in modo tale da consentire una corretta conservazione delle caratteristiche tecniche e funzionali del Prodotto fornito. Nessuna responsabilità potrà essere imputata al Venditore per un cattivo stoccaggio o deposito.

6. TERMINI DI CONSEGNA

6.1. Il termine stabilito per la consegna dei Prodotti deve intendersi a favore di entrambi i contraenti. Il termine di consegna ha carattere puramente indicativo e non essenziale: eventuali ritardi nelle consegne, interruzioni, sospensioni totali o parziali delle forniture non daranno diritto ad indennizzi e/o a rimborsi di eventuali danni (diretti o indiretti) se non diversamente concordato per iscritto. L'Acquirente rinuncia, espressamente, a formulare richiesta di risoluzione del contratto nell'ipotesi di mancato rispetto dei termini di consegna del Prodotto da parte del Fornitore.

6.2 L'Acquirente, con l'accettazione della consegna tardiva, rinuncia a qualsivoglia pretesa in relazione al ritardo.

6.3. Qualora le merci pronte per la spedizione rimangano per desiderio dell'Ordinate, a sua disposizione presso lo stabilimento del Venditore, la fattura verrà emessa come se la spedizione fosse avvenuta ed i Prodotti verranno tenuti in magazzino a rischio, pericolo e spese dell'Acquirente.

7. FORZA MAGGIORE

7.1. Il Venditore non è responsabile nei confronti dell'Acquirente per ogni inadempimento, compresa la mancata o ritardata consegna, causata da eventi al di fuori del suo ragionevole controllo quali, a titolo meramente indicativo, mancata o ritardata consegna dei materiali di lavorazione da parte dei fornitori, guasti agli impianti, scioperi e altre azioni sindacali, interruzione dei flussi energetici, sospensione o difficoltà nei trasporti.

8. CAMPIONI

8.1. I dati figuranti nei documenti illustrativi di Coem S.p.A., così come le caratteristiche dei campioni e modelli da quest'ultima inviati all'Acquirente, hanno carattere di indicazioni approssimative. Questi dati non hanno valore impegnativo se non nella misura in cui siano stati espressamente menzionati come tali nell'offerta o nell'accettazione scritta di Coem S.p.A..

9. PAGAMENTI

9.1. Il pagamento del prezzo deve essere effettuato nei termini e nelle modalità indicati nella conferma d'ordine e/o nella fattura e, salvo diverso accordo sulla valuta, in Euro.
Ogni e qualsiasi obbligazione di pagamento tra le parti contraenti deve essere adempiuta presso la sede di Coem S.p.A..
Eventuali pagamenti fatti ad agenti, rappresentanti o ausiliari di commercio di Coem S.p.A. non si intendono effettuati finché le relative somme non pervengano a Coem S.p.A..
9.2. Salvo diverso accordo, i pagamenti sono da effettuarsi dall'Acquirente, tramite bonifico bancario, entro 30 giorni data fattura.

Salvo diverso accordo, in presenza di fatture con rate di importo inferiore o uguale a Euro 250, verrà emessa un unica scadenza a 60 giorni, indipendentemente dalle normali condizioni concordate con l'Acquirente.

Tutte le spese bancarie e di negoziazione sono a carico dell'Acquirente.

9.3. Eventuali sconti o specifici accordi sulle singole forniture sono da considerarsi validi solo se espressamente riportati per iscritto nelle fatture relative a dette forniture.

9.4. Non è ammessa compensazione con eventuali crediti, comunque insorti, nei confronti di Coem S.p.A..
9.5. In caso di ritardo, anche parziale, nei pagamenti, il Venditore avrà diritto a percepire, senza alcuna necessità di messa in mora, oltre agli eventuali danni, gli interessi moratori così come determinati dal D.lgs. n. 231/2002.

L'Acquirente approva espressamente di pagare al Venditore tutte le spese (incluse ma non limitate ai costi legali) sostenute dal Venditore per la riscossione o l'intento di riscuotere qualsiasi importo non pagato e quindi scaduto.

Inoltre il mancato o ritardato pagamento anche parziale delle fatture, per qualsivoglia ragione, da diritto a Coem S.p.A., impegnjudicata ogni altra iniziativa, di pretendere il pagamento anticipato delle restanti forniture anche se non ancora consegnate, o la presentazione di adeguate garanzie patrimoniali a copertura di tutti i relativi importi.

Il mancato o ritardato pagamento, anche parziale, del prezzo nei termini pattuiti è causa di risoluzione ex art. 1456 Codice Civile Italiano del contratto cui si riferisce e giustifica in ogni caso, ex art. 1460 Codice Civile Italiano, il rifiuto di adempiere eventuali ulteriori obbligazioni contrattuali e di annullare l'evasione di eventuali altri ordini in corso, senza che l'Acquirente possa avanzare pretese di compensi, indennizzi o altro.

In ipotesi in cui l'Acquirente sia sottoposto a procedura concorsuale (concordato, amministrazione controllata, fallimento, liquidazione coatta, amministrazione straordinaria), il Fornitore, potrà nel rispetto della specifica normativa in tema di recupero dei crediti, sospendere le ulteriori forniture o ritenere risolto il contratto stesso.

10. SOLVE ET REPETE

10.1. Nessuna eccezione, contestazione o controversia inerente alla qualità della merce, a vizi o difetti, o a qualsiasi altro aspetto del contratto, salvo quelle di nullità, annullabilità e rescissione del contratto, sarà efficace e potrà essere presa in considerazione, e così pure nessuna azione potrà essere iniziata se non dopo l'avvenuto integrale pagamento del prezzo.

11. CARATTERISTICHE DEI PRODOTTI, GARANZIE E RECLAMI

11.1. Il Venditore si impegna a consegnare il prodotto esente da vizi e conforme alle specifiche della Conferma d'ordine.

Le piastrelle in ceramica ed altri Prodotti ceramici fabbricati e/o commercializzati da Coem S.p.A. sono conformi alle vigenti normative internazionali applicabili alla corrispondente classe di prodotto. Per i Prodotti venduti a rivenditori professionali questi sono responsabili della correttezza delle informazioni tecniche fornite agli utilizzatori finali e/o ai negozi al dettaglio. La classificazione del prodotto è indicata da Coem S.p.A. sul materiale pubblicitario, sulle fatture e/o sui listini prezzi, l'Acquirente deve di conseguenza utilizzare i Prodotti sulla base della classificazione fornita dal Venditore.

Per facilitare le indicazioni di utilizzo, ed adattare le classificazioni standard alle specificità della produzione di Coem S.p.A., a fronte di ogni prodotto, nei listini o sui cataloghi sono posti dei segni che indicano l'uso specifico consigliato dal Venditore.

11.2. Le differenze di tonalità non sono un difetto dei Prodotti bensì una caratteristica dello specifico materiale cotto ad alte temperature. Il particolare requisito di ingelività si applica solo ai Prodotti che il Fabricante garantisce espressamente con apposita indicazione sul materiale pubblicitario e/o listini. In mancanza di tale indicazione i materiali ceramici si considerano solo ed unicamente per uso in interni o comunque in locali protetti dalle intemperie. La garanzia di ingelività ha una durata di un anno.

11.3. I suggerimenti e i consigli circa l'adozione di qualità e di formati, le considerazioni di carattere tecnico in merito al montaggio dei prodotti ed all'esercizio di impianti ove vengono impiegati i materiali pur rappresentando il meglio delle ns. conoscenze, sono sempre dati senza alcuna responsabilità. Le analisi chimiche ed i dati fisici e chimico-fisici dei materiali forniti rappresentano medie approssimative, ma

attendibili, soggette alle usali tolleranze.

11.4. Le rappresentazioni dei Prodotti sui depliant ed altri materiali pubblicitari del Venditore sono puramente illustrative e non rappresentano necessariamente il risultato estetico finale di posa dello specifico prodotto rappresentato.

11.5. Il Venditore garantisce la buona qualità e l'assenza di vizi nei Prodotti forniti. La garanzia è limitata ai materiali di 1^ scelta, con tolleranza del 5%. La garanzia non si applica per Prodotti classificati da Coem S.p.A. per qualità inferiori alla 1^ scelta o per partite di Prodotti di fine serie, vendute in blocco e/o segnalate come partite speciali/occasionali.

11.6. Il Venditore non è responsabile per vizi e/o anomalie rilevate sui Prodotti non dovuti alla qualità dei Prodotti stessi ma all'uso improprio da parte degli acquirenti e/o dei suoi aventi causa. In particolare, il Venditore non accetta reclami o contestazioni in relazione alle situazioni precedentemente descritte.

11.7. È fatto obbligo all'Acquirente di verificare la merce in termini di qualità e quantità entro breve termine dal ricevimento e comunque prima che la merce sia posta in opera.

Il materiale considerato difettoso dovrà essere tenuto a disposizione di Coem S.p.A. per le verifiche che riterrà opportuno effettuare; ogni ulteriore azione (restituzione, riparazione o altro) dovrà essere preventivamente autorizzata per iscritto dal Venditore.

I reclami devono essere comunicati dall'Acquirente a Coem S.p.A. per iscritto entro 8 (otto) giorni dalla consegna della merce. In assenza di reclami o riserve entro il periodo di tempo sopra indicato il Prodotto sotto il profilo della tipologia e dei quantitativi si considererà accettato.

Per i vizi occulti il termine è di 8 giorni dalla scoperta del vizio e comunque entro un anno dalla consegna. In nessun caso Coem S.p.A. risponderà per vizi che vengano denunciati dopo un anno dalla consegna dei Prodotti al primo acquirente del Venditore.

Il reclamo dovrà tassativamente contenere l'elenco dei difetti o vizi ed il numero dei colli e/o pezzi sui quali gli stessi sono stati riscontrati, le modalità attraverso le quali le verifiche sono state realizzate ed il numero dei lotti, oltre ad ogni altro elemento utile per consentire al fornitore l'esatta identificazione del Prodotto oggetto di contestazione.

A tal fine, in espessa deroga a quanto previsto dall'art. 131 del Codice del Consumo, il rivenditore potrà esercitare l'azione di regresso contro il Venditore esclusivamente entro il termine di 1 (un) anno dalla consegna dei Prodotti.

11.8. In generale la garanzia si applica solo per vizi rilevati in prodotti non ancora posati. Per eventuali vizi occulti rilevabili solo successivamente alla posa, ai fini dell'applicazione della garanzia, è necessario che il Venditore accerti che la posa sia stata eseguita a regola d'arte (secondo i codici di posa nazionali o secondo le norme europee – ISO sulla posa).

11.9. La garanzia del Venditore si limita alla sostituzione dei prodotti difettosi con altri dello stesso tipo esenti da vizi, trasporto incluso. E' escluso il rimborso di altri oneri e/o spese accessorie e, in particolare, i costi di demolizione e riposatura dei Prodotti, mancati guadagni per interruzione o sospensione di attività, disagi, danni indiretti ecc.

La presenza di piastrelle difettose non inficia la qualità dell'intera fornitura né comporta l'obbligo della integrale sostituzione, ma resta limitata ai colli e/o pezzi riscontrati difettosi.

La presente clausola sarà valida anche dopo la scadenza o la risoluzione del contratto.

11.10. In espresa deroga a quanto diversamente previsto dalle presenti condizioni generali ovvero diversamente disposto da leggi, usi e quant'altro, l'ammontare dei risarcimenti dovuti dal Venditore, a qualsiasi titolo, non potrà mai eccedere l'importo totale netto del fatturato relativo al singolo ordine (e/o del singolo richiamo d'ordine programmato) in cui è inserito il Prodotto che ha causato il danno, con un massimale assoluto di Euro 10.000,00 (diecimila). Qualora nel singolo ordine siano presenti più Prodotti, il limite di fatturato risarcibile è da considerarsi riferito al solo Prodotto che ha causato il danno e comunque non oltre Euro 10.000,00 (diecimila).

11.11. Il Venditore non risponde per reclami dovuti ad una classificazione del materiale ceramico da parte di organismi di controllo e/o certificazione diversi da quelli europei sulla base di specifiche tecniche che non corrispondano a quelle utilizzate dal Venditore. Eventuali expertise tecniche attivate dall'Acquirente dovranno necessariamente basarsi sulla conformità del materiale venduto alle specifiche tecniche indicate dal Venditore, in vigore in Italia.

11.12. L'Acquirente non potrà promuovere perizie sulla merce ricevuta, se non notificherà subito al Venditore il decreto di nomina del perito e non darà tempo al Venditore di intervenire alle operazioni peritali.
11.13. Eventuali reclami o contestazioni sui materiali non danno diritto all'Acquirente di sospendere o ritardare in tutto o in parte il pagamento nei termini pattuiti, ai sensi del precedente articolo 10. Eventuali reclami o contestazioni riguardanti una singola consegna di Prodotto non esonerano l'Acquirente dall'obbligo di ritirare e pagare la restante quantità di merce, come stabilito nella conferma d'ordine.

11.14. Qualora il reclamo dovesse risultare infondato l'Acquirente dovrà risarcire Coem S.p.A. di tutte le spese sostenute per l'accertamento (viaggi, perizie, ecc.).

12. RESPONSABILITÀ

12.1. Il Fornitore non potrà essere responsabile per i difetti del Prodotto quando questi siano imputabili a:

- materiali forniti dall'Acquirente o da terzi indicati da quest'ultimo;
- errori di progettazione o disegno quando dette attività siano realizzate dall'Acquirente o da terzi indicati da quest'ultimo;

- utilizzo di attrezzature indicate o consegnati dall'Acquirente o da terzi indicati da quest'ultimo;

- trattamenti o manipolazioni effettuati senza il consenso del Fornitore;

- uso difforme, non consentito, anomalo, atipico o particolare del Prodotto da parte dell'Acquirente o da parte di terzi;

- normale usura del Prodotto o deterioramento dello stesso imputabile ad eventi attribuibili all'Acquirente o a terzi;

- non rispetto delle raccomandazioni, indicazioni o suggerimenti del Fornitore in ordine alla manutenzione, conservazione o utilizzo del Prodotto stesso.

12.2. E' espressamente esclusa qualsiasi responsabilità per i danni indiretti, da perdita di immagine, lucro cessante, mancato guadagno, perdite d'esercizio, di profitti, fermi o comunque quale conseguenza indiretta del difetto del Prodotto.

Il Fornitore non sarà inoltre responsabile per i danni diretti o indiretti eventualmente subiti dall'Acquirente per l'utilizzo da parte di quest'ultimo dei documenti tecnici, informazioni, dati del prodotto, indicazioni di caratteristiche tecniche o funzionali, quando tale uso non sia stato preventivamente e specificatamente autorizzato per iscritto dal Fornitore. In nessun caso il Fornitore risponderà per mancanza di performance del Prodotto realizzato.

13. RISERVATO DOMINIO

13.1. E' convenuto tra le Parti che la vendita dei Prodotti è effettuata con riserva di proprietà a favore del Venditore sino al totale pagamento del prezzo pattuito, ai sensi dell'art. 1523 e seguenti del Codice Civile Italiano. Tuttavia il rischio di perimento della merce passa all'Acquirente dal momento della consegna dei Prodotti al vettore.

Nelle vendite all'estero, nel caso in cui la merce sia venduta e consegnata a clienti terzi prima del passaggio di proprietà, nell'ambito di normali rapporti commerciali dell'Acquirente stesso, la riserva di proprietà a

favore del Venditore permane anche nei confronti dei terzi, ove la legge lo consenta.

13.2. In caso di mora dell'Acquirente il Venditore potrà, senza necessità di alcuna formalità, compresa la messa in mora, ritirare tutta la merce oggetto di riservato dominio ed eventualmente, se la legge lo consente, tutti i titoli di credito verso terzi ad essa afferenti, con riserva di ogni ulteriore opportuno rimedio in via giudiziale per il pregiudizio subito.

13.3 L'Acquirente dovrà tenere informati i terzi della presente clausola.

14. RISOLUZIONE

14.1. Il Fornitore avrà il diritto di risolvere, di pieno diritto, il rapporto contrattuale nascente dalla Conferma d'Ordine, in qualsiasi momento, a mezzo di comunicazione scritta indirizzata all'Acquirente, manifestando la propria volontà di avvalersi della presente clausola risolutiva espressa, in caso di inadempimento di una o più delle obbligazioni presenti in codeste Condizioni Generali di Vendita. Il Fornitore avrà, altresì, il diritto di risolvere i rapporti di fornitura in corso, qualora abbia contestato per iscritto all'Acquirente l'inadempimento di una qualsiasi obbligazione diversa da quelle precedentemente indicate e l'Acquirente non abbia posto rimedio a detto inadempimento entro il termine indicato nella diffida ad adempiere del Fornitore.

14.2. L'Acquirente è tenuto a comunicare al Fornitore ogni rilevante cambiamento della propria compagine sociale o della propria organizzazione gestionale - amministrativa o la intervenuta sottoscrizione di cessione di azienda o ramo della stessa, quando tale evento riguardi le forniture del Prodotto. Il Fornitore, valutata tale informazione, o in mancanza della stessa, potrà eventualmente comunicare all'Acquirente la propria volontà di risolvere il rapporto. In tal caso tutti i crediti del Fornitore si intenderanno immediatamente esigibili.

15. AGENTI

15.1. Gli agenti del Venditore promuovono le vendite e non sono autorizzati ad agire in nome e per conto del Venditore salvo specifica autorizzazione scritta.

15.2. Gli ordini trasmessi dagli agenti non vincolano il Venditore e devono quindi essere espressamente accettati per iscritto dal Venditore stesso.

15.3. Le variazioni delle condizioni generali di vendita, le offerte, gli accrediti o gli abbuoni accordati dagli agenti o altri intermediari, non sono validi se non accettate per iscritto dal Venditore.

16. CESSIONE DEL CONTRATTO

16.1. L'Acquirente non può cedere la sua posizione nel contratto od in singoli rapporti obbligatori da questo derivanti senza l'accettazione scritta di Coem S.p.A.; anche in tal caso l'Acquirente rimane comunque solidalmente responsabile col cessionario per le obbligazioni cedute.

17. OBBLIGO DI RISERVATEZZA: TUTELA DEL KNOW-HOW

17.1. Il Fornitore è l'unico titolare dei diritti in materia per ogni dato, notizia, disegno, caratteristica, processo, composizione, caratteristica funzionale per ogni e qualunque elemento relativo al Prodotto. La titolarità di tali diritti permarrà anche dopo la consegna del Prodotto. L'esecuzione del contratto di fornitura non costituisce in nessun caso cessione di diritti di proprietà industriale o licenza di uso del Know-how relativo al Prodotto stesso. Il Fornitore, quale titolare dei diritti di cui sopra, si riserva la facoltà di utilizzare per proprio uso i risultati di verifiche sperimentazioni prove comunque effettuate sul Prodotto anche dopo la consegna.
17.2. L'Acquirente è tenuto a mantenere strettamente riservate ed a non rivelare o rendere pubbliche a terzi estranei al contratto tutte le notizie inerenti al know-how nonché tutte le altre informazioni, esperienze e conoscenze messe a punto nell'ambito aziendale del Fornitore, di cui verrà a conoscenza nel corso delle trattative, dell'esecuzione del contratto e delle visite aziendali, ivi comprese le notizie relative alla composizione dei prodotti, agli impianti, ai mezzi di produzione e agli altri beni aziendali nonché all'organizzazione della produzione e dell'azienda, ai servizi resi dalla società, alle iniziative commerciali e alla clientela, alla gestione e all'andamento della società, ai rapporti con i terzi e così via. Le notizie sopra definite devono intendersi riservate e non utilizzabili né direttamente né indirettamente dall'Acquirente se non nei limiti necessari per la corretta esecuzione del contratto.

17.3. L'Acquirente si impegna ad adottare ogni ragionevole precauzione per tenere tali informazioni segrete, comunicandole solo ai propri dipendenti, collaboratori o eventuali consulenti, che dovranno necessariamente conoscerle per l'esecuzione del contratto, vincolandoli al rispetto dei termini e delle condizioni della presente clausola. Nel corso della durata del contratto e successivamente alla sua cessazione l'Acquirente non rivelerà, pubblicherà o divulgherà, copierà, imiterà o utilizzerà in qualsiasi modo una qualsiasi parte del know-how di proprietà del Fornitore.

18. DIRITTO APPLICABILE - FORO COMPETENTE

18.1. Il contratto è disciplinato dalla Legge italiana, compresi gli usi di settore cui Coem S.p.A. appartiene.
18.2. Per qualsiasi controversia comunque derivante dal contratto di fornitura, tanto da parte di Coem S.p.A. come da parte dell'Acquirente, è esclusivamente competente il Tribunale di Reggio Emilia. E' comunque in facoltà di Coem S.p.A. adire autorità giudiziarie diverse.
18.3. Nessuna rinuncia o omissione da parte del Venditore (né espressa né implicita) relativa all'esecuzione di qualsiasi suo diritto regolato dal presente contratto, pregiudicherà i suoi diritti futuri.

19. INFORMATIVA SUL TRATTAMENTO DEI DATI PERSONALI ex artt. 13-14 Reg.to UE 2016/679

19.1. Ai fini dell'esecuzione di ciascun contratto le Parti si impegnano a conformarsi ad ogni obbligo previsto dal Regolamento Generale (UE) 2016/679 concernente la "tutela delle persone fisiche con riguardo al trattamento dei dati personali e la libera circolazione di tali dati" (di seguito "GDPR"), nonché, nei limiti della relativa applicabilità, al D. Lgs. 196/2003 ("Codice Privacy"), come da ultimo modificato dal D. Lgs. 100/2018 ed ai provvedimenti dell'Autorità Garante per la protezione dei dati personali.

Con l'accettazione del Contratto, ciascuna Parte, per quanto di rispettiva competenza, riconosce che i dati personali propri e/o dei propri dipendenti e/o collaboratori, coinvolti nelle attività esecutive del Contratto, potranno essere comunicati alla controparte e da quest'ultima trattati in qualità di Titolare autonomo del trattamento per finalità strettamente funzionali alla instaurazione e all'esecuzione del Contratto. In particolare, l'Acquirente riconosce che i dati personali propri e/o dei propri dipendenti e/o collaboratori, coinvolti nelle attività del Contratto sottoscritto, saranno trattati dal Fornitore in qualità di Titolare autonomo del trattamento per le finalità connesse all'attuazione di adempimenti obbligatori per legge (adempimenti in campo fiscale, contabile e di obblighi previsti dalle leggi vigenti) e per finalità connesse ad adempimenti contrattuali (storico ordini forniture, gestione dei fornitori gestione della qualità, programmazione delle attività). Relativamente alle finalità sopraindicate laddove lei sia un dipendente-referente del fornitore-persona giuridica i suoi dati saranno trattati dalla necessità di interagire, tramite Lei, con il fornitore-persona giuridica. I dati personali potranno essere trattati a mezzo calcolatori elettronici ed archivi cartacei. Ogni trattamento avviene nel rispetto delle modalità di cui agli artt. 6, 32 del GDPR e mediante l'adozione delle adeguate misure di sicurezza previste. I dati saranno trattati da personale espressamente autorizzato dal Fornitore, saranno comunicati ai soggetti esterni necessari per una corretta gestione del rapporto e non saranno diffusi. I dati personali saranno conservati per i tempi previsti dagli obblighi di legge e contrattuali. L'Acquirente ha diritto di richiedere l'informativa estesa ed esercitare i diritti previsti dagli art. 15 e ss scrivendo a coem@coem.it

general conditions of sale for the usa

1. BUYER'S ACCEPTANCE OF SELLER'S GENERAL CONDITIONS OF SALE

These General Conditions of Sale shall apply to every Contract of COEM S.p.A. ("Seller") for the sale of goods or articles ("Merchandise") to any person who has purchased or agreed to purchase Merchandise from Seller (the "Buyer"), unless Seller otherwise specifically agrees in writing. By placing any order for Merchandise, the Buyer agrees to these General Conditions of Sale. Any other terms or conditions which may at any time be indicated by the Buyer, in the Buyer's order form or otherwise (whether oral, typed, written or printed) shall be null and void and of no effect, even if not expressly objected to by Seller.

2. ACCEPTANCE AND CONFIRMATION OF ORDER

Any order of the Buyer may be accepted by Seller in whole or in part. A partial acceptance by Seller of any such order shall not constitute an acceptance of any other part of the order. No order of the Buyer will be binding upon Seller unless accepted by Seller on Seller's form of Order Confirmation, signed by an officer or employee of Seller duly authorized to sign on behalf of Seller, and then only as and to the extent set forth in such Order Confirmation. Any term, condition or provision set forth in Seller's Order Confirmation which is not objected to by the Buyer in writing within ten days after the date thereof will conclusively be deemed to have been accepted by the Buyer. Seller's Order Confirmation shall be controlling regarding the Merchandise and quantities sold or required to be sold by Seller to the Buyer. Every order of the Buyer will be binding on the Buyer unless and until it is rejected in writing by Seller, and may not be cancelled, withdrawn or modified by the Buyer; however, in the event of a partial acceptance by Seller, the Buyer will no longer be bound with respect to the parts of the order not accepted by Seller.

3. PRICES

Unless otherwise specifically agreed by Seller in writing, the Buyer will pay the prices of Seller for the Merchandise in effect at the time of shipment and all prices quoted or invoiced by Seller are for delivery Ex-factory, excluding transportation and shipping charges, taxes, fees and custom duties. Packaging materials, such as boxes; crates, etc. are invoiced at the cost price and are not returnable. Seller's prices may, at Seller's option, be increased, after Seller's acceptance of the Buyer's order, to reflect any increases in Seller's materials, taxes, fees and customs duties, labor or other costs. When, on the Purchaser's request, goods available and ready for shipment remain at the suppliers factory, the invoice is issued as though the shipment had taken place and the materials are Kept in the warehouse at the purchaser's risk and expense.

4. DISCOUNTS AND ALLOWANCES

Except as expressly provided in Seller's Order Confirmation, the Buyer will not be entitled to any discount, allowance, commission or rebate of any kind, directly or indirectly. Any discount granted by Seller for prepayment of any invoice will be allowed only if the full amount specified in the invoice is received by Seller on or before the due date of the invoice.

5. TIME OF DELIVERY

Any delivery dates specified by Seller will be deemed to be estimates only, unless specific commitments are made in writing by Seller. In no event is the time of delivery of the Merchandise of the essence. Seller reserves the right to cancel, in whole or in part, or to suspend or delay, in whole or in part any orders due to (i) the unusually large size of an order (ii) exigencies of Seller's production or delivery schedule, (iii) shortages of, or failures of Seller's suppliers to deliver, or delays of Seller's suppliers in delivering materials, (iv) work stoppages or other labor troubles, (v) acts of God or (vi) any event in the nature of force majeure or beyond Seller's control. Delivery dates will be extended by the amount of any additional time required by Seller to make delivery as a result of any such condition or event or any change in the Contract. Seller also reserves the right to discontinue particular Merchandise or lines of Products, or to substitute other Merchandise or lines, in response to production and market requirements and demands. The Buyer waives any and all claims and rights which the Buyer might otherwise have arising out of or in connection with or relating to any delay in delivery of the Merchandise for any reason whatsoever or any failure of Seller to deliver by reason of the exercise by Seller of any of its rights pursuant to these General Conditions of Sale, including, without limitation, any and all claims for or rights to direct, indirect, incidental, consequential or other damages or compensation, and any and all rights to terminate or cancel the Contract, in whole or in part.

6. TERMS OF SALE, RISK OF LOSS

Buyer Will take delivery of the Merchandise at the Seller's premises ("Ex factory").

Unless otherwise specifically agreed by Seller in writing:

- (i) all risk of loss or damage to the Merchandise shall pass to the Buyer upon delivery of the Merchandise by Seller to a carrier;
- (ii) Seller shall not be required to procure insurance to cover the Merchandise during transportation in shipment;
- (iii) any shipping arrangements made by Seller with carriers or forwarding agents at the Buyer's request shall be made solely on the Buyer's behalf and at the Buyer's sole cost and risk; (iv) any agent appointed for such shipment shall be solely the Buyer's agent for all purposes; (v) the Buyer shall be responsible for all the unloading and receipt of the Merchandise at its destination; and (vi) any claim for loss or damage shall be made by the Buyer solely against the carrier.

7. TERMS OF PAYMENT

(a) The Buyer shall make all payments in accordance with the provisions of the Contract, notwithstanding any claim for any alleged defect, fault or irregularity in the Merchandise. Unless otherwise specifically agreed by Seller in writing, payment by the Buyer is due upon receipt of Seller's invoice. Payment for all Merchandise specified in the invoice shall be made; in the currency stated in the invoice, at Seller's Administrative Headquarters in Roteglia di Castellarano. The acceptance by Seller of any check, draft, promissory note or other instrument shall not constitute a change in or novation of the Contract or an agreement by Seller that payment may be made at the place where such check, draft, promissory note or other instrument is drawn, issued or payable.

Moreover, acceptance by Seller of any check, draft, promissory note or other instrument will not constitute payment until Seller has collected the full amount in cash at Seller's place of business. In the event of any delay in payment, Seller shall have the right to suspend deliveries and may, at its option (i) require immediate payment of all or any part of any and all sums owed by the Buyer, irrespective of any credit terms previously agreed to, and (ii) terminate the Contract (as well as any and all other contracts with the Buyer) in whole or in part, and hold the Buyer liable for damages. In the event Seller does not receive any payment by the due date, the Buyer shall pay to Seller interest on the unpaid amount, from the due date to the date payment is actually received by Seller, at the annual rate of interest of ten percent (10%). Seller's right to such interest shall be in addition to, and not in lieu of, all other rights and remedies arising by reason of such nonpayment. In the event of any delay in payment, Seller may, at its option, among other things, cancel or terminate the Contract, in whole or in part, and hold the Buyer liable for damages. Any payment received by Seller may be applied to any outstanding balance owed by the Buyer to Seller, as Seller, in its sole discretion, may determine, any instructions of the Buyer to the contrary notwithstanding.

(b) Irrespective of any payment or credit terms specified or agreed to by Seller, Seller may, in its sole discretion, at any time and from time to time, require payment in cash before shipment of any or all of the Merchandise, or require payment in advance of any or all amounts due or to become due under the contract. If Seller believes in good faith that the Buyer's ability to make the payment required by the Contract is or may become impaired, Seller may, in its sole discretion, cancel or terminate the Contract, in whole or in part, the Buyer remaining liable to pay for any Merchandise already shipped.

8. WARRANTIES, COLOR, TONE AND SHADE VARIATIONS

(a) Except for such express written, warranties as may be made by seller to the buyer, seller makes no warranty or representation, express or implied, with respect to the merchandise; including, without limitation, any warranty of merchantability or fitness for any particular purpose.

Under no circumstances does Seller make, or shall Seller be deemed to have made, any warranty or representation, express or implied, with respect to the uniformity of the color, tone or shade of the Merchandise or the conformity of the Merchandise to the color, tone or shade of any sample. In particular, and without limitation, under no circumstances does Seller make, or shall Seller be deemed to have made, any such warranty or representation, or any other warranty or representation, express or implied, by reason of any statement, description or illustration in any brochure or other literature or by reason of having furnished a sample of any Merchandise. Moreover, any written warranty made by Seller to Buyer with respect to any Merchandise (i) applies only to Merchandise which is of first quality, and does not apply to second or lesser quality Merchandise, and (ii) is subject to a tolerance of approximately five percent. In the event of any breach of warranty, Seller may, at its election, either (i) replace the Merchandise affected or (ii) cancel or terminate the Contract, in whole or in part, without any obligation to replace any Merchandise. The Buyer waives any and all other claims and rights which the Buyer might otherwise have arising out of or in connection with or relating to any such breach of warranty or arising out of or in connection with or relating to any defect, fault or irregularity in the Merchandise, including, without limitation, any and all claims for or rights to direct, indirect, incidental, consequential or other compensation or damages, and any and all rights to terminate or cancel the Contract, in whole or in part.

(b) The Buyer takes full and complete responsibility for ascertaining whether the Merchandise meet the requirements of or is suitable for the Buyer's intended use, regardless of any suggestions or directions given by Seller with respect to the Merchandise or the use thereof.

(c) The Buyer acknowledges that variations in color, tone and shades of the Merchandise are inherent and unavoidable, that Seller does not warrant uniformity in color, tone or shade of the Merchandise and that the Merchandise may not match the color, tone or shade of any sample.

(d) The Buyer shall not test or have any test performed on the Merchandise unless the Buyer has previously advised Seller of the proposed test in writing, specifying the time and place of the proposed test and the identity of the person proposed to perform such test, and afforded Seller a sufficient opportunity to participate in the proposed test to such extent as Seller deems advisable. Any test performed in the absence of such advice and participation shall be of no effect with respect to any claim or right of the Buyer.

9. TITLE TO AND SECURITY INTEREST IN MERCHANDISE

Until Seller collects in full all amounts required to be paid by the Buyer for the Merchandise, as well as any and all other amounts owed by the Buyer to Seller, Seller retains title to the Merchandise; and Seller shall have a security interest in the Merchandise, under the Uniform Commercial Code as in effect in the United States, to secure the payment of all such amounts. By placing an order with Seller, the Buyer appoints Seller as its attorney-in-fact to sign and file any and all financing statements with respect to such security interest which Seller may deem necessary or desirable, or to file such financing statements without the signature of the Buyer to the extent permitted by law. The Buyer shall, at the request of Seller, execute any and all financing statements and other documents which the Seller may request to perfect or evidence such title and such security interest.

10. COSTS OF COLLECTION

In the event Seller retains a collection agency to collect any amount owed by the Buyer, or institutes proceedings to collect such amount or to enforce any right under the Contract, including enforcement of any security interest granted to Seller, the Buyer shall reimburse Seller for all collection agency fees and costs, or all costs incurred in such legal proceedings, including reasonable attorneys' fees.

11. CLAIMS

(a) Any claim by the Buyer of any and every kind must be made in a writing dispatched to Seller, by registered mail, return receipt requested, not later than thirty days from the date of shipment of the Merchandise with respect to which the claim is made. Failure to make any claim in such manner or within such thirty day period shall constitute an irrevocable acceptance of the Merchandise and an admission by the Buyer that the Merchandise fully comply with all the terms, conditions and specifications of the Contract. (b) The Buyer may not accept only a part of the Merchandise delivered. Acceptance of any part of the Merchandise ordered shall constitute acceptance of all of the ordered Merchandise, whether or not the

Merchandise is all tendered in one shipment.

(c) No Merchandise may be returned by the Buyer without the prior written authorization of the Seller. All returns shall be subject to verification on arrival at the location specified, in such written authorization, for the return of the Merchandise.

12. PROPRIETARY RIGHTS

All rights in designs, trade names, trademarks and copyrights of Seller used on or in connection with the Merchandise are proprietary and shall remain the exclusive property of Seller, and the Buyer shall have no right or interest therein or with respect thereto. The Buyer shall not reproduce or simulate, or cause or allow anyone to reproduce or simulate, either directly or indirectly, any such design, trade name, trademark or copyright.

13. TERMINATION OF THE CONTRACT

Seller shall have the right to cancel or terminate the Contract, in whole or in part (i) within one hundred twenty days from the date of Seller's Order Confirmation, in Seller's sole discretion; or (ii) at any time, in the event Seller experiences difficulties in obtaining regular or sufficient supplies of materials. The Buyer waives any and all claims and rights which the Buyer otherwise might have, including, without limitation, any and all claims for or rights to direct, indirect, incidental, consequential or other damages or compensation, arising out of or in connection with or relating to any cancellation or termination, in whole or in part, pursuant to this or any other paragraph of these General Conditions of Sale, of the Contract or any other contract between Seller and the Buyer.

14. APPLICABLE LAW

The Contract shall be governed by and construed in accordance with the law of Italy, without giving effect to conflict of laws principles, except that (a) if the Seller decides to sue the Buyer as indicated in paragraph 15, the law of the state where the action is prosecuted will govern, including the Uniform Commercial Code; and (b) the rights of Seller pursuant to its security interest in the Merchandise shall be governed by and construed in accordance with the Uniform Commercial Code as in effect in the United States.

15. JURISDICTION

All litigation arising out of or in connection with the Contract or the Merchandise shall be conducted before the Courts of Reggio Emilia, Italy, except that Seller, at its option, may commence and prosecute such litigation in any jurisdiction in which the Buyer may be located or found or may do or transact any business. The Buyer consents to the jurisdiction of the courts of the Reggio Emilia, and agrees that any and all process may be served upon the Buyer outside Reggio Emilia with the same force and effect as if such service had been made in Reggio Emilia.

16. MODIFICATIONS

The Contract cannot be orally changed, modified, amended or discharged, in whole or in part. Any change, modification, amendment or discharge, to be effective, must be in writing, signed by an officer or employee of seller duly authorized to sign on behalf of Seller.

17. PRIVACY POLICY PURSUANT TO art. 13-14 EU Regulation 2016/679

For the purpose of the execution of each contract, the Parties undertake to comply with every obligation provided for by EU General Regulation 2016/679 regarding "the protection of individuals with relation to the processing of personal data and the free circulation of said data" (hereinafter "the GDPR"), as well as, within the limits of applicability, Legislative Decree 196/2003 ("the Privacy Code"), as last amended by Legislative Decree 101/2018 and the measures of the Supervisory Authority for the protection of personal data (the Italian Data Protection Authority). With acceptance of the Contract, each Party, insofar as concerns them, recognises that their own personal data and/or that of their employees and/or co-workers involved in the performance of this Contract, may be communicated to the counterparty and processed by the latter as autonomous Data Controller strictly for the purpose of the establishment and execution of the Contract. Specifically, the Buyer recognises that their own personal data and/or that of their employees and/or co-workers involved in the performance of the Contract entered into shall be processed by the Supplier in their capacity as autonomous Data Controller for purposes associated with the fulfilment of legal requirements (tax and accounting requirements and other obligations provided by the laws in force) and for purposes associated with contractual obligations (order history, management of suppliers, quality management, planning). With regards to the above purposes, in the event you are an employee/contact person of the legal entity/supplier, your data shall be processed as a result of the need to interact, through you, with the legal entity supplier. The personal data may be processed by means of electronic calculators and paper archives. Every processing activity occurs in compliance with the procedures as per arts. 6 and 32 of the GDPR and by means of the adoption of adequate security measures as required. The data shall be processed by staff personally authorised by the Supplier; they shall be communicated to external individuals and entities as necessary for correct management of the relationship and shall not be disseminated. The personal data shall be stored for the times provided for by legal and contractual obligations. The Buyer is entitled to request the full version of the privacy policy and to exercise the rights provided for by art. 15 and following, by writing to coem@coem.it

general conditions of sales abroad

1. CONTRACTUAL REGULATIONS

1.1. These general conditions (hereinafter referred to as “the Conditions”) form an integral part of all the sales contracts in which Coem S.p.A. (hereinafter referred to as “the Seller and/or the Supplier”) is a party. Except for single cases in which these conditions have been departed from through express written agreements signed by the Seller, they shall constitute the exclusive regulations for such sales, also if not specifically referred to. If one or more parts of these Conditions or of the single contracts to which they refer turn out to be invalid, the general or particular Conditions shall remain valid as a whole; the invalid parts shall be replaced with agreements that correspond as closely as possible to the original intention of the parties.

1.2. The general conditions, whatever they are, shown on the Buyer’s correspondence and/or confirmation, may not in any way be in contrast with those of the Seller, nor prevail over them. The Buyer and/or Placer of an Order shall be considered as the company/individual that acquires a product or service from Coem S.p.A.

2. SUBJECT MATTER OF THE SUPPLY

2.1. The supply includes all ceramic tiles, other materials, services (hereinafter referred to as “the Products”) in the quantities specified in our order confirmation.

3. CONCLUSION OF THE SALES CONTRACT

3.1. The contract is considered as concluded when the proposer or placer of an order are aware of the written acceptance of the counterparty.

3.2. An order not confirmed in writing may not, in any event, be considered as accepted except in the event of execution of the order on the part of the Seller by shipment or delivery of the Products. Partial delivery of ordered Products does not imply acceptance of the entire order, but only that part of the products actually delivered.

3.3. In all events, the text of Coem S.p.A.’s order confirmation shall take precedence over a different text of any offer or order.

3.4. In the event that Coem S.p.A.’s order confirmation contains differences in the single elements making up the order compared to agreements or orders, the Buyer that has not raised objections within 7 days from conformation shall be considered as having accepted the order confirmation as it is written.

3.5. All requests for reprogramming or cancelling any order in whole or in part shall be invalid unless they have been accepted in writing by the Seller. In the event that, without prejudice to any other right of the Seller, this consent is granted, the Seller shall have the right to charge a fee for the reprogramming or for approval of the cancellation of such order.

4. PRICES

4.1. The sales prices of the products are those indicated in the Seller’s price list in force upon the confirmation of the order. These prices are not binding and therefore the Seller reserves the right to modify them before accepting the order. In the event of sales contracts involving a number of deliveries, unless otherwise agreed in writing, the price shall be that of the price list in force at the time of the single deliveries.

4.2. For all Products intended for abroad, the prices may be calculated, at the Seller’s discretion, in the foreign currency of the country of destination or in Euros.

4.3. The prices agreed for each single sale are considered as net of value added tax, similar duties and accessory costs, for deliveries ex-Works, except in the event of a different written agreement.

4.4. If there are price increases in the costs of raw materials, labour, fuel, production costs, transport costs, etc. between the order date (also after the order confirmation) and the delivery date, Coem S.p.A. may increase the agreed price giving due written communication to the Buyer also by fax or e-mail.

If, however, this price exceeds the price agreed at the time of the order by more than 20%, the Buyer may withdraw from the contract, informing the Seller by registered post of such wish within the mandatory term of 10 days from receipt of the notification of the price increase. Otherwise, the new price shall be considered as accepted.

4.5. In the event of specific requests for “non-palletised” material, an increase of 10% shall be applied to the price lists in force.

4.6. Packaging such as crates, cages, etc., are invoiced at cost price and are considered as “non-returnable”. Normal pallets are included in the prices, Europallets at cost.

5. DELIVERIES

5.1. Except where there is a different written agreement, the delivery of the Products and their shipment to Italy and abroad shall occur according to Ex-Works delivery. This formula, as also in the shipment formulae that may be alternatively be agreed in writing, shall make reference to the “Incoterms” of the International Chamber of Commerce of Paris, in the edition in force at the time of the sale.

5.2. The carrier assigned to transport the goods shall be indicated by the Buyer.

5.3. In all events, from the moment the Products are delivered by the Seller to the Carrier and/or Shipper, they travel at the Buyer’s risk and danger. All responsibility of Coem S.p.A. ceases upon delivery to the Carrier, towards which the Placer of the Order, having carried out appropriate checks, shall make any claims.

5.4 The Buyer shall be the only party responsible for the deposit or storage of the Product, which must be carried out in such a way as to permit correct preservation of the technical and functional characteristics of the supplied Product. No liability may be attributed to the Seller for improper storage or deposit.

6. DELIVERY TERMS

6.1. The term established for the delivery of the Products must be considered as in favour of both the contracting parties. The term of delivery is purely indicative and not essential: any delays in deliveries, interruptions, suspensions (total or partial) of the supplies shall not give rise to the right to compensation and/or reimbursement of any damages (direct or indirect) unless otherwise agreed to in writing. The Buyer expressly waives request for termination of the contract in the event of failed compliance with the terms for delivery of the Product on the part of the Supplier.

6.2 With the acceptance of the delayed delivery, the Buyer waives any claim with respect to the delay.

6.3. In the event that the goods ready for shipment remain (according to the wishes of the Placer of the Order) at their disposition at the Seller’s factory, the invoice shall be issued as if the shipment of the Products had occurred and the Products shall be stored at the Buyer’s risk, danger and costs.

7. FORCE MAJEURE

7.1. The Seller is not liable towards the Buyer for any breach, including failed or delayed delivery, caused by events out of its reasonable control such as, by way of example and purely indicatively, the failed or delayed delivery of processing materials on the part of suppliers, plant breakdowns, strikes and other trade union actions, interruptions in energy supplies, and transport suspensions or difficulties.

8. SAMPLES

8.1. The figures shown in Coem S.p.A.’s illustrative documents, as well as the characteristics of sample and models sent by the latter to the Buyer, are approximate indications. Such data are not binding unless to the extent that they have been expressly referred to as such in the offer or in Coem S.p.A.’s written acceptance.

9. PAYMENTS

9.1. Payment of the price must be made in the terms and in the ways indicated in the order confirmation and/or in the invoice and, except in the event of a different agreement regarding the currency, in Euros. Each and every payment obligation between the contracting parties must be fulfilled at Coem S.p.A.’s offices.

Any payments made to Coem S.p.A.’s agents, sales representatives or sales assistants are not considered as carried out until the relative sums are received by Coem S.p.A.

9.2. Except in the event of a different written agreement, payments shall be made by the Buyer, by bank transfer, within 30 days from the invoice date.

All bank charges and transaction costs are payable by the Buyer.

9.3. Any discounts or specific agreements regarding single supplies are to be considered as valid only if expressly stated in writing in the invoices relating to such supplies.

9.4. No offsetting against any credits, however arising, with respect to Coem S.p.A., is permitted.

9.5. In the event of delay in payments, also partial, the Seller shall have the right, without any need for notice of default, to receive interest in arrears as established by Leg. Dec. 231/2002, besides possible damages. The Buyer expressly approves to pay the Seller all the costs (including, but not limited to, legal costs) incurred by the Seller for collection or the intention to collect any amount not paid and therefore outstanding.

In addition, the failed or delayed payment (also partial) of invoices, for any reason, gives Coem S.p.A. the right, without prejudice to any other action, to demand the payment in advance of the remaining supplies even if not yet delivered, or the provision of suitable guarantees on assets that cover all the relative amounts. The failed or delayed payment, also partial, of the price according to the agreed terms are grounds, as per art. 1456 of the Italian Civil Code, for termination of the contract to which such payment refers and justifies in all events, as per art. 1460 of the Italian Civil Code, refusal to fulfil further contractual obligations and to cancel the processing of any other orders in progress, without the Buyer being able to make any claim for compensation, allowances or otherwise.

In the event that the Buyer is subject to insolvency proceedings (arrangement with creditors, receivership, bankruptcy, compulsory liquidation, extraordinary administration proceedings), the Supplier may, in compliance with the specific legislation regarding the recovery of receivables, suspend further supplies or consider the contract as terminated.

10. SOLVE ET REPETE

10.1. No exception, contestation or dispute relating to the quality of the goods, to flaws or defects, or to any other any other aspect of the contract, save those relating to nullity, possibility of annulment, or rescission of the contract, shall be valid or may be taken into consideration, and no action may be brought unless after the due full payment of the price.

11. CHARACTERISTICS OR THE PRODUCTS, WARRANTIES AND CLAIMS

11.1. The Seller undertakes to deliver the product free of flaws and conforming to the specifications as per the order Confirmation.

The ceramic tiles and other ceramic Products manufactured and/or marketed by Coem S.p.A. comply with the international laws applicable to the corresponding class of product. For Products sold to professional resellers, the latter are responsible for the correctness of the technical information provided to final users and/or to retail stores. The classification of the product is indicated by Coem S.p.A. on the advertising material, on the invoices and/or on the price lists. The Buyer must, therefore use the products on the basis of the classification provided by the Seller.

To simplify indications for use, and to adapt the standard classifications to the specific characteristics of Coem S.p.A.’s products, signs are placed against every product in the price lists or on the catalogues that indicate the specific use recommended by the Seller.

11.2. Differences in tone are not a defect of the Products, but rather, a characteristic of the specific material fired at high temperatures. The particular frost-resistant characteristic applies only to Products that the Manufacturer expressly guarantees to be such, with a specific indication on the advertising material and/or price lists. In the absence of such indication the ceramic materials are only and uniquely for use in interiors or, in any case, in locations protected from bad weather. The frost-resistant warranty has a duration of one year.

11.3. Suggestions and recommendations regarding the adoption of qualities and sizes, considerations of a technical nature regarding the installation of the products and the operation of plant where the materials are used, while representing the best of our knowledge, are always given without any liability. Chemical analyses and physical and chemical-physical data regarding the materials supplied are approximate, but reliable, averages, subject to usual levels of tolerance.

11.4. Images of the Products on the Seller’s brochures and other advertising materials are purely illustrative and do not necessarily represent the final installed appearance of the specific product shown.

11.5. The Seller guarantees the good quality of, and the absence of flaws in, the Products supplied. The warranty is limited to 1st choice materials, with a tolerance of 5%. The warranty does not apply to Products classified by Coem S.p.A. as of a quality lower than 1st choice or for consignments of end-of-series Products sold in bulk and/or marked as special/occasional consignments.

11.6. The Seller is not responsible for flaws and/or anomalies found on the Products not due to the quality of the Products themselves but due to improper use on the part of the buyers and/or their assignees. In particular, the Seller does not accept claims or contestations in relation to the above-described situations.

11.7. The Buyer is obliged to check the goods in terms of quality and quantity within a short time from receipt and, in any case, before the goods are installed.

Material considered as defective shall be kept at Coem S.p.A.’s disposition for checks that it shall consider as appropriate; every further action (return, repair or other) must be authorised beforehand in writing by the Seller.

Claims must be communicated by the Purchaser to Coem S.p.A. in writing within 8 (eight) days from the delivery of the goods. In the absence of complaints or reservations within the above-indicated period, the product shall be considered as accepted with respect to type and quantities.

For hidden flaws the term is 8 days from the discovery of the flaw and, in any case, within a year from delivery. In no event shall Coem S.p.A. be answerable for flaws that are reported after a year from delivery of the products to the Seller’s first buyer.

The claim must, compulsorily, contain the list of defects or flaws and the number of the packages and/ or pieces on which they have been found, the procedures used for the checks and the number of lots, besides any other element useful for allowing the supplier to precisely identify the Product to which the complaint refers.

For this purpose, in express departure from the provisions of art. 131 of Consumer Code, the reseller may bring a claim against the Seller exclusively within the term of 1 (one) year from the delivery of the Products.

11.8. In general, the warranty applies only to flaws found in products not yet installed. For any hidden flaws detectable only subsequent to installation, for the purpose of the application of the warranty, the Seller needs to ascertain that the installation has been carried out in a workmanlike manner (according to national installation codes or according to European regulations – standards regarding installation).

11.9. The Seller’s warranty is limited to the replacement of the defective products with others of the same type free of flaws, including transport. The reimbursement of other expenses and/or accessory costs and, in particular, costs for the demolition and re-installation of the Products, lost earnings for interruption or the suspension of activities, disturbances, indirect damages, etc., is excluded.

The presence of defective tiles does not affect the quality of the supply as a whole, nor implies the obligation for full replacement, but remains limited to the packages and/or pieces found to be defective.

This clause shall be valid also after the expiry or termination of the contract.

11.10. In express departure from what is otherwise provided for by these general conditions, or otherwise differently provided for by laws, customary practice or whatever else, the amount of refunds due by the Seller, for whatever reason, may not exceed the net total of the invoiced amount relating to the single order (and/or of the single programmed order referred to) in which the Product that caused the damage is included, with a maximum of Euro 10,000.00 (ten thousand). In the event that a number of Products are present in the single order, the limit of refundable turnover is to be considered as referring to only the Product that caused the damage and, in any case, not more than Euro 10,000.00 (ten thousand).

11.11. The Seller is not answerable for complaints due to a classification of the ceramic material on the part of non-European control and/or certification bodies on the basis of specific techniques that do not correspond to those used by the Seller. Any technical expert opinions obtained by the Buyer must necessarily be based on the conformity of the material sold to the technical specifications indicated by the Seller, in force in Italy.

11.12. The Buyer may not seek expert reports on the material received, unless it immediately notifies to the Seller the appointment of the expert and gives the Seller time to intervene during the expert’s investigation.

11.13. Any complaints or contestations regarding the material do not give rise to the Buyer’s right to suspend or delay payment (in whole or in part) according in the agreed terms, according to article 10 above. Any complaints or contestations regarding a single delivery of a Product shall not release the Buyer from the obligation to withdraw and pay for the remaining quantity of goods, as established in the order confirmation.

11.14. In the event that the complaint turns out to be groundless, the Buyer shall reimburse Coem S.p.A. all the costs incurred for the verification (travel, expert investigations, etc.).

12. LIABILITY

12.1. The Supplier may not be liable for Product defects when they are attributable to:

- materials supplied by the Buyer or by third parties indicated by the latter;
- design or drawing errors when they are carried out by the Buyer or by third parties indicated by the latter;
- use of equipment indicated or recommended by the Buyer or by third parties indicated by the latter;
- treatments or tampering carried out without the Supplier’s approval;
- inappropriate, non-permitted, anomalous, atypical or particular use of the product on the part of the Buyer or by third parties;
- normal wear and tear of the product or its deterioration ascribable to events attributable to the Buyer or to third parties;
- lack of compliance with the Supplier’s recommendations, indications or suggestions with regards to the maintenance, preservation or use of the Product.

12.2. Any liability for indirect damage, image loss, lost income, loss of earnings, loss in the financial period, loss of profits, shutdowns or, in any case, as an indirect consequence of the Product defect, is expressly excluded.

The Supplier shall not, moreover, be liable for damage, whether direct or indirect, possibly suffered by the Buyer, due to the use, on the part of the latter, of technical documents, information, product data, indications regarding the technical or functional characteristics, when such use has not been previously and specifically authorized in writing by the Supplier. In no event shall the Supplier be answerable for lack of performance of the product manufactured.

13. RETENTION OF TITLE

13.1. It is agreed between the Parties that the sale of the Products occurs with retention of title in favour of the Seller until the total payment of the agreed price, pursuant to art. 1523 and following of the Italian Civil Code. In all events, the risk of loss of the goods passes to the Buyer upon the delivery of the Products to the carrier.

For sales abroad, in the event that the goods are sold and delivered to third party customers as part of the Buyer’s normal commercial relations before the transfer of title, the Seller’s retention of title remains also with respect to such third parties, where the law permits.

13.2. In the event of the Buyer’s default, the Seller may withdraw all the goods subject to retention of title and, possibly, if the law permits, all third party debt instruments relating to the Buyer, without the need for any formalities, including formal notification of default, and subject to any further appropriate legal remedy

for the injury suffered.

13.3 The Buyer shall inform third parties of this clause.

14. TERMINATION

14.1. The Supplier shall have full legal right to terminate the contractual relationship deriving from the Order Confirmation, at any time, by means of written communication addressed to the Buyer, expressing its intention to make use of this express termination clause in the event of the breach of one or more of the obligations contained in these General Conditions of Sale. The Supplier shall, moreover, have the right to terminate the supply relationship in force in the event that it has given formal written notice to the Buyer of the breach of any obligation other than those previously indicated and the Buyer has not remedied such breach within the term indicated in the Supplier’s warning to comply.

14.2. The Buyer is obliged to inform the Supplier of any significant change in its shareholding structure or management-administrative organisation or the due undersigning of the transfer of the enterprise or part of it, when such an event affects the supplies of the Product. The Supplier, having examined this information, or in its absence, may decide to inform the Buyer of its intention to terminate the business relationship. In this case, all the Supplier’s receivables shall be considered as immediately falling due.

15. AGENTS

15.1. The Seller’s agents promote sales and are not authorised to act in the name and on account of the Seller except in the event of specific written authorisation.

15.2. Orders transmitted by agents do not bind the Seller and therefore must be expressly accepted in writing by the Seller.

15.3. Changes in the general conditions of sale, offers, credits and allowances agreed by agents or other intermediaries, are not valid unless accepted in writing by the Seller.

16. TRANSFER OF THE CONTRACT

16.1. The Buyer may not transfer its position in the contract or in single obligatory relations deriving from the contract without Coem S.p.A.’s written acceptance; also in this case the Buyer remains, in all events, jointly liable along with the transferee for the obligations transferred.

17. CONFIDENTIALITY OBLIGATION: PROTECTION OF KNOW-HOW

17.1. The Supplier is the only holder of relative rights for every datum, piece of information, drawing, characteristic, process composition, functional feature for every and any element relating to the Product. Ownership of such rights shall remain also after the delivery of the Product. The execution of the supply contract does not imply, in any event, the transfer of intellectual property rights or rights for license to use the Know-how relating to the Product. The Supplier, as owner of the above rights, reserves the right to use for its own use the results of experiments or tests carried out on the Product, also after delivery.

17.2. The Buyer is obliged to keep all information, experience and knowledge developed in relation to the Supplier’s business activities, of which it becomes aware during the course of negotiations, in the execution of the contract and in company visits, including information relating to the composition of the Products, plant, means of production and other company assets, as well as the organisation of production and of the company, the services offered by the company, commercial initiatives and the clientele, company management and business performance, relations with third parties and so on, strictly confidential and not to reveal or make public such information to third parties extraneous to the contract. The above-defined information must be considered as confidential and not useable wither directly or indirectly by the Buyer unless within the limits necessary for the execution of the contract.

17.3. The Buyer undertakes to adopt every reasonable precaution to keep such information secret, communicating it only to its employees, co-workers or possible consultants, which must necessarily have the information for the execution of the contract, obliging them to comply with the terms and conditions of this clause. During the valid term of the contract and subsequent to its termination, the Buyer may not reveal, publish or disseminate, copy, imitate or use in any way any part of the know-how owned by the Supplier.

18. APPLICABLE LAW – COURT OF JURISDICTION

18.1. The contract is regulated by Italian Law, including customary practices in the sector to which Coem S.p.A. belongs.

18.2. For any dispute in any way deriving from the supply contract, brought by Coem S.p.A. or by the Buyer, the Court of Reggio Emilia has exclusive jurisdiction. Coem S.p.A., nevertheless, has the right to bring the matter before different courts.

18.3. No waiver of omission on the part of the Seller (either express or implicit) relating to the execution of any of its rights regulated by this contract shall affect its future rights.

19. PRIVACY POLICY PURSUANT to art. 13-14 EU Regulation 2016/679

19.1. For the purpose of the execution of each contract, the Parties undertake to comply with every obligation provided for by EU General Regulation 2016/679 regarding “the protection of individuals with relation to the processing of personal data and the free circulation of said data” (hereinafter “the GDPR”), as well as, within the limits of applicability, Legislative Decree 196/2003 (“the Privacy Code”), as last amended by Legislative Decree 101/2018 and the measures of the Supervisory Authority for the protection of personal data (the Italian Data Protection Authority). With acceptance of the Contract, each Party, insofar as concerns them, recognises that their own personal data and/or that of their employees and/or co-workers involved in the performance of this Contract, may be communicated to the counterparty and processed by the latter as autonomous Data Controller strictly for the purpose of the establishment and execution of the Contract. Specifically, the Buyer recognises that their own personal data and/or that of their employees and/or co-workers involved in the performance of the Contract entered into shall be processed by the Supplier in their capacity as autonomous Data Controller for purposes associated with the fulfilment of legal requirements (tax and accounting requirements and other obligations provided by the laws in force) and for purposes associated with contractual obligations (order history, management of suppliers, quality management, planning). With regards to the above purposes, in the event you are an employee/ contact person of the legal entity/supplier, your data shall be processed as a result of the need to interact, through you, with the legal entity supplier. The personal data may be processed by means of electronic calculators and paper archives. Every processing activity occurs in compliance with the procedures as per arts. 6 and 32 of the GDPR and by means of the adoption of adequate security measures as required. The data shall be processed by staff personally authorised by the Supplier; they shall be communicated to external individuals and entities as necessary for correct management of the relationship and shall not be disseminated. The personal data shall be stored for the times provided for by legal and contractual obligations. The Buyer is entitled to request the full version of the privacy policy and to exercise the rights provided for by art. 15 and following, by writing to coem@coem.it

