

## FINE CERAMIC TRANSFERS CONDITIONS OF SALE

### 1. General

These conditions of sale ("these Conditions") shall form part of all contracts for the supply of goods ("The Goods") by Enesco Ltd. ("the Seller") to any buyer ("the Buyer") and shall prevail over any oral or written terms or conditions submitted by the Buyer unless otherwise expressly agreed in writing by the Seller.

### 2. Orders subject to Acceptance

2.1 No quotation which the Seller may make shall be a binding offer. An order placed by the Buyer shall be binding on the Seller only upon the earlier of the Seller's acceptance in writing of the order and its appropriation of the Goods to the order.

2.2 The Seller may refuse to accept any order placed by the Buyer. The acceptance of any order does not constitute an obligation or promise to provide the Goods to the Buyer pursuant to any further or subsequent orders placed by the Buyer.

### 3. Cancellation of Orders

The Seller reserves the right to refuse any cancellation or purported cancellation of orders placed by the Buyer where the Goods are ready for despatch or are in the process of manufacture.

### 4. Delivery

4.1 Delivery estimates are given in good faith and the Seller shall endeavour to adhere to them but time of delivery shall not be of the essence and no responsibility whatsoever is accepted by the Seller for any loss arising from delay in delivery.

4.2 Unless previously agreed in writing, and subject to Clause 8 of this Agreement, where the Buyer's premises are in mainland Great Britain delivery shall be made to those premises and the Buyer shall be deemed to accept the Goods on delivery. Where the Buyer's premises are not in mainland Great Britain delivery shall take place when the Seller delivers the Goods to the carrier and the Buyer shall be deemed to accept the Goods at that time.

4.3 Where the Seller agrees to arrange carriage of the Goods to a destination outside mainland Great Britain the Seller shall be at liberty to make such arrangements as it considers reasonable and to make such charge as it considers reasonable and the Buyer shall pay such charge on demand.

4.4 The Seller shall be entitled to deliver the Goods in instalments, in which case each instalment shall be treated as an entirely separate contract and any default or breach by the Seller in respect of any instalment shall not entitle the Buyer to cancel any other instalment or treat the contract for the sale of all the Goods as a whole as being repudiated.

### 5. Prices

5.1 Unless otherwise stated the prices quoted shall be net of all taxes, duties, fees and other charges which shall additionally be paid by the Buyer.

5.2 Prices are subject to change and the actual price to be paid for the Goods by the Buyer shall be the price ruling at the time when the Goods are despatched by the Seller.

### 6. Payment

6.1 The Buyer shall make payment to the Seller, in the manner specified by the Seller, in respect of all invoices relating to the Goods in the currency stated in the Seller's invoice in full and without any deduction or set off (whether in relation to such invoice or otherwise) within thirty (30) days, or such other period as the Seller and Buyer shall mutually agree, of the date of the invoice which may be issued by the Seller as soon as the Goods have been despatched.

6.2 The time of payment for all sums due from the Buyer to the Seller shall be of the essence. Any late payment by the Buyer shall entitle the Seller to treat as void any other unexecuted contract then existing between the Buyer and the Seller. In those circumstances the Seller shall have no liability whatsoever to the Buyer.

6.3 The Seller may charge interest at the rate of 2% per month or part of a month or such other rate as the Seller may notify to the Buyer from time to time on any balance outstanding after the due date until full settlement is received (whether before or after any judgment).

6.4 All payments shall be applied to invoices, goods listed in such invoices and to interest due to the Seller in the order determined in its discretion by the Seller.

### 7. Property and Risk

7.1 From the time of delivery to the Buyer the Goods shall be at the risk of the Buyer. The Buyer shall then be solely responsible for their custody, maintenance and insurance.

7.2 The Goods shall remain the Seller's property until the Seller has received payment in full for the Goods and all sums due in connection with the supply of all other goods and services to the Buyer by the Seller at any time or until the Goods are sold by the Buyer in good faith in the ordinary course of business at full market value.

7.3 Until the sale by the Buyer of the Goods as aforesaid the Buyer shall hold the Goods as bailee and keep them separate and identifiable from all other goods in the Buyer's possession. For the avoidance of doubt the Goods and all other goods supplied to the Buyer by the Seller at any time shall be deemed to belong to the Seller unless the Buyer can prove otherwise.

7.4 In the event of their sale by the Buyer as aforesaid or in any other event whereby title to the Goods passes from the Seller, the Buyer shall account to the Seller in respect of the proceeds of sale or other consideration received by the Buyer including insurance proceeds, shall hold such proceeds or consideration or any claim therefore upon trust for the Seller and separate from any other monies or property of the Buyer or third parties and shall stand in a strictly fiduciary capacity in respect thereof. The Buyer shall maintain records of the persons to whom it sells or disposes of the Goods and of the payments made by such persons for the Goods and shall allow the Seller to inspect such records and the Goods themselves on request. The Seller shall be entitled to trace to the proceeds of sale or otherwise of the Goods.

7.5 Until title to the Goods or any of them passes to the Buyer the Buyer shall, if the Seller so requests, deliver up the Goods or any of them to the Seller on demand. If the Buyer fails to do so the Seller shall be entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess them. The Buyer shall procure that any third party which holds them shall permit the Seller to take possession of them. The Seller shall be entitled to use or dispose of the Goods as it wishes. Unless the Seller expressly elects otherwise any contract between it and the Buyer for the supply of the Goods shall remain in existence notwithstanding any exercise by the Seller of any of its rights under this clause.

7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods but if the Buyer does so all monies owed by the Buyer to the Seller shall (without prejudice to any other right of the Seller) forthwith become due and payable.

### 8. Liability for Defective Goods

8.1 The Seller shall replace any of the Goods which are defective provided:

8.1.1 The defect is proved to the Seller's reasonable satisfaction to be due to bad workmanship or materials or to negligence on the part of the Seller;

8.1.2 The Seller is advised of the alleged fault as soon as possible and in any event within 14 days of the Goods in question having been received by the Buyer; and

8.1.3 The Goods alleged to be defective are adequately packed to prevent damage and are returned to the Seller in accordance with the Seller's instructions.

8.2 If any of the Goods shall prove to be defective such defects shall not entitle the Buyer to refuse delivery of, or payment for, the remainder of the Goods.

8.3 The Seller shall have no liability to the Buyer in respect of damage to Goods whose outside packaging is damaged on receipt by the Buyer or where less than the number of Goods indicated on the delivery note are actually received by the Buyer unless the Buyer notifies the Seller of such damage or short delivery in writing received by the Seller within three days of receipt of the Goods or invoice as appropriate otherwise than merely by a note on the delivery note.

8.4 The Seller shall be liable for any death or personal injury arising from use or supply of the Goods only to the extent that it results from the proven negligence of the Seller or its employees.

8.5 The Seller shall be liable to the Buyer for any direct physical damage other than death or personal injury to the extent that it results from the negligence of the Seller or its employees up to a maximum of £50,000.

8.6 The Seller's total liability for any indirect, special or consequential damages, howsoever arising (including, but not limited to, loss of anticipated profits) in connection with, or arising out of, the furnishing, functioning or use of the Goods or any item or service supplied by the Seller shall be limited to the purchase price of the Goods and the Seller shall not be liable for any damages except as provided in these Conditions.

8.7 There are no warranties, conditions, guarantees or representations as to suitability or fitness for a particular purpose of the Goods or other warranties, conditions, guarantees or representations whether express or implied, oral or in writing, except as expressly stated in these Conditions or as provided by operation of law.

### 9. Descriptions

9.1 The Seller shall endeavour to ensure that descriptions and specifications which it provides are correct when given, but reserves the right to alter such specifications and descriptions without notice.

9.2 If a sample of the Goods has been exhibited to and inspected by the Buyer then such sample was exhibited and inspected solely to enable the Buyer to judge the quality of the bulk of the Goods and not so as to constitute a sale by sample.

9.3 The Seller shall have no liability in respect of any deviations from any description or specification of the Goods and any such deviation shall not be a ground for refusal to accept delivery or cancellation of any contract or order for the Goods, except as provided by operation of law.

9.4 The Buyer shall be responsible for ensuring that the quantity and description of the Goods on the Seller's Order Acknowledgement form corresponds with the goods that the Buyer wishes to be supplied with and the Seller shall not be responsible for any wrong delivery of goods which results from any misdescription on the Order Acknowledgement form.

### 10. Consumer Sales

No provision contained in these Conditions in any way alters any statutory rights available to the Buyer who buys as a consumer.

### 11. Marketing

11.1 The Buyer shall sell as principal only.

11.2 Where the Buyer is a retailer the Buyer shall market the Goods so as to maintain the high quality public image and reputation of the Goods and shall operate high standards of shopfitting and display in respect of the Goods.

11.3 The Seller reserves the right to cease supplying a Buyer who directly or indirectly sells the Goods at auction (public or internet).

11.4 All catalogues, literature, advertisements and other promotional copy used by the Buyer in its resale of the Goods which incorporate references to the Seller, its corporate name or its trade marks must be submitted to the Seller for written approval prior to printing, use or publication by or on behalf of the Buyer.

### 12. Licences, Consents and Confidentiality

12.1 If any licence or consent of any nature whatsoever is required by the Buyer for the acquisition, carriage or use of the Goods then the Buyer shall obtain the same at its own expense. Failure to do so shall not entitle the Buyer to withhold or delay any payment due to the Seller nor shall it entitle the Buyer to cancel any contract or order for the Goods.

12.2 All designs, specifications, drawings, documents, information and know-how disclosed by the Seller to the Buyer shall be treated by the Buyer as confidential. The Buyer shall not disclose deal with or use such information except as authorised by the Seller. The Buyer shall indemnify the Seller against any loss or damage including costs and expenses arising as a result of any breach by the Buyer of the provisions of this sub-clause.

### 13. Third Party Rights

13.1 The Seller shall at its expense defend any action against the Buyer and pay all damages and costs awarded against the Buyer (except to the extent that the Buyer is entitled to recover such sums under any policy of insurance) based on a claim in the UK Courts that any of the Goods constitute an infringement of any patent or copyright or other intellectual property rights of the United Kingdom or misuse any confidential information belonging to any third party ("a Claim") provided that:

13.1.1 The Seller shall be notified promptly in writing by the Buyer of any notice of a Claim;

13.1.2 the Seller shall have the sole control of the defence of any action based on a Claim and all negotiations for settlement or compromise;

13.1.3 the Buyer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action;

13.1.4 the Buyer shall not make any admissions, and shall not act, or omit to act, in any way which may be prejudicial to the defence or settlement of any action; and

13.1.5 the Buyer shall take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.

13.2 If a Claim is successful or the Seller considers that it is likely to be successful, the Seller may, at its option or as part of a settlement or compromise, procure for the Buyer the right to continue selling the goods, modify the goods so that they are non-infringing or terminate the contract between the parties in so far as it applies to those Goods subject to the Claim, in which latter case the Seller shall refund to the Buyer the price paid for such Goods.

13.3 This clause states the entire obligation and liability of the Seller with respect to claims that any of the Goods constitute an infringement of any patent copyright or other intellectual property rights or misuse of confidential information belonging to a third party.

### 14. Termination

14.1 The Seller shall be entitled to terminate the contract between the parties forthwith by notice in writing to the Buyer:

14.1.1 if the Buyer commits an irremediable breach of these conditions, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or

14.1.2 if the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Buyer ceases, or threatens to cease, to carry on business or an encumbrancer takes possession, or a receiver or administrative receiver or manager is appointed of any of the property or assets of the Buyer or if the Seller reasonably apprehends that any of such events is about to occur in relation to the Buyer and notifies the Buyer accordingly.

14.2 In the event of termination by the Seller pursuant to clause 14.1 above then without prejudice to any other right or remedy available to the Seller; the Seller shall be entitled to suspend and/or cancel any further deliveries, or existing orders, without any liability to the Buyer and, if the Goods have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall be entitled to charge interest (both before and after any judgment) at the rate of 2% per month or part thereof from the time of such termination until the Seller receives payment.

### 15. Severability and Waiver

15.1 If any term of these Conditions is or becomes invalid or unenforceable that term shall be modified to delete the invalid or unenforceable parts of it and shall be binding as so modified. All other terms shall remain in full force and effect.

15.2 Any failure by the Seller to exercise any right or remedy available to it under this agreement shall not operate as a waiver by the Seller of such right or remedy and shall in no way affect the Seller's right later to enforce or exercise it or alter the obligations of the Buyer.

### 16. Resale

The Buyer shall not, directly or indirectly, sell the Goods for resale in any country other than a member state of the European Community or the European Free Trade Association nor actively solicit purchasers for the Goods, whether for resale or otherwise, in any other country.

### 17. Assignment

This agreement is personal to the Buyer and the Buyer may not assign, transfer, sub-contract or otherwise part with it or any right or obligation under it without the Seller's prior written consent.

### 18. Whole Agreement

These Conditions set out the Entire Agreement between the Seller and the Buyer in relation to the subject matter of these Conditions.

### 19. Force Majeure

19.1 In this clause "Force Majeure" shall mean any circumstances beyond the reasonable control of the Seller including, without limitation, any strike, lock out, or other form of industrial action.

19.2 If the Seller is affected by Force Majeure it shall as soon as reasonably possible notify the Buyer of the nature and extent thereof.

19.3 The Seller shall not be in breach of this agreement or otherwise liable to the Buyer by reason of any delay in performance or non-performance of any of its obligations under these Conditions to the extent that such delay or non performance is due to any Force Majeure of which it has notified the Buyer and the time of performance of that obligation shall be extended by the same length of time as the Force Majeure lasts.

### 20. Applicable Law

These Conditions shall in all respects be construed in accordance with the laws of England and the parties accept the jurisdiction of the English Courts.

### 21. Data Protection

Information about the Buyer or its employees or agents will be retained by the Seller to update and develop the Seller's records, to enable the Seller to administer the Buyer's account and for assessment and analysis and may be disclosed to the Seller's representative body, The Giftware Association, and to other companies who are members of The Giftware Association for monitoring and administrative purposes. The Seller may also inform you from time to time by e-mail, telephone, or mail about relevant news, information, services or products which it believes may be of interest to the Buyer.

21.2 The Seller will exchange information about the Buyer; its employees and agents with credit reference agencies which may be shared with other organisations in carrying out credit checks, assessing applications for credit and other facilities for preventing fraud and tracing debtors.

21.3 The Buyer may transfer the information which it collects to the USA, where data protection laws are not as comprehensive as in the European Union. In such cases, the Buyer has taken appropriate steps to ensure the same level of protection for such information in the USA as there is in the European Union.

### 22. General

22.1 Any notice required or permitted to be given under the Contract by either party shall be delivered by hand or sent by recorded delivery mail or by facsimile to the other party at its address and shall be deemed to have been given when actually received or, if recorded delivery mail, is marked "gone away" or to the like effect, on return of such recorded delivery mail.

22.2 In the event of any conflict between the English language version of these Conditions and a translation of them, the English language version shall prevail.

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