

**Vesuvius Crucible Inc. formerly known as Morganite Crucible Inc. TERMS AND CONDITIONS OF THIS PURCHASE ORDER**

**1. AGREEMENT AND ACCEPTANCE.** The acceptance of the terms and conditions contained herein is an essential prerequisite to any contract, agreement of purchase or purchase order (collectively the "Order") made by Buyer. Any offer or acceptance by Buyer is made subject to the terms and conditions contained herein and no different and/or additional terms and conditions offered by Seller shall become part of the Order between Buyer and Seller unless such Seller terms and conditions have been expressly approved in a signed writing by an authorized representative of Buyer. If this document is an offer, acceptance of this offer is expressly limited to the terms and conditions contained herein, notification of objection by Buyer to any different and/or additional terms and conditions in any response to this offer from Seller is hereby given, and Buyer reserves the right to withdraw this offer at any time before its acceptance by Seller. If this document has been issued by Buyer in response to a written offer made by Seller, then Buyer's acceptance of Seller's offer is expressly conditioned on Seller's assent to the different and/or additional terms and conditions contained herein. Regardless of the manner or medium of acceptance, time is of the essence. If these terms and conditions are not acceptable, then Seller shall notify Buyer in writing at once, provided, however, that Seller's action in (a) acknowledging this Order, (b) commencing performance of work and/or making shipment of goods or any portion thereof, and/or (c) receiving this Order without disaffirmance within three (3) business days of receipt shall constitute an unqualified acceptance by Seller of all terms and conditions contained herein. Regardless of its construction as an offer, acceptance, confirmation or use to place orders for goods or work pursuant to an earlier contract, the terms and conditions contained herein and this Order incorporate by reference all terms of the Uniform Commercial Code providing any protection for the Buyer including, without limitation, all express and implied warranty protection and all Buyer's remedies under the Uniform Commercial Code.

**2. PRICE PROTECTION.** The goods purchased and/or work performed hereunder, will be provided at the price(s) set forth on the reverse side hereof and no extra charges of any kind will be permitted unless specifically agreed to in a signed writing by an authorized representative of Buyer. If any price is omitted, it is agreed that Seller's price shall be the lowest prevailing market price. Unless expressly provided in this Order, deliveries of goods and/or performance of work shall be provided without charges for boxing, crating, carting and storage and the price(s) shall include all applicable taxes and all tooling and transportation charges. Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer, or any of Buyer's affiliated companies, against any amount payable at any time by Buyer in connection with any Order.

**3. PRICE REDUCTION AND DISCOUNTS.** Notwithstanding the price(s) set forth on the reverse side hereof, Buyer shall receive the benefit of any general reduction in the price(s) of goods and/or work ordered hereby, which may be made by Seller at any time prior to the last delivery of goods covered by this Order. If Seller's established price for any item upon the date of delivery shall be lower than the price shown on this Order, then Buyer shall have the benefit of such lower price. Buyer shall also receive the full benefit of all discounts, premiums, and other favorable terms of payment customarily offered on goods and/or work by Seller to its customer.

**4. CASH DISCOUNTS.** In the event that Buyer is entitled to a cash discount, the period of computation will commence on the date of delivery, or receipt of a correct invoice, whichever is later. If an adjustment is necessary due to damaged goods, the cash discount period shall commence on the date final approval for payment is authorized.

**5. SHIPPING INSTRUCTIONS.** Title to and risk of loss with respect to goods and/or work purchased hereunder shall remain in Seller until such goods and/or work, in a completed state, have been inspected and accepted by Buyer at the location specified on the reverse side hereof. Goods shall be shipped F.O.B. Destination, unless otherwise expressly specified or agreed to in writing by Buyer. A packing slip shall accompany each shipment. If no such slip is forwarded, Buyer's count or weight shall be conclusive. Cost of return shipments shall be borne by Seller with title and risk of loss passing to Seller upon delivery to a carrier at Buyer's plant and Buyer shall have the right to select the carrier and/or the method of transportation to be used in shipping.

**6. DELIVERY.** Time of delivery and/or time for performance of work hereunder is of the essence in this Order and the failure to deliver goods or perform work in a timely manner will constitute a material breach hereof. Delivery of goods and/or performance of work shall be during regular business hours and in such lots as Buyer may specify and shall not be deemed to be complete until such goods and/or work have been actually received and accepted by Buyer. Buyer reserves the right to refuse, return and/or reject any goods and/or work and to cancel all or any part of a shipment and/or work which does not conform to this Order or to applicable specifications, drawings, samples or descriptions. Acceptance of any part of this Order shall not bind Buyer to accept future shipments and/or work nor deprive it of the right to return and/or reject goods and/or work already accepted.

**7. RIGHT TO INSPECT.** Buyer may inspect the goods ordered and/or work performed hereunder during any stage of manufacture, construction, preparation, delivery or completion. Seller shall provide and maintain an inspection and testing system reasonably acceptable to Buyer covering the goods purchased and/or work performed hereunder. Records of all quality procedures and test data, and samples of each lot of shipped items by Seller shall be kept complete and available during performance of this Order and for two (2) years after completion thereof. Goods and/or work performed may be rejected by Buyer for defects or defaults revealed by inspection, analysis or subsequent manufacturing operations even though such goods and/or work may have previously been accepted.

**8. CHANGES.** Buyer shall have the right, at its sole discretion, to make any changes, additions, omissions and alterations in the items, quantities, destinations, specifications, drawings, designs and delivery schedule under this Order. The parties undertake to agree to an appropriate adjustment in price(s) and/or terms of this Order where Seller's direct costs are effected by such modifications and all such modifications must be in writing and signed by a duly authorized representative of Buyer. Furthermore, Buyer reserves the right, at its convenience and in its sole discretion, to cancel this Order, in whole or in part, at any time. In the event of such cancellation, and if Seller is not in default hereunder, Buyer agrees to pay Seller for all direct costs reasonably incurred by Seller in connection with the cancelled portion of this Order, in addition to the stipulated price(s) for all conforming goods and/or work accepted.

**9. WARRANTY.** Seller warrants all goods and components thereof delivered hereunder, and/or all work performed hereunder, to be new and free from defects in material and/or workmanship, fully merchantable and of highest quality, fit for the purpose intended, and in conformity with all specifications, drawings and samples which may have been specified or furnished by Seller and/or Buyer. Seller further warrants that it has good title to the goods and/or work free and clear of all liens and encumbrances and will transfer such title to Buyer. This warranty shall survive any inspection, delivery, acceptance and/or payment by the Buyer. Any goods and/or work performed covered by this Order which, under normal operating conditions, prove defective in material or workmanship, or fails to perform in accordance with the applicable specifications, drawings or samples, or otherwise is not in conformity with the requirements of this Order, within twelve (12) months from the date of Buyer's acceptance or eighteen (18) months after shipment, whichever is earlier, will be at Buyer's option and at Seller's expense: (a) rejected and returned to Seller with the purchase price promptly refunded to Buyer; (b) removed by Seller and replaced with conforming goods; or (c) repaired by Seller without delay. In addition, Seller will reimburse Buyer for damages for the testing, storage, disposal, material replacement, reformulating processing, labor and freight incurred by Buyer due to such defective goods and/or work. This warranty period is extended for the period the goods and/or work are defective or fail to perform in accordance with the applicable specifications, drawings or samples. Any repairs or replacements made pursuant to this warranty shall be subject to an extended warranty of one (1) year from the date thereof. This remedy is in addition to any other right or remedy to which Buyer may be entitled by law or this Order. In the event Seller fails to make the necessary removal, replacement, or repair within a reasonable time after notice, Buyer may, at Seller's expense, make or cause such repairs or replacements to be made.

**10. INDEMNITY.** Seller shall indemnify, defend and hold harmless Buyer and its respective officers, agents, employees and customers from and against any and all claims, actions, liabilities, damages, losses, costs and expenses including, but not limited to, legal fees and costs of investigation, arising out of, or in connection with, any actual or alleged infringement of any patent, trademark or copyright by any goods and/or work sold to Buyer hereunder, and any and all claims, actions, liabilities, damages, losses, costs and expenses including, but not limited to, legal fees and costs of investigation, arising out of, or in connection with, any actual or alleged deaths or injuries to persons, damages to property including, but not limited to, property of the Buyer, and/or any other damages or losses by whomsoever suffered, arising in whole or in part, from Seller's performance, or non-performance, of its obligations under this Order and the terms and conditions contained herein including, but not limited to, any breach of Seller's warranties as specified herein or any claimed defect in the goods and/or work provided hereunder.

**11. REMEDIES AND SURVIVAL.** The rights and remedies herein reserved by Buyer shall be cumulative in nature and are in addition to any other rights or remedies provided by law. A waiver by Buyer of any right or remedy hereunder shall not affect any rights or remedies subsequently arising under the same or similar provision.

The provisions of Sections 1, 5, 7, 9, 10, 11, 14, 15, 16, 17 and 18 herein shall survive the expiration or earlier termination of this Order. This Order and the terms and conditions contained herein, and all plans, specifications, and other documents referred to therein constitute the entire agreement between the parties relating to the subject matter referred to therein. This Order and the terms and conditions contained herein may not be released, discharged, abandoned, changed, renewed, extended or modified in any manner, orally or otherwise, except by an instrument in writing signed by an authorized representative of Buyer. Neither course of performance, nor course of dealing, nor usage of trade shall be used to modify, qualify, explain or supplement any of the terms hereof. Any failure by Buyer at any time, or from time to time, to require the performance by Seller of any other terms and conditions of the Order or these terms and conditions shall not constitute a waiver by Buyer of the particular terms and conditions and shall not affect or impair said terms and conditions in any manner. Each of the provisions of such terms and conditions shall apply to the fullest extent permitted by law and the invalidity, in whole or in part, of any provision shall not affect the remainder of such provision or any other provision.

**12. SELLER'S INSOLVENCY.** If Seller becomes insolvent, a petition under any insolvency law is filed by or against Seller, Seller makes a general assignment for the benefit of creditors, or a receiver shall be appointed for Seller, Buyer may cancel this Order. In the event of such cancellation, Buyer shall not be liable to any party including, but not limited to, Seller for any damages, losses or costs in connection with this Order, except for conforming goods and/or work which have been accepted.

**13. FORCE MAJEURE.** Delay in performance or non-performance of any obligation created herein shall be excused to the extent such delay in performance or non-performance is caused by force majeure. For the purposes of the terms and conditions contained herein, "Force Majeure" shall mean any cause or agency preventing performance of an obligation hereunder which is beyond the reasonable control of the Seller or Buyer, as the case may be including, without limitation, fire, flood, sabotage, shipwreck, accident, embargo, explosion, strike or other labor disturbance, war, civil insurrection, riot, acts of governmental authority including, without limitation, acts based on laws or regulations now in existence as well as those enacted in the future. It is expressly agreed that the Seller's ability to sell goods covered by this Order at a more advantageous price, or the Seller's economic hardship in buying raw materials necessary to manufacture such goods at a commercially reasonable price shall not constitute an event of Force Majeure. If Buyer or Seller is affected by Force Majeure, the party affected shall promptly provide notice thereof to the other party explaining in detail the causes and the expected duration thereof and shall use its reasonable best efforts to remedy the interruption or delay if it is reasonably capable of being remedied. Buyer shall have the right to purchase the affected goods and/or work from other sources. If an event of Force Majeure extends for more than thirty (30) days, this Order may be terminated without any liability by the party not declaring Force Majeure upon written notice thereof to the other party. In the event of a Force Majeure compelling the Seller to allocate production and deliveries of goods, the Seller shall make such allocation in a manner that ensures Buyer at least the same proportion of the Seller's total output of goods as was purchased by Buyer prior to the onset of Force Majeure. Seller shall use reasonable best efforts to source goods, at Seller's expense, from its own or its affiliates' global operations or the market to meet Buyer's required delivery dates. Seller shall provide Buyer with advanced written notice of the source of such material. All such sourced goods shall meet the agreed upon specifications and other quality requirements. In the event of non-delivery, Buyer shall have the right to procure such goods from third parties.

**14. TOOLS AND DIES.** Unless otherwise agreed herein, Seller at its sole cost and expense, shall furnish, keep in good condition, and replace when necessary, all dies, tools, gauges, fixtures and patterns necessary for the production of any goods, materials and/or work ordered hereunder. Any special tools or dies shall be considered as purchased by Buyer without additional charge, unless herein specified to the contrary. Title shall vest in Buyer, giving Buyer the right to take possession of such tooling or dies at any time. However, Buyer shall not have the rights enumerated in the previous sentences if the goods and/or work hereby ordered are the standard product of Seller, or if prior to the date hereof, a substantial quantity of like goods and/or work are being sold by Seller to others, unless Buyer shall have paid for tooling or dies used in the production of such goods and/or work.

**15. ASSIGNMENT.** This Order is issued to Seller in reliance upon Seller's personal performance of the duties imposed. Seller agrees not to assign this Order or delegate the performance of its duties without the prior written consent of Buyer. Any such assignment or delegation without the prior written consent of Buyer shall, at Buyer's option, effect a cancellation of this Order. Any consent by Buyer to an assignment shall not be deemed to waive Buyer's right to recover from Seller and/or its assigns for any claim arising out of this Order.

**16. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY.** All confidential information supplied by Buyer to Seller in any form including, but not limited to, specifications, drawings, engineering notes, technical data and/or equipment shall be held in confidence by Seller, shall not be reproduced, used or disclosed to others by Seller without Buyer's prior written consent and shall be returned to Buyer upon demand or upon completion by Seller of its obligations hereunder. Buyer retains all intellectual property rights in, and ownership of, all such confidential information supplied by Buyer to Seller. Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise, publish, or disclose to any third party that Seller has contracted with Buyer to furnish the goods and/or work hereunder, except as specified or required for completion of this Order. Breach hereof shall permit Buyer to cancel the Order in addition to any other rights and remedies provided by law. Any information which Seller discloses to Buyer with respect to the design, manufacture, sale, or use of the goods and/or work covered by this Order shall be deemed to have been disclosed as part of the consideration for this Order and Seller shall not assert any claim against Buyer by reason of Buyer's use thereof.

**17. COMPLIANCE WITH LAWS.** Seller agrees to comply with the applicable provisions of all federal, state and/or local laws, acts or ordinances and all lawful orders, rules and regulations issued thereunder. Seller agrees that: (a) no goods or work provided hereunder have been produced using forced, indentured or convict labor or using the labor of persons in violation of the minimum working age laws in the country of manufacture or, in the case of work, where the work are performed; (b) it shall comply with Buyer's Anti-Corruption and Bribery Policy and Buyer's Guidelines On Appointing Agents and Other Intermediaries, as well as all laws including, but not limited to, the Anti-Bribery Act as adopted in the United Kingdom, as amended from time to time, regarding improper or illegal payments, gifts or gratuities and Seller agrees not to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person or entity for the purpose of illegally or improperly inducing a decision or obtaining or retaining business or any advantage in connection with this Order; (c) it has not paid or provided any gratuity for the benefit of any employee, representative or agent of Buyer other than in accordance with Buyer's applicable policies; and (d) it has not engaged in any sharing or exchange of prices, costs or other competitive information or undertaken any other collusive conduct with any third party supplier or bidder in connection with the preparation or submission of any bid or proposal to Buyer or the negotiation of this Order.

**18. APPLICABLE LAW AND JURISDICTION.** The validity, construction and performance of the Order is governed by and shall be construed in accordance with the laws of the State of Illinois without regard to its conflict of laws principles, and the United Nations Convention On Contracts For the International Sale of Goods shall not apply to the Order. Seller hereby irrevocably submits and agrees to the jurisdiction of the courts of the State of Illinois in any action, suit or proceeding related to, or in connection with, the Order.