

REFRACTECH PTY. LIMITED

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STANDARD TERMS AND CONDITIONS OF SALE.

All quotations (offers) and Sales made by Refractech Pty Ltd (the seller) are based upon and conditional upon the following terms and conditions. The Seller accepts no provision, printed or otherwise contained in any order, acceptance, confirmation or acknowledgement, which is inconsistent with or different from or in addition to these Standard Terms and Conditions of Sale, unless specifically agreed to in writing by the Seller. No order for or changes to any terms or scope of an order for the Seller's goods or services shall be binding until accepted in writing by the Seller.

QUOTATIONS. Seller's quotations are valid for thirty days from the date of the quotation unless otherwise stated. The latest dated quotation supersedes all previous quotations or correspondence concerning the transaction. Seller's quotations contain proprietary information and are provided to the Buyer with the understanding that the information will be used solely for the purposes of its internal evaluation of the quotation. The Seller's quotations and the proprietary information contained therein may not be disclosed by the Buyer to any third party or be used for the preparation of any request for a quotation for goods or services similar to or as a substitution for goods or services quoted by Refractech Pty Ltd.

PRICE. Unless otherwise stated the price offered does not include, transport costs, handling and packing, duties and taxes. The Buyer is responsible for all duties and taxes including but not limited to GST, sales tax, use and excise tax and duties for import or export. The Buyer shall indemnify and hold harmless the Seller against any liability arising there from.

PAYMENT. Unless otherwise stated by the seller the following payment terms shall apply. Payment of all invoices shall be thirty days net from date of invoice. If requested by the Seller, payment shall be made by irrevocable letter of credit confirmed by a prime Australian bank. To the extent permitted by applicable laws the Buyer shall pay on demand. A late payment fee may be imposed for any late settlement of outstanding accounts. The Buyer's failure to make a payment when due, shall be a material breach of the contract and these terms and conditions. The Seller at its sole option and without incurring any liability may suspend its performance until such time as the overdue payment is made or the Seller is provided assurances adequate in the Seller's opinion that the payment shall be promptly paid. In the event of such suspension of performance by the Seller there shall be an equitable adjustment made to the delivery schedule and order price reflecting the duration and cost resulting from such suspension. Payments due shall in no event be subject to set off with any other order or business arrangement. Waivers of lien by Seller shall be contingent upon Seller receiving in full payments due.

LIMITED WARRANTY. The Seller warrants its goods to be free of defects in materials or workmanship for six months from date of shipment to the Buyer. Seller will at Seller's discretion either repair or replace the goods with identical or substantially similar goods. Replaced or repaired goods will be warranted against defects in materials or workmanship for the remaining portion of the replaced goods warranty. Goods not manufactured by the Seller are subject only to warranties of Seller's vendors. Seller hereby assigns to the Buyer all rights in such vendor's warranties. The Seller will not be responsible for costs of making access for or of import / export shipment, removal of or installation of goods or any items required to repair or replace defective goods. The Seller will not be responsible for materials, workmanship of others, shipment, labour and workmanship or other related expenses for the installation or the repair or replacement of defective goods. The Seller is not responsible for any contingent loss of the Buyer.

Seller's performance guarantees if any, shall be deemed to be met by satisfactory demonstration of performance.

These limited warranties will be voided if:

- a) The goods are NOT stored, maintained, operated or subjected to conditions of service not in accordance with accepted Australian standards or industry practice.
- b) Any instructions issued by the seller are not followed.
- c) The goods are subjected to any accident, misapplication, environmental contaminant, corrosion, abrasion, abuse or misuse
- d) Buyer used, repaired or modified the goods after discovery of a defect without the prior written consent of the Seller.
- e) Buyer fails to permit the Seller to examine the goods and operating data or fails to furnish routine operating data sufficient to determine the nature of the defect claimed.

THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED EXCEPT, AS EXPRESSLY PROVIDED HEREIN; SELLER EXTENDS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. NO WARRANTY EITHER EXPRESS OR IMPLIED IS GIVEN AS TO THE CAPACITY, EFFICENCY OR PERFORMANCE OF THE GOODS, EXCEPT AS MAY BE AGREED BY THE PARTIES IN WRITING.

OBLIGATION OF BUYER. Buyer is solely responsible for identifying and defining all processes and mechanical considerations, which may affect the performance, reliability and operation of the goods, furnished by the Seller. Seller's quotation and any sale is based upon the covenant by the Buyer that all the information and data provided by the Buyer is full, complete, accurate and does not contain information which is misleading.

LIMIT OF LIABILITY. Seller's liability is limited to the price allocable to the goods determined defective. In no event will the Seller's cumulative liability be in excess of the total price of the goods, whether arising under warranty, contract, negligence, strict liability, indemnification or any other cause or combination of causes whatsoever. Seller will not be liable for any special, indirect, incidental or consequential damages or loss of profit whether arising under warranty, contract, negligence, strict liability, indemnification or any other cause or combination of causes whatsoever. This limitation shall apply notwithstanding any failure of essential purpose of any limited remedy. Buyer's remedies are specifically limited to the repair or replacement of the defective goods and are exclusive of all other remedies. Should these remedies be found inadequate or to have failed their essential purpose for any reason whatsoever, Buyer agrees that the return of the full sale order price to it by the Seller shall prevent the remedies from failing their essential purpose and shall be considered by the Buyer as a fair and adequate remedy.

TECHNICAL ASSISTANCE. It is expressly understood that any services or technical assistance furnished by the Seller will be addressed in a separate written agreement between the parties. In no event will any such services or technical assistance provided by the Seller constitute a waiver of these terms and conditions or order or affect or expand the Seller's obligations under these terms and conditions or any other contractual agreement.

PATENTS / INTELLECTUAL PROPERTY. The goods and services provided under this contract are subject to the Seller retaining its rights to all Patents and Intellectual Property contained therein. The Buyer will not in any way communicate or deliver the Seller's property, either actual or intellectual, to any third party without the written consent of the Seller. Should the Buyer fail to comply with the confidentiality of the Seller's property, and then they accept their liability for any costs incurred or awarded.

CANCELLATION FEE. Unless otherwise agreed in writing by the parties, the Buyer may not cancel the order, except upon written notice and payment to the Seller of an amount consisting of all costs incurred by the Seller up to the time of the cancellation along with those costs which arose or resulted from the cancellation plus a fee of twenty five percent of the order price. Materials received, work in progress, goods manufactured and the Seller shall retain results and products of the work performed, in part or in full, prior to the time of cancellation in writing. When calculating the cancellation related payments, payments made by the Buyer prior to cancellation will be taken into account.

FORCE MAJEURE. The Seller will be excused from their obligations in the event and to the extent of their performance delayed or prevented a) by any circumstance (except financial) reasonably beyond their control, or b) by act of God, fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labour disputes, riots or other civil disturbances or voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any government authority. In addition the Seller will be excused in the event of its inability to obtain materials for manufacture of the goods or total or partial failure of any of its usual means of transportation of the goods.

OWNERSHIP. Goods shipped to the Buyer remain the property of the Seller until the goods are paid for.

ASSIGNABILITY AND RESHIPMENT. No claim against the Seller arising directly or indirectly out of or in connection with the goods furnished to the Buyer may be assigned by the Buyer or by operation of law without the prior written approval of the Seller. Goods sold hereunder shall not be reshipped or rerouted to end-users or end-use in violation of Australian laws.

SHIPMENT. Shipping terms shall be F.O.B manufacturing facility. If the Buyer has not issued inspection or shipping instructions by the time the goods are ready for shipment the Seller may select a reasonable method of shipment without liability by reason of its selection. Shipments made on the Buyer's behalf shall be insured at the Buyer's expense. If the Seller is required to arrange shipment of the goods or any part thereof, the Buyer shall reimburse the Seller for all freight, insurance and other costs and handling fees. Shipment of goods held by reason of Buyer's request or inability to receive goods will be at the risk and expense of the Buyer. Timely delivery of the goods will be contingent upon among other things, Seller's receipt of all the data and information from the Buyer, necessary for the completion of the work.

SEVERABILITY. Invalidity of any of these terms and conditions will not affect the validity of any other provision and the remaining provisions will remain in full force and effect.

WAIVER. Failure to enforce any of these terms and conditions in a particular instance will not constitute a waiver or preclude subsequent enforcement of any of these provisions.

APPLICABLE LAW. These terms and conditions of this order and the legal relations of the parties shall be in accordance with the laws of New South Wales, Australia. The parties disclaim any applicability of the UN Convention of the International Sale of Goods to the order. The parties consent and will submit to the jurisdiction of the courts and of the Federal courts seated in the State of New South Wales with respect to disputes relating to the order.