

1. Definitions

In these terms and conditions :

“Goods” means all equipment, products and services agreed to be supplied by the SELLER to the BUYER under any contract, arrangement, understanding between the SELLER and the BUYER (including pursuant to a quotation or letter of offer accepted by the BUYER);

“BUYER” means the person to whom any quotation is made, any person offering to contract with the SELLER on these Conditions of Sale and any person who purchases Goods from the SELLER;

“Contract” means the SELLER’s pricing letter or letter of offer to which the supply of the Goods relates, as updated in writing by the mutual agreement of the parties, the attachments (if any) to that letter and these Conditions of Sale;

“Individual” means a BUYER who is a natural person;

“Person” means an Individual and a corporation; and

“PPS Act” means the Personal Property Securities Act 2009 (Cth).

“SELLER” means Membrane Works Pty Ltd (ABN 39 646 667 156).

2. Contract

2.1. These Conditions of Sale apply to all contracts for the sale of Goods and are an integral part of the contract for purchase. Conflicting or deviating conditions of purchase or other reservations made by the BUYER shall not be effective unless the SELLER has expressly accepted them in writing for a particular order. Acceptance by BUYER of Goods or payment for same shall constitute unequivocal acceptance of the terms and conditions contained herein. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein nor shall same add any term not contained herein.

2.2. These Conditions of Sale supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods, except to

the extent that any prior representations are recorded in the Contract

2.3. The SELLER's offers shall not be binding with respect to price, quantity, delivery time and availability.

2.4. The BUYER's orders shall become binding on the SELLER upon receipt by the BUYER of the SELLER's written order acknowledgment (or invoice or delivery).

2.5. The SELLER may change these Conditions of Sale from time to time. These Conditions of Sale and any changes to the Conditions of Sale will be shown on the website www.membraneworks.com.au together with the date on which any new Conditions of Sale become effective. It is the BUYER's obligation to check the SELLER website or ask the SELLER to provide a copy of the most up to date Conditions of Sale at the time the BUYER enters into a Contract. By entering into a Contract after the date upon which the new Conditions of Sale become effective the BUYER accepts and is bound by the changed Conditions of Sale for that Contract and future Contracts. If the BUYER does not accept the changes to the Conditions of Sale, it may notify the SELLER to close its account. For the avoidance of doubt, any change to the Conditions of Sale will only apply to transactions entered into after the date on which the new Conditions of Sale become effective and does not result in amendments to any existing Conditions of Sale

3. Delivery

3.1. BUYER will provide to SELLER written, detailed shipping instructions within a reasonable time prior to shipment. BUYER will be responsible for any increased costs or delays in delivery resulting from BUYER's failure to supply such instructions in a timely manner.

3.2. BUYER may not withhold payment in the event of delay caused by BUYER.

3.3. The SELLER is not liable for delay in delivery for any reason.

3.4. All shipments of Goods shall be made FOB (as defined by Incoterms 2010), unless otherwise stated in this Contract.

3.5. All specified delivery dates refer to the completion of manufacture and availability for shipment of Goods and are SELLER's best estimates. SELLER reserves the right to modify the delivery dates with notice to BUYER.

3.6. Title shall pass to BUYER upon delivery to carrier.

- 3.7. In the event that the BUYER is unable to take delivery of any shipment or refuses delivery of a scheduled shipment, SELLER will store the shipment at BUYER's sole risk and expense and payment for such delayed shipment shall immediately become due.
- 3.8. The BUYER warrants there will be no diversion of any shipment that is a) contrary to any applicable law; b) for resale and/or transfer to any party not a party to this Contract unless approved in writing by SELLER; or c) for shipment or use contrary to applicable export laws, restrictions and regulations of Singapore and other governments.
- 3.9. Upon delivery of the Goods to the BUYER or its agent or to a carrier commissioned by the BUYER, the BUYER warrants to the SELLER that, in the storage and handling of the Goods, the BUYER and its agents and carriers will comply with all relevant environmental laws and regulations, and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the BUYER must ensure that the BUYER and its agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods. If the Goods comprise bulk chemicals, the BUYER must ensure that its storage tanks and vessels and the pipes, hoses, valves and other components used for the storage or transfer of those Goods are properly installed and maintained so as to prevent any death, injury or loss of containment during the processes of unloading the Goods into and storing those Goods in those tanks or vessels.
- 3.10. Where the BUYER re-sells or distributes the Goods to any third parties, it shall be responsible for ensuring that it provides detailed instructions to those third parties regarding the safe storage, handling and use of those Goods and any cylinders, drums or other packaging in which those Goods are stored.

4. Force Majeure

- 4.1. Neither party shall be held responsible for any loss, damage, delay or lack of delivery arising from fire; strikes, lockouts, injunction or other labour troubles; governmental intervention; war; riots; acts of terrorism; explosion; weather; flood; acts of nature; inability to obtain on terms acceptable to SELLER or a shortage of, fuel,

power, raw materials, labour, containers or transportation; accident; breakage of machinery or other apparatus; disruption of normal supplier channels of distribution; or any other act or force beyond the affected party's reasonable control.

- 4.2. BUYER may cancel, without liability, deliveries suspended for at least thirty (30) days by SELLER for reasons stated in the previous section, but the Contract shall otherwise remain in effect.
- 4.3. SELLER shall have no obligation to acquire by purchase or otherwise any Goods that SELLER is unable to supply to BUYER due to force majeure events.

5. Warranty

- 5.1. SELLER warrants Goods will conform only to SELLER's standard specifications for same, unless otherwise agreed to herein. This warranty applies only to the original purchaser of the Goods.
- 5.2. BUYER shall inspect all Goods for conformance to this warranty. BUYER shall notify SELLER of any non-conformance no later than the earlier of a) thirty (30) days from date of shipment by SELLER; or b) the date of use of the Goods by BUYER.
- 5.3. BUYER's sole remedy and SELLER's sole liability for claims of breach of warranty shall be SELLER's choice of either a) replacement by SELLER of conforming for non-conforming Goods; or b) refund of monies paid by BUYER to SELLER for the non-conforming Goods.
- 5.4. Subject to clause 5.3 and without limiting any other provision in these Conditions of Sale, each party's total liability to the other party for any claim howsoever arising in connection with the Contract or the supply of Goods, whether based on contract, tort, statute, equity or any other cause, is limited to the contract price payable by the BUYER to the SELLER for the quantity of Goods to which the claim relates.
- 5.5. To the extent permitted by law and notwithstanding anything else in the Contract, each party excludes all liability whatsoever to the other party arising out of or in any way connected with a Contract for any loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements, other economic losses, or any consequential or indirect losses of any kind

howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort.

- 5.6. SELLER assumes no liability for any errors that are caused by the inaccuracy or incompleteness of BUYER-supplied data.
- 5.7. Any information or advice provided by the SELLER is for general information only and does not constitute any legal, accounting or professionally certified guidance and as such any information and advice should only be relied upon as a guide and the BUYER bears the sole risk in respect of the purchase and use of the Goods.
- 5.8. SELLER shall have the opportunity to inspect all Goods that BUYER claims are non-conforming. BUYER shall hold, at no cost to SELLER, the Goods pending such inspection. The conditions of any test of the Goods for conformance with any specification shall be mutually agreed upon and SELLER shall be notified of, and may be represented at, all tests that may be made by or for BUYER.
- 5.9. BUYER assumes all risk for misuse of the Goods and acknowledges that:
 - a. it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by the SELLER in relation to the Goods or their use or application; and
 - b. it is responsible for ensuring that Goods that comply with the warranties in clause 5.1 are fit and suitable for its purposes, requirements, processes, plant and equipment.
- 5.10. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WHICH ARE EXPRESSLY DISCLAIMED.

6. Termination for Default

- 6.1. In the event BUYER commits a material breach of this Contract, SELLER may terminate this Contract upon thirty (30) days written notice; provided that during such notice period, BUYER shall have the opportunity to cure its default. If BUYER is in default, SELLER may suspend shipments during such cure period without liability.

7. Limitation of Liability

- 7.1. NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT OR ELSEWHERE TO THE

CONTRARY: A) SELLER'S MAXIMUM LIABILITY HEREUNDER AT ANY TIME FOR ANY CAUSE WHATSOEVER SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCTS AT ISSUE; AND B) SELLER SHALL NOT BE LIABLE FOR LOSS OF REVENUE OR PROFIT OR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER.

- 7.2. These limitations of liability shall apply notwithstanding any finding that any remedy fails its essential purpose.

8. Laws; Dispute Resolution

- 8.1. This Contract shall be construed, interpreted and controlled by the laws of the state of New South Wales in the country of Australia.
- 8.2. In the event of any dispute, controversy or claim ("Dispute") arising out of or in connection with this Contract, the parties agree to first escalate the Dispute to each party's respective senior management for discussion and negotiation (a "Consultation"). Either party may call for Consultation by written notice of a Dispute from one party to the other, stating: (a) that a Dispute has arisen; (b) the time(s) and date(s) upon which its senior management is prepared to consult; and (c) the place(s) it is prepared to meet for consultations (a "Notice of Dispute").
- 8.3. If within sixty (60) days from the date of the Notice of Dispute, any Dispute arising out of or in connection with this Contract has not yet been resolved, then unless such Dispute is to be determined by an expert, all and any Disputes including but not limited to, any question regarding this Agreement's existence, validity or termination shall be referred to and finally resolved by arbitration by an independent third party agreed by both the BUYER and SELLER.

9. Prices; Payment Terms

- 9.1. Unless otherwise stated herein, PAYMENT TERMS shall be Net 14 Days from the date of SELLER's invoice, and payments shall be made in Australian dollars. All prices shown are exclusive of any applicable tax, including GST. Any tax that SELLER is required to collect pursuant to the sale of Goods hereunder shall be in addition to the price and shall be entirely for BUYER's account.
- 9.2. Notwithstanding any other provision in this Contract or elsewhere to the contrary,

SELLER may revise the price, payment terms or shipping terms by written notice dispatched not less than thirty (30) days prior to the effective date of such change. In addition, if in the sole judgment of SELLER, BUYER's financial ability to perform hereunder is altered or impaired, SELLER reserves the right, among any other right or remedy, to change immediately and without any prior notice, payment terms, require full or partial advance payment, stop shipment of any Goods in transit, or to cancel any outstanding order, without liability.

- 9.3. Any discount or rebate provided for in this Contract shall be accounted for exclusively on the basis of sales made to BUYER.
- 9.4. All PRICES in this Contract are exclusively for products sold directly to BUYER.
- 9.5. SELLER shall retain a purchase money security interest in the Good(s) sold hereunder until all payments (including deferred payments, whether evidenced by notes or otherwise) shall have been received in full by SELLER and, if requested in writing to do so, BUYER agrees to do all acts necessary to perfect and maintain such security interest in SELLER.