

DARLEY REFRACTORIES AUSTRALIA PTY. LTD.

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CONDITIONS OF SALE

1. DEFINITIONS

"Seller" means Darley Refractories Australia Pty Ltd

"Buyer" means the purchaser of goods hereunder

"Price" and "Goods" are those stated in Seller's quotation

2. CONTRACT

Any contract for the sale of Goods by Seller to Buyer ("Contract") is upon and subject to these Conditions and the terms on the reverse hereof and no other, unless other written terms are signed by a duly authorized representative of Seller. No order shall be binding on Seller unless and until it is accepted by Seller in writing. If no Quotation or written acceptance is given by Seller all deliveries are made subject to these conditions.

3. QUOTATIONS

Any Quotation;-

- (i) is an offer to sell on these Conditions only and if accepted is accepted without qualification.
- (ii) Unless otherwise agreed in writing, will lapse without notice after two (2) months from the date it is made.
- (iii) Is subject to availability of goods in stock.

4. PRICE

All Goods are sold at the price current at the time of dispatch notwithstanding any prior statements of price and all costs and charges for freight and handling are payable by Buyer (unless otherwise stated on the reverse hereof). Seller reserves the right to apply the extent of any increase in costs to the amount charged for any Goods. Special delivery charges incurred in complying with Buyer's instructions will be charged as an extra to Buyer.

5. PAYMENT

(1) Interest:

The price is payable net cash not later than the last day of the calendar month following the month of delivery. Thereafter any part of the Price unpaid shall bear interest from such date until payment at a rate equal to the Commonwealth Bank Corporate Overdraft Reference Rate most recently published before that date.

(2) Delivery by Instalments:

If Goods are delivered by instalments the sale of each instalment comprises a separate contract. Payment for any such instalment shall be in accordance with sub-clause (a) and failure

to pay on the due date shall entitle Seller to suspend deliveries of other instalments without prejudice to any other remedy available to Seller.

(3) Taxes:

The price does not include any taxes, duties or other governmental charges of any type imposed on this Contract or any performance hereof. Buyer shall pay all such taxes, charges and duties or reimburse Seller for such costs at the time of payment for the Goods. All costs after delivery are Buyer's responsibility.

(4) Credit Standing

If Seller becomes dissatisfied with Buyer's credit standing, Seller may suspend further deliveries until Buyer's credit standing has been established to Seller's satisfaction.

6. RISK AND TITLE

(1) The risk in respect of all Goods shall pass to Buyer upon delivery, notwithstanding that Seller may arrange and charge for the costs of carriage. Delivery of the Goods to a carrier constitutes delivery to Buyer. Seller will not in any circumstances be liable for damage, breakage or loss occurring after the Goods have been so delivered.

(2) Seller shall retain title to the Goods until payment in accordance with clause 5 has been made and has the right to repossess and sell the Goods upon Buyer's Default under clause 12 hereof, whereupon title to the Goods shall pass to the Buyer.

7. DELIVERIES

(1) Transport:

Where the Seller is responsible for arranging the transport of the Goods to the Buyer's premises then the Seller may select the route, method and agency of transportation and has the right of stopping the Goods in transit.

(2) Excess:

The maximum permitted percentage in excess of the quantity ordered by Buyer which Seller shall be allowed on each delivery of non-standard refractory brick (and which, if available, shall be added to quantities ordered) is as follows:

Quantity Ordered	Allowance
0-25 pieces	100%
26-200 pieces	30%
201-1000 pieces	6%
1001-10,000 pieces	3%
over 10,000 pieces	1%

(3) Delivery:

Seller shall endeavour to comply with any date for delivery of the Goods but unless the Contract expressly otherwise provides, such date shall not be binding. If Seller fails to deliver the Goods by such date such failure shall not constitute a breach of the Contract and Buyer shall not be entitled to any remedy in respect of it.

(4) Suspension:

If Seller is unable to supply Goods or any part thereof due to force majeure. Seller may suspend performance of the Contract or make partial deliveries for so long as such circumstances exist, provided that if performance is suspended for more than three consecutive calendar months, Buyer or Seller may by written notice terminate the Contract or cancel any

outstanding parts thereof. In such circumstances Buyer shall pay for all work done and materials used by Seller to the date of termination. Seller shall not be liable for any direct or consequential loss or damage suffered by Buyer as a result of Seller's inability to perform its obligations in such circumstances.

In the event of any failure by Buyer to perform its obligations under the Contract, Seller shall be entitled without prejudice to any other remedy of Seller or to the obligation of Buyer to pay for goods already delivered or manufactured:

- (a) to suspend delivery to Buyer so long as such failure shall continue; and/or
- (b) by notice to Buyer to cancel any further obligations of Seller under the contract.

(5) **Liability Limitation:**

Seller shall not be liable in contract or in tort or otherwise howsoever for any loss or damage including consequential loss or damage arising from delay in manufacture or delivery howsoever caused or for any delay in failure of delivery after goods have been dispatched from Seller's work (unless otherwise agreed by Seller in writing).

8. DEFECTIVE GOODS.

(1) **Refund, Repair or Replace**

Seller undertakes at its option to refund the price of or to repair or replace, free of charge, any Goods manufactured and supplied by it which are returned carriage paid to Seller and which are shown to Seller's satisfaction to be defective (provided that they have been properly stored, assembled, maintained, not combined with other goods and used in accordance with Seller's directions, and fair wear and tear excepted) by reason of faulty material or workmanship within ninety (90) days from the date of their original despatch. If the Goods are shown to be so defective, Seller will refund the carriage costs. Subject to clause 15, Seller shall not be liable for any loss or damage caused by, or arising out of, any alteration or modification or any change whatsoever to the Goods, or any part thereof, by Buyer or any third party without Seller's prior written consent.

(2) **Liability Limitation:**

Subject to clause 15, Seller shall not otherwise be liable for any loss or damage whether direct, indirect or consequential incurred by Buyer resulting indirectly from a defect in the Goods, or loss resulting therefrom including loss of profits, loss of production, or any other consequential loss or damage, or incurred in consequence of any negligence or default on part of Seller its servants or agents in the manufacture or supply of Goods.

9. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

(1) **Seller's Property**

Unless otherwise agreed in writing, patterns, jigs, tools, fixtures and any other plans, drawings and specifications (information) manufactured or prepared by Seller in relation to any Contract shall remain Seller's property notwithstanding any charge therefore Seller may, in its discretion, make to Buyer and Seller reserves all proprietary and industrial property rights vested in it in relation to such information. Buyer shall not without Seller's written consent deal in any way with the information and when in possession of any information shall as promptly as possible and in any case immediately upon demand return it to Seller.

(2) **Buyer's Tools**

Where the Seller at Buyer's request uses Buyer's patterns, jigs, tools or fixtures Buyer shall be liable for any repairs, alterations or replacement necessary thereto or for any damage or loss (unless occurring exclusively due to the negligence of Seller, its servants or agents/whether due

to fair wear and tear, inherent unsuitability for the production of satisfactory Goods or otherwise.

(3) **Seller's Specifications**

Unless Seller agrees in writing to work to Buyer's drawings or specifications, Seller's normal tolerances and material specifications shall apply.

(4) **Proprietary Rights**

Seller and its suppliers shall have no liability to Buyer in connection with any claim that buyer's intended or actual use or resale of any of the goods either as sold or in conjunction with other materials constitutes an infringement of any proprietary or industrial property rights of third parties and buyer agrees to indemnify Seller against all such claims in relation to the production or sale of any goods in conformity with Buyer's specifications or instructions.

10. REPRESENTATIONS

(1) Subject to clause 15, Buyer assumes responsibility for the suitability or fitness for any particular purpose of the Goods, and acknowledges that any statement or representation as to the suitability or fitness of Goods is a statement of opinion only and that no reliance is placed on it.

(2) It is expressly agreed that any technical advice furnished by Seller is, unless furnished pursuant to an express agreement supported by valuable consideration given gratis and accepted at Buyer's risk and Seller assumes no obligation or liability for any advice given or results obtained by Buyer.

11. BUYER'S PREMISES

If Seller's employees or agents work on Buyer's premises or elsewhere at Buyer's request in relation to the manufacture, supply, installation or use by Buyer of the Goods, Seller shall not be liable to Buyer in respect of any claims for damage to Buyer's property.

(1) Except where the liability incurred is wholly and exclusively due to the negligence of Seller's employee or agents: and

(2) Seller shall not be liable for any indirect or consequential loss or damage whatsoever or howsoever arising and whether suffered by Buyer or any third party: and

(3) Seller shall in no event be liable for any amount in excess of the price of Goods.

12. BUYER'S DEFAULT

If (i) Buyer commits a breach of the Contract or any of its obligations: or

(ii) The Buyer threatens to cease to carry on its business or is unable to pay its debts within the meaning of section 460(2) of the Corporations Law or any amending legislation: or

(iii) A receiver, liquidator, trustee in bankruptcy or official manager or administrator of the Buyer or any of its business or property is appointed.

Seller may terminate the Contract forthwith and upon written notice of such termination posted to Buyer's last known address any Contract shall be deemed to have been terminated without prejudice to any claim or right Seller might otherwise make or have against Buyer but it is

nevertheless agreed that Buyer shall pay Seller at the Contract rate for all the work done, materials used and Goods supplied up and/or including the date of termination.

13. Waiver by the Seller of any specific default by the Buyer under these Conditions of Sale, or a failure of the Seller to cancel the sale or any part thereof when such right arises, shall not constitute a waiver by the Seller of any of the Conditions of Sale except such defaults as are specifically waived, and then only in respect of the actual defaults.

14. LIEN

Seller shall in respect of all unpaid debts or monies due from Buyer have a general lien on all Goods and property of Buyer in its possession and may on the expiration of fourteen (14) days notice to Buyer dispose of such goods or property as it thinks fit and apply the proceeds towards reduction of such debts.

15. STATUTORY LIABILITY

Nothing in this Contract shall exclude, restrict or modify any term, condition, warranty or liability implied into this Contract by statute, where to do so would render any provision of this Contract void or Seller subject to penalties. Subject to that, any implied conditions warranties and liabilities, including liability for consequential loss and for loss arising from negligence, are hereby excluded. Where it is legally permitted, any remaining liability implied by statute or resulting from breach of any condition or warranty implied by statute is limited to repair or replacement of the Goods at the Seller's option.

16. FORCE MAJEURE

If by any reason of Act of God, war, government control, storm, fire, tempest, strike, lockout or any other cause beyond its control Seller is prevented from performing any under this contract Seller shall be entitled to suspend deliveries and, at its option, should such suspension continue for a period of six (6) months, by written notice to cancel the unfulfilled part of the Contract.

17. GOVERNING LAW

These conditions and any Contract made between Seller and Buyers shall be governed by and construed in all respects in accordance with the laws of the State of Victoria and any disputes arising thereunder shall be submitted to the jurisdiction of the Courts of that State and for such purpose the parties hereby irrevocably submit to the non-exclusive jurisdiction of those Courts.