



Southern Equity Traders

T/A TECHNICAL CERAMICS AUSTRALIA

Southern Equity Traders Limited. 45 Evans St Balmain NSW 2041 Australia

Tel: 61 2 9106 2132 Tel Direct: 0417 076 667 email: shamus@southernequity.com.au ABN 61 096 414 345

Company referred to as: SET / TCA

Sale & Delivery - Terms and Conditions

1. General

Unless otherwise agreed in writing, these Terms and Conditions shall apply to all quotations, orders and supplies. Any purchase conditions of the Buyer shall not be binding on SET / TCA. All quotations shall be subject unsold. SET / TCA shall be entitled to modify the Terms and Conditions without notice.

2. Terms of Delivery

If nothing else has been agreed, terms of delivery shall be ex works, with customer to pay for freight.

3. Prices

Except where fixed prices have been agreed upon in writing, all prices are ex works, incl. standard packaging and excluding any taxes, rates and duties. Goods shall be offered on the basis of the rates of exchange and tariff rates for imported goods or materials prevailing on the date of the quotation. In the event of any variations in any of the above mentioned rates, SET / TCA reserves the right to amend the price accordingly for non-confirmed orders and offers outside validity terms.

4. Order Confirmation

As a company policy all customers are subject to credit insurance and order confirmations are conditional on credit accreditation/insurance. In the event that SET / TCA order confirmation deviates from the Buyer's order by way of any supplementary quantities, limitations or reservations and the Buyer refuses to accept such variations, the Buyer shall notify SET / TCA thereof in writing within one week. If he fails to do so, SET / TCA order confirmation shall be controlling for all purposes. The Buyer's order shall not be binding on SET / TCA before the Buyer has received a written order confirmation.

5. Time of Delivery, Force Majeure and Cancellation

Delivery times are based on the assumption that all technical specifications and data as well as the Buyer's wishes have been clarified at the time of the Buyer making out the order and the assumption that SET / TCA will receive materials from its sub-contractors in due time. SET / TCA makes reservations for any delays due to lack of conformity with these assumptions. In the event that delivery in due time is prevented due to circumstances beyond SET / TCA absolute control, including strikes and lockout affecting SET / TCA and/or SET / TCA sub-contractors, and labour disputes, fire, explosion, natural disasters, epidemics, working difficulties, operational breakdowns, war, riots, mobilization, government measures, sequestration, currency restrictions, shortage of means of transport, general shortage of goods, restrictions of power, environmental measures or defects and shortcomings or delays attributable to sub-contractors due to one or more of the aforesaid circumstances, SET / TCA shall be entitled to cancel the order without incurring any liability by notifying the Buyer in writing without delay, whereas delays by reason of the aforesaid circumstances shall only entitle the Buyer to cancel in the event that the delay exceeds six months.



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Within the said time limit of six months, the Buyer shall only be entitled to cancel following a separate agreement with SET / TCA and on condition that SET / TCA sub-contractor(s) has/have granted his/their acceptance.

In the event of material delay on the part of SET / TCA that is not covered by the above provisions, the Buyer shall be entitled to rescind the agreement in keeping with the general rules of Australian law. Notwithstanding the Buyer being entitled to rescind the agreement, he shall have no other remedies in this respect unless the Buyer proves that the delay is due to gross negligence on the part of SET / TCA. Hence, SET / TCA shall not be liable for any direct loss or operating loss, loss of profit, loss of earnings or any other indirect loss or consequential loss.

6. Payment

SET / TCA reserves the right to fix the amount of any credit limit for the Buyer. In the event that delivery in due time is prevented due to circumstances for which the Buyer is responsible, including the Buyer's wish to change specifications after the date of order, the Buyer shall nevertheless settle all payments in keeping with the original agreement. Unless otherwise stated in writing, payment for the goods shall be made within 30 days from date of invoice/delivery.

PLEASE NOTE ALL ORDERS THAT REQUIRE TOOLING MUST BE PAID FOR 100% IN ADVANCE.

The Buyer shall not be entitled to withhold any payments by reason of any counterclaims which have not been acknowledged in writing by SET / TCA

If payment is made after the due date, SET / TCA shall be entitled to charge penalty interest at a rate of 10 per cent per commenced month, counting from the due date until payment is affected. The products sold shall remain the property of SET / TCA until the entire purchase price under the agreement has been paid.

6a. Cancellations

The purchaser forfeits any monies with a cancellation of order if the job is a newly developed job or if the customer is not a repeat customer. This includes and is not limited to any jobs that are newly developed or require material adjustments relating to operating temperatures or environments.

If the cancellation occurs after the items have already been formed, then any outstanding monies will fall due immediately. (Evidence of such to be provided by SET/TCA.

7. SET / TCA Warranties

SET / TCA warrants that the goods supplied correspond to those itemized in the order confirmation, but SET / TCA undertakes no further obligations over and above this warranty, nor for the goods being fit for the Buyer's intended purposes, including in the event that the goods have been resold by the Buyer.

Use and application - including resale - of the goods shall thus be at the exclusive risk of the Buyer. Any information furnished by SET / TCA in catalogues, technical data sheets and the like concerning specifications and the like shall be understood as a guide only and can in no circumstances be claimed to constitute the basis for liability on the part of SET / TCA, whether in whole or in part, nor shall they release the Buyer from making any necessary examinations, tests, etc. on his own initiative. The uncertainty prevailing at all times should be added to all absolute values indicated.

8. SET / TCA Liability

A. General

Notwithstanding the following provisions and any substantiated negligence, except from instances of gross negligence on the part of SET / TCA, SET / TCA shall in no event be liable for operational loss,

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loss of profit or any other indirect loss or consequential loss of whatsoever nature, no matter whether the claim for liability is based on ordinary rules of compensation or on any other basis.

B. Liability for Lack of Conformity of the Goods

With respect to lack of conformity claimed in due time and within three months after delivery of the goods, SET / TCA undertakes - at its option - (a) to remedy the lack of conformity of the goods, (b) to deliver goods in replacement of any non-conforming goods - and in that event the Buyer shall not be entitled to make any other claims based on lack of conformity - (c) to credit the Buyer with the amount payable for the non-conforming goods returned at SET / TCA request for the Buyer's account, (d) to grant the Buyer a pro rata reduction of the purchase price for the goods.

In claiming lack of conformity, the Buyer shall state the number and date of invoice. On request, defective parts shall be returned carriage paid to SET / TCA. Over and above the aforesaid obligations, SET / TCA shall not be liable for lack of conformity after the risk for the goods has passed to the Buyer, notwithstanding the said lack of conformity being attributable to causes existing prior to the time when the risk passes to the Buyer and notwithstanding any negligence that might be proved to be attributable to SET / TCA.

Any costs connected with demounting and remounting shall be of no concern to SET / TCA.

The Buyer's claims on the basis of demonstrated lack of conformity cannot be assigned to any third party without the written consent of SET / TCA.

SET / TCA shall not be liable for lack of conformity attributable to incorrect use, transportation, storage, mounting or other negligence on the part of parties other than SET / TCA, and extraordinary or ordinary wear and tear.

C. Product Liability vis-à-vis the Buyer

In cases where, by their nature, the goods are ordinarily intended for commercial use and are used by the injured party mainly in keeping with such intended purpose, SET / TCA shall be liable for a period of one year only, counting from the date of delivery, for damage to real property or movables caused by the goods.

SET / TCA shall only be liable for such damage if it can be proved that the injury or damage is due to negligence or omission on the part of SET / TCA or its employees, and where SET / TCA is held liable by a court ruling.

SET / TCA shall however in no circumstance be liable for operational loss, loss of profit, loss of earnings or any other indirect loss or consequential loss.

In cases where, by their nature, the goods are intended for non-commercial use and are used by the Buyer mainly in keeping with such intended purpose, SET / TCA shall be liable for damage to real property or movables in keeping with the Danish legislation on product liability in force at the time in question.

D. Product Liability vis-à-vis Third Parties

In cases where, by their nature, the goods are ordinarily intended for commercial use, and SET / TCA is held liable for product liability towards a third party by reason of the Buyer's use of such goods, including their resale, the following provisions shall apply with respect to damage to property:

In the event that the Buyer has been negligent, SET / TCA shall have a right of recourse against the Buyer according to the degree of liability attributable to the Buyer. In all circumstances and notwithstanding any negligence on the part of SET / TCA, the Buyer shall indemnify SET / TCA to the

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extent that SET / TCA liability towards third parties exceeds the limitations and rules set out in clause 8 C above.

In the event of damage to property, where the goods are not intended for commercial use, and in the event of injury, and where SET / TCA is held liable towards a third party by reason of the Buyer's use of such goods, including resale of the goods, SET / TCA shall have a right of recourse against the Buyer to the extent that such damage or injury is attributable to negligence on the part of the Buyer.

In the event that the damage or injury is not attributable to negligence on the part of the Buyer, SET / TCA shall be liable in keeping with the Australian legislation on product liability in force at the time in question.

In cases where SET / TCA is liable under the Australian legislation on product liability in force at the time in question, cf. clauses C and D, it is expressly understood that liability does not extend to system or development damage, and that the general rules of Australian law on compensation, including the provisions on limitation of liability for compensation shall apply *pari passu* with these provisions.

9. The Buyer's Obligations

In his use of the goods, including resale, the Buyer shall prudently use/market such goods and to the extent possible take such measures (including the issuing of instructions and warnings to joint contractors and subsequent levels of distribution) which can safeguard the Buyer as well as SET / TCA from incurring product liability. With respect to the provisions on product liability towards third parties referred to above, the Buyer's violation of this provision shall be deemed to constitute an act for which he incurs liability on an equal footing with any other negligence on the part of the Buyer.

Immediately upon receipt of the goods, the Buyer shall thoroughly examine and test the products supplied in order to ensure that the goods are in conformity with the Buyer's wishes.

In the event that the Buyer wishes to claim lack of conformity of the goods, he shall moreover complain thereof forthwith and in writing, and at any rate not later than 5 days after receipt of the goods. In the event that the Buyer fails to give such notification, irrespective of whether he has or should have discovered the lack of conformity, he will lose the right to invoke lack of conformity of the goods at any later date.

All complaints and/or any other claims against SET / TCA shall be made by the Buyer forthwith after he has become - or should have been aware of the circumstances on which the complaint/claim is based. In all other cases, the Buyer has forfeited his rights to invoke them at a later date.

10. Disputes

Any dispute arising between the parties, including but not limited to disputes regarding the interpretation or validity of these Terms and Conditions, or any dispute arising between the parties by reason of SET / TCA quotation/order confirmation or in connection with any supply from SET / TCA to the Buyer shall be settled with final effect according to Australian law.

June 2017