

TERMS OF SALE OF CLEAR EDGE FILTRATION (NZ) LTD (“the Seller”)

Terms Paramount

1. These terms will apply to all contracts involving the supply of goods by the Seller to the Buyer or made with other persons at the Buyer’s request.
2. If there is any inconsistency between these terms and any order submitted by the Buyer or any other arrangement between the parties, these terms will prevail unless otherwise agreed in writing by the parties.

No Credit Obligation

3. Without prejudice to the Seller’s rights, the acceptance of this application by the Seller does not create any obligation on the Seller to provide credit. Accordingly all credit is provided at the Seller’s absolute discretion and may be withdrawn by the Seller at any time. In addition, the Seller will be entitled at any time to withhold delivery of any goods where an order has been accepted if it considers the Buyer’s creditworthiness to be unsatisfactory.

Price

4. Any estimate or quoted price does not include any GST and other taxes and duties which may be applicable, insurance or freight and such amounts will be paid by the Buyer in addition to the price.
5. The Seller may also charge the Buyer where additional work results from the lack in precision of the Buyer’s specifications or the Buyer alters the specifications after the date of any contract.
6. Pricing subject to pass-through of any levied tariffs or surcharges. The Buyer is bound to pay the price current at the time of delivery.

Payment

7. Where goods are supplied by the Seller on credit, payment of cleared funds is due in full 30 days from date of invoice. If an Event of Default occurs (as defined in clause 27), payment is due immediately. Time for payment is of the essence.
8. The Buyer may not withhold payment or make any deductions from any amount owing without the Seller’s prior written consent.

Delivery

9. The Seller will send all goods “at limited carrier’s risk” under the Carriage of Goods Act 1979.
10. The Seller may deliver the goods by installments, and each installment shall be treated as a separate contract on these terms.
11. If the Seller fails to deliver or makes defective delivery of part of the goods, the Buyer is not entitled to cancel the contract.
12. Any time stated for delivery of the goods is an estimate only. The Seller is not liable for any delay in delivery or non-delivery of the goods caused by any factor beyond the Seller’s control.
13. In addition to the Buyer’s obligation to accept delivery of and pay for the quantity of goods ordered, the Seller may also in its discretion require the Buyer to accept delivery of and pay for an extra 10% of the quantity ordered.
14. If the Buyer refuses to accept delivery of any of the goods, the Seller may charge the Buyer for any additional costs incurred as a result, including storage and transportation costs.

Risks

15. The risk of any loss, damage to or deterioration of the goods passes to the Buyer upon delivery to the Buyer’s premises.
16. The Buyer will insure the goods for their full replacement value for the benefit of the Seller until ownership of the goods has passed to the Buyer.

Ownership

17. Ownership of the goods remains with the Seller and does not pass to the Buyer until the Buyer pays the amount owing for the goods and any other moneys owing by the Buyer to the Seller.
18. While ownership of the goods remains with the Seller:
 - 18.1 The Buyer must store the goods separately and clearly identify them as belonging to the Seller.
 - 18.2 The Seller authorises the Buyer in the ordinary course of business to use the goods or to sell them but only as the Seller’s agent. This authority is revoked from the time that an Event of Default occurs or the Seller notifies the Buyer in writing that this authority is revoked.
 - 18.3 If the Buyer has not paid in full for any goods by the due date, the Seller or its agents may enter the premises where any goods are stored and remove them. The Seller shall not be responsible for any damage caused in entering and removing the goods. The Buyer is liable for all costs incurred by the Seller in entering and removing the goods. The Seller may resell any of the goods and apply the proceeds in reduction of the debt owed by the Buyer to the Seller.
19. If the Buyer resells or uses the goods before ownership of the goods has passed to the Buyer, the proceeds of such sale or use shall be received and held by the Buyer in trust for the Seller in such portion of the proceeds as does not exceed the Buyer’s indebtedness to the Seller. The Seller may at any time by notice in writing require the Buyer to pay to the Seller the proceeds of the sale or of the use of the goods.

No Guarantees

20. The Buyer acknowledges that the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption and that the Consumer Guarantees Act 1993 does not apply.
21. No goods shall be returned unless the Seller has agreed in advance. Goods specially made to the Buyer’s requirements are not returnable. The Seller may charge the Buyer a restocking charge equal to 10% of the value of the goods for goods that are returned by agreement with the Seller.
22. The Seller, to the fullest extent permitted by law, accepts no liability for any claim by the Buyer or by any other person including any claim relating to or arising from any conditions, warranties or representations as to fitness or suitability for any purpose, merchantability or otherwise whether express or implied by law, trade custom or made by any agent or representative which are not expressly confirmed by the Seller in writing. The Buyer agrees to indemnify the Seller against any claim by any other person against the Seller. Without limiting this clause, the Seller’s liability to the Buyer or any other person under any claim shall not exceed the price of the goods or the cost of repairing or replacing the goods, whichever is the lesser.
23. Nothing in these terms is intended to have the effect of contracting out of the provisions of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 except to the maximum extent permitted by that Act and these terms are to be modified to the extent necessary to give effect to that intention.

Intellectual Property

24. The Buyer warrants that the use by the Seller of any designs or instructions supplied by the Buyer will not infringe the patents, trademarks, designs or copyright of any other person and the Buyer agreed to indemnify the Seller against any claim relating to or arising from the infringement of any such intellectual property of any other person.

Default

25. If an Event of Default occurs, the amount owing for the goods shall immediately become due and payable notwithstanding that the due date for payment has not arisen.
26. If the Buyer does not pay to the Seller the price for the goods by the due date, the Seller may do one or more of the following:
 - 26.1 Suspend its performance of or cancel any contract between the Seller and the Buyer;
 - 26.2 Withdraw any previously agreed discounts or special terms;
 - 26.3 Charge interest at the Interest Rate (as defined in clause 28) (plus GST) from the date on which payment became due until the date the Seller receives payment in full.
27. For the purpose of these terms, an Event of Default means:
 - 27.1 The Buyer fails to pay the Seller for the goods by the due date; or
 - 27.2 The Buyer commits an act of bankruptcy; or
 - 27.3 If the Buyer is a company, the Buyer has resolved or the Buyer or any of its creditors has applied to liquidate the Buyer, the Buyer becomes insolvent or a receiver or manager is appointed in respect of any part of its assets or business; or
 - 27.4 The Seller has reasonable grounds for believing that any of the events described in clauses 27.1, 27.2 or 27.3 are about to occur.
28. For the purpose of clause 26.3, “Interest Rate” means a rate per annum equal to 3% above that charged, or which would be charged, to the Seller by the Seller’s principal banker from time to time during the relevant period.