

1. **Acceptance** - All quotations submitted to Buyer are subject to acceptance by Tetlow Kiln Pty Ltd ABN 26 166 832 300 ("Seller") on receipt of order. Unless otherwise stated, quoted prices and terms and conditions are held open for acceptance for a period of thirty (30) days from date of quotation after which period, such quotations and terms and conditions must be reconfirmed by Seller in writing in order to be valid. Any terms and conditions stated in Buyer's enquiry or purchase order which differ or are inconsistent with Seller's Quotation shall not apply. "Seller's Quotation" includes all or any of Seller's proposal, quotation, specification(s), drawings, tables and related documentation and these General Conditions of Sale as may be submitted from time to time by Seller to Buyer.
2. **Delivery** - Where Buyer's purchase order is in relation to plant and equipment, every reasonable endeavour will be made to effect delivery within the period quoted but no liability shall be accepted by Seller should the estimated delivery time be exceeded for any reason. The delivery period will commence from the date on which Seller receives Buyer's executed purchase order incorporating all necessary details for the design and manufacture by Seller to commence work, together with Buyer's payment made in accordance with Seller's Quotation. For that purpose, Buyer acknowledges that if it does not promptly submit its purchase order (as above), then Seller's manufacturing schedule may result in an extension of the delivery date, at the sole discretion of Seller. Unless specified by Seller to the contrary, all quotations and sales are for delivery EXW Incoterms 2010. In addition to any other right conferred on Seller by these General Conditions of Sale, all deliveries may be suspended by Seller whilst any payment for any invoice or instalment is overdue and unpaid by Buyer.
3. **Terms of Payment** - In relation to plant and equipment ordered by Buyer, and unless otherwise specified in Seller's Quotation, the terms of payment shall be: 30% of contract price with purchase order; monthly progress payments up to 70% of contract price prior to delivery. As to payment for any plant and equipment and/or Services supplied by Seller, Seller's terms of payment shall be: nett cash thirty days after date of invoice. In any event, amounts remaining unpaid at the due date for payment shall accrue interest at the rate of 1.5% per month until payment in full is received by Seller.
4. **Warranty** -
 - (a) **For plant and equipment:**
 - (i) In terms of Seller's warranty and unless otherwise agreed in writing, any plant and equipment manufactured and supplied by Seller is warranted against defects in materials and workmanship either for a period of 12 months from the date of Plant Acceptance (as determined in accordance with clause 7) ("Warranty Period"), fair wear and tear excepted. In the event that Seller's Quotation includes delivery to site and/or installation and/or commissioning, Seller's warranty shall in any event not extend beyond the period of eighteen (18) months from the date of delivery EXW. Any plant and equipment manufactured and supplied by Seller and shown to its satisfaction to be defective by reason of faulty materials or workmanship may, at Seller's option, be repaired or replaced in accordance with this sub-clause subject always to the other provisions of this clause 4. This warranty does not apply to any defects or failures due to:
 - A. Negligence, accidents, abuse, improper installation, improper operation, improper maintenance, improper electrical/mechanical interfacing of Seller's plant and equipment with other products, electrical failure, or abnormal conditions of moisture, temperature, dirt and corrosive matter;
 - B. Products tampered with or altered, modified or repaired by anyone not previously approved by Seller;
 - C. Products damaged in shipment or otherwise without Seller's fault.In order to qualify for this warranty, a claim must be made in writing to and received by Seller within the Warranty Period. Plant and equipment must be returned at Buyer's cost in the manner directed by Seller, or otherwise made accessible to Seller, failing which this warranty shall not apply and Seller shall be discharged from all liability under this sub-clause. Items or components of a proprietary nature purchased from third parties for incorporation by Seller into Seller's Quotation, including, without limitation, crucibles and refractories, are excluded from Seller's warranty and, for those items (if any) Seller will use its best endeavours to pass to Buyer the best warranties obtainable by Seller from that third party. Items of a consumable or routine replacement nature such as thermocouples, elements, spark plugs, UV cells, etc. are also excluded from this general warranty.
 - (ii) Notwithstanding the foregoing, Buyer acknowledges and agrees that all liability (if any) of Seller arising under or in terms of Seller's Quotation shall be limited at Seller's option to the cost of repair or replacement of parts EXW Melbourne, Australia. All warranties, conditions, liabilities (including for negligence) or representations in relation to, inter alia, the quality or fitness of the plant and equipment, its compliance with description, conformance with statutory requirements or its use or application other than any non-excludable right which might otherwise be implied by law or statute, are expressly excluded.
 - (iii) Seller has a policy of continuous improvement to its products and reserves the right to alter the specifications, design or to discontinue any products without prior notice. Notwithstanding, all illustrations, descriptions and specifications are by way of example only and are not necessarily applicable to any plant and equipment offered by Seller.
 - (b) **For Services:**
 - (i) The Buyer acknowledges and agrees that in respect of any services (including, without limitation, any advice, recommendation, information or assistance) ("Services") Seller may provide to Buyer, is provided in good faith and, Seller makes no representation or warranty of any kind including the Services' fitness for purpose or compliance with description and Seller excludes all implied conditions and warranties other than any non-excludable rights which might be expressed by or implied by law or statute.
 - (ii) Seller's liability to Buyer for breach of any express provision of Seller's Quotation or any condition or warranty that cannot be excluded by statute is limited, at Seller's option, to refunding the price of the Services in respect of which breach occurred or to re-performing those Services.
 - (iii) Any Services provided by Seller are subject to a charge by Seller and may at Seller's option be subject to a separate agreement. Seller reserves the right at any time to refuse any Services requested by Buyer.
 - (c) **Limitation of Liability:** - Notwithstanding anything contained in Seller's Quotation (including without limitation these General Conditions), Seller shall not be liable to Buyer in any circumstances for any indirect, economic, incidental, special or consequential loss or damage, including without limitation loss of revenue, loss of production, loss of business or loss of profit, whether arising from negligence, breach of contract, statute or otherwise in connection with or arising out of or in any way related to the supply of Seller's plant and equipment and the provision by Seller of Services. In any event, the total liability (if any) of Seller under Seller's Quotation shall be limited to 10% of the contract price.
 - (d) **Indemnity:** - Notwithstanding any other provision of Seller's Quotation (including without limitation these General Conditions), Buyer shall indemnify and keep indemnified Seller and hold Seller harmless from and against all actions, suits, causes of action, claims, demands, costs, charges and expenses of every description made against or suffered by Seller due to the use, operation, safety features and procedures for use in respect of any plant and equipment which may be supplied by Seller to Buyer.
5. **Performance** - The Buyer shall properly and correctly specify in its purchase order submitted to Seller the capacity and performance required from the plant and equipment to be supplied by Seller under the relevant proposal. Any performance specifications provided by Seller in Seller's Quotation or otherwise are hereby acknowledged and agreed by Buyer to be non-binding estimates only and of a nature that Seller expects to obtain on any testing. The Buyer hereby acknowledges that it has not relied upon any such performance specifications in accepting Seller's Quotation. To the extent permitted by law, Seller makes no warranties in relation to estimated performance unless specifically agreed otherwise in writing between the parties.
6. **Modifications** - All modifications or additions which may be requested specified or authorised by Buyer shall be made in writing. The Seller is not bound to accept any such requests, specifications or authorisations which are not in writing. The Seller's contract price as specified in Seller's Quotation and the date for delivery shall be adjusted as may be necessary having regard to the nature and extent of such modifications or additions and the then stage of manufacture. In any event and notwithstanding such modifications or additions, all other conditions of the quotation or contract shall continue to apply. Seller may accept or reject any modifications or additions requested by Buyer and reserves the right to adjust the technical performance, price and delivery period where it deems that to be appropriate.
7. **Plant Acceptance** - Unless otherwise agreed in writing, plant and equipment shall be accepted or be deemed to have been accepted by Buyer, and the contract completed, when delivered by Seller to the place specified for delivery in accordance with Seller's Quotation. Unless otherwise agreed in writing, and provided that Buyer has fully performed its obligations in terms of Seller's Quotation, plant and equipment erected and/or

installed by Seller at Buyer's site (if so specified in Seller's Quotation) will be deemed as having been accepted by Buyer when Seller, in its sole discretion (acting reasonably), determines either that erection and/or installation of the plant and equipment has occurred and any agreed tests are complete, or when the plant and equipment is deemed by Seller in its sole discretion (acting reasonably) of being capable of being operated, whichever is the earlier date. Acceptance by Buyer shall not be delayed by any conditions or minor omissions or defects which do not prevent operation of the plant and equipment, which in any event shall be subject to any warranty offered by Seller in accordance with these General Conditions of Sale.

8. **Force Majeure** - The Seller shall not be liable for failure or delay in performance caused wholly or partially by unavailability of freight or shipping space, failure of any third party manufacturer/supplier to supply whole or part of any goods to Seller, prohibitions or restrictions under any law or by any government or authority or inability to obtain any necessary export licence or import licence, or any act of force majeure including, but without limitation strikes, lockouts, shortage of labour, flood, fire, earthquakes, explosion, accident, breakdown of machinery, rioting, civil or industrial disturbances, acts of war (whether declared or not), Acts of God or any other causes whether or not of a similar nature or beyond Seller's control. In the event of any such failure or delay, Seller may at its discretion and without liability terminate whole or any part of its performance under Seller's Quotation or postpone its performance. This clause 8 does not apply to any obligation of Buyer to pay money.
9. **Notices, Fees and Statutory Requirements** - The requirements of Australian statutory bodies such as those for the protection of the environment and the regulation of labour will insofar as is possible be considered by Seller in any design and manufacture. At the written request of the Buyer, Seller is prepared to advise Buyer on these aspects. Notwithstanding, Buyer shall conform with all requirements of such and any other relevant statutory bodies (whether Australian or otherwise) and, for obtaining all necessary planning, operating or building or other consents or permits which may be necessary (unless agreed otherwise in writing) and, for the payment of any applicable fees or charges, for the purpose of completing the contracted work in terms of Seller's Quotation.
10. **Cancellation or Deferment of Contract** - Without prejudice to Seller's rights, after Buyer's purchase order had been received and/or accepted by Seller, cancellation or suspension of that order by Buyer shall only be accepted by Seller if Buyer shall first have paid or indemnified (in a form satisfactory to Seller) Seller against all of its financial loss, loss of profit and/or consequential damage which it has suffered or could suffer as a result of such cancellation or suspension. Without limiting the generality of the foregoing Buyer agrees to pay the costs already incurred or committed to by Seller up to the date of such cancellation or suspension together with an allowance determined by Seller on account of overhead and profit.
11. **Taxes** - All Sales Tax, Goods and Services Tax ('GST') and other legally chargeable taxes, duties, imposts and excises are excluded from Seller's quoted contract price, and if applicable will be charged to Buyer as extras. If GST is imposed on any supply by Seller of plant and equipment and/or Services Buyer agrees that it shall pay and Seller shall be entitled to recover from Buyer the amount of GST. For that purpose, Seller shall issue to Buyer a tax invoice in respect of that taxable supply.
12. **Applicable Law** - Seller's Quotation (including without limitation these General Conditions) shall be governed by the laws of the State of Victoria, Australia. Both Seller and Buyer irrevocably submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia and the Courts entitled to hear appeals therefrom.
13. **Retention of Title** -
 - (a) Buyer acknowledges:
 - (i) That the transactions contemplated by this agreement give rise to a Security Interest in the Equipment as Collateral under and for the purposes of the PPSA;
 - (ii) That Seller may Register Seller's Security Interest on the PPS Register and Buyer consents to such registration;
 - (iii) That Seller may Register Seller's Security Interest prior to the Attachment of Seller's Security Interest to the plant or equipment;
 - (iv) That the plant or equipment is not Consumer Property.
 - (b) Buyer must execute documents and do such further acts as may be required by Seller to Register the Security Interest granted to Seller under this agreement under the PPSA.
 - (c) Without limiting the generality of clause 1.2 of this agreement, Buyer must promptly upon request from Seller:
 - (i) Do anything for the purposes of:
 - a) Ensuring that any Security Interest created under, or provided for by, this agreement:
 1. Attaches to the Collateral that is intended to be covered by that Security Interest;
 2. Is enforceable, perfected, maintained and otherwise effective; and
 3. Any Security Interest created under, or provided for by, this agreement has the priority contemplated by this agreement; or
 - b) Enabling Seller on and from the Registration Commencement Time (within the meaning of the PPSA), to prepare and register a financing statement or financing change statement;
 - c) Enabling Seller to exercise any of its powers in connection with any Security Interest created under, or provided by, this agreement; and
 - (ii) Do everything including signing all documents and giving all consents to enable Seller to cure any defect in Registration of Seller's Security Interest and Buyer hereby irrevocably appoints Seller as Buyer's attorney for this purpose.
 - (d) In these terms and conditions and for the purposes of this agreement the following words and phrases have the meanings specified unless the context indicates otherwise: "Attaches" has the meaning given in section 19 of the PPSA, and "Attached" and "Attachment" have corresponding meanings; "Consumer Property" has the meaning given in section 10 of the PPSA; "PPSA" means the Personal Property Securities Act 2009 (Cth) (as amended from time to time) and any regulations made pursuant to the PPSA; "PPS Register" means the Personal Property Securities Register established under section 147 of the PPSA; "Register" means to register a Security Interest on the PPS Register and "Registration" has a corresponding meaning; "Security Interest" has the meaning given in section 12 of the PPSA; "Seller's Security Interest" means the Security Interest in the plant or equipment contemplated by this agreement and granted to Seller.
14. **Insolvency and Termination** - If Buyer fails to comply with any of the terms of Seller's Quotation or fails to make payment for goods as and when they fall due; or if Buyer shall become bankrupt or commit any act of bankruptcy; or if Buyer (being a company) goes into liquidation or provisional liquidation, has a receiver appointed; or if in the opinion of Seller Buyer is no longer able to meet its debts as and when they fall due, Seller may at its discretion suspend or postpone any delivery without being liable for any loss or damage suffered by Buyer in that regard, or terminate the contract by notice in writing to Buyer. Upon termination, and in addition to any other rights conferred on Seller by these General Conditions of Sale, Seller shall be entitled to recover all costs incurred by it including, without limitation, payment for all deliveries already made and the cost of materials already obtained or ordered for the purpose of future deliveries (whether or not such materials have been incorporated into the goods being purchased by Buyer). Termination pursuant to this clause shall not affect any other rights or remedies which Seller may have.
15. **General** -
 - (a) The Buyer must not without Seller's prior written approval, assign or transfer or purport to assign or transfer Seller's Quotation or the benefit thereof to any other person whatsoever.
 - (b) No indulgence or forbearance extended to Buyer shall limit or prejudice any other right of claim to Seller.
 - (c) The supply of goods by Seller shall not confer any right upon Buyer to use any of Seller's trademarks or tradename without Seller's prior written consent, and at all times such marks or names remain the property of Seller.
 - (d) If any provision or part of a provision of Seller's Quotation should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down it shall be severed from the remainder of the contract which shall not be effected by such severance.
 - (e) The rights and obligations of the parties under Seller's Quotation shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (1980).
 - (f) No term or provision of Seller's Quotation will be construed against a party on the basis that Seller's Quotation or the term in question was put forward or drafted by or on behalf of that party.