

## **TERMS AND CONDITIONS – RESOLVING IMAGES PTY LTD ACN 121 811 961**

- 1. Interpretation**
  - (a) In these terms and conditions:
    - Buyer** means the purchaser of the Goods or their agents.
    - Goods** means the products.
    - Seller** means Resolving Images Pty Ltd ACN 121 811 961 or its agents or parties that Resolving Images is legally responsible for.
  - (b) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any non-excludable condition, warranty, guarantee, right or remedy at law (including the Australian Consumer Law).
- 2. General**
  - (a) These terms and conditions represent the entire agreement between the parties.
  - (b) Parties may only change these terms and conditions in writing and signed by the Seller.
  - (c) The Seller operates exclusively in its capacity as a distributor of goods.
- 3. Seller's quotations**
  - (a) Unless stated otherwise, Seller's quotations are only valid in writing and are open for acceptance within the period stated in them or, when no period is stated, within 7 days of quotation date. The Seller reserves the right to refuse any order based on this quotation within 7 days after the order have been received.
  - (b) Unless stated otherwise, the Seller's quotations are for the sale of goods only and does not include handling, delivery or installation charges.
- 4. Purchase Orders**
  - (a) The Seller will only order EXACTLY what is described on the Buyer's Purchase Order. It is the Buyer's responsibility to confirm the goods catalogue number, goods name and goods specifications and details are correct when ordering. Any advice provided prior to the purchase order or on the Seller's website is general advice only. It is prepared without knowledge of the Buyer's specific experimental objectives, experimental methods or any other research requirements. Before acting on this advice the Buyer is expected to consider the appropriateness of the advice, having regard the Buyer's specific experimental objectives, experimental methods or other requirements. If any products or techniques have been recommended by the Seller, on the Seller's own website or on our supplier's website, the Buyer should check the catalogue numbers, the specifications of each goods and whether they are appropriate for their research before making any decisions. The Buyer must accept sole responsibility associated with the use of the advice provided by the Seller or on the Seller's website, irrespective of the purpose for which such use or results are applied.
- 5. Packing**

The buyer remains liable for the cost of any special packaging and packing materials used in relation to the goods or the transport or movement of the goods even if omitted from any quotation.
- 6. Specifications**
  - (a) All specifications, drawings, and particulars of weights, volumes and dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.
  - (b) The descriptions, colours, illustrations, and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the goods or of the description applied to the goods. They are for general information purposes only.
  - (c) Where specifications, drawings, weights, volumes or dimensions or other particulars are supplied by the Buyer for the purposes of the order of the goods, the Seller's price will be calculated on the basis of estimates of quantities required to provide the goods as specified or otherwise particularised by the Buyer. If there are any adjustments in quantities above or below the quantities estimated by Seller as set out in a quotation, then any such increase or decrease will be adjusted on a unit rate basis according to unit prices.
  - (d) It is the Buyer's responsibility when ordering to use the correct catalogue number, description and quantity for each product. In addition, the Buyer will be deemed responsible.
- 7. Performance and Suitability**
  - (a) The goods provided are intended for use by professionals only.
  - (b) The goods are authorised only for the sole purpose of in-vitro research and must not be used for human treatment, diagnostics, therapeutic use or any other purpose.
  - (c) Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.
- 8. Delivery**
  - (a) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.
  - (b) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers in any way however arising from late or non-delivery.
  - (c) The Seller may at its option deliver the goods to the Buyer in one or any number of instalments unless otherwise agreed in writing.
  - (d) If the Seller delivers any of the goods by instalments, and any one of those instalments is defective for any reason:
    - (i) this does not constitute a repudiation of the contract of sale formed by these conditions; and
    - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation for the price paid by the Buyer for the defective instalment.
- 9. Loss or damage in transit**
  - (a) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
  - (b) The Seller must provide the Buyer with such reasonable help as may be necessary to institute claims against a carrier for damages to goods in transit so long as the Buyer:
    - (i) has notified the Seller and the carrier in writing immediately after loss or damage is discovered on receipt of goods; and
    - (ii) serves a claim for compensation on the carrier within 3 days of the date of receipt of the goods.
- 10. Guarantee and Limitation of Liability**
  - (a) The Seller subject to any non-excludable statutory obligations (including under the Australian Consumer Law) is not liable to the Buyer for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of:
    - (i) the supply, delivery, delay, non-delivery, suitability or performance of the goods or any breach of these conditions;
    - (ii) any fact, matter or thing relating to the goods including injury sustained or damage occurring through the use of the goods; or
    - (iii) any defect in material or workmanship of, or any other defect whatsoever in, or unsuitability for, any purpose of the goods or any part of the goods; or
    - (iv) any error or omission (whether negligent or in breach of contract or in any other way) in information or goods supplied to the buyer whether before or after the date of the Buyer's use of the goods.
  - (b) The Seller's liability for goods distributed by it on an exclusive or non-exclusive basis in Australia from overseas suppliers who do not have a place of business in Australia is limited to making good any defects by repair or at the Seller's option by replacement with a similar product or refund, within a period not exceeding 60 days after the goods have been dispatched so long as:
    - (i) any defects have arisen solely from faulty materials or workmanship;
    - (ii) the goods have not gone past any used by date or expiration date;
    - (iii) the goods have been used by a suitably qualified and trained staff member
    - (iv) the goods have been stored and/or refrigerated properly as indicated by the specifications outlined by the Manufacturer of the goods. Where appropriate, the goods should be stored in COMMERCIAL GRADE REFRIGERATORS/FREEZERS at +4°C, minus 20°C, minus 70°C or Liquid Nitrogen. Warranty may be voided if goods are stored in domestic refrigerators/freezers.

- (v) In situations where the goods are NOT RECEIVED DIRECTLY by the end-user and are received in a "Goods Store" or "Receiving Bay" or such, it will be the Buyer's responsibility that these departments deliver the goods to the end-user immediately after delivery by the Seller's Couriers or otherwise they must store the goods properly as indicated by the specifications outlined by the Manufacturer of the goods until they are delivered to the end-user. Where appropriate, the goods should be stored in COMMERCIAL GRADE REFRIGERATORS/FREEZERS at +4°C, minus 20°C, minus 70°C or Liquid Nitrogen. Warranty may be voided if goods are stored in domestic refrigerators/freezers.
  - (vi) no contamination has been caused or induced by the buyer;
  - (vii) the goods have not received maltreatment, abuse, inattention or interference;
  - (viii) accessories of any kind used by the Buyer are appropriate for use with the goods;
  - (ix) the seals of any kind on the goods remain unbroken; and
  - (x) the defective goods are promptly returned free of cost to the Seller within 14 days of the defect occurring.
- (c) If the goods are not manufactured by the Seller and the manufacturer does not have a place of business within Australia, the guarantee of the manufacturer of those goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

**11. Consumer guarantees**

The Seller's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the Australian Consumer Law is limited to:

in the case of goods, any one or more of the following:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired;

**12. Indemnification of suppliers by manufacturers**

The Seller's liability under s 274 of the Australian Consumer Law is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the goods repaired, whichever is the lowest amount.

**13. Prices**

- (a) Unless otherwise stated all prices quoted by Seller are net, exclusive of Goods and Services Tax (GST).
- (b) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production ruling on the date it is made.
- (c) If the Seller makes any alterations to the price of the goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

**14. Payment**

Payment MUST be made by EFT, cheque or credit card 14 days after the receipt of goods

**15. Rights in relation to Goods**

The Seller reserves the following rights in relation to the goods until all accounts owed by the Buyer to the Seller are fully paid:

- (a) ownership of the goods;
- (b) to enter the Buyer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and
- (c) subject to, and in accordance with, the Personal Property Securities Act 2009, to keep or resell any goods repossessed. If the goods are resold, or products manufactured using the goods are sold by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the goods shall pass to the Buyer upon dispatch from the Seller for delivery.

**16. Buyer's property**

Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

**17. Returned Goods**

- (a) Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- (b) If the Seller agrees to accept returned goods from the Buyer under para (a) of this clause, the Buyer must return the goods to the Seller at the Seller's place of business.

**18. Products**

The performance of each product is defined by the specifications provided by the manufacturer. It is limited by the validation specified in the Product Data Sheet or alternate manufacturer's information.

**19. Complaints**

Please submit requests for complaints within 5 days of product use. This should include all data and relevant information.

**20. Refunds or Replacements**

As the distributor, we do not provide refunds or replacements. This is provided by the manufacturer of your product and as such it is their decision and at their discretion. Before purchasing multiple units of a product, customers should purchase a single unit for pilot experiments. We limit our obligation for refund/replacement to the value of one unit.

**21. Custom or Bulk Products**

Almost all manufacturers DO NOT provide refunds or replacements for custom or bulk purchases. The onus is on the user to be satisfied that the product performs to their expectations prior to custom or bulk orders. We do not accept responsibility and do not provide payment for any direct or indirect costs associated with the use of products.

**22. Cancellation**

No order may be cancelled by the Buyer except with the written consent of the Seller. In the event of a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

**23. Termination**

- (a) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of 30 days after receipt of a written notice by the other party requiring rectification of the breach.
- (b) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other respect of a breach of any term, condition or warranty of this agreement.

**24. Place of Contract**

- (a) The contract for sale of the goods is made in the State of Victoria.
- (b) The parties submit all disputes arising between them to the courts of Victoria and any court competent to hear appeals from those courts of first instance.