



TERMS AND CONDITIONS

- 1) **CONDITIONS OF ACCEPTANCE OF ORDER:** REFRACTRON's acceptance of the order is expressly conditioned upon Buyer's assent to the terms and conditions of sale as contained herein. This Agreement contains all of the terms and conditions of this purchase and sale. As a result, any or all clauses or special terms of purchase appearing on or with the Buyer's purchase order form and which are inconsistent with or in addition to these Terms and Conditions shall be deemed to be null and void and shall not be binding on REFRACTRON unless expressly accepted in writing by an authorized representative of REFRACTRON. If these terms and conditions are not acceptable to Buyer, Buyer must so notify REFRACTRON at once by specific written objection. No waiver, alteration or modification of this Agreement shall be binding on REFRACTRON unless in writing and signed by an Authorized Representative of REFRACTRON. An order becomes valid following acknowledgement of receipt by REFRACTRON. All or any changes noted on REFRACTRON's acknowledgement of receipt shall be deemed to have been accepted by the Buyer, unless the latter informs REFRACTRON in writing of its objection within three business days of receipt of acknowledgement from REFRACTRON. If the Buyer notifies REFRACTRON of any objections after REFRACTRON has already commenced performance of the order, both parties agree to negotiate in good-faith to resolve the discrepancy in a fair, reasonable and equitable manner. REFRACTRON reserves the right to refuse any order of under \$500 USD, with this amount subject to change at any time.
- 2) **CANCELLATION:** Buyer may cancel an order provided written notice is given to REFRACTRON prior to the commencement of manufacture. If manufacturing has commenced, including all engineering and tooling costs, REFRACTRON shall charge the full invoice price.
- 3) **NON-RECURRING ENGINEERING CHARGE:** When applicable, non-recurring engineering charges are quoted and invoiced subject to the following conditions:
- Tooling is invoiced at the time of shipment of the product and the title to said tooling remains the property of REFRACTRON.
 - Unless changes are made in design specifications, REFRACTRON will keep tools in good repair and make necessary replacements without charge for a period of 3 years from the date of last order for products.
- 4) **CUSTOMER SUPPLIED MATERIAL:** When a quotation specifies "customer supplied material", ample allowance must be made for reasonable scrap and material must be of suitable quality to facilitate efficient production. RTC is not responsible for loss or damage to any materials supplied to RTC by Buyer, whether such loss or damage occurs in or outside the course of normal manufacturing processes. An MSDS of the material is subject to review before accepting an order.
- 5) **DELIVERY:** Unless otherwise specifically provided, delivery of all items shall be FCA REFRACTRON's plant INCOTERMS® 2010 or at REFRACTRON's option, FCA Point of Manufacture INCOTERMS® 2010 as indicated on the relevant quote. Ground shipment or airfreight charges will be billed freight collect, unless REFRACTRON has agreed in advance to provide shipping support by prepaying and adding freight charges to the invoice. All VAT, duties and/or similar fees are the responsibility of the Buyer. Title and risk of loss or damage shall pass to Buyer upon REFRACTRON's delivery of the goods to a common carrier or other delivery agency for shipment to Buyer. As stipulated by FCA INCOTERMS®: It shall be the responsibility of the Buyer to file claims with the carrier for loss or damage to goods while in transit. Partial shipments may be made by REFRACTRON unless specifically prohibited on Buyer's purchase order. Items will be invoiced upon shipment. Any disputes with an individual invoice or delivery will not affect further processing of the purchase order or payment of any other pending invoices.
- 6) **QUANTITY VARIATION:** It is necessary to make more than the stated quantity to avoid delays in completing Buyer's purchase order. This is due to unavoidable losses in the manufacturing process while making special ceramic shapes. Refractron will ship additional quantity should they pass final inspection. If the rejection rates exceed the expected amount and 90% of the order has been fulfilled the order will be considered complete. Therefore the standard shipping policy employed by REFRACTRON is plus or minus 10% rounded to the nearest whole part. Buyer may request exact quantities. In the event REFRACTRON agrees to ship exact quantities, a 5% surcharge will be included on such orders.
- 7) **FORCE MAJEURE:** REFRACTRON shall not be responsible for any failure to perform due to causes beyond its reasonable control, such as, but not limited to, acts of God, acts of civil or military authority, judicial action, default of subcontractors or vendors, priorities, labor disputes, epidemics, explosion, fire, accident, quarantine restrictions, failure or delays on transportation, and inability to obtain necessary labor, materials or manufacturing facilities. In the event of any delay due to such causes, or other difficulties, (whether or not similar in nature to any of those specified) the date of delivery shall be extended for a period equal to the time lost. No form of compensation or penalties for such delay of delivery shall be allowed. Should a delivery be delayed for a reason which is outside the control of REFRACTRON, it shall be deemed to have been made on the agreed date.
- 8) **RETURNS:** Returns will not be accepted unless a "Return Authorization" has been issued by REFRACTRON. Buyer must reference the proper return authorization number on all packages and paperwork. Shipment of Products which are attempted to be returned WITHOUT following the Repair & Return procedure shall be deemed rejected by REFRACTRON and the freight charge for said return shall be at Buyer's sole risk and expense
- 9) **TERMS AND METHODS OF PAYMENT:** Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If shipments are delayed by the Buyer, payments shall be made due on the date when REFRACTRON is prepared to make shipment. Products held for the Buyer shall be at the risk and expense of the Buyer. REFRACTRON reserves the right to ship collect or COD, or to add freight charges to the invoice.
- 10) **APPLICABLE LAW:** Any controversy or claims arising under this Agreement or under any contract or order to which the terms and conditions of the Agreement apply, which is not settled by agreement of the parties, shall be exclusively subject to the Law of New York State, USA and jurisdiction to which Buyer consents shall be exclusively in the courts of the State of New York, County of Wayne, USA. In the event that REFRACTRON brings an action for collection of any overdue amount payable under this contract Buyer shall pay the cost of collection including reasonable attorney's fees.



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11) **PAYMENT TERMS:** If Buyer has not established preliminary credit with REFRACTRON, prepayment of full amount is required.

STANDARD TERMS WITH CREDIT: Net within 30 days after date of invoice

All quotations reflect U.S. Dollars. All payments must be made in U.S. funds. All past due invoices are subject to an interest charge of 2% per month or partial month in addition to any collections expenses. All costs incurred in this recovery process are borne by the Buyer.

12) **TAXES:** The prices stated in this quote or order do not include any provision for sales, use, excise, or similar taxes. The amount of any and all such present or future taxes or other government charges applicable to the goods sold will be added by REFRACTRON to the sales price and shall be paid by the Buyer, unless Buyer provides REFRACTRON with a tax-exemption certificate acceptable to the taxing authority.

13) **GENERAL:** The Buyer and REFRACTRON will comply with all applicable federal, state and local laws. Without limiting the generality of the foregoing, REFRACTRON represents that the goods manufactured hereunder were or will be provided in compliance with all applicable requirements of the U.S. Fair Labor Standards Act of 1938, as amended.

14) **INTELLECTUAL PROPERTY AND PATENTS:** The Buyer shall hold REFRACTRON harmless against any expenses, damages, costs, or losses resulting from any suit or proceeding brought for infringement of patents, copyrights, trademarks or trade secrets or for unfair competition arising from compliance with Buyer's designs or specifications or instructions.

15) **EXPORT CONTROL:** The Buyer agrees to conform with the Export Administration Regulations of the United States in so far as they apply to the sale of products. The products are licensed by the United States for delivery to the ultimate destination as shown on the shipment/invoice and any contrary diversion is prohibited.

16) **FOREIGN CORRUPT PRACTICES ACT COMPLIANCE:** Buyer shall comply with the requirements of the United States Foreign Corrupt Practices Act (FCPA) as amended, (15 U.S.C. §§78dd-1, *et. seq.*), regardless of whether Buyer is within the jurisdiction of the United States; and (ii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.

17) **CONFIDENTIALITY:** The studies, plans, drawings and documents provided by or sent by REFRACTRON shall remain the property of REFRACTRON. The Buyer may not disclose any proprietary information to third parties for any reason whatsoever without prior written approval of REFRACTRON.

18) **LIMITED WARRANTY:** Refractron warrants its products to conform to the specifications described in its quotation or its literature, whichever is applicable.

EXCEPT FOR THE LIMITED WARRANTY STATED ABOVE, REFRACTRON DISCLAIMS ALL WARRANTIES OF ANY KIND WITH REGARD TO REFRACTRON PRODUCTS OR OTHER MATERIALS PROVIDED BY REFRACTRON, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19) **LIMITATION OF LIABILITY:** REFRACTRON'S LIABILITY FOR ANY CLAIMS, DAMAGES, LOSSES OR LIABILITIES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OF AN ORDER MADE HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS SOLD PER SUCH ORDER. IN NO EVENT SHALL REFRACTRON BE LIABLE TO BUYER OR BUYER'S AFFILIATES, EMPLOYEES, REPRESENTATIVES, BUYERS OR AGENTS, OR TO ANYONE PRESENTING CLAIMS THROUGH BUYER, FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOSS OF REPUTATION OR LABOR COSTS, RESULTING FROM THE USE OR INABILITY TO USE THE GOODS, FROM THE GOODS' INCORPORATION INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT, FROM ANY BREACH OF THIS AGREEMENT, FROM ANY DELAY IN DELIVERY, OR ANY OTHER BREACH, FAILURE OR OMISSION BY REFRACTRON, REGARDLESS OF THE CAUSE OR NATURE OF SUCH DELAY, BREACH, FAILURE OR OMISSION OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED), CONTRACT, TORT (INCLUDING STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY AND REGARDLESS OF ANY ADVICE OR REPRESENTATION THAT MAY HAVE BEEN RENDERED BY REFRACTRON REGARDING THE GOODS OR REFRACTRON'S PERFORMANCE HEREUNDER.

20) **PROTOTYPE ORDERS:** A prototype order, typically designated with an "SM" part number, is based on REFRACTRON's reasonable efforts to meet Buyers overall specification requirements. If REFRACTRON deems this product is not feasible, then REFRACTRON will not be obligated to manufacture said product. REFRACTRON's Sales Engineer will contact the Buyer to discuss available options.

21) **CONFLICTING TERMS AND CONDITIONS:** In the event of a conflict between any terms and conditions on the quotation, these terms and conditions, and the terms and conditions contained in or attached to the Buyer's Purchase Order, the terms and conditions of the quotation, followed by these terms and conditions including any attachments or exhibits shall prevail.

22) **GOVERNING LAW:** The validity, performance and all matters relating to the effect of these Terms and Conditions and the transactions to which they relate shall be governed by the laws of the State of New York, USA without reference to conflicts of law principles. The parties hereby consent to jurisdiction and venue in the Federal and State courts of the State of New York, USA.

23) **NO WAIVER:** REFRACTRON's failure to insist upon performance of any of the terms and conditions set forth herein or to exercise any right hereunder on any one or more occasions shall not be deemed to be a waiver of such terms, conditions or rights, nor shall it be deemed to be a waiver of any other term, condition or right set forth herein.



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24) **SEVERABILITY:** In the event any one or more of the provisions of this Agreement is held to be unenforceable under applicable law, (i) such unenforceability shall not affect any other provision of this Agreement; (ii) this Agreement shall be construed as if said unenforceable provision had not been contained herein; and (iii) the parties shall negotiate in good faith to replace the unenforceable provision by such as has the effect nearest to that of the provision being replaced.

25) **ENTIRE CONTRACT:** These Terms and Conditions and the attachments hereto constitute the entire understanding between the parties concerning the subject matter hereof and supersede all prior discussions, agreements and representations, whether oral or written and whether or not executed by Buyer and REFRACTRON, except those expressly set forth herein.