



Toray Membrane USA, Inc.

**13435 Danielson St.
Poway, CA 92164-6871
USA
Tel: 858.218.2390
Fax: 858.486.3063**

**TORAY MEMBRANE USA
STANDARD TERMS AND CONDITIONS
FOR SALE OF MEMBRANES, COMPONENTS AND PARTS**

These Terms and Conditions are an integral part of each agreement between Toray Membrane USA (“Seller”) and its customer (“Purchaser”) for the sale of membranes, components and parts (collectively, “Components”) and any related services (“Services”). Seller’s proposal to Purchaser, when accepted by Purchaser, together with these Terms and Conditions, is referred to as the “Agreement”.

1. **Proposals & quotations.** Any proposals or price quotations may be modified or withdrawn by Seller at any time prior to acceptance by Purchaser and shall automatically expire in 30 days, except as otherwise expressly agreed in writing. All prices quoted by Seller are F.O.B. point of origin unless otherwise indicated.
2. **Warranties.** Seller warrants for the period ending twelve months after first use of the relevant Component or 15 months after shipment (18 months if shipped to a destination outside North America), whichever occurs earlier, that the Component will conform in all material respects to any specifications included in the Agreement and will be free of defects in materials and workmanship. Any performance warranties of membranes stated elsewhere in the Agreement apply only if the membranes are used in accordance with Seller’s instructions when processing water or other liquids having the characteristics specified in the Agreement. Warranties do not apply to damage or wear resulting from accidents, negligence, abuse or misuse by Purchaser or third parties; from failure to follow Seller’s instructions for installation, operation, maintenance, cleaning or storage; or from alterations or repairs not performed in accordance with Seller’s instructions. Seller shall assign to Purchaser any manufacturer’s warranties of equipment or materials purchased from others, to extent that they are assignable, and Purchaser’s sole recourse shall be against the manufacturer. Seller warrants that any Services will be performed in a good and workmanlike manner. Purchaser shall promptly notify Seller of any warranty claim and shall maintain defective Components for Seller’s inspection. Purchaser’s sole remedy shall be the repair or replacement (at Seller’s election) of defective Components or the correction of deficient Services. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS EXPRESSLY STATED IN THIS AGREEMENT.**
3. **Payment.** Payment shall be made in full in lawful, free and unblocked currency of the United States of America (U.S.A.) upon Seller’s delivery of Components to the carrier, unless otherwise agreed. Seller’s obligation to ship Components shall be subject to approval of all orders by Seller’s credit department, and Seller may require full or partial payment in advance. Pro rata payments shall become due as shipments are made or as otherwise mutually agreed. If Purchaser is located outside the U.S.A. or its territories, Purchaser shall deliver an irrevocable letter of credit in Seller’s favor confirmed by a first-class U.S.A. bank upon acceptance of Purchaser’s order. Payments not made within thirty (30) days after invoice shall bear interest at

the rate of 1.5 percent per month or, if lower, the maximum lawful rate. If Purchaser disputes any portion of an invoice, it shall notify Seller in writing with specificity and pay the undisputed portion within 30 days. Purchaser shall reimburse costs, including reasonable attorneys' fees, incurred by Seller to collect overdue amounts.

4. **Limitation of liability.** The aggregate liability of Seller and its affiliates and subcontractors and their employees, officers, directors and agents in connection with the Agreement and Components and Services provided hereunder shall be limited to the amount actually paid by Purchaser to Seller for such Components and Services. Seller shall not be liable for any special, indirect, incidental, consequential, or punitive damages, including lost profits, loss of use, and claims by third parties.
5. **Export.** If Components are to be shipped to a point outside the U.S.A., acceptance by Seller is subject to its ability to obtain, on acceptable terms, any applicable export licenses or permits.
6. **Taxes.** Purchaser shall pay all sales, use and excise taxes, custom duties, and similar taxes and governmental charges now or hereafter imposed on either party based on the production, sale, shipment or use of Components.
7. **Shipping, title & risk of loss.** Purchaser shall give Seller complete shipping instructions at least three business days before the estimated shipping date and shall arrange for receipt, unpacking, storage and installation of Components. Delivery dates refer to date of shipment and are estimated based on conditions prevailing at the time of quotation, but are not guaranteed unless so stated. Components offered from stock are subject to prior sale. Purchaser is responsible for all shipping costs and insurance unless otherwise agreed. Title and risk of loss shall pass to Purchaser upon delivery of Components to the carrier for shipment, although Purchaser grants Seller a security interest in all Components until Seller is paid in full. If shipment is delayed by Purchaser for any reason, payment shall become due as of the date Seller is prepared to make shipment, and storage shall be at Purchaser's risk and expense.
8. **Returns.** Products returned for reasons other than warranty issues are to be returned at purchaser's expense and are subject to a 10% re-stocking fee. Products returned must still be sealed in the original vacuum bags and suitable for re-sale.
9. **Compliance with U.S. Export Regulations.** Purchaser will not, directly or through an intermediary, export any Components (including related technology and information) to any country that is subject to embargo or similar restrictions under U.S. Export Regulations (including but not limited to Cuba, Iran, Iraq, Libya and North Korea), or transfer it to a national of any such country or to any other person or company restricted from receiving it, or put it to a prohibited end use, or transfer it with knowledge or reason to believe that it is intended for a prohibited destination, recipient or use.
10. **Force Majeure.** Seller will not be responsible for any delays, damages or failures to perform due to circumstances beyond its reasonable control, including those caused by Purchaser. Seller's time for performance shall be extended by a period of time commensurate with the amount of delay caused by such circumstances.
11. **Documents.** All specifications, instructions and other documents furnished by Seller in connection with Components shall remain the property of Seller, and Purchaser warrants that no use will be made of such documents except to facilitate Purchaser's installation, use and maintenance of Components. Such documents shall be provided to Purchaser's employees only on a need-to-know basis and shall not be provided to third parties without Seller's written consent.
12. **Information.** Seller will be deemed to have reasonably relied on any representations made or information furnished by Purchaser, whether prior to or after the date of this Agreement, as to the intended use of Components and the characteristics of any liquids to be treated by membranes.
13. **Termination and suspension.** Seller shall be entitled to terminate the Agreement or to suspend any shipment if Purchaser is in breach of the Agreement or is overdue in any payment to Seller under the Agreement or any other agreement or order.
14. **Complete Agreement.** Seller's written proposal and these Terms and Conditions, when accepted by Purchaser, constitute the entire agreement between parties. The Agreement may be modified or amended only by a writing signed by an authorized representative of the party against which enforcement is being sought. These Terms and Conditions shall prevail over any inconsistent terms and conditions included in Purchaser's order, even if the order has been signed or otherwise accepted by Seller.

15. **Miscellaneous.** The Agreement is governed by the laws of The State of California, U.S.A. In the event the Agreement is prepared in more than one language, the English version shall govern its interpretation. Neither the Agreement nor any proposals of Seller nor any rights or obligations hereunder are assignable without Seller's written consent.