

## **1. SCOPE**

1.1 In these Conditions: "Supply" means any supply by Supplier to Customer including the supply of Goods and/or Services; "Customer" means the party buying Goods or procuring Services and shall include, if the context so permits, its agents or sub-contractors; "Supplier" means Walker Filtration Pty Ltd, ABN 27 066 425 125 or any Related Body Corporate; "Purchase Order" means an order placed on Supplier by Customer; "Product" means a product owned by Customer to be the subject of a Service; "Purchase Price" means the price to be paid by Customer to Supplier for the Goods and/or Services. "Goods" means products, consumable materials, equipment, equipment components, spare parts, software and other goods and materials supplied by Supplier to Customer (including any exchanged products supplied by Supplier as part of providing Services); "Services" means any services supplied by Supplier to Customer; and "Service Exchange" means the exchange of a product shipped by Customer to Supplier with a new or refurbished Good of the same type.

1.2 These Conditions apply to and are deemed to be incorporated in all contracts for Goods and Services and, save where Supplier and Customer have both agreed to specific terms as identified in the accepted Purchase Order, shall apply to and prevail over all conditions endorsed on, delivered with or contained in Customer's purchase terms, or any Purchase Order, or other documentation. All Purchase Orders are subject to acceptance by Supplier.

1.3 Once accepted, the Supplier's Quote, the Purchase Order and these Conditions shall constitute the contract ("Contract") between Customer and Supplier for the Supply and shall constitute the entire agreement between the Customer and Supplier in relation to the Supply. Save as set out in this Contract, all warranties, terms, conditions implied by statute, common law or otherwise are, to the extent permitted by law, excluded from this Contract.

1.4 Notwithstanding any other clause or provision, any provision of Goods ordered and/or commencement of Services by the Supplier is done so, strictly in accordance with these Conditions and the Contract and any terms and conditions supplied or communicated by the Customer are expressly rejected. This applies even if there is wording in any of the Customer's terms, conditions or communications that provide that the Supplier is deemed to have accepted such terms or conditions if the Supplier does an act, such as (but not limited to) providing goods, accepting an order, or accepting payment, and the Supplier performs such act.

## **2. PRICE QUOTATIONS**

2.1 Prices quoted for (a) standard Goods and Services remain valid for 30 days unless otherwise specified; and (b) non-standard Goods and Services are estimates and may be increased in the event of increases in Supplier's costs to produce and supply the non-standard Goods and Services including but not limited to: (i) increases in the cost of labour and materials; (ii) change in regulatory requirements concerning hazardous materials; and / or (iii) increases to handling, delivery and shipping costs. Supplier will promptly notify the Customer upon becoming aware of any increase in the estimated Purchase Price for non-standard Goods and Services as a result of increases in Supplier's costs as contemplated by this Condition.

2.2 Prices quoted are exclusive of all applicable taxes, including but not limited to, any goods and services tax, excise, and/or use taxes, levies and duties of any nature whatsoever ("Taxes") applicable to the Goods and Services. The Supplier is entitled to increase the amount payable by the Customer by all Taxes unless Customer provides Supplier with an exemption certificate for a Tax acceptable to the relevant taxing authority.

## **3. INSPECTION AND TESTING**

3.1 All Goods are inspected by Supplier before supply to Customer and tested where appropriate.

3.2 An additional charge will be made for tests or trial runs carried out at Customer's request. In the event that Customer does not attend such tests, after 14 days' notice Supplier will perform the tests and the Goods will be deemed accepted in Customer's absence.

## **4. SUPPLY AND TRANSPORT**

4.1 Supplier will use reasonable efforts to supply Goods and Services within the time requested in the Purchase Order and, in any event, within a reasonable period.

4.2 Unless otherwise agreed in writing all shipments shall be made FCA (Incoterms 2010) Supplier's production and/or distribution facilities and/or repair centres. Unless other delivery arrangements are agreed, Supplier may, at Customer's request and expense, arrange carriage and insure Goods against normal transit risks to the value of the

Purchase Price. Risk of damage to or loss of Goods shall pass to Customer on Supplier's delivery of the Goods to the carrier. Should Customer carry out the transport of the Goods, Customer shall have in place all adequate transit insurance with insurers of good reputation to the value of the Purchase Price, and Customer shall ensure that Supplier is noted as additional insured on this insurance. Risk of damage to or loss of Goods shall pass to Customer in accordance with the agreed terms and Customer will be responsible for paying the Purchase Price and shall indemnify the Supplier against any other loss or costs suffered by the Supplier arising from the loss or damage to the Goods.

4.3 Customer shall take delivery of the Goods in accordance with the delivery date specified in the Contract or at the latest 5 days from Supplier's notification that the Goods are ready for delivery, whichever is the latest (the "Delivery Date"). Customer will supply Supplier with delivery instructions promptly on notification to Customer that Goods are ready for shipment.

4.4 Customer's obligation to take delivery of the Goods as provided in this Contract constitutes a material obligation of Customer.

4.5 Where the Goods to be supplied are new, Customer may request a deferral of the Delivery Date provided this request is in writing and made at the latest 6 weeks prior to the due date of shipment. Supplier may accept or refuse, at its sole discretion, a request for deferral. Notwithstanding any other remedies available under these Conditions, should deferral of delivery be for a period longer than 14 days from the Delivery Date, Supplier shall be entitled to charge Customer compensation amounting to at least 2% of the Purchase Price per month of delay, to be paid by Customer within 30 days of issuance of the corresponding invoice. Deferral of the Delivery Date shall not in any case be for longer than 3 months from the initial Delivery Date. Without prejudice to Condition 12, at the expiry of the 3-month period Supplier shall be entitled to make arrangements for storage of the Goods at a place of its choice at Customer's expense. In such case, Supplier's obligation to deliver the Goods will be deemed satisfied and Customer will be responsible for the risk of loss of, or damage to, the Goods, and for paying the Purchase Price.

4.6 Where the Goods to be supplied are not new, or where Supplier is to return a Product after it is serviced, Customer will supply Supplier with delivery instructions promptly on notification to Customer that the Good or Product is ready for shipment. Should shipment or collection be postponed for more than 14 days after such notification: (i) Supplier shall be entitled to make arrangements for storage of the Good or Product at Customer's risk and expense at a place of its choice, (ii) Supplier may charge Customer compensation at the rate of 2% of the Purchase Price per 14-day period or part thereof from the date of such notification and Customer shall pay such amount within 30 days of invoice, and (iii) Supplier's obligation to deliver the Goods or Product will be deemed satisfied and Customer will become responsible for the risk of loss of or damage to the Goods or Product and for paying the Purchase Price.

4.7 In the case of Service Exchange, Customer must ship at its cost the product to be exchanged to Supplier within thirty (30) days of the date of the relevant Purchase Order. Should Customer not comply with this obligation (i) Supplier may charge a non-return compensation which shall be calculated at the rate of two per cent (2%) of the Purchase Price of the original product to be exchanged for each 14 day-period during which Supplier has not received the product to be returned, with the non-return compensation being payable within thirty (30) days of the date of invoice by Supplier and (ii) should delay in returning the product exceed 3 months from the date of the relevant Purchase Order, Supplier shall be entitled to terminate the Purchase Order or that part of the Purchase Order related to the Service Exchange. When the replacement product has been supplied by Supplier and the product to be returned has not been received by Supplier, Customer shall pay the price which would be due against the supply of a new Good of equivalent specification, less any amount already paid towards the Service Exchange. Customer shall pay within 30 days of the date of invoice.

4.8 The parties agree that compensation and other expenses payable under the Conditions above are a genuine pre-estimate of the costs and losses which Supplier would suffer from Customer not taking delivery of the Goods and/or for non-return of exchange product on the Delivery Date.

4.9 If any of the Conditions above are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Supplier to stated compensation, the Supplier shall be entitled to claim against the Customer damages at Law for the Customer's failure to comply with the relevant conditions.

4.10 The payment of the stated compensation does not in any way relieve the Customer from any of its obligations and liabilities of the Customer under the Contract.

4.11 In cases where a Product is received by Supplier in respect of which no Purchase Order, or other written authority, is given to Supplier to carry out Services within 60 days of receipt by Supplier, Supplier may, at its option, either return the Product to Customer or dispose of the Product as Supplier thinks fit and Supplier may charge Customer for, and Customer agrees to pay, all storage, return and/or disposal costs.

4.12 Customer shall ensure and warrant that it shall comply with any applicable export or import laws, regulations or guidance and that it shall not import, export or re-export, directly or indirectly, the Goods, or other item related to the Goods, in or to (1) any country subject to an embargo or applicable sanctions measures under the laws of any country or under any international laws, including, but not limited to, measures imposed targeting the following countries or designated parties connected with the following countries Cuba, Iran, North Korea, Sudan and Syria and/or (2) any country for which an import or export/re-export licence or approval or certificate is required, without obtaining such licence or approval or certificate prior to importing or (re)exporting. Customer shall attach to all Purchase Orders the necessary information to permit Supplier to commence its work, together with any import licence and/or permits or certificates, which may be necessary. Supplier shall not be liable for delay in delivery or non-delivery of the Goods or any associated item due to (1) any restriction on the import or export of the Goods or any associated items, or (2) non-compliance by Customer with this Condition or with the law or (3) delay or refusal of export or import licence or approval by any relevant authority. Supplier may request, and if so Customer shall provide, in advance and as a condition of delivery, a signed statement providing information related to the use of the Goods and any associated items and/or the full identity of the end-user or any intermediary in the transaction. Notwithstanding any other provision of the Contract, Supplier shall be entitled to terminate the Contract with immediate effect and without liability if it has reasonable grounds to suspect that Customer has breached or intends to breach this Condition.

4.13 Goods will be supplied and paid for as available unless Customer specifically requests "one consignment". Each shipment shall be considered a separate and independent transaction. Supplier may suspend shipment of any unfulfilled Contract between the parties in the event of any act or omission on the part of Customer or if Customer is in material breach of Customer's obligations under the Contract.

4.14 All Goods and Services supplied in accordance with the Contract will be deemed accepted unless Customer promptly notifies Supplier in writing that the Goods or Services are not in compliance with the Contract. Any damaged Goods and packaging must be kept for inspection by Supplier.

4.15 Supplier may modify the specification of Goods without notice provided that the modification does not materially affect the performance, form or fit of the affected Goods.

4.16 Services, installation and commissioning are not included in the Purchase Price for the Goods, unless it is agreed, in writing, otherwise.

4.17 Customer shall be responsible for de-installing, de-commissioning and shipment of any Product in all circumstances. Before shipping, Supplier shall notify Customer of any issues making such Product unsuitable for the performance of Services.

## **5. PAYMENT**

5.1 All amounts are stated and payments are to be made in Australian dollars unless otherwise agreed in writing. If Customer specifies a different currency, Supplier reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the relevant currency and Australian dollars arising between the time of quotation and acceptance of the Purchase Order.

5.2 Full payment, without any deduction whatsoever, must be made to Supplier within 30 days of the end of the month of invoice, unless otherwise agreed in writing. Invoices will normally be issued on the date of delivery of the Goods (or the date of deemed delivery) or completion of the Services. Any invoice disputes must be raised by Customer within 15 days from date of invoice, or the invoice shall be considered to be accepted by Customer. Time for payment shall be of the essence.

5.3 All Purchase Orders are subject to credit approval before shipment. If, in Supplier's judgement, Customer's financial condition does not at any time justify payment terms as previously specified, Supplier may cancel or suspend any unfulfilled Contract. Supplier may require Customer to furnish Supplier with a confirmed irrevocable letter of credit drawn on a bank acceptable to Supplier.

5.4 If any payment is overdue, Supplier shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Customer without notice and/or to charge interest on any amount overdue, at the rate of 1.5% per month or such lesser rate as advised by the Supplier, calculated daily.

5.5 Any sum due by the Customer may be offset by the Supplier (at the Supplier's sole discretion) against any sums due by Supplier to Customer under the Contract or any other contract between Customer and Supplier.

## **6. RETENTION OF TITLE**

6.1 Subject to Condition 6.2, and notwithstanding any other Conditions in this Contract, Goods shall remain Supplier's property until Customer has made full and unconditional payment to Supplier of all sums due to it in respect of the Goods

6.2 Title to Product remains with Customer unless it becomes the subject of Service Exchange in which case title passes to Supplier upon receipt of the Product at the Supplier service centre.

6.3 Any consignment stock, inventory or materials held at Customer's site and owned by Customer for the use of Supplier in carrying out the Services shall be at the risk of the Customer.

6.4 Until payment in full by Customer, Goods shall be held by Customer as bailee for Supplier and will be kept, unaltered and in good condition (at no cost to Supplier) separately from all other goods of Customer or any third party in such a way that they remain readily identifiable as Supplier's property.

6.5 If payment becomes overdue, or on the occurrence of any termination event referred to in Condition 12 below, Supplier may, where permitted by law, and after giving notice to Customer, enter upon any premises where Supplier reasonably believes Goods to be, or otherwise take action, to recover Goods.

6.6 From delivery and prior to full payment of the Purchase Price, Customer shall maintain the Goods in satisfactory condition and keep them insured under adequate insurance policies with insurers of good reputation, covering the Purchase Price.

6.7 In addition to any lien to which the Supplier may, by statute or otherwise, be entitled, the Supplier shall in the event of the Customer's insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to the Customer in the Supplier's possession (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered to the Customer under this or any other contract.

## **7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

7.1 Supplier shall retain all right, title and interest in and to, and possession of, any know-how, technical information, plans, drawings, specifications or documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Supplier, whether before or after this Contract has been entered into, and supplied by Supplier under any Contract. All such information shall be kept confidential by Customer and shall not be disclosed to any third party unless, and until the same is, or becomes public knowledge, nor shall any such information be used by Customer for any purpose, other than for the purpose of using any Goods supplied under the Contract, without Supplier's prior written consent.

7.2 Ownership is retained by Supplier of any patent, copyright, trade secret, design right or other intellectual property right in or relating to the Supply and Customer shall acquire no rights in or over such intellectual property rights save as expressly set out herein including, but not limited to, any technical information, know-how, drawings and specifications supplied by Supplier or relating to the Supply.

7.3 Supplier's trademarks and names and those of its associated companies shall not be used by Customer otherwise than as applied by Supplier to Goods, Services or associated documentation.

## **8. WARRANTY**

8.1 In respect of supply of Goods comprising equipment and related components, spares and parts:

A. Supplier hereby undertakes to repair or replace at Supplier's option, or to arrange repair or replacement by Supplier's representative of, any Goods supplied to Customer if a defect in materials or workmanship arises under conditions of normal and proper use and maintenance (fair wear and tear, and consumables excepted) provided that (i) the Goods were purchased and used for a purpose for which they were suitable; (ii) the Goods were operated and maintained in accordance with the operating instructions; (iii) unless otherwise agreed by Supplier in writing, the defect occurs within 12 months from the date of shipment of the Goods; and (iv) Condition 8.3 is satisfied.

B. Any repaired or replaced Goods (including Goods the subject of Service Exchange) will continue to be warranted for the unexpired period of the warranty referred to in Condition 8.1 A above.

C. Supplier may charge Customer for the cost of shipping Goods to and from a Supplier service centre if the Goods to be repaired or replaced are located in a country in which Supplier does not have a service centre.

D. The warranty under this Condition does not cover the costs of installation or removal of the Goods to be repaired or replaced which shall be at Customer's cost.

#### 8.2 In respect of supply of Services:

A. Supplier warrants that Services shall be performed in a workmanlike manner using reasonable skill and care and in accordance with Supplier's service policy and practice. Unless otherwise agreed in advance, Supplier shall provide such Services, including repair and replacement, as are in Supplier's reasonable opinion necessary in order to provide the Service.

B. If subsequent to the performance of Services failure or breakdown (fair wear and tear and consumables excepted) occurs: (a) during the warranty period notified to Customer at the time the Services are performed (or if no such period is notified to Customer, and unless otherwise agreed, within 90 days of the date that the Services are completed); (b) during normal usage; and (c) shown by Customer to Supplier's reasonable satisfaction (after a reasonable opportunity for Supplier to inspect the allegedly defective Services and to review documentation pertinent to the failure or breakdown) to have been caused by Supplier's failure to perform the Services in accordance with this Condition, Supplier, at its option, shall correct or re-perform the Service or replace the serviced Product or refund the cost of the Services; provided that: (i) the failure or breakdown was not caused, or contributed to, by Customer's act or omission, breach of contract, negligence, process reactions, excessive process build ups or accidents or by Customer's failure to observe Supplier's recommended maintenance schedules and activities; and (ii) Condition 8.3 is satisfied. For the avoidance of doubt any components of a Product not replaced in the course of the Product being serviced will not be covered by the Service warranty on the Product.

C. Customer is responsible for shipping Products to the designated Supplier service centre at Customer's risk and cost. Supplier may charge Customer for the cost of shipping Product from a Supplier service centre back to Customer if the Product is located in a country in which Supplier does not have a service centre. If Customer requires a more expensive method of freight than Supplier's standard shipping then the extra cost shall be paid by the Customer.

D. The Warranty under this Condition does not cover the costs of installation or removal of the Product which shall be at Customer's cost.

E. Except as expressly warranted above, Services are provided "as is" and Customer assumes the entire risk as to the results of the Services. Nothing stated in these Conditions implies that the operation of any serviced Product will be uninterrupted or error-free or that errors will be corrected. Other written or oral statements by Supplier, its representatives, or others do not constitute warranties of Supplier.

8.3 The following provisions must be satisfied in respect of all claims under Conditions 8.1 and 8.2: a) the claim must first be notified promptly in writing to Supplier using the contact details on the Purchase Order or otherwise advised; b) the Goods or any Product must not have been repaired or modified by anyone other than Supplier or at Supplier's direction; c) in the case of equipment and related components, spares and parts not of Supplier's own manufacture, unless otherwise required by law, Supplier's responsibility shall be limited to passing on to Customer the benefit of any guarantee or warranty given to Supplier by the manufacturer of such Goods or part; d) in the case of a replacement, Customer returns at its cost the defective Goods to Supplier within 10 days of delivery of the replacement Goods by Supplier; e) the defect does not arise from Customer's specification or instructions; and g) Customer has paid the Purchase Price in full or paid in accordance with agreed payment schedule.

8.4 Supplier may satisfy Supplier's liability under this Condition 8 by reducing the Purchase Price or refunding the Purchase Price and retaking the Goods or issuing a credit note.

8.5 Except as expressly warranted above, to the extent permitted by law, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded.

8.6 If this condition 8 forms part of a "warranty against defects" pursuant to the Australian Consumer Law contained in the Competition and Consumer Act 2010 (Cth): (i) Customer is advised that the benefits given by the warranties are in addition to other rights and remedies of Customer under a law in relation to the Goods or Services to which the warranty relates and (ii) Supplier makes the following statement:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

#### 9. LIABILITY AND INDEMNIFICATION

9.1 To the extent permitted by law and subject to Condition 8, the following provisions set out the entire liability of Supplier (including any liability for the acts or omissions of its employees, agents, or subcontractors) to Customer in respect of: (a) any breach of these Conditions and/or the Contract; or (b) any representation, statement or tortious act or omission, including negligence, arising under or in connection with these Conditions.

9.2 Nothing in these Conditions excludes or limits the liability of Supplier for: (a) death or personal injury caused by Supplier's negligence or (b) fraud or fraudulent misrepresentation or (c) any other liability that cannot be excluded or limited by law and the Contract should be read as subject to such restrictions on exclusions and limitations.

9.3 Subject to Conditions 9.2 and 9.4, notwithstanding any other provision in this Contract to the contrary, the Supplier's total liability under this Contract, however caused, whether in contract, tort (including negligence), under any statute or otherwise, arising from or related in any way to this Contract (including, to avoid doubt, arising from or related in any way to the Goods) is limited in aggregate for any and all claims to AUD 100% of the Purchase Price, or the actual amount received by the Supplier from the Customer in connection with this Contract at the time of the claim, whichever is the lesser. To avoid doubt, the cap in this Condition 9.3: (i) applies in all cases; (ii) applies to loss or damage of any kind; and (iii) applies to any amounts that the Supplier is required to pay to the Customer (or to reimburse the Customer for).

9.4 Supplier shall not be liable to Customer for pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of anticipated savings, injury to reputation, loss of revenue, interruption of production, loss of production costs, additional or wasted costs, any damages claimed to Customer by third parties, or like risks, in each case whether direct, indirect or consequential, and whether or not foreseeable at the date of the Contract or otherwise any claims for any indirect or consequential loss or compensation whatsoever (howsoever caused) which arise out of, or in connection with the Contract.

9.5 If Customer fails to perform any of its obligations pursuant to these Conditions, Customer shall pay Supplier all costs and expenses incurred by Supplier, including all attorney's fees, in enforcing Supplier's rights relating to such obligation, whether by formal proceedings or otherwise, in addition to any other remedy available to Supplier.

9.6 Save as provided in this Condition, Supplier shall have no liability in contract, tort (including negligence), misrepresentation, restitution, or otherwise arising as a result of the performance or contemplated performance of the Contract.

9.7 Customer will indemnify and keep indemnified Supplier from and against any costs, claims, demands, liabilities, damages or losses and all interest, penalties and legal and other professional costs and expenses (including legal fees and disbursements on a full indemnity basis to the extent that the Customer has caused such costs) arising out of or in connection with Customer's use of Goods or Customer supplying Goods to any party who is not a party to these Conditions and the Goods' subsequent use. This indemnity shall cover (but is not limited to) Supplier's liability to third parties arising out of the use or sale of the Goods, except to the extent caused by Supplier's negligence or falling within liability expressly assumed by Supplier under these Conditions.

9.8 Despite Condition 8, if Supplier fails to comply with a non-excludable guarantee under the Australian Consumer Law, to the extent permitted by law, Supplier limits its liability for that failure:

- A. in the case of Goods, at Supplier's option to:
- (a) the replacement of the Goods or the supply of equivalent goods; (b) the repair of the Goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (d) the payment of the cost of having the Goods repaired; and

B. in the case of Services, at Supplier's option to: (a) supplying the Services again; or (b) payment of the cost of having the Services supplied again.

#### **10. FORCE MAJEURE**

10.1 Neither Customer nor Supplier shall be liable for failures in performance, including delay or non-shipment, resulting from any acts, omissions or failures, if that act, omission or failure results directly from an event or circumstance beyond its reasonable control.

10.2 In the event of such delay, the date of shipment or performance shall, at the request of the non-performing party, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

#### **11. CANCELLATION**

11.1 Customer may request a cancellation of the Contract to the extent it relates to the sale of Goods, provided such request is given in writing and at the latest six (6) weeks prior to the due date of shipment and the Goods are standard Goods. Supplier may accept or refuse, at its sole discretion, a request for cancellation in other circumstances. Without prejudice to any other rights Supplier may have, upon cancellation Customer shall pay Supplier compensation equivalent to 20% of the Purchase Price for standard Goods and in the event the Supplier accepts a request for the cancellation of a non-standard Good, 30% of the Purchase Price for non-standard Goods, within thirty (30) days from issuance of the corresponding invoice.

11.2 Unless agreed otherwise in writing by Supplier, should Customer cancel any Contract to the extent it relates to the sale of Services, Customer shall pay to Supplier the costs of all work done and materials purchased or provided in connection with the Services up to the time of cancellation, plus compensation for all costs and losses equivalent to 15% of the Purchase Price. For the avoidance of doubt, in the event that fees for the Services have been amortised, the Supplier will assess the costs of all work done and materials purchased or provided in connection with the Services against the amortised fees already paid by the Customer to evaluate whether there is any shortfall in the fees payable for the Services provided against the periodic fees already paid by the Customer. 11.3 The parties agree that such sums payable to Supplier under this Condition are a genuine pre-estimate of the costs and losses which Supplier would suffer from Customer cancelling all or part of the Contract

11.4 If the terms on this Condition are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Supplier to the stated compensation, the Supplier shall be entitled to claim against the Customer damages at Law for the Customer's cancellation of part of all of the Contract.

11.5 The payment of the stated damages does not in any way relieve the Customer from any of its other obligations and liabilities of the Contractor under the Contract.

#### **12. TERMINATION**

12.1 If Customer is subject to any act of bankruptcy or, being a company, has a receiver appointed or an administration order made against it or goes into liquidation or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Supplier under the Contract shall immediately become due and payable and Supplier may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice.

12.2 Supplier may terminate the Contract with immediate effect in the event of a failure by Customer to comply with any material provision of these Conditions if the failure continues for more than 14 days after Customer has been given written notice of such failure.

12.3 If Customer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Supplier shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to dispose of the Goods, and to charge Customer a compensation of 20% of the Purchase Price (standard goods) or 30% of the Purchase Price (non-standard goods), to be paid by Customer within 30 days of issuance of the corresponding invoice. The parties agree that such sums payable to Supplier under this Condition are a genuine pre-estimate of the costs and losses which Supplier would suffer from Customer not taking delivery of the Goods.

12.4 Termination shall be without prejudice to any prior right of either party or any provisions (including but not limited to Conditions 5, 6, 7 and 9) which by nature shall survive termination.

12.5 If the terms of Condition 12.3 are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Supplier to the stated compensation, the Supplier shall be entitled to claim against the

Customer damages at Law for the Customer's failure to collect or take delivery of any Goods or Products of the Contract.

12.6 The payment of the stated compensation does not in any way relieve the Customer from any of its other obligations and liabilities of the Contractor under the Contract.

#### **13. CUSTOMER'S DUTIES AND RESPONSIBILITIES WHEN GOODS OR SERVICES ARE PROVIDED**

13.1 All Products and environments (whether at Supplier's or Customer's or Customer's customer's premises) must be free from risks to health and safety (save to the extent notified to, and specifically accepted by, Supplier in writing). Supplier may decline, without incurring any liability, to service any Product, or work in any environment in which, in Supplier's opinion, the risks to health and safety are not managed satisfactorily by Customer.

13.2 Customer will permit Supplier prior to commencement of any Services to assess the condition of the Products and the working environment. Supplier shall be under no obligation to service any Product which, in Supplier's reasonable opinion, has been used in a way or for a purpose for which it was not suitable, has not been operated and maintained in accordance with the manufacturer's operating instructions, is too old or in too poor a condition to be serviced economically or is in any way unsafe.

Supplier shall have the right and Customer shall provide all necessary access and cooperation to enable Supplier to carry out a risk assessment.

13.3 Customer will provide Supplier with all available operating documentation, drawings, test certificates and maintenance inspection reports relating to any Product.

13.4 Customer will indemnify and hold Supplier harmless against any loss, claim or damage suffered by Supplier or its employees, agents or sub-contractors suffered on the Customer's site or Customer's customer's site except to the extent caused by Supplier's own negligence.

13.5 The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify The Supplier from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against the Supplier.

13.6 The Customer warrants to the Supplier that it is purchasing Goods as the principal and not as an agent.

13.7 The Customer acknowledges that the Goods contain disposable or replaceable parts including filter elements which will need replacing from time to time according to use. The life of any such parts and in particular any filter elements will depend on a large number of variable conditions and no guarantee can be given for their life.

13.8 Any Goods supplied by the Supplier are complete with instructions for installation and use. The Customer agrees that the Goods will be installed and used in accordance with those instructions by suitably trained personnel. The Supplier will assist the Customer or any ultimate user with further information relating to installation or use upon request.

#### **14. PPSA**

14.1 The Customer grants the Supplier a Security Interest in any goods supplied (otherwise referred to as the Goods) as Commercial Property, more particularly described as Other Goods (a relevant sub-classification of collateral described in the regulations pursuant to section 20(4) of the PPSA) and their Proceeds to secure the obligation the Customer to pay the purchase price of the goods and any other obligations of the Customer to the Supplier under this contract (together the "Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all of the Customer's present and after acquired property, of which the goods form part, to the extent required to secured the Indebtedness.

14.2 As and when required by the Supplier, the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable the Supplier to register a Financing Statement or a Financing Change Statement and generally to obtain, maintain, register and enforce the Supplier's Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 2009 ("PPSA").

14.3 The Customer shall not change its name without first notifying the Supplier of the new name not less than 7 days before the change takes effect.

14.4 The Customer warrants that the goods are not purchased for personal, domestic or household purposes.

14.5 Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by the Supplier in the following order:

- A. To any obligation owed by the Customer to the Supplier, which is unsecured, in the order in which the obligations were incurred;
- B. To any obligations that are secured, but not by a Purchase Money Security Interest, in the order in which those obligations were incurred;
- C. To obligations that are secured by a Purchase Money Security Interest, in the order in which those obligations were incurred.

14.6 Until the Customer has paid all money owing to the Supplier, the Customer shall at all times ensure that:

- A. All goods supplied by the Supplier, while in the Customer's possession, can be readily identified and distinguished, and/or
- B. All Proceeds (in whatever form) that the Customer received from the sale of any of the goods are readily identifiable and traceable.

14.7 Where the goods are purchased by the Customer and held as Inventory, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Otherwise until the Customer has paid all money owing to the Supplier, the Customer shall not sell or grant a Security Interest in the goods without the Supplier's written consent.

14.8 The parties agree to opt out of the PPSA in accordance with Section 115 of the PPSA to the extent that Section 115 applies for the benefit of, and does not impose a burden on, the Supplier, including but not limited to PPSA Sections 95, 130, 132(3)(d), 132(4), 135 and 143. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of the Supplier in respect of the Security Interest created by these terms and conditions.

14.9 The Supplier is irrevocably authorised to enter any premises where the goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods and seize the Goods in accordance with the Act without liability for trespass or any resulting damage.

14.10 For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of the PPSA.

#### **15. MISCELLANEOUS**

15.1 Customer may neither assign, novate nor otherwise transfer nor deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Supplier.

15.2 Save as expressly provided, no term or provision of these Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

15.3 No waiver by either party of any breach of any of these Conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.

15.4 In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of these Conditions shall remain in full force and effect to the fullest extent permitted by applicable law.

15.5 Nothing contained in these Conditions shall be deemed to require Supplier to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Supplier's failure to take any such action shall not be deemed a breach hereunder.

15.6 All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of Goods (whether in catalogues or advertisements or accompanying or referred to in the Contract) are stated by Supplier in good faith based on Supplier's experience as being correct within acceptable tolerances but are not binding in detail and do not form part of the Contract unless specifically stated to do so. Unless agreed otherwise in writing, it is Customer's responsibility to ensure that Goods are sufficient and suitable for Customer's purposes.

15.7 Customer hereby acknowledges that relevant safety and training literature relating to the Goods and Services will be supplied by Supplier to Customer free of charge and may be photocopied by Customer or copied electronically as required. Customer shall be fully responsible for the implementation of the contents of all safety and training literature provided by Supplier. Customer shall ensure persons who use, maintain or otherwise handle Goods or receive Services receive adequate safety and training literature.

15.8 Customer shall comply at all times with Supplier's code of practice which can be found at <https://www.atlascopco.com/en-au/group/our-business-code-of-practice> and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time (the "Requirements"), and Customer shall have in place and shall maintain at all times its own policies and procedures to ensure compliance with the Requirements by Customer's employees, officers, representatives, subcontractors and customers and shall enforce them where appropriate. Supplier shall be entitled to terminate the Contract immediately upon written notice to Customer if Customer or any person employed by it or acting on its behalf commits or may be deemed or is suspected to have committed or intends to commit a breach of the Requirements. If Customer suspects or knows that there is any breach or intended breach of the Requirements by Customer or any person employed by it or acting on its behalf, Customer will notify Supplier immediately.

15.9 In the interpretation of the Contract, no rule of contract interpretation applies to the disadvantage of one party on the basis that it put forward the relevant conditions, the Contract, or any part of it.

#### **16. GOVERNING LAW AND DISPUTE RESOLUTION**

16.1 The Contract and any claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of Victoria, Australia.

16.2 Customer and Supplier agree that the courts of Victoria, Australia shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.

16.3 Supplier shall have the option to bring suit before the Courts of the domicile of Customer when the claim is for or related to payments due from Customer.

#### **17. Privacy Act 1988 ("Privacy Act")**

To enable the Supplier to assess the Customer's application for credit, the Customer authorises, the Supplier:

17.1 To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1) of the Privacy Act; and

17.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities, and

17.3 To give to a credit reporting agency information including identity particulars and application details

AND in accordance with Section 18N(1) of the Privacy Act the Customer authorises the Supplier to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

The Customer understands that information can be used for the purposes of assessing its application for credit (Section 18L(4) Privacy Act), assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.