

THESE TERMS AND CONDITIONS GOVERN THE SUPPLY OF GOODS AND SERVICES BY FILTEC TO THE CUSTOMER, AS FURTHER DESCRIBED BELOW.

1. DEFINITIONS

In these Terms and Conditions capitalised terms have the meaning given to them in context, or otherwise as set out below:

Agreement means these Terms and Conditions, including any annexure, read together with each Purchase Order.

Australian Consumer Law means the law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Customer means any person Filtec supplies with Goods and/or Services. The Customer may be identified in a Purchase Order, Customer Credit Application or any other document or agreement between the parties.

Customer Credit Application means any agreement between Filtec and the Customer that provides for the supply of the Goods and/or Services on credit, and any other document executed by the Customer or its agent, representative, officer, or director in connection with that agreement.

Customer Background IP means any information, data or other item or thing which the Customer provides to Filtec for inclusion as part of any Works or for Filtec to evaluate when producing any Works.

Commencement Date means the date on which a Customer Credit Application is executed or the date on which the first Purchase Order is agreed between the parties, whichever is earlier.

Defect means, as the context requires: (a) a failure to deliver Goods or Services in accordance with the requirements of a Purchase Order; or (b) a defect or error in the Goods or Services that means they do not comply with a Purchase Order or any Warranty because of faulty material or workmanship, but does not include anything disclosed by Filtec as a feature or limitation of the Goods or Services prior to acceptance of a Purchase Order, or anything trivial, insubstantial, or otherwise caused by the Customer.

Event of Default means a party: is unable to pay its debts when they are due; is bankrupt or insolvent; has a receiver, administrator, official manager or liquidator or any similar official appointed over it or any of its assets; has an order or resolution passed for its winding up, bankruptcy or dissolution; ceases to trade or exist, or is subject to any similar event.

Fees means the fees and charges payable by the Customer under this Agreement or the Customer Credit Application including but not limited to the fees and charges set out in any Purchase Order.

Filtec means Filtec International Pty Limited (ACN 621 132 394).

Goods means any goods or Works agreed to be supplied by Filtec to the Customer from time to time, as described in a Purchase Order.

GST has the meaning given in the GST Law.

GST Law means *A New Tax System (Goods and Goods Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights whatsoever throughout the world including, without limitation, all present, future, registered and unregistered rights which subsist in copyright, trademarks, patents, designs and circuit layouts.

PPSA means the *Personal Properties Securities Act 2009* (Cth).

Purchase Order means any document agreed between the parties in writing which describes the Goods and/or Services to be supplied by Filtec and the Fees to be paid by the Customer as consideration for those Goods and/or Services and may (without limitation) be in the form of an invoice or quote provided by Filtec and accepted by the Customer, or emails exchanged between the parties.

Services means, generally, any services provided by Filtec to or on behalf of the Customer under these Terms and Conditions and, specifically, the services described in a Purchase Order.

Service Request means a written request for delivery of specific Goods or Services.

Special Condition means any special condition agreed in writing between the parties under a Purchase Order, which is intended to modify or override a provision of these Terms and Conditions.

Term means, in respect of a Purchase Order, the period from the acceptance of that Purchase Order to its completion or termination in accordance with this Agreement and, in respect of this Agreement, the period from the Commencement Date to termination under clause 10.

Warranty means any warranty provided by Filtec in relation to any Goods or Services.

Warranty Conditions means any terms and conditions which Filtec imposes in relation to a Warranty (in addition to those imposed hereunder).

Warranty Period means the warranty period which Filtec specifies from time to time which applies to a Warranty.

Works means any designs, recommendations, advices or other items or things created or delivered by Filtec to the Customer as part of the Services.

2. APPOINTMENT

2.1 The Customer appoints Filtec to provide the Goods and Services during the Term. Subject to payment of the Fees, Filtec agrees to provide the Goods and Services in accordance with this Agreement.

2.2 The particulars of the Goods and Services that Filtec will provide are as described in a Purchase Order. The parties may have any number of Purchase Orders in place at the same time, and each Purchase Order will be read together with these Terms and Conditions, together forming this Agreement. A Purchase Order will take effect when agreed in writing by the parties, or when submitted by the Customer to Filtec and accepted in writing by Filtec. The Customer agrees that Filtec may refuse to agree to a Purchase Order and may refuse to provide any requested Goods or Services for any reason whatsoever.

2.3 The Customer may raise a Service Request with Filtec to request the supply of specific Goods and/or Services contemplated by a Purchase Order at any time during the term of that Purchase Order. A Service Request will not be binding until accepted in writing by Filtec. Filtec will respond to a Service Request promptly and in accordance with any time frame otherwise agreed between the parties.

2.4 The Customer acknowledges and agrees that the appointment is non-exclusive and that Filtec may be engaged by other Customers to provide goods or services (including goods or services similar to the Goods and Services) during the period of the appointment.

3. PAYMENT

3.1 Where Filtec supplies the Goods to the Customer under a Customer Credit Application, Filtec will invoice the Customer on a calendar monthly basis for the sale of all Goods and Services for the calendar month. All Fees so invoiced must be paid by the Customer by 30 calendar days after the invoice date.

3.2 Where Filtec does not supply the Goods to the Customer under a Customer Credit Application, or terminates any Customer Credit Application then in force, the Customer agrees to pay Filtec the Fees by the due date and method specified in any invoice (or within 14 days of the date of any invoice if no due date is specified), or in accordance with any payment terms otherwise agreed in a Purchase Order. Where up-front payment is required by Filtec, Filtec may (in its sole discretion) elect not to commence production of or provide the Goods or Services until payment in full is received and will not be liable for any resulting delay or loss or damage to any person.

3.3 Filtec may incur expenses that are directly attributable to providing the Services (including without limitation travel, accommodation, equipment or other administrative expenses) (**Expenses**). If the Fees are agreed in the Purchase Order to exclude Expenses, the Client agrees to pay all properly incurred Expenses, provided that individual Expense items over \$1,000 are approved by the Client prior to being incurred.

3.4 The Customer agrees to provide Filtec with all necessary information to enable the issuing of an invoice and/or taking of payment, and to inform Filtec promptly of any change to that information.

- 3.5 Filtec may increase the Fees or alter or terminate a Customer's credit limit from time to time on notice to the Customer (**Fee Notice**). The Fee Notice will apply to future Purchase Orders provided by the Customer. Filtec may specify that a Fee Notice applies to an existing Purchase Order, however where this occurs, the Customer will have 30 days from the date of any Fee Notice to provide Filtec with written notice terminating the affected Purchase Order. A failure by the Customer to terminate a Purchase Order in accordance with the foregoing will be deemed as acceptance of the increased Fees or altered credit facility.
- 3.6 The Customer agrees that all Fees not paid in full on the due date are debts due and payable immediately. The Customer agrees to pay all of Filtec's costs of recovering such debts on a full indemnity basis (which may include debt collection or legal fees). Filtec reserves the right to charge, and the Customer agrees to pay, interest on any overdue debt owed by the Customer under this Agreement, at a rate of 2% above the Commonwealth Bank of Australia's commercial lending rate at the time of charging.
- 4. GST**
- 4.1 Except where this Agreement states otherwise, each amount payable by a party under this Agreement in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount, and at the same time, pay to the supplier the GST payable in respect of the supply.
- 4.2 A party's obligation to pay an amount under this clause 4 is subject to a valid tax invoice being delivered by the other party.
- 4.3 Terms used in this clause 4 have the same meaning as under the GST Law.
- 5. TITLE AND RISK**
- 5.1 Risk in the Goods will pass to the Customer on delivery unless otherwise agreed in writing between the parties.
- 5.2 Title in the Goods will remain with Filtec and pass to the Customer only on payment of the Fees, as well as all other amounts owing to Filtec by the Customer (under this Agreement or otherwise), in full. The Customer shall hold the Goods (including where they have been converted or changed by any process) as bailee and agent for Filtec only before payment of the Fees in full.
- 5.3 Until title to the Goods passes to the Customer upon payment in full of all Fees owing to Filtec for all Goods supplied, the Customer must:
- (a) store the Goods separately and in such a manner that they are clearly identified as the property of Filtec; and
 - (b) ensure that the Goods are properly stored, protected, readily identifiable and insured.
- 5.4 In addition to any rights Filtec may have under Chapter 4 of the PPSA, Filtec is entitled at any time until title in and to the Goods passes to the Customer, to demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer to enter, or cause Filtec's agent to enter, any premises occupied by the Customer (or any other premises where the Customer is holding the Goods) in order to search for and remove the Goods.
- 5.5 For the purpose of clause 5.4 above, the Customer:
- (a) irrevocably grants a license to Filtec to enter such premises (including via an agent); and
 - (b) indemnifies Filtec from and against all loss, cost, damage, or claim suffered or incurred by Filtec as a result of exercising its rights under this clause 5.
- 6. PPSA**
- 6.1 The Customer acknowledges and agrees that this Agreement is an accepted and adopted security agreement between the parties. Unless otherwise stated, a term contained in clauses 5 and 6 of this Agreement that is defined in the PPSA (but not otherwise defined in this Agreement) has the meaning given to it in the PPSA.
- 6.2 The Customer acknowledges and agrees that this Agreement creates and that Filtec has a security interest for the purposes of the PPSA: (a) in all Goods and any proceeds previously supplied by Filtec to the Customer; and (b) in all Goods and any proceeds that will be supplied in the future by Filtec to the Customer.
- 6.3 The Customer acknowledges and agrees that this security interest is registrable in the personal property securities register and this security interest secures all moneys owing by the Customer to Filtec under this Agreement or otherwise.
- 6.4 The Customer grants to Filtec where and when applicable, a purchase money security interest (PMSI) to the extent that it secures payment of the amounts owing in relation to the relevant Goods in accordance with, and to the extent prescribed by, section 14 of the PPSA.
- 6.5 The Customer acknowledges and agrees the security interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) security interest and any unsecured creditor.
- 6.6 The Customer acknowledges that the security interest over the Goods or their proceeds arising under this clause 6 is a PMSI under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods.
- 6.7 The Customer will do everything reasonably required of it by Filtec to enable Filtec to register its security interest with the priority Filtec requires and to maintain those registrations including:
- (a) signing any documents and/or providing any information which Filtec may reasonably require to register a financing statement or a financing change statement in relation to a security interest; or
 - (b) correcting a defect in a statement referred to in paragraph (a).
- 6.8 The security interests arising under this Agreement will be perfected by Filtec prior to or when the Customer obtains possession of the Goods and the parties confirm they have not agreed that any security interest arising under this Agreement attaches at any later time.
- 6.9 Filtec does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 6.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under this Agreement, the Customer agrees that sections 95, 96, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of the security interest(s).
- 6.11 The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including the security agreement between Filtec and the Customer.
- 6.12 The Customer agrees to keep and maintain all Goods free of any charge, lien, or security interest except as created under this Agreement and not otherwise to deal with the Goods in a way that will, or may, prejudice the rights of Filtec under this Agreement or the PPSA.
- 6.13 The Customer must notify Filtec immediately in writing if the Customer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA in respect of this Agreement.
- 7. SERVICES AND WORKS**
- 7.1 If a Purchase Order requires Filtec to provide Services, then Filtec will use all reasonable endeavours to deliver those Services:
- (a) subject to clause 8, by the dates and times specified in the Purchase Order; and
 - (b) in accordance with the requirements specified in the Purchase Order.
- 7.2 Filtec may specify additional conditions which apply to the delivery of Services as part of a Purchase Order, including any assistance

required from the Customer or required access to the Customer's premises.

7.3 Subject to clause 7.4, the Customer agrees that as between the parties, Filtec shall remain the owner at all times of all Intellectual Property Rights in the Works. The Customer shall make no claim on such Intellectual Property Rights. Subject to any express licence terms to the contrary specified in a Purchase Order or as part of any Special Conditions, Filtec grants the Customer a royalty free, perpetual, irrevocable licence to use the Works in Australia, solely for the purposes of the Customer's business.

7.4 As between the parties, the Customer shall retain all Intellectual Property Rights in the Customer Background IP and nothing in clause 7.3 shall effect an assignment of such Intellectual Property Rights to Filtec.

8. DELIVERY

8.1 Any time quoted for delivery in a Purchase Order is an estimate only. The Customer is not relieved of any obligation to accept or pay for Goods or Services because of any delay in delivery.

8.2 Filtec will make all reasonable efforts to deliver the Goods to the Customer's nominated delivery address at the time and on the date agreed. However, time is not of the essence under this Agreement and, except where Filtec has an obligation under the Australian Consumer Law, Filtec is not liable for any failure to deliver, any failure to deliver within the time quoted for delivery in a Purchase Order or delay in delivery for any reason, including without limitation, where an incorrect delivery address has been provided to Filtec, or where an event beyond Filtec's reasonable control occurs in accordance with clause 8.3.

8.3 If for any reason beyond the control of Filtec (including without limitation as a result of any strike, trade dispute, fire, tempest, theft, breakdown, shortage of stock, a failure of a third party to fulfil their related obligations to Filtec, or similar) a Purchase Order cannot be filled at the time stipulated by the Customer or quoted for delivery in a Purchase Order, Filtec shall be entitled to delay or cancel delivery and fulfilment of the Purchase Order, and the Customer agrees that Filtec will not be liable to the Customer for any costs, expenses, losses or damages arising out of such cancellation.

9. DEFECTS

9.1 On delivery of Goods, if the Customer considers the Goods have a shortage in quantity or fail to meet the requirements of a Purchase Order, then the Customer has 14 days to notify Filtec in writing of the alleged Defect and the Customer must preserve the Goods as delivered and either return them to Filtec or (if agreed by Filtec) allow Filtec (or a nominated agent) access to the Customer's premises for the purpose of inspecting the Goods. If, upon inspection, Filtec agrees that the Goods have a Defect, the remedies set out in clause 11.3(a) will be provided. If no notice of Defect is given by the Customer within 14 days of the delivery of Goods, the Customer is deemed to have accepted the Goods (and that they are free from any Defect as delivered).

9.2 If a Defect arises in any Goods or Services during their Warranty Period, then Filtec may elect to provide any of the remedies specified in clause 11.3(a) in respect of any Defect reported by the Customer, and accepted by Filtec, during the Warranty Period. The forgoing however may be overridden by any Warranty Conditions separately provided by Filtec together with the supply of any Goods or Services.

9.3 For the purposes of evaluating a Warranty claim, the Customer at the time of lodging the claim must provide details of the Warranty claim, reasonable evidence of the claim required by Filtec, and proof of purchase. The Customer further agrees to preserve the Goods or Works which are alleged to be affected by a Defect and either return them to Filtec or (if agreed by Filtec) allow Filtec (or a nominated agent) access to the Customer's premises for the purpose of inspecting the Goods or Works.

9.4 If the Customer notifies Filtec of a Defect other than in accordance with this clause 9, or the Goods or Services are affected by an error or defect other than a Defect (including due to ordinary wear and tear or Customer or third party fault, or other exceptions specified in the Warranty Conditions), Filtec may impose a Fee on the

Customer (in Filtec's sole discretion) to provide the remedies set out in clause 11.3(a).

10. TERM & TERMINATION

10.1 This Agreement will commence on the Commencement Date and continue in effect unless terminated in accordance with this clause 10. A Purchase Order will commence on the start date specified in that Purchase Order and continue in effect for the whole of the Term of that Purchase Order, unless terminated earlier in accordance with this clause 10 or in accordance with any additional rights of termination, as specified in clause 10.2.

10.2 Any right of termination provided in a Special Condition applies in addition to this clause 10 and does not have the effect of replacing any right herein, unless expressly agreed between the parties.

10.3 Either party may terminate this Agreement and/or any one or more Purchase Orders immediately upon written notice to the other party (the **Relevant Party**) if:

- (a) the Relevant Party commits a material breach of this Agreement which is incapable of being remedied or, if the breach is capable of being remedied, the Relevant Party fails to remedy the breach within 7 days after being required in writing to do so; or
- (b) the Relevant Party is or is reasonably likely to be subject to an Event of Default.

10.4 Filtec may terminate, or suspend the supply of the Goods and Services under, this Agreement and/or any one or more Purchase Orders immediately upon written notice to the Customer if the Customer:

- (a) fails to pay any Fees, or other amounts on or by the due date for payment and otherwise in accordance with this Agreement;
- (b) ceases or fails to provide within a reasonable time any information or assistance reasonably necessary for Filtec to provide any part of the Goods and Services; or
- (c) acts fraudulently or dishonestly or otherwise in breach of any relevant law.

10.5 Either party may terminate this Agreement on 30 days' written notice if no Purchase Order has been in force for a period of at least 30 days prior to the date of the notice.

10.6 For the avoidance of doubt, termination of this Agreement under clauses 10.3 or 10.4 will result in the termination of any Purchase Order in force at the date of termination, but termination of a Purchase Order alone will not affect the operation of this Agreement in respect of any other then current or future Purchase Order.

10.7 If the supply of the Goods or Services is suspended in whole or in part under clause 10.4, Filtec may, at its sole election:

- (a) end that suspension if and when the relevant breach is cured and Filtec has the resources available to re-commence supply of the Goods and Services;
- (b) continue the suspension until such time as Filtec has the resources available to again supply the Goods and Services; or
- (c) provide notice of termination at any time if the issue constituting grounds for suspension under clause 10.4 has not been remedied,

and the Customer agrees that Filtec will not incur any liability in respect of the failure to supply the Goods and Services during any period in which those Goods and Services are suspended.

10.8 If this Agreement or a Purchase Order is terminated by either party, Filtec will cease providing the relevant Goods and Services and the Customer must immediately pay Filtec all Fees due or incurred up to the date of termination in connection with those Goods and Services, including the unpaid balance of any credit account maintained by Filtec for the Customer under the Customer Credit Application.

11. LIABILITY & INDEMNITY

- 11.1 Except as expressly set out otherwise in this Agreement, and to the fullest extent permitted by the applicable law and legislations (including the Australian Consumer Law), Filtec provides the Goods and Services on an "as is" basis.
- 11.2 In this Agreement "as is" basis means to the exclusion of, other than those implied by law, all conditions, warranties, representations, implied terms and/or liability for any loss howsoever caused (including negligence) arising in connection with the Goods and Service or this Agreement that is not solely within the control of Filtec or otherwise without any direct fault on the part of Filtec (e.g. arising out of misuse of the Goods and Services, failure to abide by manufacturer/Filtec instructions, etc).
- 11.3 In respect of any liability of Filtec which cannot be excluded in accordance with clause 11.1, Filtec limits its liability to the Customer as follows:
- under any applicable consumer guarantees in the Australian Consumer Law in relation to the supply of the Goods or Services to either, at Filtec's sole discretion: (i) replacing the Goods or part thereof; or (ii) supplying equivalent goods; or (iii) repairing the Goods or part thereof; (iv) paying the cost of replacing or repairing the Goods; or (v) re-performing Services or part thereof.
 - for breach of agreement, negligence, breach of statutory duty or any other cause of action other than a breach of an applicable consumer guarantee (regardless of how that liability is caused), arising under this Agreement or related to any Goods or Services, in aggregate to the total Fees paid by the Customer for the relevant Goods or Services.
- 11.4 Neither party will be liable for any consequential, collateral, special, incidental, indirect, exemplary or punitive damages, including, without limitation, loss of profits or revenue, loss of opportunity or loss or destruction of data, costs of cover, costs of delay, however caused and based on any theory of liability, for any claims or causes of action arising out of or related to this Agreement or the Goods or Services.
- 11.5 Filtec's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in this Agreement limits or excludes any right, guarantee, or entitlement that the Customer may have at law, to the extent that such right, guarantee, or entitlement cannot be limited or excluded. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

12. GENERAL

- 12.1 **Subcontractors:** The Customer agrees that Filtec may without notice engage subcontractors to assist Filtec in providing the Goods and Services. Filtec will remain liable for the actions or omissions of any subcontractor to the same extent Filtec would be liable under this Agreement if the subcontractor were an employee of Filtec.
- 12.2 **No employment:** Nothing contained in this Agreement constitutes the relationship of joint venture, partnership, or employment between the parties and it is the parties' express intention to deny such relationships.
- 12.3 **Assignment:** Filtec may by written notice to the Customer assign, transfer, subcontract or otherwise dispose of, in whole or in part, its rights under this Agreement. The Customer must not assign or novate this Agreement without Filtec's prior written consent, such consent not to be unreasonably withheld.
- 12.4 **Variation:** This Agreement may only be amended or modified in writing signed by the parties.
- 12.5 **Notices:** Any notice or demand to be given or made under this Agreement must be in writing signed by a party's authorised representative. A notice will be deemed to be received (a) in the case of a notice given by hand, on delivery; (b) in the case of a notice sent by pre-paid post, 3 business days following the date of postage; (c) in the case of a notice sent by facsimile, on the date the notice was sent provided that the sending facsimile machine confirms by a printed report that the facsimile was successfully sent; and (d) in the case of a notice sent by email, upon the recipient or their mail server confirming receipt of the email.
- 12.6 **Entire agreement:** The Terms and Conditions set out in this Agreement contain the entire agreement concluded between the parties, and this Agreement supersedes any and all prior agreements, representations, or understandings between the parties, whether written or oral, in respect of the same subject matter. To the extent that any inconsistency arises between these Terms and Conditions (including any annexure), Special Conditions, Purchase Order and a Customer Credit Application, then those documents will be read in the following order of priority: (a) the Special Conditions; (b) the Customer Credit Application; (c) the Purchase Order; and (d) these Terms and Conditions.
- 12.7 **Survival:** Clauses 7.3, 7.4, 10.8 and 11 will continue in force notwithstanding the termination or expiration of a Purchase Order or this Agreement in its entirety for any reason.
- 12.8 **Governing law:** This Agreement is governed by and must be construed in accordance with the laws of Victoria, Australia, and the parties irrevocably consent to the jurisdiction of the courts there and their courts of appeal.

We can be contacted via:**Email:** info@filtecinternational.com.au**Phone:** +61 3 9543 5096**Post:** Filtec International Pty Limited (ACN 621 132 394), Unit 13/40 Ricketts Road, Mount Waverly 3149**Version:** January 2024