

TERMS + CONDITIONS OF SUPPLY

1. OUTLINE

- 1.1 These terms and conditions of sale (**Terms**) apply to all contracts for the supply of Goods and/or Services by us (**Contracts**), whether arising from an Order that we have accepted or from any Quotation.
- 1.2 Any Contract however arising will be subject to these Terms unless we otherwise expressly agree in writing by reference to this Clause 1.2.
- 1.3 The descriptions, illustrations and performance attributes contained in our issued catalogues, price lists and other advertising matter do not form part of these Terms.
- 1.4 These Terms supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply, performance or expected results of the Goods or Services and shall prevail over all other to the extent of any inconsistency.
- 1.5 Specific Product + Services Conditions may apply with respect to third party products and services such as licences of intellectual property. You are bound by such Product + Services Conditions to the extent relevant to the Goods and Services supplied by you.

2. QUOTATION + ORDERS

- 2.1 You agree to be bound by these Terms upon accepting a Quotation or upon providing to us an Order form for Goods and/or Services.
- 2.2 We may provide you a Quotation at your request.
- 2.3 Unless otherwise stated or communicated to you, you may accept a Quotation, within 30 days after its date.
- 2.4 We may refuse any Order including an Order made pursuant to a Quotation.
- 2.5 We will not be bound, unless otherwise indicated in writing, by:
- 2.5.1 any variation, modification or waiver of a Quotation; or
- 2.5.2 any conditions attaching to an Order or acceptance of a Quotation.
- 2.6 Prices quoted in a Quotation are based on our costs as at the date of the Quotation. Any alteration to the details of the Quotation before our acceptance of an Order by us may be added to your account.
- 2.7 Prices in a Quotation are applicable to that Quotation only.
- 2.8 Every Quotation shall be subject to and conditional upon any necessary import or export costs.
- 2.9 If you request any additions or modifications to the Goods or Services the subject of a Quotation or Order which we have accepted, we reserve the right to adjust the Quotation or Order as necessary having regard to the nature and extent of such additions or modifications, but subject these Terms.
- 2.10 If auxiliary components are included in a Quotation or an Order but are not expressly named, we reserve the right to supply such auxiliary components from an appropriate source as we see fit.

3. SPECIFICATIONS

- 3.1 All Specifications that we submit to you are for quotation purposes only and must not be used for construction purposes.
- 3.2 Any deviation by you from the Specifications shall not be taken to vitiate any Contract with us nor form any grounds for any claim against us except as permitted by law.
- 3.3 All documents that we supply to you in the nature of Specifications shall remain our property and remain returnable to us on demand in writing. Such documents shall not, without our prior written approval, be used, copied or reproduced for any purpose.

4. PRICE VARIATIONS – GST, TAXES AND DUTIES

- 4.1 GST, import duty, or any other statutory charges (if any) included in a Quotation are based on the rates and methods of assessment in force as at the date of the relevant Quotation.
- 4.2 We reserve the right to increase the quoted price of imported Goods to reflect any increase in rates of Currency Exchange, freight, insurance and cartage on the declared value of such imported components of equipment that may occur between the relevant date of Quotation and date of final invoice to you.
- 4.3 Any increase in such charges shall be to your account and payable as invoiced by us.

5. TERMS OF PAYMENT

- 5.1 Unless otherwise expressly stated in a Quotation, the Price shall be payable by the earlier of:
- 5.1.1 the date stated for payment in any delivery docket, invoice or statement that we may issue to you; and
- 5.1.2 the last working day of the month immediately following the month of delivery or supply of the Goods or Services.
- 5.2 If you do not accept delivery on the date stipulated in a Quotation (or at any extended date as we agree to), you shall pay to us:
- 5.2.1 the Price no later than 30 days after the invoice date, or on the agreed extended date; and
- 5.2.2 any reasonable storage and insurance charges we incur for the Goods from the day following the Delivery date until the date that the Goods are delivered to you.

6. DEFAULT INTEREST

If you fail to pay to us the Price (or any part of it) on the due date then you shall pay default interest on that unpaid amount accruing from and including the due date(s) for that payment until that amount is paid in full. The default interest rate will be 10% p.a. (compounded daily).

7. DELIVERY

- 7.1 Upon accepting an Order, we will provide you with the estimated delivery time applicable in light of the then known or envisaged circumstances. As soon as is practicable thereafter, we will request from you full particulars to enable us to commence and complete the manufacture or procurement of relevant Goods.

- 7.2 As Goods or any part of the Goods are made available on the mutually agreed Delivery date, you shall take Delivery of the Goods within three working days of the agreed date or date of notification of availability.
- 7.3 Unless otherwise stated in the Quotation, we will deliver the Goods to you free-on-truck from one of our nominated warehouses. Any additional charges will be invoiced to you.
- 7.4 If we deliver the Goods to an address specified by you, the following will apply:
- 7.4.1 clause 7.3 will apply for any additional charges;
- 7.4.2 you or your representative must be present at the agreed place and time for Delivery and must sign the Delivery docket as acknowledgement that:
- A the Goods described on the Delivery docket have been delivered and comply with the Order; and
- B that you accept any applicable Delivery surcharges;
- 7.4.3 if you or your representative is not present, we may unload the Goods at the agreed place for Delivery, after which we will no longer be responsible in any way for the Goods delivery having deemed to have taken place and risk passed to you; and
- 7.4.4 our responsibility for delivery ceases at the kerbside of the delivery address.
- 7.5 If at your request, a delivery vehicle crosses the kerbline in the course of making a delivery, you:
- 7.5.1 are responsible for providing safe and adequate access for the vehicle, persons accompanying the Goods and the Goods;
- 7.5.2 will pay for all damage and injury to any person and to any public or private property which may result; and
- 7.5.3 are responsible for any costs associated with enabling the delivery vehicle to exit the delivery site.
- 7.6 We, at our discretion, may deliver the Goods on pallets, which shall remain our property. We may charge you for such pallets at the rate applicable at the time of Order.
- 7.7 You waive any claim for shortage of any Goods delivered unless such a claim has been lodged with us within a reasonable time from the date of Delivery of the Goods to you.

8. PART DELIVERY OR DELAY

- 8.1 Unless otherwise agreed in writing, we reserve the right to make part deliveries of any Order. These Terms shall apply separately to each such part Delivery. Our failure to make a Delivery of the total Order shall not invalidate any of these Terms.
- 8.2 Where we make part delivery, we may invoice you for the Goods delivered on each separate Delivery. We shall have no obligation to make any further Delivery until all moneys owed to us in respect of prior Deliveries have been paid in full.
- 8.3 The Delivery times made known to you are estimates only. Under no circumstances shall we be liable for any loss, damage or delay occasioned to you

arising from the late or non-delivery of any Goods except as required by law.

8.4 If a delay arises from or is contributed to by any cause beyond our reasonable control, the Delivery time shall be extended commensurately and such delay shall not constitute a breach of the relevant Contract.

9. CANCELLATION FEES

9.1 If at any time you purport to terminate and/or repudiate or cancel a Contract, without prejudice to any other rights or remedies which we may have, we shall be entitled to recover from you (at our option) an amount equivalent to the value of labour, skills and materials expended by us in our performance of the Contract to that date under the Contract.

9.2 In no event shall the amount in clause 9.1 be less than 10% of the Price.

10. EVENT OF DEFAULT

10.1 If a Default Event occurs in relation to you, you will be deemed to be in default of these Terms and we may at our discretion:

- 10.1.1 require you to immediately pay all moneys that you owe to us;
- 10.1.2 refuse to extend any further credit to you;
- 10.1.3 retake possession of any Goods which have not been paid for;
- 10.1.4 cancel all warranty obligations relating to Goods not paid for (to the extent permitted by law);
- 10.1.5 take such steps as we may deem necessary to mitigate the damages suffered; and
- 10.1.6 pursue any other remedies available to us under these Terms, at law or in equity.

11. INSURANCE

11.1 We shall only be responsible for damage to Goods up to the point of Delivery, as specified in the Quotation, which unless otherwise agreed in writing shall be from one of our nominated warehouses to the nominated Delivery address, after which the Goods shall be at your risk in all respects.

11.2 Upon written request, we will act as agent on your behalf to dispatch and insure the Goods. Any resulting freight and insurance fees will be charged to your account and are payable in accordance with these Terms.

12. TESTS

You must pay us the costs of any test, if requested or required by you in order to determine the performance for the Goods, unless the cost of such testing is specifically included in a Quotation.

13. ACCESS

13.1 You must ensure that the area where the Goods are to be installed is free and clear so as to allow any and all machinery associated with the installation to enter the site and complete such installation without hindrance or any risk of injury to the installer or their equipment.

13.2 You will be liable for the cost of all labour, equipment or other material provided and dispatched by us in the event of a postponement or cancellation of access to the relevant job site.

13.3 You must also ensure that the area where the Goods are installed allows for adequate access for the purpose of carrying out any necessary repairs or servicing of the Goods.

14. COMMISSIONING

14.1 It is your responsibility to have the Goods installed and all auxiliary services operative in accordance with our written instructions prior to requesting us to carry out the commissioning of the Goods (if the same is included in the Quotation).

14.2 If upon arrival on site to carry out the commissioning our personnel find that the Goods are not ready for commissioning, any extra costs incurred, including costs of transportation and accommodation, will be charged to your account and you shall pay any such costs as invoiced by us.

14.3 Our costs for carrying out commissioning (if stated as included in the Quotation) are based on our normal working hours. Overtime rates and site allowance will be charged to your account and you shall pay any such costs as invoiced by us.

15. NOISE + VIBRATION

15.1 You are responsible for selecting the appropriate site for the installation of Goods so as not to create a noise nuisance.

15.2 We are not responsible for any noise and/or vibration emanating from the Goods unless specifically provided for in the Quotation.

15.3 Any performance figures that we give are estimates only. Any information that we provide concerning noise and vibration in relation to the Goods is given in an advisory capacity only and is not part of our Terms of sale, any warranty or representation.

15.4 We shall not be liable for damages arising from the failure of the Goods to attain such figures unless specifically guaranteed in writing and such guarantee shall be subject to the recognised tolerances applicable to such figures.

16. GOODS WARRANTY

16.1 We warrant that the Goods supplied by us (excluding third party Goods such as software which may be governed by separate Product + Services Conditions) are supplied free from defects in material and workmanship except such defects as normally being regarded as being commercially acceptable (**Goods Warranty**).

16.2 This Goods Warranty extends for a period of 12 months from the date of installation of the Goods or for a period of 18 months calculated from the invoice date of the Goods (whichever period expires first).

16.3 We will during the Goods Warranty period and subject to the limitations stated below, repair or replace at our option, any component or part of the Goods which our examination shows to be defective.

16.4 Our obligations under this Goods Warranty are limited (to the extent permitted by law) to repairing or furnishing a replacement part from our nearest nominated spare parts outlet to replace any part which has proven to have been defective.

16.5 You will be liable for all transport charges incurred in returning defective components or parts for repair or replacement together with the cost of returning them to you unless relevant laws required otherwise.

16.6 A replacement part supplied by us during the Goods Warranty period shall be covered by the Goods Warranty for the unexpired portion of the original warranty or for a period of 90 days from the date of installation of the part, whichever is later.

16.7 This warranty against defects is provided in addition to other rights and remedies you may have at law. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are

entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage. You are 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.

17. LABOUR WARRANTY

17.1 You may purchase a labour warranty for our STULZ branded Goods on such terms and conditions prevailing at that time to cover the labour costs of removal and replacement of faulty components and parts by us the subject of this warranty (**Labour Warranty**). This clause does not displace your Statutory Rights and is subject to clause 20.6 (*Statutory Rights*).

17.2 Unless specifically allowed for in our Quotation, all labour costs associated with the diagnosis of faults is specifically excluded from the Labour Warranty the subject of these Terms.

17.3 The Goods Warranty and Labour Warranty does not cover replacement of consumable items including but not limited to, air filters, v-belts, humidifier bottles, etc.

18. SERVICE WARRANTY

18.1 We guarantee that all Services provided by us shall be performed in a workmanlike manner (**Services Warranty**).

18.2 Our Services Warranty extends for a period of 30 days from the date the service is undertaken.

18.3 Any claim under the Services Warranty must be made known to us in writing within 30 days of the Service being undertaken.

18.4 Your Statutory Rights are not affected.

19. WARRANTY LIMITATIONS + YOUR RESPONSIBILITIES

19.1 This clause is subject to clauses 20 (*Limitation of Liability*) and 20.6 (*Statutory Rights*).

19.2 You are responsible for and must meet all charges, costs and expenses in respect of:

- 19.2.1 making the Goods accessible for service;
- 19.2.2 all transportation, travelling, insurance and communication expenses necessarily incurred in the provision of component parts for the Goods at locations other than at our service branches; and
- 19.2.3 any surcharge applicable in respect of the provision of this warranty outside normal working hours.

20. LIMITATION OF LIABILITY

20.1 The exclusions and limitations in this clause 20 are subject to clause 20.6 (*Statutory Rights*).

20.2 Any liability arising in relation to Goods, including any liability arising by virtue of any representation, warranty or statutory guarantee (whether express or implied by law), is hereby excluded to the fullest extent permitted under law.

20.3 Any warranty or guarantee set out in these Terms or which applies shall not apply:

- 20.3.1 if any serial number, identification or installation plate attached to the Goods has been altered, rendered illegible or removed; or
- 20.3.2 to light globes, glass components or refrigerant lost or damaged during shipment or during the relevant warranty period;
- 20.4 No warranty is given and we will not be liable for:
- 20.4.1 alterations to Goods for which we are not responsible;

20.4.2 damage or failure caused by unusual or non-recommended use or application of the Goods;

20.4.3 Goods which have been:

- A subject to misuse, abuse, negligence or accidents;
- B connected to improper, inadequate or faulty power supply, water or drainage services or exhaust duct or flues;
- C operated using incorrect, insufficient or contaminated fuels, lubricants, coolants, refrigerants or additives;
- D installed, maintained, operated otherwise than in accordance with our instructions and good work practices;
- E serviced or repaired using replacement parts other than those approved by us or use of any accessories which were not manufactured by and approved by us;
- F damaged as a result of fire, abrasion, chemicals, corrosion, deterioration due to extremes of environment, foresight objects or impact;
- G (in case of a compressor or a compressor-bearing product) used in a system or application which will cause inadequate compressor lubrication or liquid flood back to the compressor; and/or
- H (in the case of liquid chilling or compressor sets) commissioned or serviced otherwise than by us or our nominee; or
- I loss caused by any factors beyond our control.

20.5 We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits or data (however arising) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of a Contract or these Terms).

20.6 Total liability: Our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

In the case of Goods

- 20.6.1 the replacement of the Goods or the supply of equivalent goods;
- 20.6.2 the repair or rectification of the Goods;
- 20.6.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- 20.6.4 the payment of the cost of the repair or rectification of the Goods; and

In the case of Services

- 20.6.5 the supply of the Services again; or
- 20.6.6 the payment of the cost of having the Services supplied again.

21. STATUTORY RIGHTS

21.1 If you are a consumer for the purposes of the ACL, certain statutory guarantees and rights shall apply to you but subject to these Terms (as applicable).

21.2 Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully

excluded, restricted or modified, such as implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

22. OPERATING MANUALS

22.1 If requested, and at our sole discretion, we may supply to you no more than four copies of our operating instruction manuals for the Goods.

22.2 A charge will apply on request for additional copies of the manual.

23. PRODUCT CHANGES

23.1 Subject to your rights under law, pursuant to our policy of continuous product development and improvement, we reserve the right to make minor modifications to Goods without notice and to deliver revised designs or models of Goods against any Order modifications of a major nature which may affect your contractual responsibilities will be referred to you for acceptance (if applicable).

23.2 Where Goods are ordered from information supplied from a manufacturer or other supplier, we shall not be liable to you for any alterations or amendments made by the manufacturers or other suppliers without notice to us.

24. DISPUTE RESOLUTION

24.1 If any dispute arises in relation to any Contract, either party may serve on the other a notice of dispute.

24.2 Within ten days after service of a notice of dispute referred to in clause 24.1 the parties must confer, acting in good faith, at least once to attempt to resolve the dispute and failing resolution of dispute, to explore and if possible, agree on methods of resolving the dispute. At each conference, each party must be represented by a person having authority to resolve the dispute in the course of the conference.

24.3 If a dispute cannot be resolved in accordance with the provisions of clause 24.2 or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute or not acting in good faith, either party may by notice in writing refer the dispute to arbitration.

24.4 The parties must within ten days of receipt of the further notice of dispute referred to in clause 24.3 agree to the identity of an arbitrator failing which at the expiry of that period, the party who served the notice of dispute may request the President for the time being of the Institute of Engineers Australia to nominate a single arbitrator pursuant to the rules of commercial arbitration of that institute and the decision of the arbitrator will be final and binding on the parties. A party may be represented at the arbitration by a legal practitioner.

24.5 This clause does not prejudice the right of either party to seek urgent interlocutory relief or an injunction.

25. SECURITY INTEREST + TITLE

25.1 This clause 25 sets out the **Security Agreement** between you and us.

25.2 You grant to us a purchase money security interest (**PMSI**) in the Goods as security for all or part of the Payment for the Goods.

25.3 Our security interest attaches to the Collateral by virtue of your possession of the Goods as bailee under clause 25.6.

25.4 We may, without notice, apply to register a financing statement with respect to the PMSI described in this clause 25.

25.5 Until full title in the Goods has passed to you, you must ensure that:

25.5.1 the Goods are identifiable and distinguishable from any other goods that may be in your possession; and

25.5.2 the particular Goods to which any particular Invoice relates is readily identifiable.

25.6 You shall not assign, charge, encumber, mortgage, or permit any lien to arise over, or any security interest (other than ours) to attach to the Goods without our prior written consent

25.7 After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.

25.8 Until payment in full for the Goods has been received by us, we may, without notice, seize the Goods and/or appoint any person to be a receiver of all or any of the Goods if:

25.8.1 a Default Event occurs; or

25.8.2 you are in breach of these Terms.

25.9 For the purposes of carrying out seizure under clause 25.8, we may without notice, enter your premises and seek any all remedies provided under Chapter 4 of the PPSA, and any other remedies provided at law or in equity or otherwise, without liability for any damage caused.

25.10 You may only sell all or any of the Goods in respect of which full Payment has not been received to a third party if we provide our written consent.

25.11 Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on us in your favour.

25.12 You agree to waive your right to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to these Terms and this Security Agreement.

25.13 You agree to reimburse us for all costs and/or expenses incurred or payable by us in relation to registering, maintaining or releasing any financing statement in respect of this Security Agreement.

25.14 You shall immediately notify us in writing of any change of name.

25.15 You acknowledge receipt of a copy or due notice of these Terms and this Security Agreement.

26. FORCE MAJEURE

26.1 If we become unable wholly or in part by Force Majeure to carry out an obligation under these Terms:

26.1.1 we must give to you reasonable particulars of the Force Majeure; and

26.1.2 any obligations that will be suspended for the continuance of the force Majeure.

26.2 We will not have to settle any labour or other dispute creating the Force Majeure on terms contrary to our wishes or contest the validity or enforceability of any law, regulation or decreed by way of legal proceedings.

27. GENERAL

27.1 The failure by either party at any time to enforce any of these Terms or to exercise any right under these Terms shall not constitute a waiver of the same or affect that party's right thereafter to enforce the same.

27.2 If any provision of these Terms is deemed to be unlawful or unenforceable, that provision shall be severed from these Terms and all other provisions shall remain in force.

27.3 A notice, request, consent or other communication to be given in connection with any agreement arising out of the Quotation or Terms must be in writing addressed according to the particulars for

that party given in this Contract, or to another address for that party as may be notified in writing by that party. A communication may be delivered by hand, prepaid post or email.

28. GOVERNING LAW + JURISDICTION

28.1 The supply of Goods and/or Services under a Contract to you shall be governed by the laws of either the State or Territory of our office as specified in the Quotation (or the State or Territory in which supply of the Goods and/or Services is made if not specified).

28.2 The parties agree to submit to the non-exclusive jurisdiction of the Courts in the jurisdiction of the law which governs the Contract.

29. INTERPRETATION + DEFINITIONS

29.1 **Personal pronouns:** Except where the context otherwise provides or requires:

29.1.1 the terms **we, us or our** refers to Stulz Australia Pty Ltd; and

29.1.2 the terms **you or your** refers to the party or parties to whom we shall sell or otherwise dispose of Goods.

29.2 **Defined terms:** In this document, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law.

Default Event if any of the following occurs:

- (a) any monies payable to us by you remains unpaid for 7 days after date that such monies became due, whether formally demanded or not;
- (b) 7 days has expired after you were provided with a notice to remedy a breach or non-performance of any of your obligations under these Terms;
- (c) you go into compulsory or voluntary liquidation, become bankrupt or enter into an arrangement for the benefit of your creditors;
- (d) you appoint (allow the appointment of) under any Act or instrument or by order of any Court a Manager, Administrator, Trustee, Receiver, a Receiver Manager, or a Liquidator over you or in relation to any part of the your assets;
- (e) you suspend payment generally or without cause cease or threaten to cease to carry on your business or are unable to pay your debts within the meaning of the provisions of the Corporations Act 2001 (Cth).

Delivery means the delivery or supply of the Goods to you as set out in the Quotation or otherwise agreed by us.

Force Majeure means any act, event or cause which is beyond our reasonable control, including act of God, war, sabotage, riot, civil commotion, national emergency, fire, lightening, flood, cyclone, earthquake, landslide, storm or other adverse weather condition, explosion, power shortage, strike or other labour difficulty, quarantine, action or inaction of Government or other competent authority including restraint prohibition, intervention, requisition, requirement, direction or embargo by legislation or other legally enforceable order and breakdown of plant machinery or equipment or shortages of labour, transport, fuel, power or plant machinery, equipment or material.

Goods means goods, plant, equipment and components as the case may be or Contract requires.

Order shall mean any order for or any statement of intent or offer to purchase any Goods and/or Services or any direction to proceed with engineering,

procurement, manufacture or shipment of Goods placed by you with us.

PPSA means the Personal Property Securities Act 2009.

Price means the purchase price payable for particular Goods and/or Services, whether stated in a Quotation, Order, or otherwise agreed by us.

Purchase Price means the price stated in the Quotation, delivery docket invoice or statement that we render to you in respect of the Goods we supply or deliver to you.

Quotation means any proposal or quotation that we give to you with respect to the proposed supply of Goods and/or Services. A Quotation is an invitation to treat and for the purpose of soliciting an Order. References in this document to the verb *accept* and its derivatives as regards a Quotation mean that you have accepted the Quotation in principle and made an offer capable of acceptance to us.

Services means services.

Specification means specifications, drawing and particulars of weights and dimensions in relation to a Quotation.