

## TERMS AND CONDITIONS

### DEFINITIONS

In these Terms:

**"ACL"** means the Australian Consumer Law;

**"Agreement"** means any agreement entered into or request for the provision of goods or services by FFT to the Customer, including but not limited to any Orders submitted or any credit application made by the Customer to FFT or these Terms;

**"Anticipated Delivery Date"** anticipated date for delivery and installation of the goods and completion of the services specified in a Quotation;

**"Customer"** means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from FFT;

**"FFT"** means Freudenberg Filtration Technologies (Aust) Pty Ltd (ACN 006 243 447) trading as "FFT" from 69 Malcolm Rd, Braeside Victoria 3195;

**"goods and services"** means the services provided by FFT to the Customer including but not limited to air and liquid filters and filtration systems by FFT to the Customer as described in a Quotation or invoice;

**"GST"** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

**"INCO Terms 2010"** means the International Commercial Terms published by the International Chamber of Commerce that are widely used in International commercial transactions or procurement processes;

**"Intellectual Property"** means all copyright, trademarks, designs, specifications, drawings, confidential information (whether registrable or not) owned or licensed by FFT in respect of the goods (including but not limited to their components, casings and ancillary parts) and services, or their installation, operation, location or design;

**"Order"** means the acceptance by the Customer of a quotation or invoice provided by FFT to the Customer concerning the proposed supply of goods or services, whether by written, verbal, electronic or other means.

**"PPSA"** means the *Personal Property Securities Act 2009*;

**"Price List"** means any price list issued by FFT from time to time in relation to the price payable for the goods or services;

**"Quotation"** means any written quotation or estimate provided by FFT to the Customer concerning the proposed supply of goods or services;

**"Site"** means the site where the goods are to be delivered and installed; and

**"Terms"** means these Terms and Conditions.

### 1. BASIS OF AGREEMENT AND ORDERS

1.1 Unless otherwise agreed by FFT in writing, these Terms apply exclusively to every supply of goods and services by FFT to the Customer and cannot be varied, altered or replaced by any other terms, including the Customer's terms and conditions of purchase (if any) and shall prevail to the extent of any inconsistency any other terms, unless expressly agreed by the parties in writing.

1.2 Any Quotation provided by FFT to the Customer concerning the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation only to the Customer to place an Order based upon that Quotation; and
- (c) subject to the Customer entering into and accepting this Agreement and accepting these Terms.

1.3 The Terms may include additional terms in FFT's Quotation. The specific terms of the Quotation will prevail over these Terms to the extent of any inconsistency.

1.4 The Agreement is accepted by the Customer upon the earlier of:

- (a) FFT receiving a copy of the Terms signed by the Customer; or
- (b) FFT confirming its acceptance of an Order from the Customer; or
- (c) FFT providing the Customer with the goods or services ordered by the Customer.

1.5 FFT in its absolute discretion may refuse to accept any Order.

1.6 It is the Customer's responsibility to provide FFT with its specific requirements in relation to the goods or services.

1.7 FFT may vary these Terms by written notice to the Customer at any time. Any variations will apply to orders placed by the Customer after the date of notice.

### 2. PRICING

2.1 All prices are quoted in Australian Dollars unless otherwise stated.

2.2 Unless otherwise agreed in writing, prices specified whether by Quotation, verbally or in a Price List, for the supply of the goods and services excludes taxes, duties or imposts, including import levies and duties, on or in relation to the goods and services, including, without limitation GST.

2.3 Whether or not the cost of shipment, freight, delivery, insurance and other charges arising from the point of dispatch of the goods from FFT's storage facility/factory to the Customer's Site and applicable INCO terms applicable and payable by the Customer in accordance with FFT's Quotation.

2.4 The Customer must pay to FFT any amounts specified in clauses 2.2 and 2.3 in addition to payment of the price of goods or services.

### 3. PRICING VARIATIONS

3.1 If the Customer requests any variation to the Order placed, FFT may, in its discretion:

- (a) increase the price to account for the variation, or
- (b) provide a revised Quotation for the goods or services.

3.2 Where:

- (a) the Customer requests or requires a different goods or services to those initially specified; or
- (b) the Customer fails to give FFT adequate instructions or unreasonably delays in the provision of instructions

then FFT may vary its price to take account of any such changes, by notifying the Customer before providing the goods and services.

### 4. PAYMENT

4.1 Payment for the goods and services must be made by the Customer to FFT as provided in the Quotation.

4.2 Time for payment is of the essence. Payment must be made to FFT without any deduction, withholding or set-off by the Customer or any other person.

Payment must be made by cash, cheque, bank cheque or electronic transfer or credit card. Payment will not be deemed to be made until cleared funds are received by FFT.

### 5. PAYMENT DEFAULT

5.1 If the Customer defaults in payment by the due date of any amount payable to FFT, then all money which would become payable by the Customer to FFT at a later date on any account, may at the sole discretion of FFT, become immediately due and payable without notice to the Customer, and FFT may (without prejudice to any other remedy available to it):

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Supreme Court of Victoria* for the period from the due date until the date of payment in full;

- (b) charge the Customer for, and the Customer must indemnify FFT from, all costs and expenses (including without limitation all legal costs on a solicitor own client basis and expenses) incurred by FFT resulting from the default in taking action to enforce compliance with the Terms, to recover any goods, to enforce, protect or maintain its Security Interest in the goods or to recover any sum due;
- (c) cease or suspend for such period as FFT thinks fit, supply of any further goods or services to the Customer;
- (d) by written notice to the Customer, terminate any contract with the Customer to the extent that it is not performed by FFT;
- without liability or any effect on FFT's accrued rights under any Agreement.
- 5.2 Clauses 5.1(c) and (d) may also be relied upon, at FFT's option:
- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator or similar functionary appointed.
- 6. PASSING OF PROPERTY**
- 6.1 Until FFT receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to FFT by the Customer:
- (a) title and property in all goods remains vested in FFT and does not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for FFT;
- (c) the Customer is required to hold the proceeds of any sale of the goods on trust for FFT in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee; and
- (d) FFT may without notice, enter any premises where it suspects the goods may be and take possession of the goods, dismantle, detach and remove them (notwithstanding that the goods may have been attached to other goods not the property of FFT), and for this purpose the Customer irrevocably licences FFT to enter such premises and also indemnifies FFT from and against all costs, claims, demands or actions by any party arising from such action;
- 6.2 In addition to any rights FFT may have under Chapter 4 of the PPSA, until payment of all and any amounts owing by the Customer to FFT are received:
- (a) the Customer will keep the goods separate and identifiable as goods of FFT, until FFT has received payment in full and any other obligations owed by the Customer to FFT are met;
- (b) FFT may give notice to the Customer to return the goods to FFT. Upon receipt of such or upon such notice being given, any rights of the Customer to obtain ownership or any other interest in the goods will cease and risk of the goods will pass to FFT only upon the acceptance of delivery of the returned goods by FFT;
- (c) the Customer will not encumber or charge the goods or register any Security Interest or permit any other person to register a Security Interest in the goods or grant or otherwise give any interest in the goods whilst the goods remain the property of FFT;
- (d) if there is any inconsistency between FFT's rights under this clause 6 and its rights under Chapter 4 of the PPSA, this clause 6 prevails; and
- (e) any difference or loss incurred by FFT in respect of the value of any re-possessed goods will be recoverable by FFT from the Customer in addition to any amounts owing by the Customer to FFT.
- 7. PERSONAL PROPERTIES SECURITIES ACT**
- 7.1 The Customer acknowledges and agrees that this Agreement is the accepted and adopted security agreement between the parties. Unless otherwise stated, a term contained in this Agreement that is defined in the PPSA (but not otherwise defined in this Agreement) has the meaning given to it in the PPSA.
- 7.2 The Customer acknowledges and agrees that this Agreement creates and that FFT has a Security Interest for the purposes of the PPSA in all goods supplied and for all monies owing under all FFT invoices and any proceeds previously supplied or that will be supplied in the future by FFT to the Customer, including but not limited to the lease of any goods by FFT to the Customer.
- 7.3 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 FFT under all invoices, this Agreement or otherwise.
- 7.4 The Customer grants to FFT where and when applicable, a purchase money Security Interest (PMSI) to the extent that it secures payment of all amounts owing under all invoices in relation to all goods supplied by FFT in accordance with, and to the extent prescribed by, section 14 of the PPSA.
- 7.5 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.
- 7.6 The Customer acknowledges that the Security Interest over the goods or their proceeds arising under this clause 7 is a PMSI under the PPSA to the extent that it secures payment of the amounts owing in relation to the goods.
- 7.7 The Customer will do everything reasonably required of it by FFT to enable FFT to register its Security Interest with the priority FFT requires and to maintain those registrations including:
- (a) signing any documents and/or providing any information which FFT 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 clause 7.7(a).
- 7.8 The Security Interests arising under this clause 7 will be perfected by FFT 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 clause 8 attaches at any later time.
- 7.9 FFT 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.
- 7.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interests created under this

Agreement, the Buyer 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).

- 7.11 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 FFT under this Agreement or the PPSA.
- 7.12 The Customer irrevocably grants to FFT the right to enter any premises or property of the Customer without notice, and without being in any way liable to the Customer or any other person, if FFT has cause to exercise any of its rights under the PPSA, and the Customer agrees to indemnify FFT against any such liability.
- 7.13 The Customer must notify FFT 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.

## 8. RISK AND INSURANCE

- 8.1 Unless otherwise agreed in writing or set out in the terms contained in the Quotation, the risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer on an ex-works basis in accordance with the INCO Terms 2010.
- 8.2 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods or services supplied by FFT.
- 8.3 The Customer indemnifies FFT in respect of any loss, claim, action or damage arising out of any of the matters referred to in this clause 8.

## 9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer is responsible for ensuring the accuracy of any specifications and requirements in respect of the goods and services and for giving FFT any necessary information relating to the goods and services within a reasonable time.
- 9.2 The Customer must:
- (a) ensure that the Site is available to and accessible by FFT and its servants or agents by the Anticipated Delivery Date specified in the Quotation to enable delivery and installation of the goods; and
  - (b) ensure that it has suitable protection and insurance for the goods from the time of delivery.

## 10. DELIVERY AND INSTALLATION

- 10.1 FFT will arrange for the delivery of the goods to the Customer, at the Customer's cost and delivery of the goods will be deemed to have occurred at upon delivery of the goods to the Site.
- 10.2 Any period or date for delivery of goods or provision of services stated by FFT is intended as an estimate only and is not a contractual commitment. FFT will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services and the Customer indemnifies FFT from any costs, losses, expenses, claims or actions arising out of any such delay.

## 11. LIABILITY

- 11.1 Except as specifically set out in these Terms, or contained in any warranty statement provided with the goods or services, any term, condition, warranty or consumer guarantee in respect of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded to the maximum extent permitted by law.
- 11.2 Repair or replacement of the goods, or part of the goods, or re-supply of the services is the absolute limit of FFT's liability

howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party to the maximum extent permitted by law.

11.3 FFT is not liable for:

- (a) any indirect or consequential losses or expenses suffered by the Customer or any third party, however caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party; or
- (b) any loss or damage suffered by the Customer or any third party where FFT has failed to deliver goods or services or fails meet any delivery date or cancels or suspends the supply of goods or services; and

11.4 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.

## 12. VARIATION AND CANCELLATION

12.1 If, through circumstances beyond FFT's control, FFT is unable to provide the goods or services, then FFT may, by written notice to the Customer and without any liability to the Customer:

- (a) make changes to the goods and services supplied, provided that the end performance of the goods or services is not materially prejudiced; or
- (b) cancel any Order (even if it has already been accepted).

12.2 No purported cancellation or suspension of an Order by the Customer is binding on FFT after that Order has been accepted.

12.3 The Customer shall be liable for any costs incurred or arising out of any variation made by the Customer to an Order that has been accepted by FFT, including but not limited to freight and the cost of additional or replacement goods.

12.4 Without limiting the generality of this clause 12, if goods or services are supplied by FFT in accordance with any particular drawings, designs, specifications or instructions provided by the Customer ("Custom Order"), and the Customer wishes to vary or cancel the Custom Order, then subject to clause 12.3:

- (a) If FFT has not yet commenced production of the Custom Order, cancellation or variation of same will not be subject to any additional fee or charge;
- (b) If production of the Custom Order has commenced and the Customer wishes to cancel the Custom Order, the Customer agrees to pay the full cost of the Custom Order goods and a cancellation fee set by FFT in its discretion;
- (c) If production of the Custom Order has commenced and the Customer wishes to vary the Custom Order, the Customer will unconditionally indemnify FFT from and against any losses, costs, liability, or expenses arising out of the variation of the Custom Order in addition to paying a variation fee set by FFT in its absolute discretion.

## 13. WARRANTY

13.1 FFT offers a limited warranty for its goods and services against defects and workmanship and materials, subject to the limitations and exclusions set out in this warranty which is given subject to and in addition to other rights and remedies the Customer has under any law in relation to the goods to which this warranty relates, including but not limited to the rights provided by the ACL. This warranty does not limit or restrict the Customer's rights.

- 13.2 Where the ACL applies, the goods and services come with guarantees that cannot be excluded under the ACL. The Customer is entitled to replacement or a refund for a major failure and for compensation for any other 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.
- 13.3 FFT warrants that, subject to the exclusions and limitations set out in these Terms, the goods and services provided by FFT will be free from defects in materials and workmanship under normal usage ("Warranty"), for the period within twelve (12) months of the date that the goods are delivered to Site by FFT ("Warranty Period"). Products manufactured or supplied by any other party will be subject to their own manufacturer's warranties and warranty periods.
- 13.4 To the maximum extent permitted by law, this Warranty does not cover
- (a) products packaged or labelled by someone other than FFT or its authorised agents;
  - (b) products not used in compliance with the specifications or goods not cared for or used, serviced or maintained in accordance with the product manuals, instructions or training provided by FFT;
  - (c) defects due to misuse, alteration, unauthorised repair or negligent handling, or defects due to lack of care neglect or accident by the Customer, or servant or agent of the Customer, including but not limited to storage, handling or cleaning of the goods;
  - (d) personal injury, property damage, consequential or economic loss, however caused;
  - (e) modification, repair or service of the goods by someone other than FFT; or
  - (f) goods that have been subject to abnormal conditions, whether of temperature, water, humidity, pressure, stress or similar.
- 13.5 To the maximum extent permitted by law and other than the Warranty stated above, FFT makes no representations or warranties of any kind whatsoever express or implied in respect of the goods and services.
- 13.6 All Warranty claims must be made within the Warranty Period.
- 13.7 If a defect appears in the goods or services before the end of the Warranty Period and FFT finds the goods or services to be defective in materials or workmanship, FFT will, in its sole discretion, either:
- (a) replace or repair the goods or the defective part of the goods free of charge;
  - (b) cause the goods or the defective part of the goods to be repaired or replaced free of charge;
  - (c) re-supply the services or part of the services; or
  - (d) refund the purchase price of the goods or services to the Customer.
- 13.8 If a fault covered by this Warranty occurs, the Customer must notify FFT in writing of the fault, including details of the nature of the warranty claim and the purchase order number. FFT will contact the Customer and, where possible, assess the claim over the telephone and otherwise investigate the Claim to determine whether the Warranty applies.
- 13.9 Provided that a claim is made within the Warranty Period and the Warranty applies, all direct costs associated with labour and replacement parts will be borne by FFT. FFT may, in its sole discretion:
- (a) choose to have the goods returned to FFT for any warranty repair, with the costs of transport borne by FFT; or
  - (b) choose to travel to the Customer's Site to effect warranty repairs, with the cost of travel to be borne by FFT.
- 13.10 Where a valid warranty claim is made by the Customer in accordance with these Terms and it is accepted by FFT the cost of repaired or replaced goods or services and all labour associated with same will be borne by FFT.
- 13.11 Where FFT incurs costs in investigating a warranty claim that is ultimately deemed by FFT not to be valid, the Customer shall be liable to reimburse FFT for all such costs incurred by FFT.
- 13.12 The Warranty is limited to defects in the materials or workmanship of the goods or services and does not cover expendable parts, consumable items or the replacement of parts due to fair wear and tear.
- 13.13 This warranty is in addition to any statutory warranties available to the Customer that cannot be excluded.
- 14. RETURNS**
- 14.1 Subject to the ACL and to clause 15.3, FFT will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless:
- (a) the Customer notifies FFT with full details as soon as practicable after delivery specifying the shortage or defect; and
  - (b) FFT is given the opportunity to inspect the goods and services and investigate the complaint before any further dealing.
- 14.2 If the Customer fails to give the notice as required in clause 15.1, it is deemed to have accepted the goods and services and will be bound to pay for them.
- 14.3 Where FFT accepts any claim for shortages, damage or non-compliance with the Agreement, FFT's liability will be limited to a remedy of, at its option, repair or replace the goods, re-supply the services, or refund the price of the goods or services.
- 14.4 FFT will not, under any circumstances, accept goods for return that:
- (a) are damaged due to not being stored or handled in accordance with FFT instructions or any legislative requirements; or
  - (b) have been altered in any way without authorisation from FFT.
- 14.5 The Customer must obtain FFT's prior written approval for the return of goods and pay all freight charges associated with return.
- 14.6 The Customer must return the goods in new condition together with proof of purchase and original packaging, where possible.
- 14.7 FFT may, in its absolute discretion, accept the return of any goods for credit within 14 days of delivery or otherwise within a reasonable time from delivery.
- 15. INTELLECTUAL PROPERTY & SPECIFICATIONS**
- 15.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 15.2 The Customer must not register or record or attempt to register or record the Intellectual Property or any derivative works in respect of same including but not limited to any amendment, modification or improvement thereof or part thereof, or anything similar to it, or aid or abet anyone else to do so.
- 15.3 Any Intellectual Property provided to the Customer by FFT remains FFT's exclusive property and must be returned to FFT on demand (as applicable) and must not be copied or communicated to any third party without FFT's express written consent.
- 15.4 The Customer must not at any time (and must not direct any other party to) create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property without FFT's prior written consent.

- 15.5 If goods and services are supplied in accordance with any particular drawings, designs, specifications or instructions provided by the Customer, then the Customer agrees to indemnify FFT from and against any losses, expenses, claims, demands or actions awarded against or incurred by FFT in connection with any third party claim for infringement of any intellectual property rights.
16. **FORCE MAJEURE**
- 16.1 FFT shall have no liability whatsoever under these Terms to the extent that such fulfilment is prevented by circumstances beyond its reasonable control, including but not limited to:
- (a) industrial disputes, strikes, lockouts;
  - (b) accident or breakdown;
  - (c) import or export restrictions and embargoes;
  - (d) act of God, explosion, flood, tempest or fire;
  - (e) act of terrorism, act of war, sabotage, insurrection, civil disobedience or requisition;
  - (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery.
- 16.2 If an event of force majeure occurs, FFT may terminate the Agreement by written notice to the Customer without any liability for any costs, damages, loss or claims suffered by the Customer arising out of such termination.
17. **MISCELLANEOUS**
- 17.1 The laws of Victoria from time to time governs the Terms.
- 17.2 Failure by FFT to enforce any of these Terms shall not be construed as a waiver of any of FFT's rights.
- 17.3 If any of the Terms are unenforceable it must be read down so as to be enforceable or, if it cannot be so read down, the term must be severed from these Terms without affecting the enforceability of the remaining terms.
18. **CREDIT REPORTING**
- 18.1 The Customer consents to FFT obtaining credit information about the Customer and providing a credit report in relation to the Customer or exchanging credit information about the Customer to third parties for the purposes of providing goods and services to the Customer in accordance with these Terms.
19. **PRIVACY AND FINANCIAL INFORMATION**
- 19.1 The Customer acknowledges and consents to the use by FFT and its employees, officers and agents of its personal and financial information for the purposes of:
- (a) the supply of goods and services to the Customer;
  - (b) assessing and approving any credit application of the Customer;
  - (c) obtaining reports in relation to any application for credit or the Customer's credit history; or
  - (d) general marketing purposes and otherwise in accordance with the FFT's privacy policy from time to time, which is available upon request
- 19.2 Other than in the circumstances allowed under the relevant privacy laws or its privacy policy, FFT will not disclose the Customer's personal information to other parties. The Customer may contact FFT's privacy officer at any time to access or change any personal information provided to FFT by calling +61 39587 9488.
- 19.3 The Customer will provide any and all necessary instructions and/or authorities required by FFT's accountants, debtor insurers and bankers to enable FFT to make investigations from time to time into the Customer's trading and financial position.
- 19.4 The Customer's details, including its purchases will be added to FFT's database and will be used by FFT:
- (a) to identify the Customer;
  - (b) to assist in providing goods and services to the Customer, including but not limited to the processing of any application for or granting of credit and the management and administration of those services;
  - (c) to provide the Customer with information about the goods in undertaking risk assessment management and in gathering data and disclosing data to third parties such as
    - (i) Insurance brokers and insurers;
    - (ii) Credit reporting agencies; and
    - (iii) Financial institutions; and
  - (d) for the purposes of providing promotional or marketing information to the Customer in relation to the goods and services provided by FFT.

The Customer hereby acknowledges and agrees that it has read and understood these Terms and Conditions and that it understands that any orders placed by it from the below date will be supplied subject to these Terms and Conditions.

SIGNED for and on behalf of the Customer by its duly authorised representative:

.....  
Signature

.....  
Name (Printed)

.....  
Name of Customer (Printed)

Date:.....