

## TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

### 1 Standard Terms

1.1 These terms are incorporated by reference into Air Liquide's Purchase Orders.

1.2 Except to the extent otherwise agreed, these terms apply to all supplies to Air Liquide of Goods and/or Services. They supersede any terms and conditions that the Supplier may provide to Air Liquide.

### 2 Contract Formation

2.1 Air Liquide's Contract with the Supplier will commence on the earlier of the date the Parties execute it or the date of the Supplier's acceptance or deemed acceptance (in accordance with **clause 3.2**) of Air Liquide's Purchase Order.

2.2 If there is any inconsistency between these terms and other terms of the Contract, these terms apply to the extent of such inconsistency, except to the extent another order of precedence is expressly stated in the Contract.

### 3 Purchase Orders

3.1 Unless otherwise agreed in writing:

- (a) the Supplier is not an exclusive supplier to Air Liquide of the Goods and/or Services;
- (b) Air Liquide does not commit to purchase a minimum amount of Goods and/or Services from the Supplier; and
- (c) Air Liquide will have no commitment to purchase Goods or Services until it issues the Supplier a Purchase Order for the relevant Goods or Services, and that Purchase Order becomes binding under **clause 3.2**.

3.2 The Supplier must accept or reject Air Liquide's Purchase Order within 5 Business Days of receipt, but if the Supplier does not, or if Air Liquide is aware that the Supplier has started to perform any of the Supplier's obligations under that Purchase Order, the Supplier will be deemed to have accepted the Purchase Order. Upon acceptance or deemed acceptance, the Purchase Order will be binding.

3.3 Air Liquide may vary or withdraw its Purchase Order at any time prior to it being binding.

3.4 When a Purchase Order has become binding, Air Liquide may cancel it (subject to **clause 4.3**) or vary it (subject to **clause 5**).

### 4 Contract Term

4.1 The Contract will end on the earlier of:

- (a) termination by either Party pursuant to the terms of the Contract;
- (b) the expiry of a fixed term (if any is stated in the Contract) (**Fixed-Term**); or
- (c) the date Air Liquide tells the Supplier that the supply of the Goods and/or Services has been completed to Air Liquide's satisfaction under the Contract.

4.2 Notwithstanding **clause 4.1** and the expiration of any Fixed-Term, if Air Liquide continues to order Goods or Services from the Supplier and the Supplier continues to deliver or perform these, then, unless otherwise agreed in writing, the Contract will be deemed to continue to apply until either Party terminates it by providing to the other Party no less than 10 Business Days' notice in writing (and, subject to **clause 4.3**, it will continue to apply in respect of any binding Purchase Order

until the completion of that binding Purchase Order).

4.3 Except to the extent otherwise agreed in writing, Air Liquide may terminate the Contract (including cancelling any binding Purchase Order) for convenience any time prior to delivery of the relevant Goods or completion in full of the relevant Services:

- (a) by providing no less than 10 Business Days' notice in writing at any time; and
- (b) with no liability to pay for any Goods delivered after the date of termination where the Goods are not made to Air Liquide's specifications; or
- (c) where the Goods are made to Air Liquide's specifications, or Services have been performed in part by the Supplier, subject to reimbursement to the extent stated in **clause 4.4**.

4.4 Where **clause 4.3(c)** applies, Air Liquide shall reimburse the Supplier for either (at Air Liquide's discretion):

- (a) a pro rata amount which reflects the work the Supplier has performed up to the date of cancellation in respect of the relevant Goods or Services; or
- (b) the Supplier's reasonable out-of-pocket costs (excluding labour costs) that the Supplier necessarily incurred before termination; subject to proof of such costs and that the Supplier mitigated its losses, after receiving notice of termination, and the right of Air Liquide to receive, should it request, the benefit of any Goods or Services paid for.

### 5 Contract Variation

5.1 Air Liquide may issue a request of variation to the Contract at any time.

5.2 The Supplier must tell Air Liquide in writing within 5 Business Days of the request whether this variation will change the Price or Delivery Date or any other term of the Contract, following which Air Liquide will tell the Supplier in writing if Air Liquide wants to proceed with Air Liquide's variation request.

5.3 If the Supplier does not tell Air Liquide within this timeframe, the Supplier is deemed to have accepted the variation to the Contract with no other change to the Price or Delivery Date or other term of the Contract.

5.4 Upon request by Air Liquide, the Parties will execute a variation document consistent with the accepted (or deemed accepted) variation. Where appropriate, Air Liquide may adjust its Purchase Order to reflect such change.

### 6 Obligations Applicable to Both Goods and Services

6.1 The Supplier agrees to supply the Goods and/or Services:

- (a) expeditiously, having regard to any Milestone Date, and in any case, no later than the Delivery Date;
- (b) at the Delivery Location; and
- (c) in accordance with all relevant laws.

6.2 If the Goods or Services are not received in full by the Delivery Date, except to the extent caused or contributed by Air Liquide fault, Air Liquide shall have the right to terminate the Contract.

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- 6.3 Where relevant to the provision of the Goods or Services, the Supplier will comply with export controls, customs and foreign trade regulations (**Foreign Trade Regulations**). If information is needed from Air Liquide to comply with Foreign Trade Regulations, the Supplier must ask Air Liquide in writing within a reasonable period after receipt of Air Liquide's Purchase Order, and Air Liquide will endeavour to provide it (subject to any laws or embargos/sanctions).
- 7 Warranties and Obligations Only Applicable to Supply of Goods**
- 7.1 The Supplier warrants that:
- (a) it may lawfully supply the Goods to Air Liquide, they are at the time of delivery free of encumbrances and Air Liquide will have quiet possession of the Goods supplied;
  - (b) the Goods will correspond to any specification issued by Air Liquide and agreed by the Supplier;
  - (c) where Goods are supplied by reference to any sample or description, they will correspond with such sample or description;
  - (d) the Goods are fit for purpose, new and of merchantable and acceptable quality and free from defects in design, materials and workmanship; and
  - (e) the Goods will comply with relevant laws and applicable industry standards including any relevant laws in the place of manufacture of the Goods, including in relation to:
    - (i) their safety, manufacture, packaging, labelling, transportation and sale; and
    - (ii) their nature, substance, quality, weight and measurement.
- 7.2 In the case of Goods to be re-supplied by Air Liquide to end users in Australia, the Supplier warrants that the Goods meet applicable consumer guarantees under Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the applicable state *Fair Trading Acts* (**Australian Consumer Law** or '**ACL**'), or (where the Goods are being delivered in New Zealand) the *Consumer Guarantees Act 1993* (NZ) (**CGA**), and (if and to the extent applicable) that any warranty against defects provided with respect to the Goods meets the ACL or CGA requirements.
- 7.3 If the Supplier supplies Air Liquide with something that the Supplier has not manufactured or created, the Supplier assigns to Air Liquide the benefit of any warranty or entitlement that the manufacturer or creator or other supplier has granted the Supplier under any contract or by law, to the extent that the benefit of any warranty or entitlement is assignable. To the extent that such warranty or entitlement cannot be assigned, the Supplier authorises Air Liquide to take such action to enforce such warranty or entitlement in the name of the Supplier against the manufacturer or such other person.
- 7.4 The Supplier must provide all information (including by way of training of Air Liquide's Representatives) relating to the Goods as required by law, including WHS Laws, and as otherwise reasonably required by Air Liquide. This information shall include any operator manual, parts books and other instructional documentation relevant to the operation, use and maintenance of the Goods.
- 7.5 Unless otherwise stated in the Contract:
- (a) the Supplier must safely and securely pack and prepare the Goods for shipment. They must be labelled with the order date, Air Liquide's Purchase Order number, the Delivery Location and Air Liquide Contract Representative's name. If Air Liquide asks, the Supplier must dispose of all packaging at the Supplier's cost; and
  - (b) the Supplier must arrange transport for and deliver the Goods, at the Supplier's cost (including any duties and any other transport-related costs) to the Delivery Location.
- 7.6 Air Liquide's Representative must upon delivery sign the Supplier's delivery docket that includes a description of the Goods and the Purchase Order number. The Supplier must give Air Liquide a copy of this. Except as otherwise agreed in the Contract, Goods are not to be delivered in instalments and they must not be left unattended at the Delivery Location.
- 7.7 Risk in the Goods will not pass to Air Liquide until signing of the Supplier's delivery docket under **clause 7.7** and completion of Acceptance Testing under **clause 7.8** (where applicable) to the satisfaction of Air Liquide. Title in the Goods passes to Air Liquide upon delivery to Air Liquide or upon Air Liquide paying for them, whichever is earlier.
- 7.8 If required by Air Liquide, the Goods must successfully complete Acceptance Testing. Air Liquide may carry out the Acceptance Testing or require the Supplier to do so (at the Supplier's cost) at the Delivery Location or elsewhere. Where Acceptance Testing is required, acceptance occurs after the delivered Goods have successfully completed Acceptance Testing. In no event shall Air Liquide be considered to have accepted Goods prior to fully inspecting them or prior to completion of any applicable Acceptance Testing. Air Liquide will seek to inspect delivered Goods and to conduct Acceptance Testing (if not agreed to be carried out by the Supplier) as soon as practicable in the normal course of business.
- 7.9 If the Goods fail Acceptance Testing or otherwise do not comply with the Contract, Air Liquide may decide to reject all or some of them. The Supplier must, at the Supplier's cost and if Air Liquide asks, remove the rejected Goods, refund any payment Air Liquide has made, and/or repair or replace them as directed by Air Liquide. Notwithstanding successful completion of Acceptance Testing or other acceptance of the Goods, Air Liquide retains the right to reject the Goods and to enforce Air Liquide's other rights under the Contract if, after fuller inspection or use, Air Liquide otherwise becomes aware of any Defects in the Goods.

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### 8 Warranties and Obligations Applicable to Performance of Services

8.1 The Supplier warrants that the Services will:

- (a) correspond to any specification issued by Air Liquide and agreed by the Supplier;
- (b) be fit for purpose;
- (c) be provided with all due skill, care and diligence; and
- (d) comply with relevant laws and applicable industry standards.

8.2 The Supplier must supply the Services (including any Deliverables):

- (a) in accordance with the Service Levels;
- (b) in accordance with Air Liquide's reasonable directions as advised from time to time;
- (c) using the Key Personnel (or, if the Key Personnel cannot do so or none are identified in the Contract), other suitably experienced people approved by Air Liquide (acting reasonably); and
- (d) where applicable, ensuring that the Services are free of any computer virus, disabling device or code, or other harmful or destructive code.

8.3 Where the Delivery Location for Services is Air Liquide's site:

- (a) Air Liquide will give the Supplier non-exclusive access at the site for the Supplier to supply the Services;
- (b) upon request, the Supplier and the Supplier's Representatives must comply with any relevant site induction and safety process applicable at the site prior to entering it;
- (c) the Supplier must comply with Air Liquide's policies and procedures advised to the Supplier in advance in writing which are relevant to the performance of the Services, including the Air Liquide Life Saving Rules, a document which sets out clear and simple "do's and don'ts" concerning activities with high potential safety risk and which is available at <https://industry.airliquide.com.au/safety>;
- (d) the Supplier must not interfere with activities or operations of Air Liquide or its Representatives at the site; and
- (e) the Supplier must ensure that, after the performance of the Supplier's activities, the Supplier leaves Air Liquide's site secure, clean, orderly and fit for Air Liquide's immediate use.

8.4 If:

- (a) the Supplier knows or suspects that it is not; or
- (b) Air Liquide believes the Supplier is not (or, in the future, may not be)

compliant with the requirements of the Contract so far as the Services, the Supplier must immediately tell Air Liquide (where applicable), and otherwise take all steps necessary (including any which are mandated by Air Liquide in any Rectification Plan) to achieve compliance. Compliance with this

clause 8.4 does not prejudice Air Liquide's other rights in the Contract.

8.5 Air Liquide is not liable to pay the Supplier for the Services until Air Liquide has had a reasonable opportunity to check that the Services (including any Deliverables) are supplied according to the Contract. Even after providing the Supplier notice of acceptance, Air Liquide retains other rights under the Contract in the event Air Liquide later becomes aware of any Defects in the Services.

8.6 If Air Liquide gives the Supplier access to Air Liquide's systems (for example, computer or communications):

- (a) Air Liquide may revoke access at any time and for any reason and the Supplier will not be held liable for any breach of the Contract which results only because of the Supplier's access being revoked by Air Liquide;
- (b) the Supplier will comply with Air Liquide's policies and directions in relation to Air Liquide's systems, which Air Liquide can amend at any time. Air Liquide will provide the Supplier with up-to-date copies of Air Liquide's policies.

### 9 Defects

9.1 If there are Defects which are notified by Air Liquide to the Supplier during the Defects Liability Period:

- (a) the Supplier must fix them and the cause(s) within the timeframe Air Liquide reasonably requests (depending on the consequences to Air Liquide's business) and, if the Supplier does not do so, then without prejudice to any other right Air Liquide has and at the Supplier's risk, cost and expense, Air Liquide will do what is reasonably necessary (in Air Liquide's opinion) to fix the Defect (including, for example, engaging third parties to do the work);
- (b) if Goods and/or Services are fixed according to **clause 9.1(a)**, the Defects Liability Period for them will be extended by a period equal to that of the original Defects Liability Period, commencing on the date on which the repair or replacement is completed; and
- (c) if the Supplier organises a Defect to be fixed, in so doing, the Supplier must minimise disruption to Air Liquide's business.

### 10 Indemnities

10.1 Without limitation to any other right Air Liquide has, the Supplier indemnifies Air Liquide for Air Liquide's Costs from:

- (a) injury, loss or damage to any person or property due to the Supplier's (including the Supplier's Representatives) act or omission in connection with the Contract;
- (b) any breach by the Supplier of the Contract including any warranty; and
- (c) any negligent or wrongful act or omission by the Supplier (including by the Supplier's Representatives) in connection with the Contract,

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- except to the extent they result from Air Liquide's (including its Representatives) negligent act or omission or breach of the Contract.
- 10.2 Air Liquide is not liable for any indirect, punitive or consequential loss, penalties, interest, loss of profits, revenue, savings, expectation or opportunity, lost production, product development and engineering costs, tooling, administration costs or similar losses in connection with the Contract or the Supplier's claims for similar losses.
- 11 Price and Payment**
- 11.1 The Supplier must not increase the Price, unless Air Liquide has agreed to the increase in writing.
- 11.2 Except as otherwise agreed in writing, the Supplier must only invoice Air Liquide when the Goods have been received by Air Liquide and/or the Services completed according to the Contract (if any).
- 11.3 Provided that the Supplier has complied with the Contract, and the Supplier invoices Air Liquide no later than 12 months after the delivery of the Goods or the performance of the Services, Air Liquide will pay the Supplier the Price for the Goods and/or Services. Air Liquide reserves the right to reject invoices issued later than that this.
- 11.4 If Air Liquide has provided notice of Defects under **clause 9.1**, Air Liquide is not liable to pay the Supplier the relevant Price, until the Defects are fixed to Air Liquide's reasonable satisfaction and according to the Contract.
- 11.5 The Supplier's invoices must comply with applicable GST Laws and refer to Air Liquide's Purchase Order number. The Supplier's invoice must include, or be accompanied by, a breakdown of the quantity and unit Price for the Goods and/or Services received and invoiced at each Delivery Location during the relevant period, together with any other information reasonably specified by Air Liquide to verify the amount owing to the Supplier or to facilitate payment through Air Liquide's payment system.
- 11.6 The Supplier must (at its cost) use any procurement system notified to the Supplier in writing by Air Liquide from time to time (acting reasonably) in order to electronically exchange Purchase Orders, the Supplier's invoices and such other documents as may be specified by Air Liquide. Should the Supplier be notified of such system requirement, then except as otherwise agreed by Air Liquide from time to time, a reference in these terms to a Purchase Order will be a reference to a Purchase Order issued via such system, and an invoice will only be validly issued if issued to Air Liquide via such system.
- 11.7 The Supplier permits Air Liquide, at all reasonable times and with reasonable notice, access to all records, including books of account and operating records, to substantiate the amount claimed.
- 11.8 Except where **clause 11.12** applies, Air Liquide will pay the Supplier's duly issued tax invoice within 60 calendar days after the end of month in which Air Liquide receives it.
- 11.9 Air Liquide may deduct from the invoiced Price any amounts that the Supplier owes Air Liquide.
- 11.10 Air Liquide's payment is not evidence that the Goods and/or Services are accepted or comply with the Contract and is without prejudice to any other rights Air Liquide may have.
- 11.11 The Supplier is responsible to pay for all of its employment and labour costs and payments (for example, wages, superannuation, taxes, leave entitlements, insurances, permits and licences etc). Air Liquide will not reimburse the Supplier for any out-of-pocket costs the Supplier incurs in connection with supply of the Goods and/or Services in the Contract unless Air Liquide specifically agrees to do so in writing or except as otherwise stated in the Contract (**Reimbursable Expenses**), and in any event, Reimbursable Expenses will be limited to those which the Supplier can reasonably substantiate to Air Liquide were directly incurred by the Supplier in connection with the supply, and must have received Air Liquide's prior written approval.
- 11.12 If the Contract is deemed a construction contract or a contract for construction work according to relevant laws in a state or territory of Australia or New Zealand (as the case may be), the following overrides any provision in these terms to the contrary, then:
- (a) if the Supplier submits the Payment Claim earlier than as stated in the Contract, Air Liquide will deem it to be submitted on the date specified in the Contract;
  - (b) within 10 Business Days of receipt of a valid Payment Claim (including the Supplier's tax invoice), Air Liquide will give the Supplier a payment schedule setting out the amount (and the basis) Air Liquide proposes to pay;
  - (c) Air Liquide will pay the Supplier the amount in the payment schedule within 20 Business Days (or, if the Goods or Services are supplied in New South Wales or Queensland, 15 Business Days) of a Payment Claim;
  - (d) if a payment schedule shows an amount owed to Air Liquide by the Supplier, the Supplier must pay Air Liquide within 10 Business Days of a payment schedule; and
  - (e) if the Supplier does not submit a Payment Claim in accordance with **clause 11.12(a)**, Air Liquide may issue a payment schedule.
- 12 Confidential Information and Personal Information**
- 12.1 Each Party may only use or permit the use of Confidential Information of the other Party for the purpose of supply under the Contract.
- 12.2 Each Party must not disclose the Confidential Information of the other Party to any other person other than to their Representatives who need to know it in order for them to perform an obligation under the Contract.
- 12.3 Each Party undertakes that it will not make or copy any Document disclosing Confidential Information of the other Party, except for the purpose of performing an obligation under the Contract, and after obtaining the other Party's written consent.
- 12.4 A Party shall ensure that each of its Representatives who receives Confidential

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- Information of the other Party acts consistently with the requirements of **clauses 12.1 to 12.3** as if they were a Party to the Contract and agrees that a failure by a Representative to so comply will be deemed a breach by the receiving Party.
- 12.5 The obligations imposed by **clauses 12.1 to 12.3** do not apply to disclosure on a confidential basis to a Party's professional advisers, auditors, financiers, or insurers, or as required by law or to enforce the terms of this Contract.
- 12.6 If a Party is required to make disclosure by law, they must notify the other Party as soon as practicable, and co-operate with the other Party in any action reasonably required to limit disclosure.
- 12.7 Each Party must:
- (a) take all reasonable steps (including doing all things reasonably required by the other Party), to keep Confidential Information and all Documents disclosing Confidential Information of the other Party secure from copying, access, use or disclosure in circumstances not permitted under **clauses 12.1 to 12.5**; and
  - (b) immediately notify the other Party if they become aware of any copying, access to, use or disclosure of the Confidential Information of the other Party in circumstances not permitted under **clauses 12.1 to 12.5**.
- 12.8 Each Party must, on termination or expiry of the Contract (or earlier, if requested) immediately:
- (a) return to the other Party or, destroy or delete, all documents disclosing Confidential Information of the other Party;
  - (b) return to the other Party or, destroy or delete, all other property, documents or material belonging to the other Party; and
  - (c) delete any computer program or data containing Confidential Information of the other Party from any storage device;
- in the possession of the first Party or their officers, independent contractors or employees at that time.
- 12.9 Each Party must provide to the other Party as soon as practicable a written statement that they have returned to the other Party or, destroyed or deleted, all Documents and other property referred to in **clause 12.8** and made the required deletions from any storage device forming part of any computer.
- 12.10 Where the information disclosed in connection with the Contract is Personal Information, and irrespective of whether such information is also Confidential Information, then with respect to such Personal Information, each Party must (and must ensure that its officers, employees and independent contractors):
- (a) comply with all applicable privacy laws in any country in which such Personal Information is received, collected, held, used or disclosed by the receiving Party and, to the extent that different privacy laws apply to the Supplier, the Supplier shall comply with the obligations applicable to Air Liquide under the privacy laws applicable to Air Liquide as if they were binding on the Supplier;
  - (b) not transfer Personal Information internationally to any person without the written consent of the other Party;
  - (c) co-operate with the other Party to enable the other Party to comply with privacy laws;
  - (d) co-operate with the other Party in the resolution of any complaint alleging breach of privacy laws or a privacy policy by that other Party in relation to Personal Information disclosed by the other Party; and
  - (e) notify the other Party immediately upon becoming aware of a Data Breach or suspected Data Breach in relation to Personal Information held in connection with the Contract.
- 12.11 The Supplier authorises Air Liquide to collect, use and disclose Personal Information it discloses to Air Liquide in accordance with the AU/NZ Privacy Policy and AU/NZ Credit Reporting Policy, which can be accessed at <https://industry.airliquide.com.au/privacy>, except to the extent the Supplier notifies Air Liquide that it opts out.
- 13 Ownership and Assignment of Intellectual Property**
- 13.1 The Supplier agrees that all Intellectual Property in Project Material shall be Air Liquide's exclusive property. The Supplier assigns absolutely to Air Liquide, with effect from the date of this Contract, the whole of the Supplier's interest in any Intellectual Property in Project Material existing at the date of this Contract, including the assignment of the right to bring legal proceedings, and to obtain any relief to which the Supplier would have been entitled but for this clause, in respect of any infringement of any rights included in the Intellectual Property in Project Material occurring before or after the date of this Contract.
- 13.2 The Supplier must notify Air Liquide promptly of any Project Material produced, created or developed by the Supplier's officers, independent contractors or employees.
- 13.3 The Supplier assigns to Air Liquide absolutely, by way of assignment of future copyright, the whole of the Supplier's interest in the copyright in any country that permits the assignment of future copyright, in any Project Material which comes into existence after the date of this Contract.
- 13.4 The Supplier agrees to assign to Air Liquide absolutely all the Supplier's title to and interest in the Intellectual Property throughout the world which comes into existence in any Project Material after the date of this Contract, and is not assigned by **clause 13.3**.
- 13.5 The Supplier agrees to do all acts and execute all documents, and to ensure that the Supplier's officers, independent contractors or employees do all acts and execute all documents, necessary to secure Air Liquide's ownership of the entire Intellectual Property in respect of all Project Material. The Supplier irrevocably appoints each of Air Liquide's directors from time to time severally as the Supplier's attorneys to do all acts

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- and execute all documents which the Supplier is obliged to do or execute by this clause.
- 13.6 The Supplier must tell Air Liquide if there is any suspected, threatened or actual infringement of any Intellectual Property in the Project Material. The Supplier agrees to provide any assistance reasonably required by Air Liquide in relation to the enforcement of any Intellectual Property in Project Material against third parties. Air Liquide shall reimburse the Supplier for all reasonable costs and expenses incurred by the Supplier in providing such assistance, provided such expenses do not, in any way, result from a breach of this Contract by the Supplier.
- 13.7 The Supplier grants Air Liquide a non-exclusive, world-wide, perpetual, royalty free licence to use, reproduce and exploit (and to sub-license third parties to use, reproduce and exploit) any of the Supplier's Background Material to the extent useful or necessary to develop, reproduce, use or exploit any Project Material or to obtain the full benefit of this Contract.
- 13.8 Air Liquide grants the Supplier a non-exclusive, world-wide, revocable, royalty free licence to use, reproduce, and exploit, (and to sub-license any third party approved in writing by Air Liquide to use, reproduce and exploit) any of Air Liquide's Background Material and Project Material to the extent necessary for the Supplier to comply with the Contract.
- 13.9 The Supplier warrants that Air Liquide's use, reproduction or exploitation of the Supplier's Background Material, the Project Material or the Deliverables will not infringe the rights, including Intellectual Property, of any third party.
- 13.10 Without limitation to any other remedy that Air Liquide may have, if the Supplier has breached **clause 13.9**, the Supplier must, at no cost to Air Liquide, procure all licences and consents necessary to enable Air Liquide to obtain the full benefit of this Contract.
- 14 Insurance**
- 14.1 The Supplier must take out and maintain all insurances required by law and which would customarily be taken out by a prudent business operator supplying similar goods or services to those supplied by the Supplier under the Contract. Those insurances shall be on terms and with an insurer satisfactory to Air Liquide (acting reasonably) and, except to the extent Air Liquide otherwise agrees, must include:
- (a) product liability insurance on an occurrence basis of not less than \$20 million in the aggregate;
  - (b) public liability insurance on an occurrence basis of not less than \$20 million per event;
  - (c) professional indemnity insurance on a claims made basis of not less than \$10 million per event;
  - (d) in Australia (where applicable), workers compensation insurance including common law liability insurance for all of the Supplier's employees and working directors, which complies with the laws in force in the place where services are to be supplied (which in the case of Australia, shall be the relevant State or Territory); and
- (e) equipment/property insurance for any property owned by the Supplier.
- If Air Liquide asks, the Supplier must immediately give Air Liquide evidence of the currency of these insurances.
- 15 Compliance**
- 15.1 The Supplier warrants that the operation of the Supplier's business complies with all laws, including laws relating to employment, the environment and health and safety, bribery and corruption. The Supplier also warrants that the Supplier and the Key Personnel, as well as any other officers, employees and independent contractors engaged by it to perform this Contract, have:
- (a) not been prosecuted or fined in relation to health, safety or environmental laws or matters (which the Supplier has not fully disclosed to Air Liquide prior to entry into the Contract);
  - (b) no actual or perceived conflict of interest with Air Liquide; and
  - (c) the necessary experience, skills, qualifications, knowledge, competence, licences and permits to perform the Contract.
- 15.2 If Air Liquide asks, the Supplier must immediately give Air Liquide evidence of the currency of any licences, permits or relevant qualifications.
- 15.3 The Supplier must:
- (a) keep and make available to Air Liquide on request, during the term of the Contract and for no less than two years after its expiration or termination, all documentation evidencing the Supplier has complied with, and is complying with, its obligations under the Contract; and
  - (b) respond to any reasonable request for such information, access or documents from Air Liquide within 10 Business Days of such request.
- 15.4 Each Party agrees to comply with all laws and regulations applicable in connection with entering into the Contract and supplying the Goods or Services generally, including in particular as concerns anti-corruption.
- 15.5 Each Party will implement policies and procedures to foster compliance with anti-corruption and anti-bribery. If the Supplier does not have its own code of conduct addressing anti-corruption behaviour, the Supplier agrees to adhere to the principles stated in the Air Liquide Group Code of Conduct, available at the link: <https://industry.airliquide.com.au/csr> when carrying out any activity in connection with the Contract and to take reasonable and customary measures to ensure that the Supplier's officers, employees and independent contractors implement these principles when carrying out any activity in connection with this Contract.
- 15.6 For information as to Air Liquide's Whistleblower Policy, refer to <https://industry.airliquide.com.au/csr>.

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### 16 Modern Slavery

16.1 For information as to Air Liquide's Modern Slavery policy and to Air Liquide's most recent Modern Slavery Statement, refer to <https://industry.airliquide.com.au/csr>.

16.2 The Supplier warrants that it does not knowingly, and covenants that it will not knowingly:

- (a) engage in any form of Modern Slavery;
- (b) engage a Tier 1 Supplier which in any way engages in any form of Modern Slavery; and
- (c) give or receive goods or services from, or otherwise deal with, a Tier 1 Supplier which in any way engages in any form of Modern Slavery.

16.3 The Supplier will:

- (a) comply with Modern Slavery Laws;
- (b) treat all its Workers with dignity and respect;
- (c) not apply any form of threat, coercion, violence (including corporal punishment) or deception to any Worker;
- (d) not discriminate against any Worker on the basis of any attribute protected by any anti-discrimination law;
- (e) do all that it reasonably can to ensure that all entities in its Supply Chains treat their Workers in a manner consistent with this **clause 16.3**.

16.4 The Supplier will, on Air Liquide's request:

- (a) provide a written statement confirming that it, all its Related Companies and all its Tier 1 Suppliers, are not in any way involved in any form of Modern Slavery; and
- (b) take all reasonable steps to procure a written statement from any entity in any of its Supply Chains confirming that, that entity is not in any way involved in any form of Modern Slavery.

16.5 The Supplier will, whenever requested by Air Liquide, disclose all suppliers of goods or services in its Supply Chains (as at the time of the request) relevant to the supply of goods or services to Air Liquide.

16.6 In the event the Supplier identifies an occurrence or risk of Modern Slavery in its own operations or within its Supply Chains, it will immediately:

- (a) take reasonable and appropriate steps to rectify that occurrence or mitigate that risk (including provision of an appropriate remedy for the victim of that occurrence); and
- (b) notify Air Liquide of that occurrence or risk and the steps taken by the Supplier to rectify that occurrence or mitigate that risk.

### 17 Corporate Social Responsibility

17.1 The Supplier acknowledges that it has read and accepted Air Liquide's Supplier Code of Conduct, which can also be accessed at <https://industry.airliquide.com.au/csr>. The Air Liquide Supplier Code of Conduct sets out the standards of business ethics, human rights and labour standards as well as its approach to the

environment and the community which Air Liquide expects its suppliers to observe.

17.2 Air Liquide reserves the right to verify the Supplier's compliance with the rules set forth in the Air Liquide Supplier Code of Conduct and provisions of the Contract in any form Air Liquide chooses (acting reasonably), whether by way of asking the Supplier (at its cost) to complete a questionnaire or to participate in an audit, issued or conducted by Air Liquide or by a third party engaged by Air Liquide. If Air Liquide identifies any shortcomings or areas for improvement after assessing the Supplier's compliance, Air Liquide may issue the Supplier a Rectification Plan and the Supplier must promptly implement initiatives to address those shortcomings and to make those improvements.

17.3 Where appropriate, Air Liquide may also request from the Supplier reasonable evidence that the Supplier has in place systems and procedures to manage and monitor its safety performance (including number of lost-time accidents and the number of non-lost time accidents and the accident frequency rate of employees, subcontractors and temporary workers) as well as use of water and energy consumption, greenhouse gas (GHG) emissions and other wastes and discharges.

17.4 If Air Liquide requests, the Supplier will provide Air Liquide with reasonable evidence that the Supplier has implemented a commitment like the Air Liquide Safety Pledge (a copy of which is available at <https://industry.airliquide.com.au/safety>) where the Supplier requires its employees to evidence their commitment to working safely every day.

### 18 Default, Suspension and Termination

18.1 If the Supplier is unable to pay the Supplier's debts or expenses when they fall due, the Supplier must tell Air Liquide immediately. If the Supplier suspends payments or, in Air Liquide's reasonable view, has payment or liquidity problems, Air Liquide may ask the Supplier to promptly provide Air Liquide with reasonable financial information to assess the Supplier's ability to perform the Contract. Air Liquide will keep this information confidential and only use this information for the purpose of assessing the Supplier's ability to comply with the Contract and to exercise Air Liquide's rights under the Contract.

18.2 A Party may suspend the performance of its obligations under the Contract if: (a) the other Party is the subject of an Insolvency Event; or (b) the other Party or its officers, employees and independent contractors commit a material breach of **clauses 15 and 16**, until the failure has been remedied to the reasonable satisfaction of the other Party.

18.3 A Party may suspend the performance of its obligations under the Contract if it has reasonable grounds to consider that ongoing delivery of Goods or performance of Services at an Air Liquide site which is the Delivery Location is no longer safe, provided that in this event, it provides the other Party with reasonable prior written notice (which in appropriate circumstances may be immediate) setting out the event or circumstance that renders such performance unsafe, and upon

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- which such Party relies to suspend performance. Such suspension may continue only so long as, and to the extent, that performance would be unsafe. The Party responsible for the safety issue shall take steps to rectify or overcome the safety issue as soon as practicable. Neither Party will be responsible for any delay in delivery or performance resulting from suspension except to the extent such Party has caused or contributed to the safety issue. Nothing in the foregoing relieves the Supplier from its obligations in circumstances where it has failed to alert Air Liquide to an issue of which it is aware or would have been aware had the Supplier made reasonable enquiries, examined all information relevant to the risks, contingencies and other circumstances having an effect on its obligations under the Contract and thoroughly investigated and satisfied itself as to the local and other conditions affecting performance of the Supplier's obligations under this Contract.
- 18.4 Without prejudice to any other rights of a Party in the Contract or at law, either Party may terminate the Contract immediately by giving the other Party notice if the other Party:
- (a) is the subject of an Insolvency Event;
  - (b) commits any criminal offence in relation to bribery or corruption;
  - (c) fails to remedy a breach of the Contract within 10 Business Days of written notice requiring such remedy; or
  - (d) materially breaches the Contract and that breach is unable to be remedied.
- 18.5 Air Liquide may terminate the Contract in whole or in part by notice in writing immediately if:
- (a) it has reasonable grounds to consider the Supplier is not able to pay the Supplier's debts, as and when they become due and payable;
  - (b) Air Liquide gives the Supplier notice in writing of a breach and within twelve months of that notice, the Supplier commits a further breach of a substantially similar kind;
  - (c) if the Supplier fails to comply with Air Liquide's Rectification Plan under **clause 8.4** or **clause 17.2**; or
  - (d) the Supplier does anything that materially damages, or is likely to materially damage, Air Liquide's reputation, brand or goodwill.
- 18.6 Subject to **clause 4.3**, if Air Liquide terminates the Contract, the Supplier forfeits any right to payment under the Contract (except for Goods and/or Services retained by Air Liquide) and Air Liquide can recover from the Supplier any costs, losses or damages suffered or incurred by Air Liquide that are in connection with the Supplier's breach of the Contract and/or such termination including any amounts already paid by Air Liquide for Goods and/or Services which have not been supplied or which have Defects or which have been rejected by Air Liquide.
- 18.7 Upon expiration or termination of the Contract, if requested by Air Liquide, the Supplier will fully co-operate in the transition of supply to a new supplier and promptly provide all information reasonably requested by Air Liquide to facilitate such transition.
- 19 Governing Law and Disputes**
- 19.1 If the Goods or Services are being delivered or performed:
- (a) in Australia, the Contract is governed by the Laws of the State or Territory in which the Goods or Services are to be delivered or performed, except if the Contract involves supply in more than one State or Territory of Australia, in which case the Laws of the State or Territory in Australia in which the relevant Air Liquide entity has its registered office applies; or
  - (b) in New Zealand, the Contract is governed by the Laws of New Zealand,
- and in each case the Parties submit to the exclusive jurisdiction of the courts in the applicable jurisdiction specified above.
- 19.2 Unless a Party is seeking urgent interlocutory relief, the Parties shall comply with this dispute resolution process before resorting to litigation in respect of any dispute which arises under or in connection with the Contract (**Dispute**).
- (a) The Supplier's senior manager and Air Liquide's senior manager will try to resolve the Dispute within 10 Business Days of either Party giving notice that there is a Dispute (**Dispute Notice**).
  - (b) If that fails, the Dispute will be referred to mediation. The Parties will endeavour to agree upon a mediator. If the Parties do not reach agreement within five (5) Business Days of the meeting referred to in **clause 19.2(a)**, the Parties will request the chairperson for the time being of the Resolution Institute (or their designated representative) in Australia (if Goods or Services are supplied in Australia) or in New Zealand (if Goods or Services are supplied in New Zealand) to select a mediator. The mediation shall be conducted in Melbourne or Auckland (as applicable). The role of a mediator is to assist in negotiating a resolution of the Dispute. The mediator shall conduct the mediation in accordance with the guidelines agreed between the Parties or, if the Parties cannot agree these within 10 Business Days following appointment of the mediator, in accordance with the guidelines set by the mediator. A mediator may not make a binding decision in relation to the Dispute unless the Parties agree in writing. The costs and expenses of the mediator shall be shared by the Parties equally. If the mediation fails, either Party can commence legal proceedings.
  - (c) Despite a Dispute, the Contract must be performed, except nothing in this **clause 19.2** applies to impair, delay or otherwise prejudice the exercise by a Party of any other right it has under the Contract (including without limitation any right of termination).



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### 20 Other

20.1 All indemnities and any clauses in the Contract which expressly or impliedly have effect after termination will continue to be enforceable after termination.

20.2 There is no relationship of agency, partnership or employment between the Parties, and the Supplier has no authority to bind Air Liquide to any third party.

20.3 The failure of either Party to exercise any right arising as a result of a breach by the other will not waive that right, nor will any practice developed between the Parties waive or lessen their rights under the Contract.

20.4 The Contract contains the entire agreement between the Parties and supersedes all earlier negotiations, representation or agreements with respect to its subject matter.

20.5 The Contract may only be changed by written agreement between the Parties and it may be executed in counterparts.

20.6 The Supplier must not:

- (a) subcontract the supply of the Goods and/or Services; and/or
- (b) assign any right in the Contract or novate it,

without Air Liquide's written consent. Air Liquide's consent may be subject to further terms that it decides, and (except if it agrees to a novation) the Supplier remains fully responsible for the performance by other persons of the Contract and is liable for any of their breaches, acts or omissions and such other person engaged as a subcontractor shall not be permitted to further subcontract to a third party. Air Liquide's consent to assignment, novation or subcontracting may not be inferred only from its acceptance of Goods or Services from another person other than the Supplier.

20.7 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

20.8 Each clause of the Contract, and each part of each clause, must be read as a separate and severable provision. If any provision is found to be void or unenforceable, that provision may be severed and the remainder of the Contract must be interpreted as if the severed provision never existed.

20.9 A reference to \$ or dollar is to Australian currency where the purchaser is an Air Liquide entity in Australia, or to New Zealand currency where the purchaser is Air Liquide New Zealand Limited.

20.10 The following definitions apply unless the context requires otherwise:

**Acceptance Testing** means such tests of the Goods as are reasonably required by Air Liquide in order to determine whether the Goods comply with the requirements of the Contract, including against any specific acceptance criteria in the Contract.

**Air Liquide** means (as the context requires) means **Air Liquide Australia Limited** ABN 57 004 385 782, or **Air Liquide Australia Solutions Pty Ltd** ABN 78 602 866 106 (in each case of Level 12, 600 St Kilda Road, Melbourne, Victoria 3004, Australia) or **Air**

**Liquide Healthcare Pty Ltd** ABN 41 002 653 045 or **Healthy Workplace Solutions Pty Ltd** ABN 35 121 729 584 trading as Healthy Sleep Solutions (in each case of Level 4, Suite 4, 247 Coward Street, Mascot NSW 2020, Australia) or **Air Liquide New Zealand Limited** Company NZBN 9429032036121 of 19 Maurice Road, Penrose, Auckland 1061, New Zealand, whichever is stated to be the purchaser in the Purchase Order or Contract.

**Background Material** means the Material of a Party that is in existence at the date of this Contract, or comes into existence after the date of this Contract, that was created or developed otherwise than for the purpose of this Contract.

**Business Day** means a day in the place where the Goods and/or Services are to be supplied (which in the case of Australia, shall be the relevant State or Territory) that is not a weekend or public holiday and on which banks are open for business generally.

**Confidential Information** of a Party includes all information relating to that Party's Background Material, the Project Material and any other information of a Party, whether disclosed by that Party to the other Party, or created or discovered by the other Party under or in anticipation of the Contract, and includes the terms of the Contract. Confidential Information of a Party does not include information which:

- (a) was lawfully known to the other Party or in the other Party's possession prior to it being disclosed; or
- (b) is or becomes generally available in the public domain other than as a result of disclosure by a Party or their officers, employees and independent contractors in breach of this Contract or in breach of any other obligation of confidence.

**Contract** means an executed agreement and/or accepted Purchase Order which incorporates these terms.

**Contract Documentation** means any documentation relating to Air Liquide's requirements for the Goods or Services which is incorporated, including by reference, into the Contract.

**Contract Representative** means a party's representative for administering the Contract, as nominated by such party from time to time.

**Costs** means loss, costs, liabilities, expenses (including legal expenses on a full indemnity basis), including as a result of any claims, suits, actions, demands, judgments and awards brought or issued against Air Liquide and costs, damages or other monies paid or payable by Air Liquide to any customer, end user or other Party as a result of Defects, and includes any costs or liabilities incurred by Air Liquide for transport, carriage, labour costs, assembly and disassembly costs, cost of materials and cost of incoming goods control and any costs as a result of or in connection with any recall necessitated because of Defects.

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**Data Breach** means an incident in which there has been unauthorised access to, unauthorised disclosure of, or loss of, Personal Information held by a Party on behalf of the other Party as well as any accidental or unlawful destruction or alteration of Personal Information, held by a Party on behalf of the other Party.

**Defects** means any failure to comply with the warranties contained in **clause 7.1, 7.2 and 8.1**, including a defect which crystallises with respect to a particular Good during the Defects Liability Period. Defects includes a defect which affects a batch of Goods delivered during the Defect Liability Period, even if the relevant failure of a particular Good does not appear with respect to all Goods in the batch. Defect excludes a defect to the extent caused by negligent use, maintenance or storage by Air Liquide or any third party after the transfer of risk in the Goods to Air Liquide.

**Defects Liability Period** means (unless a longer period is specified in the Supplier's quotation or description of the Goods or Services, in which case it shall be such longer period):

- (a) in relation to the Goods, 36 months commencing on:
- (i) where Air Liquide is the end user, the date of Air Liquide's acceptance of the Goods; or
  - (ii) where Air Liquide is not the end user but on-supplies the Goods or incorporates them into or assembles them onto other goods which Air Liquide on-supplies, from the date of delivery to the end user of the Goods or the final product into or onto which the Goods have been incorporated or assembled; and

- (b) in relation to Services or Deliverables, 12 months after Air Liquide's acceptance of the relevant Services or Deliverables.

**Deliverables** means anything to be supplied by the Supplier under the Contract as part of or in connection with the performance of the Services.

**Delivery Date** means the date in the Contract or otherwise agreed by the Parties in writing or, if there is no date stated, a reasonable period after the date of Air Liquide's Purchase Order.

**Delivery Location** means the place where the Goods and/or Services are to be delivered or supplied as specified in the Contract or as otherwise agreed by the Parties.

**Document** includes films, tapes, disks, pictures, diagrams and any medium containing data in machine-readable form.

**GST** means the tax payable on taxable supplies under the GST Law.

**GST Laws** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or *Goods and Services Tax Act 1985* (NZ), as applicable.

**Goods** means the goods specified in the Contract or otherwise as agreed between the Parties.

**Insolvency Event** means:

- (a) if a Party is a company, a Party is placed in receivership, has a liquidator appointed or enters into any other form of external administration or

- (b) any arrangement with their creditors; a resolution is passed or proposed or a petition is presented or an application filed for its winding up (which is not withdrawn, dismissed or set aside within 10 Business Days) or the Party is deregistered;
- (c) if a Party is a person, the Party becomes bankrupt; or execution is levied upon the Party's assets and is not satisfied within 10 Business Days.

**Intellectual Property** includes present and future applications for registration of designs, and rights in relation to registered or unregistered designs; rights in relation to inventions, including patents, patent applications, rights of priority and the right to apply for grants of patents; copyright; EL rights and other rights in relation to circuit designs; applications for registration of trade marks, and rights in relation to registered or unregistered trademarks; and rights in relation to trade secrets and confidential information, throughout the world.

**Key Personnel** means specific people (if any) agreed by the Parties who must supply the Services or perform the obligations as stated in the Contract.

**Material** means all subject matter in which Intellectual Property may subsist.

**Milestone Date** means the date by which any agreed milestone must be achieved as set out in the Contract.

**Modern Slavery** means any conduct involving the use of any form of slavery, human trafficking, exploitation, forced labour practices or servitude to exploit children or other persons taking place in a supply chain, any other slavery-like practices and any other conduct constituting an offence and/or as otherwise defined as Modern Slavery, under Modern Slavery Laws.

**Modern Slavery Laws** means any laws applicable to Air Liquide or the Supplier in Australia or New Zealand and/or which are otherwise applicable to either of them from time to time, which laws prohibit certain slavery-like practices and/or require risks of such practices to be addressed and/or require reporting.

**Party** means either the Supplier or Air Liquide and **Parties** means the Supplier and Air Liquide together.

**Payment Claim** means a claim for payment which meeting the requirements of applicable construction laws and containing sufficient detail for Air Liquide to calculate the amount payable to the Supplier, including a tax invoice issued in accordance with **clause 11.5**.

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

**Price** means the total price for the supply of the Goods and/or Services as specified in the

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Contract or otherwise as agreed in writing by the Parties, which is, except to the extent otherwise stated in the Contract, a price which is fixed and inclusive of all manufacturing, packaging, transportation, execution and delivery costs, and fees and disbursements incurred by the Supplier; inclusive of GST (except where stated to be GST exclusive) and all other applicable taxes, duties, levies, charges and costs for the Supplier to perform the Supplier's obligations in the Contract.

**Project Material** means all Material produced, created or developed in the course of this Contract, or as a result of the Supplier having access to Confidential Information and includes Material produced, created or developed prior to the date of, but in anticipation of, the Contract.

**Purchase Order** means Air Liquide's document entitled as such or other similar order document issued by Air Liquide to the Supplier.

**Rectification Plan** means a plan (including time schedule) which Air Liquide may issue specifying the steps required to be taken by the Supplier to address, to the satisfaction of Air Liquide, any non-compliance with the Contract.

**Related Company** means, if the governing law applicable to this Contract is:

- (a) that of a State or Territory of Australia, "related body corporate" as that term is defined in section 50 of the *Corporations Act 2001* (Cth); or
- (c) that of New Zealand, "related company" as that term is defined in subsection 3 of the *Companies Act 1993* (NZ).

**Representatives** means directors, officers, employees, agents, representatives, contractors or subcontractors of the relevant person. For the purpose of **clause 12**, Representatives of a Party includes its Related Companies, financiers, insurers, or advisers and their Representatives.

**Service Levels** means any key performance indicators or service levels for the Services set out in the Contract.

**Services** means the services specified in the Contract or as otherwise necessary in connection with the delivery of the Goods or as otherwise agreed by the Parties.

**Supply Chain** means any Tier 1 Supplier as well as the network of organisations indirectly associated with the Supplier (i.e. Tier 2 Suppliers and beyond) who transform substances into finished goods or services which are eventually supplied to Air Liquide pursuant to the Contract.

**Tier 1 Supplier** means any supplier of goods or services directly to the Supplier.

**WHS Laws** means any laws (including codes of practice, directions or notices issued or approved under any laws) addressing work health and safety which apply in the jurisdiction of Air Liquide's site at which the Goods are to be used or Services performed.

**Worker** means an employee (whether engaged directly or indirectly via a labour supplier) or

individual contractor providing services to the Supplier, and also includes (to the extent relevant) any person who is a candidate to become this.