

TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES**1. Standard Terms**

1.1 Except to the extent otherwise agreed, the terms contained in this document “**TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES**” (**Standard 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.

1.2 A reference in these Standard Terms to “this Contract” is to an executed agreement or accepted Purchase Order which incorporates these Standard Terms.

2. Contract Formation

2.1 This Contract between Air Liquide and the Supplier commences (as applicable) on the earlier of the date the Parties execute a formal contract which incorporates these Standard Terms or the date upon Air Liquide’s Purchase Order (which incorporates these Standard Terms) becomes binding in accordance with **clause 3.2**.

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

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 unless and until it issues to the Supplier a Purchase Order for the relevant Goods or Services, and that Purchase Order becomes binding under **clause 3.2**.

3.2 Air Liquide’s Purchase Order will become binding on the earlier of:

- (a) the date the Supplier accepts the Purchase Order in writing;
- (b) the date the Supplier starts to perform any of the Supplier’s obligations under the Purchase Order; or
- (c) the date which is 5 Business Days after the Supplier’s receipt of the Purchase Order (unless the Supplier has rejected the Purchase Order in writing).

3.3 Air Liquide may vary or withdraw its Purchase Order at any time prior to it becoming 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 This Contract will end on the earlier of:

- (a) termination by either Party pursuant to the terms of this Contract;
- (b) the expiry of a fixed term (if any is stated in this Contract) (**Fixed-Term**); or
- (c) the date that the supply of the Goods and/or Services has been completed in accordance with this 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, this 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 this Contract (including cancelling any binding Purchase Order) for convenience at any time prior to Delivery of the relevant Goods or prior to completion in full of the relevant Services by providing no less than 10 Business Days’ notice in writing. If Air Liquide does provide notice of termination in accordance with this clause:

- (a) in respect of Goods not made to Air Liquide’s specifications, Air Liquide will have no liability to pay for the relevant Goods which are delivered after the termination effective date; or
- (b) in respect of Goods made to Air Liquide’s specifications or in respect of Services which have been performed in part by the Supplier, Air Liquide must reimburse the Supplier, to the extent stated in **clause 22.2**.

5. Contract Variation

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

5.2 The Supplier must tell Air Liquide in writing within 5 Business Days of the request if it accepts the variation and if such variation will change the Price or Delivery Date or any other term of this Contract, and what such change is, following which Air Liquide will tell the Supplier in writing if Air Liquide wants to proceed with Air Liquide’s variation request. The Supplier shall not unreasonably withhold or delay its agreement to the request for the variation or otherwise delay in providing a response under this clause.

5.3 If the Supplier accepts Air Liquide’s variation request, Air Liquide may require that the Parties execute a variation document consistent with the accepted variation. Where appropriate, Air Liquide may adjust its Purchase Order to reflect such change.

6. Requirements relevant to both Goods and Services

6.1 The Supplier warrants that it has and will maintain throughout the term of this Contract:

- (a) all necessary personnel, materials, resources, equipment, and facilities required to supply the Goods and/or Services in accordance with this Contract, and acknowledges its sole responsibility to provide such resources, unless expressly stated otherwise in this Contract;
- (b) the requisite experience, skills, knowledge, and competence to perform its obligations under this Contract;
- (c) all necessary licences, permits, approvals, and qualifications required by Law for the supply of the Goods and/or Services; and
- (d) no actual, potential, or perceived Conflict of Interest.

6.2 If Air Liquide asks, the Supplier must immediately give Air Liquide evidence of the currency of any licences, permits or relevant qualifications.

6.3 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) in accordance with any specification issued by Air Liquide and agreed by the Supplier;
- (c) in a safe and professional manner, with all due skill, care and diligence;

- (d) at or to the Delivery Location or Performance Location;
 - (e) in accordance with Laws; and
 - (f) otherwise in accordance with this Contract.
- 6.4 To the extent relevant to the provision of the Goods or Services and the Agreed Incoterm, the Supplier will comply with any applicable export controls, customs and foreign trade Laws. If information is needed from Air Liquide to comply with such Laws, the Supplier must ask Air Liquide in writing within a reasonable period after receipt of Air Liquide's Purchase Order, and Air Liquide will provide it without unreasonable delay (subject always to compliance with such Laws).
- 6.5 If the Parties agree, in connection with the supply of the Goods and/or Services, that any Air Liquide property is to be supplied or made accessible to the Supplier under this Contract, it:
- (a) will at all times remain the property of Air Liquide;
 - (b) must only be used by the Supplier for the purposes of fulfilling its obligations under this Contract;
 - (c) must only be used with reasonable care and in accordance with Laws, instructions from Air Liquide and good industry practice; and
 - (d) must be (if Air Liquide agrees for the property to be removed from Air Liquide's site) returned to Air Liquide on the expiry or termination of this Contract in the same condition as it was when provided by Air Liquide, failing which the Supplier is responsible and must indemnify Air Liquide for loss or damage to Air Liquide's property, fair wear and tear excepted.

7. Requirements relevant to Supply of Goods

- 7.1 The Supplier warrants that:
- (a) it may lawfully supply the Goods to Air Liquide, they will at the time of delivery be free of encumbrances and Air Liquide will have quiet possession of the Goods supplied;
 - (b) where Goods are supplied by reference to any sample or description, they will correspond with such sample or description;
 - (c) as from Delivery of the Goods and throughout the Defects Liability Period, the Goods will be fit for purpose, new and of merchantable and acceptable quality and free from defects in design, materials and workmanship; and
 - (d) the Goods will comply with Laws, 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 expressly agreed in writing:
- (a) the Supplier must safely and securely pack and prepare the Goods for shipment; the Goods must be labelled with the Purchase Order date, Air Liquide's Purchase Order number, Air Liquide Contract Representative's name and the Delivery Location; and
 - (b) the costs of transport and delivery of the Goods to the Delivery Location shall be included in the Price (including any import or other duties and any other transport-related costs).
- 7.6 Goods must not be left unattended and unsecured at the Delivery Location.
- 7.7 Except as otherwise agreed in writing, Goods shall not be delivered in instalments. The Supplier acknowledges that Air Liquide will not accept additional costs, delivery charges, and duties incurred from unauthorised instalment deliveries, and will require reimbursement for such costs if they arise without prior agreement.
- 7.8 Risk of loss of or damage to the Goods will pass to Air Liquide as determined by the Agreed Incoterm. Title in the Goods passes to Air Liquide upon Delivery to Air Liquide or upon Air Liquide paying for them, whichever is earlier.
- 7.9 Nothing in this **clause 7** is intended to limit or otherwise alter the scope of the Supplier's obligations as specified in the Agreed Incoterm.
- 8. Requirements Applicable to Performance of Services**
- 8.1 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 this Contract), other suitably experienced people approved by Air Liquide (acting reasonably);
 - (d) using equipment which is in good working order, regularly maintained and suitable for use in connection with the supply of the Services;
 - (e) where applicable, ensuring that the Services are free of any computer virus, disabling device or code, or other harmful or destructive code; and
 - (f) such that the outcome of such Services (including any Deliverables) at and from the completion of the Services is fit for purpose, complies with Laws and is free from Defects.
- 8.2 Where the Performance Location for the 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 safety 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;
 - (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.
- 8.3 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 this 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 reasonable directions in relation to Air Liquide's systems. Air Liquide will provide the Supplier with up-to-date copies of Air Liquide's policies.
- 9. Acceptance**
- 9.1 Air Liquide shall have a period of up to 30 Business Days ("**Inspection Period**") to inspect Goods and Services and conduct any Acceptance Testing (if applicable). Subject to **clause 9.2**, the Inspection Period shall commence:
- (a) for Goods: on the later of:
 - (i) the date of Delivery of the Goods to the Delivery Location; or
 - (ii) if the Delivery Location is not Air Liquide's site, the date the Goods arrive at Air Liquide's site; and
 - (b) for Services: on the date of completion of the Services.
- 9.2 If this Contract requires the Supplier to carry out any Acceptance Testing after Delivery of Goods, and the Supplier fails to adequately perform such testing, or the Goods fail to successfully pass such Acceptance Testing, the Inspection Period shall commence from the date the Goods successfully pass such Acceptance Testing or the date the requirement for such Acceptance Testing is waived in writing by Air Liquide.
- 9.3 If Goods or Services fail to comply with this Contract, Air Liquide may reject the non-compliant Goods or Services. If Air Liquide does so, the Supplier must, at the Supplier's cost and as directed by Air Liquide (acting reasonably):
- (a) remove the rejected Goods;
 - (b) replace the rejected Goods with Goods that comply with this Contract;
 - (c) re-perform the rejected Services in accordance with this Contract; and/or
 - (d) refund any amounts Air Liquide has paid in relation to such rejected Goods or Services.
- 9.4 Alternatively, if Goods or Services fail to comply with this Contract, Air Liquide may notify the Supplier it accepts the Goods or Services subject to repair or rectification by the Supplier, and the Supplier must repair or rectify them, as Air Liquide sees appropriate (acting reasonably).
- 9.5 If the Supplier does not reject Goods or Services under **clause 9.2** within the Inspection Period, the date of acceptance of the Goods or Services (**Acceptance Date**) will be the earlier of:
- (a) the date on which Air Liquide confirms in writing its express acceptance of the Goods or Services;
 - (b) the date Air Liquide commences using the Goods or the product of the Services for their intended purpose; or
 - (c) the expiration of the period allowed under **clause 9.1**.
- 9.6 Any acceptance determined to have occurred under this **clause 9** does not limit Air Liquide's rights under **clause 10** or otherwise under this Contract in respect of Defects, regardless of when such Defects arise or are identified, including but not limited to those identified prior to the Acceptance Date or during the Defects Liability Period.
- 10. Defects**
- 10.1 If there are Defects which are notified by Air Liquide to the Supplier prior to the expiration of the Defects Liability Period:
- (a) the Supplier must, as reasonably directed by Air Liquide, repair or replace the Goods or rectify or re-perform the Services within the timeframe Air Liquide reasonably requires (depending on the consequences to Air Liquide's business) and in so doing, the Supplier must minimise disruption to Air Liquide's business; or
 - (b) if the Supplier does not perform its obligation in respect of any Defect as required under **clause 10.1(a)**, then without prejudice to any other right Air Liquide has, Air Liquide may do what is necessary (acting reasonably) to remedy the Defect (including, for example, engaging third parties, in which case Air Liquide may recover any reasonably incurred costs of doing so from the Supplier).
- 10.2 The Defects Liability Period for the Goods and/or Services fixed under **clause 10.1** 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 or re-performance is completed.
- 10.3 The Supplier must notify Air Liquide in writing if it becomes aware of any repeated failures or systemic non-compliances in the Goods or Services.
- 10.4 If multiple Defects in Goods (whether in the same batch or otherwise) or in Services occur or become evident within the Defects Liability Period indicating a systemic issue (as reasonably determined by Air Liquide after consultation with the Supplier), the Supplier must take all steps necessary as soon as practicable (including steps outlined in a Rectification Plan proposed by the Supplier and reasonably approved by Air Liquide) to address the Defect(s) and their underlying cause(s) to achieve full compliance with this Contract.
- 10.5 Compliance with this **clause 10** does not limit or prejudice Air Liquide's other rights in this Contract.
- 11. Recall**
- 11.1 The Supplier must notify Air Liquide in writing as soon as practicable if the Supplier becomes aware of any actual or potential Recall relating to the Goods (or any component or material incorporated into the Goods) supplied under this Contract, or if any Law requires or recommends a Recall of the Goods. The Supplier must provide Air Liquide with all relevant information regarding the Recall (including the reasons for the Recall, the affected Goods, and the proposed Recall Plan) as soon as practicable.
- 11.2 Unless and to the extent otherwise agreed by Air Liquide in writing, the Supplier is solely responsible

- for, and must conduct and manage, any Recall of the Goods (or any component or material incorporated into the Goods) supplied under this Contract. The Supplier must conduct the Recall in accordance with all applicable Laws and the Supplier's Recall Plan. Air Liquide will cooperate with the Supplier in good faith to facilitate any Recall required under this clause.
- 11.3 All Costs (including but not limited to direct and indirect costs, administrative costs, transportation, disposal, and communication expenses) associated with any Recall shall be borne solely by the Supplier.
- 12. Indemnities**
- 12.1 Without limitation to any other right Air Liquide has, the Supplier indemnifies Air Liquide for Air Liquide's Costs from:
- injury, loss or damage to any person or property due to the act or omission of the Supplier or of Supplier's Representatives in connection with this Contract;
 - any breach by the Supplier of this Contract including any warranty; and
 - any negligent or wrongful act or omission by the Supplier (including by the Supplier's Representatives) in connection with this Contract,
 - except to the extent they result from Air Liquide's (including its Representatives) negligent act or omission or breach of this Contract.
- 12.2 If this Contract is a UCT Contract then, without limiting a Party's rights to bring any claim against the other Party (whether in contract, tort, under statute or otherwise at law) **clause 12.1** shall not apply.
- 12.3 A Party seeking to enforce an indemnity under this Contract must take reasonable steps to mitigate any liability, loss, damage, costs or expenses in respect of any matter covered by the indemnity.
- 13. Price and Payment**
- 13.1 Provided that the Supplier has complied with this Contract, Air Liquide will pay the Supplier the Price for the Goods and/or Services.
- 13.2 The Supplier must not increase the Price, unless Air Liquide has agreed to the increase in writing.
- 13.3 Except to the extent expressly agreed otherwise by the parties (including by way of the Agreed Incoterm) the Price is 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), other applicable taxes, duties, levies, charges and costs for the Supplier to perform the Supplier's obligations in this Contract. 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.).
- 13.4 Except as otherwise agreed in writing, the Supplier must only invoice Air Liquide when the Goods have achieved Delivery and/or the Services completed according to this Contract. The Supplier must invoice Air Liquide no later than 12 months after the delivery of the Goods or the performance of the Services. Air Liquide reserves the right to reject invoices issued later than this.
- 13.5 The Supplier's invoices must comply with GST Laws (if applicable) 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 Delivered or performed in accordance with this Contract 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.
- 13.6 Air Liquide may request the Supplier to use an online procurement system 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, provided such system does not involve additional enrolment cost for the Supplier, the Supplier shall not unreasonably withhold its consent to such use. Use of the preferred Air Liquide procurement system enables Air Liquide to more efficiently attend to supplier payment.
- 13.7 The Supplier will, at Air Liquide's request, provide any details and documentation reasonably necessary to substantiate the amount claimed.
- 13.8 Air Liquide is not liable to pay the Supplier the relevant Price for Goods or Services which it has rejected in accordance with the terms of this Contract, or for Goods or Services with respect of which it has provided notice of Defects under **clause 10.1**, until the Defects are remedied as required by this Contract.
- 13.9 If any part of an invoiced amount is disputed by Air Liquide, Air Liquide must pay the undisputed amount to the Supplier in accordance with this Contract and the parties must deal with the disputed amount in accordance with **clause 23.2**.
- 13.10 Except where **clause 13.13** applies or unless otherwise agreed in writing, and subject otherwise to any right it has to withhold payment under this Contract, Air Liquide will pay the Supplier's duly issued tax invoice within 30 calendar days after the end of month in which Air Liquide receives it. Unless this Contract is a UCT Contract, Air Liquide may deduct from the invoiced Price any amounts that the Supplier owes Air Liquide. If Air Liquide is required by Law to deduct or withhold any amount from a payment to the Supplier (including any withholding tax), Air Liquide shall make such deduction or withholding and remit it to the relevant authority. The Supplier shall provide Air Liquide with all necessary documentation to facilitate such deduction and remittance.
- 13.11 Air Liquide's payment is not evidence that the Goods and/or Services are accepted or comply with this Contract and is without prejudice to any other rights Air Liquide may have.
- 13.12 If Air Liquide agrees in writing to reimburse the Supplier for any out-of-pocket costs the Supplier incurs in connection with supply of the Goods and/or Services under this Contract such reimbursement will be limited to those approved costs which the Supplier can reasonably substantiate to Air Liquide were directly incurred by the Supplier in connection with the supply.
- 13.13 If this Contract is deemed a construction contract or a contract for construction work in a state or territory of Australia or New Zealand (as the case may be) where Goods are to be supplied or Services are to be performed, the following overrides any provision in this Contract to the contrary:
- if the Supplier submits the Payment Claim earlier than as stated in this Contract, Air Liquide will deem it to be submitted on the date specified in this Contract;
 - 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 13.13(a)**, Air Liquide may issue a payment schedule.
- 14. Confidential Information and Personal Information**
- 14.1 Each Party may only use or permit the use of Confidential Information of the other Party for the purpose of supply under this Contract.
- 14.2 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 this Contract.
- 14.3 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 this Contract, and after obtaining the other Party's written consent.
- 14.4 A Party shall ensure that each of its Representatives who receives Confidential Information of the other Party acts consistently with the requirements of **clauses 14.1 to 14.3** as if they were a Party to this Contract and agrees that a failure by a Representative to so comply will be deemed a breach by the receiving Party.
- 14.5 The obligations imposed by **clauses 14.1 to 14.3** 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.
- 14.6 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.
- 14.7 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 14.1 to 14.5**; 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 14.1 to 14.5**.
- 14.8 Each Party must, on termination or expiry of this 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;
 - (d) in the possession of the first Party or their officers, independent contractors or employees at that time.
- 14.9 Each Party must provide to the other Party within 5 Business Days of its written request a written statement confirming that it has returned to the other Party or, destroyed or deleted, all Documents and other property referred to in **clause 14.8** and made the required deletions from any storage device forming part of any computer.
- 14.10 Where the information disclosed in connection with this 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 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 this Contract.
- 14.11 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://au.airliquide.com/privacy>, except to the extent the Supplier notifies Air Liquide that it opts out.
- 15. Ownership and Assignment of Intellectual Property**
- 15.1 All Intellectual Property in Background IP shall remain the exclusive property of the Party owning or licensing it prior to the date of this Contract. Nothing in this Contract assigns or transfers any Intellectual Property in Background IP.
- 15.2 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) the Supplier's Background IP to the extent useful or necessary to develop, reproduce, use or exploit any New IP or to obtain the full benefit of this Contract.
- 15.3 The Supplier agrees that all Intellectual Property in New IP shall be Air Liquide's exclusive property. All New IP vests in Air Liquide on its creation and the Supplier hereby assigns to Air Liquide any interest it may have in such New IP. This includes, but is not limited to, the assignment of the right to bring legal proceedings and to obtain any relief to which the Supplier would have been entitled in respect of any infringement of such Intellectual Property occurring before or after the date of this Contract. This assignment includes, 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.

- 15.4 The Supplier must notify Air Liquide promptly of any New IP produced, created or developed by the Supplier's officers, independent contractors or employees.
- 15.5 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 and execute all documents which the Supplier is obliged to do or execute by this clause.
- 15.6 The Supplier must tell Air Liquide if there is any suspected, threatened or actual infringement of any Intellectual Property in the New IP. The Supplier agrees to provide any assistance reasonably required by Air Liquide in relation to the enforcement of any Intellectual Property in New IP 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.
- 15.7 Air Liquide grants the Supplier a non-exclusive, worldwide, 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 IP and New IP to the extent necessary for the Supplier to comply with this Contract.
- 15.8 The Supplier warrants that Air Liquide's use, reproduction or exploitation of the Supplier's Background IP, the New IP, the Goods or the Deliverables will not infringe the rights, including Intellectual Property, of any third party. The Supplier indemnifies Air Liquide for Air Liquide's Costs from a breach of the warranty in this **clause 15.8**.
- 15.9 Without limitation to any other remedy that Air Liquide may have, if the Supplier has breached **clause 15.8**, 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.
- 16. Insurance**
- 16.1 The Supplier must take out and maintain (at its cost) 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 this Contract. Those insurances shall be with a reputable insurer and, except to the extent Air Liquide otherwise agrees, must include:
- in instances where the Supplier is supplying Goods to Air Liquide - appropriate cargo / transit insurance, indemnifying the Supplier for a minimum of 110% of the price of the Goods (by reference to the invoice issued by the Supplier to Air Liquide, in accordance with this Contract);
 - product liability insurance on an occurrence basis of not less than \$20 million in the aggregate;
 - public liability insurance on an occurrence basis of not less than \$20 million per event;
 - professional indemnity insurance on a claims made basis of not less than \$10 million per event;
 - 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
- (f) 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.
- 16.2 Each Party shall assist the other Party in the event of any reasonable request from the second-mentioned Party for assistance in relation to the presentation of a claim to its insurers
- 17. Compliance**
- 17.1 The Supplier warrants that the operation of the Supplier's business complies with Laws, including those relating to employment, the environment and health and safety, privacy, 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 not been prosecuted or fined in relation to health, safety or environmental Laws (which the Supplier has not fully disclosed to Air Liquide prior to entry into this Contract).
- 17.2 Each Party agrees to comply with Laws in connection with entering into this Contract and supplying the Goods or Services generally, including in particular as concerns anti-corruption.
- 17.3 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 relevant principles stated in the Air Liquide Group Code of Conduct, available at the link: <https://au.airliquide.com/our-policies> when carrying out any activity in connection with this 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.
- 17.4 For information as to Air Liquide's Whistleblower Policy, refer to: <https://au.airliquide.com/our-policies>.
- 18. Modern Slavery**
- 18.1 For information as to Air Liquide's Modern Slavery policy and to Air Liquide's most recent Modern Slavery Statement, refer to: <https://au.airliquide.com/our-policies>.
- 18.2 The Supplier warrants that it does not knowingly, and covenants that it will not knowingly:
- engage in any form of Modern Slavery;
 - engage a Tier 1 Supplier which in any way engages in any form of Modern Slavery; and
 - 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.
- 18.3 The Supplier will:
- comply with Modern Slavery Laws;
 - treat all its Workers with dignity and respect;
 - not apply any form of threat, coercion, violence (including corporal punishment) or deception to any Worker;
 - not discriminate against any Worker on the basis of any attribute protected by any anti-discrimination Law;
 - 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 18.3**.

18.4 The Supplier will, upon Air Liquide's reasonable request, provide information and statements, including (where reasonable) from any Related Company and Tier 1 Supplier, to confirm compliance with Modern Slavery Laws and that no Modern Slavery exists within its Supply Chains. Air Liquide will keep any such information confidential and only use that information for the purpose of assessing the Supplier's compliance with this **clause 18** and the Modern Slavery Laws generally.

18.5 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:

- 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
- notify Air Liquide of that occurrence or risk and the steps taken by the Supplier to rectify that occurrence or mitigate that risk.

19. Information

19.1 The Supplier must:

- keep and make available to Air Liquide on request, during the term of this 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 this Contract; and
- respond to any reasonable request for such information, access or documents from Air Liquide within 10 Business Days of such request.

20. Corporate Social Responsibility

20.1 The Supplier acknowledges that it has read and accepted Air Liquide's Supplier Code of Conduct, which can also be accessed at: <https://au.airliquide.com/our-policies>. 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.

20.2 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 this 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.

20.3 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.

20.4 If Air Liquide requests, the Supplier will provide Air Liquide with reasonable evidence that the Supplier requires its employees to evidence their commitment to working safely every day.

21. Default, Suspension and Termination

21.1 If the Supplier, 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 this 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 this Contract and to exercise Air Liquide's rights under this Contract.

21.2 A Party may suspend the performance of its obligations under this Contract (by provision of written notice to the other Party giving notice of the relevant ground) if:

- the other Party is the subject of an Insolvency Event; or
- the other Party or its officers, employees and independent contractors commit a material breach of **clauses 17 and 18**,

until the failure has been remedied to the reasonable satisfaction of the other Party.

21.3 A Party may suspend the performance of its obligations under this Contract if it has reasonable grounds to consider that ongoing delivery of Goods or performance of Services at an Air Liquide site (if this is the Delivery Location or Performance 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 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 this Contract and thoroughly investigated and satisfied itself as to the local and other conditions affecting performance of the Supplier's obligations under this Contract.

21.4 Without prejudice to any other rights of a Party in this Contract or at law, a Party (**non-defaulting Party**) may terminate this Contract immediately by giving the other Party (**defaulting Party**) notice if the defaulting Party:

- is the subject of an Insolvency Event;
- commits any criminal offence in relation to bribery or corruption;
- fails to remedy a breach of this Contract within 20 Business Days of written notice from the non-defaulting Party requiring such remedy; or
- materially breaches this Contract and that breach is unable to be remedied.

21.5 For the purpose of **clause 21.4**, failure to Deliver the Goods or Services in full by the Delivery Date (except to the extent caused or contributed by the fault of Air Liquide) is a material breach.

21.6 Air Liquide may terminate this Contract in whole or in part by notice in writing immediately if:

- this Contract is for the performance of ongoing supply of Goods and/or Services during a fixed

Contract term, the Supplier repeats a breach or commits a further breach of a substantially similar kind within six months of written notice from Air Liquide regarding a prior breach of this Contract and after having received written notice from Air Liquide that repetition of the breach will or may result in Air Liquide terminating this Agreement;

- (b) the Supplier does anything that materially damages, or is likely to materially damage, Air Liquide's reputation, brand or goodwill (including but not limited to the Supplier being subject to significant negative media coverage, public scandal, or regulatory action); or
- (c) there is a Change in Control of the Supplier, without prior approval in writing by Air Liquide (not to be unreasonably withheld or delayed).

22. Consequences of termination

22.1 Upon termination of this Contract, Air Liquide shall only be liable to pay the Supplier for Goods Delivered and Services performed in accordance with this Contract up to the date of termination.

22.2 Where Air Liquide terminates this Contract under **clause 4.3(b)**, Air Liquide shall reimburse the Supplier for the amount assessed by Air Liquide as follows (acting reasonably):

- (a) for Goods, Air Liquide shall pay:
 - (i) a pro rata amount of the Price which fairly reflects the value of Goods completed under this Contract and Delivered to Air Liquide up to the date of termination; and/or
 - (ii) where the Goods have been partially completed or materials and third party services have been procured for this Contract which cannot be reasonably re-used or cancelled, the Supplier's reasonable direct costs necessarily incurred in relation to such Goods or materials up to the date of termination; or
- (b) For Services, Air Liquide shall pay either:
 - (i) where the agreed Price under this Contract is a fixed lump sum, a pro rata amount which fairly reflects the work the Supplier has performed in accordance with this Contract up to the date of termination, calculated by reference to any agreed milestones or schedule of values for the Services; or
 - (ii) where the agreed Price was a variable amount dependent on time spent and/or tasks performed, an amount of the Price which fairly reflects the Services performed in accordance with this Contract up to the date of termination based on the agreed Contract rates,

subject in each case (to the extent relevant) to the Supplier providing (to Air Liquide's reasonable satisfaction) proof of such costs and that the Supplier took steps to mitigate its Losses after receiving notice of termination, and subject to Air Liquide having the right to receive, should it request, the benefit of any materials, Goods or Services paid for.

22.3 Upon expiration or termination of this Contract, if requested by Air Liquide, the Supplier will fully cooperate in the transition of supply to a new supplier and promptly provide or return all information reasonably requested by Air Liquide to facilitate such transition.

23. Governing Law and Disputes

23.1 If the Goods or Services are being acquired:

- (a) by an Air Liquide entity with registered office in Australia, this 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 this 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 apply; or
- (b) by an Air Liquide entity with registered office in New Zealand, this Contract is governed by the laws of New Zealand.

The jurisdiction determined under this **clause 23.1** as governing this Contract is hereby referred to as the **Applicable Jurisdiction**. In each case (but subject to **clause 23.6(b)**), the Parties submit to the exclusive jurisdiction of the courts in the Applicable Jurisdiction. The Parties agree that any conflict of laws rule that may otherwise refer the interpretation of this Contract to the laws of another jurisdiction, will not apply to this Contract.

23.2 Unless a Party is seeking urgent interlocutory relief, the Parties shall comply with this dispute resolution process outlined in this **clause 23** before resorting to litigation or arbitration in respect of any dispute which arises under or in connection with this Contract (**Dispute**).

23.3 If a Party gives a notice to the other Party of a Dispute (**Dispute Notice**), the Supplier's senior manager and Air Liquide's senior manager must meet (including by remote means) to try to resolve the Dispute. This may be in person or by other means.

23.4 If the senior managers cannot resolve the Dispute within 10 Business Days of the Dispute Notice, they shall explore and seek to agree a suitable method and timeframe for resolving the Dispute. This may involve: (a) an informal process of investigation and meetings; (b) conciliation; (c) mediation; (d) arbitration; (e) reference to an expert; and/or (f) any other appropriate mechanism. The use of any such method and its timeframe shall only be binding if expressly agreed in writing by both Parties at that time.

23.5 If no alternative method is agreed under **clause 23.4** within 20 Business Days of the Dispute Notice, the Dispute will be referred to mediation, and the Parties will endeavour to agree upon a mediator. If the Parties do not reach agreement on the choice of mediator within ten Business Days of referral to mediation, the Parties will request the chairperson 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.

23.6 If the Dispute is not settled within 20 Business Days of appointment of the mediator under **clause 23.5**

(unless such period is extended by agreement of the Parties), the Dispute shall be submitted to:

- (a) if the Supplier is incorporated in Australia or New Zealand, the courts of the Applicable Jurisdiction; or
 - (b) otherwise, if the Supplier is not incorporated in Australia or New Zealand, arbitration conducted in accordance with, and subject to, the UNCITRAL Arbitration Rules 2010 (as amended from time to time). The venue of the arbitration shall be in the capital city of the Applicable Jurisdiction, and the arbitration will be conducted in English. One arbitrator will be appointed by agreement between the Parties. If the Parties cannot agree the appointment of the arbitrator within 10 Business Days after the giving of the notice requiring the Dispute to be submitted to arbitration, the arbitrator will be appointed by the Resolution Institute of Australia (if the Applicable Jurisdiction is in Australia) or of New Zealand (if that is the Applicable Jurisdiction). The arbitrator will have power to grant all remedies provided for in this Contract.
- 23.7 Despite a Dispute, this Contract must be performed, except nothing in this **clause 23.6** applies to impair, delay or otherwise prejudice the exercise by a Party of any other right it has under this Contract (including without limitation any right of termination).

24. Other

- 24.1 All indemnities and any clauses in this Contract which expressly or impliedly have effect after termination will continue to be enforceable after termination. Without limitation, this includes **clauses 6.5(d)** (return of Air Liquide property); **9** (Defects), **12** (indemnities), **13.11** (Payment), **14** (Confidential Information and Personal Information), **15** (Ownership and assignment of Intellectual Property) **16** (Insurance), **17** (Compliance), **22** (Consequences of termination) **23** (Governing Law and Disputes) and this **clause 24.1**.
- 24.2 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.
- 24.3 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 this Contract.
- 24.4 This Contract contains the entire agreement between the Parties and supersedes all earlier negotiations, representation or agreements with respect to its subject matter.
- 24.5 This Contract may only be changed by written agreement between the Parties and it may be executed in counterparts.
- 24.6 The Supplier must not:
- (a) subcontract the supply of the Goods and/or Services; and/or
 - (b) assign any right in this 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 this 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.

25. Definitions and interpretation

- 25.1 The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.
- 25.2 Each clause of this 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 this Contract must be interpreted as if the severed provision never existed.
- 25.3 If any law relating to unfair contract terms would otherwise make a provision of this Contract void, that provision is to be read down and construed as if it were varied, to the minimum extent necessary, so that the law does not make the provision void. This clause applies before any other reading down or severance provision in this Contract.
- 25.4 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.
- 25.5 Unless otherwise stated in this Contract:
- (a) headings are for convenience and do not affect interpretation;
 - (b) this Contract or any part of it or them may not be construed adversely to a Party on the ground that it was responsible for the preparation or drafting of it or them;
 - (c) words importing the singular include the plural and vice versa;
 - (d) words importing gender include any gender;
 - (e) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate or any government agency;
 - (f) references to clauses are references to clauses of these Standard Terms;
 - (g) a reference to a Party includes its executors, administrators, successors and permitted assigns;
 - (h) a reference to any statute, regulation, proclamation, ordinance, or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (i) a reference to a document or agreement, in this Contract, includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - (j) other grammatical forms of defined words or expressions have corresponding meanings;
 - (k) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
 - (l) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
 - (m) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day (unless another time is nominated by this Contract), it is taken to have occurred or been done on the next day; and
 - (n) if anything under this Contract is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.
- 25.6 The following definitions apply unless the context requires otherwise:

Acceptance Date means the date determined under **clause 9**.

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

Agreed Incoterm means

- (a) in relation to Goods that are supplied to Air Liquide at a Delivery Location within Australia or New Zealand from a location outside respectively Australia or New Zealand – DDP / 'Delivered Duty Paid';
- (b) in relation to Goods that are supplied to Air Liquide at a Delivery Location within Australia or New Zealand from a location within respectively Australia or New Zealand – DAP / 'Delivered at Place';
- (c) an alternative Incoterm nominated by Air Liquide, in all instances subject to the Delivery Location being completely and otherwise accurately identified in the Purchase Order and subsequently accepted by the Supplier in accordance with **clause 3**.

Air Liquide means (as the context requires) **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 of Suite 4, 270 Lahrs Road, Ormeau QLD 4208, 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 this Contract.

Air Liquide Life Saving Rules means a document which sets out clear and simple "do's and don'ts" concerning activities with high potential safety risk. These rules include, but are not limited to, the following:

- (a) no working under the influence of drugs and/or alcohol;
- (b) no smoking outside designated smoking areas;
- (c) wearing the Personal Protective Equipment (PPE) required for the job;
- (d) no entering a confined space without authorisation;
- (e) wearing an ambient gas detector as required;
- (f) working with a valid Safe Work Permit;
- (g) applying isolation procedures before working on potentially energised systems, including making a line break;
- (h) no bypassing EIS (Element Important for Safety) requirements without authorisation;
- (i) wearing fall-prevention equipment when required;
- (j) no walking under suspended loads;
- (k) securing the load on vehicles; and
- (l) wearing a seat belt when in a moving vehicle.

Applicable Jurisdiction is defined in **clause 23.1**.

Background IP means Intellectual Property of a Party that is in existence at the date of this Contract, or comes into existence after the date of this Contract, excluding New IP.

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.

Change in Control means, in relation to the Supplier, any event or series of events as a result of which a person (or group of associated persons) acquires the capacity and power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove the majority of directors of the Supplier or otherwise to

control or have the power to control the affairs and policies of the Supplier, but excludes where:

- (a) this results from a change in control of an entity listed on a recognised stock exchange;
- (b) the entity that ceases to control the Supplier was immediately beforehand controlled by a body corporate that controls and continues to control the Supplier or its holding company; or
- (c) the entity that comes to control the Supplier or its holding company is immediately afterward a wholly owned subsidiary of a body corporate that previously controlled and continues to control the Supplier or its holding company.

Confidential Information of a Party includes all information relating to that Party's Background IP, the New IP 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 this Contract, and includes the terms of this 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.

Conflict of Interest means any interest (financial, professional or personal) that directly or indirectly:

- (a) is, or could reasonably be perceived to be, an actual or potential conflict with the Supplier's responsibilities or obligations in performing the Goods and/or Services under this Contract; or
- (b) could compromise the Supplier's objectivity or independence in fulfilling its obligations under this Contract,

but for the avoidance of doubt, does not, in itself, prohibit the Supplier from entering into supply contracts with other parties, provided such contracts do not otherwise give rise to an actual, potential, or perceived Conflict of Interest under sub-clauses (a) and (b) of this definition.

Contract means an executed agreement or accepted Purchase Order which incorporates these Standard Terms.

Contract Representative means a Party's representative for administering this 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 reasonable 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.

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.

Defect means any failure to comply with the warranties provided with respect to the Goods or the Services, and where relevant, includes the underlying cause(s) of such failure that are attributable to the Supplier. This includes a defect which crystallises with respect to a particular Good or Service after Delivery. A Defect includes a failure

that affects a batch of Goods delivered during the Defect Liability Period, even if the relevant failure does not appear with respect to all Goods in the batch. However, in the case of Goods, Defect excludes a defect to the extent it was caused solely by:

- (a) negligent use, maintenance, or storage by Air Liquide or any third party after the transfer of risk in the Goods to Air Liquide;
- (b) unauthorised and material modification or alteration of the Goods by Air Liquide or any third party not authorised by the Supplier;
- (c) normal wear and tear; or
- (d) Air Liquide's failure to follow any written instructions or specifications provided by the Supplier regarding the storage, use, installation, or maintenance of the Goods,

provided that, in the case of each exclusion listed in (a) to (d) above, the defect is not attributable to:

- (i) a failure of the Goods to comply at Delivery with warranties applicable to the Goods; or
- (ii) a failure of the Goods to have been designed for, or to meet suitability standards or performance parameters (whether expressly agreed or, in the absence of such agreement, reasonably expected) for their intended use.

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; and
 - (b) in relation to the Services including Deliverables, 12 months,
- commencing on the Acceptance Date (unless otherwise stated).

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

Delivery means the Goods are physically received by Air Liquide or its nominated Representative at the Delivery Location.

Delivery Date means the date in this 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 of destination identified in the Purchase Order.

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 this Contract or otherwise as agreed between the Parties.

Incoterms means Incoterms 2020.

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 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;
- (b) if a Party is a person, the Party becomes bankrupt; or
- (c) execution is levied upon the Party's assets and is not satisfied within 10 Business Days.

Inspection Period is defined in **clause 9.1**.

Intellectual Property means any invention, patent or application for a patent, design (registered or unregistered), trademark (registered or unregistered), name, copyright (including future copyright), circuit layout, trade secret, know-how, proprietary information or other right in respect of any information, process, work, material or method.

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

Law means all laws, statutes, regulations, ordinances, rules, codes, orders, decrees, injunctions, judgments, awards, and other pronouncements having the force of law (and includes requirements of certificates, licences, consents, permits, approvals, qualifications, which are legally binding) which are applicable to a Party in any jurisdiction where a Party conducts its business or performs activities contemplated by this Contract, or which otherwise are applicable to the Party, or in respect of Goods, apply in any jurisdiction where the Goods are intended to be used or supplied by Air Liquide.

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

New IP means all Intellectual Property produced, created or developed in the course of the performance of this Contract, or as a result of the Supplier having access to Air Liquide's Confidential Information, and includes Intellectual Property produced, created or developed prior to the date of, but in anticipation of, this Contract.

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

Payment Claim means a claim for payment meeting the requirements of 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 13.5**.

Performance Location means the agreed site for the performance of the Services, as expressly stated or described in this Contract or, if not so stated or described, as reasonably inferred from this Contract and the nature of the Services.

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 this Contract or otherwise as agreed in writing by the Parties.

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

Recall means any action taken to remove Goods from the market or to retrieve Goods from end-users, or to issue a public warning or notification regarding Goods, due to actual or suspected Defects or safety concerns. This includes any voluntary or mandatory recall.

Recall Plan means the Supplier's plan for managing a Recall, including communication, logistics, and remediation.

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, acting reasonably, any non-compliance with this 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
- (b) 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 14**, 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 this Contract.

Services means the services specified in this 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 this Contract.

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

UCT Contract means a "small business contract" as that term is defined under section 23 of the Australian Consumer Law.

WHS Laws means any Laws (including codes of practice, directions or notices issued or approved under such 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.