

1. DEFINITIONS

In these Conditions of Sale:

- 1.1 **"Buyer"** means any person who or company (including its Related Bodies Corporate, administrators, successors and/or permitted assignees) which is named as the buyer overleaf;
- "Seller"** means Culligan Australia;
- "Goods"** means goods described overleaf;
- "Order"** means a written or verbal order from Buyer to Seller;
- "Price"** means the amount described overleaf;
- "Quotation"** means a written quotation provided by Seller to Buyer;
- "Related Bodies Corporate"** has the same meaning as in the Corporations Act 2001; and
- "Services"** means installation, repair or maintenance services (if any) in connection with the Goods.

2. INCORPORATION

- 2.1 Other than as set out in clause 2.5, these Conditions of Sale and the conditions overleaf govern all contracts for the sale or supply of Goods and/or Services by Seller to Buyer and constitute the entire contract between the parties in connection with the Sale of Goods and/or supply of Services agreed between Seller and Buyer. Subject to clause 2.5, all other terms and conditions, express or implied are excluded to the fullest extent permitted by law including without limitation any terms and conditions of Buyer.
- 2.2 No modification or variation of these Conditions of Sale shall bind Seller unless expressly agreed to in writing by an authorised employee of Seller.
- 2.3 These Conditions of Sale supersede any terms and conditions which have previously governed a contract for sale of goods and/or supply of services between Buyer and Seller.
- 2.4 These Conditions of Sale will prevail to the extent of any inconsistency between a Quotation or Order and these Conditions of Sale.
- 2.5 In so far as maintenance services are concerned, Seller's Conditions of Maintenance will apply and in relation to such services, the Conditions of Maintenance will prevail to the extent of any inconsistency with these Conditions of Sale.

3. QUOTATIONS AND ORDER

- 3.1 Unless previously withdrawn a Quotation is valid for thirty (30) days from issue or such other period as is stated therein and is subject to withdrawal or change at any time. Any Quotation provided by Seller is a mere invitation to treat and does not constitute a contractual offer.
- 3.2 An Order made by Buyer shall be taken to be an offer incorporating all the conditions herein. Seller reserves the right to accept Orders in whole or in part. A contract for supply of Goods and/or Services shall not come into existence until an authorised employee of Seller accepts the offer of Buyer in writing.
- 3.3 Once Seller has accepted an Order, Buyer may not alter or modify the Order unless the written consent of an authorised employee of Seller is obtained.

4. PRICE

- 4.1 In addition to the Price, Buyer agrees to pay for, if so requested by Seller: any increases in taxes and duties which Seller may be required to collect or pay after the date set out overleaf;
- (a) all goods and services tax payable not otherwise included in the Price. Seller shall issue a tax invoice to Buyer for goods and services tax;
- (b) customs clearance charges, temporary import surcharges, freight from the delivery point, special handling, special packing or special documentation required by Buyer;
- (c) the cost of holding, storing and insuring the Goods if delivery is delayed by or at the request of Buyer;
- (d) the cost of installation of Goods and associated accessories;
- (e) interest accruing daily on the unpaid balance of the price or any amount payable from its due date until the date of payment at the rate of two percent (2%) above the rate notified by National Australia Bank from time to time as being that bank's indicator lending rate (to accrue from day to day); and
- (f) extra or additional costs or expenses incurred by Seller by reason of the instructions or information given by Buyer being incorrect or by reason of lack of insufficiency of instructions or by reason of any variations or amendments to the specifications or your requirements for the Goods and/or Services or the type of goods being produced by Seller. Any such extra or additional cost will be accepted by Buyer and added to the price and will be paid by Buyer in accordance with these Conditions of Sale.

5. PAYMENT

- 5.1 Buyer shall pay the Price and other amounts payable upon delivery or, if open account credit has been given by Seller, within thirty (30) days of invoice. Interest at the rate specified in condition 4.1(g) hereof shall accrue on any amount due and unpaid. Unless otherwise indicated, all payments shall be made in Australian currency.
- 5.2 Time of payment is of the essence to the contract. Buyer will indemnify Seller on demand against all costs, charges, expenses and legal costs (on a solicitor and own client basis) incurred by Seller in recovering sums owed by Buyer.

6. DELIVERY AND RISK

- 6.1 Risk in the Goods will pass to Buyer at Seller's warehouse upon the Goods being packed upon the vessel or vehicle which is to deliver the Goods to Buyer.
- 6.2 Seller gives or accepts delivery dates overleaf in good faith, but does not guarantee those dates. Seller shall not be liable to Buyer for any loss or damage whatsoever should Seller be delayed or prevented from delivering Goods, or otherwise performing any of its contractual obligations due to any cause or circumstance of any kind whatsoever beyond its control. In the event of any such delay in delivery or supply, the due date for delivery shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance. Delay in delivery or any other default in respect of a delivery shall not relieve Buyer of any obligation in respect of any other delivery.
- 6.3 Seller reserves the right to make deliveries pursuant to these Conditions of Sale in installments and the contract shall be severable as to such installments. All such installments, when separately invoiced, shall be paid for by Buyer without regard to the delivery of subsequent instalments.
- 6.4 Subject to clause 6.2, delivery dates shall not be varied by Buyer once they have been agreed to by Seller without the prior written consent of an authorised employee of Seller.

7. RETENTION OF TITLE

- 7.1 Seller shall retain title to the Goods supplied to Buyer until it has received payment in full for the Goods and all other Goods supplied to Buyer.
- 7.2 Until title passes under clause 7.1:
- (a) Buyer will hold Goods as bailee and fiduciary for Seller (in which full title to Goods will remain);
- (b) Buyer will insure Goods against all usual risks to full replacement value until ownership passes to Buyer. Buyer will hold on trust for Seller in a

must be agent for Seller in any sale if Goods are sold. Buyer must account to Seller for the proceeds of any such sale and shall hold these proceeds in a separate bank account on trust for Seller. However any such agency will only extend to the obligation to account for proceeds. Seller will not be bound by any contract between Buyer and Buyer's purchaser.

- 7.3 Seller's rights as an unpaid seller shall not be affected by Seller retaining title to Goods supplied until the Goods have been paid for in full by Buyer.
- 7.4 Where Buyer has not fully paid Seller for Goods or Buyer enters into bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent:
- (a) Buyer may not sell, use or part with possession of the Goods; and
- (b) Seller shall be entitled, without prejudice to Seller's other remedies, to recover and repossess such Goods and to enter any premises without notice for this purpose.
- 7.5 No provision of this clause 7 is intended to, nor shall it, constitute a charge in respect of the Goods supplied or in respect of any monies paid to Buyer by any customer of Buyer purchasing such Goods. If any provision of this contract creates a charge over the Goods supplied or monies paid to Buyer for any customer of Buyer purchasing such Goods, or shall be found to be void or unenforceable for any other reason, then that provision shall be severed and excised from the contract and the remainder of the provisions shall be read and construed as if that severed and excised provision was not part of the contract.

8. LIMITATION OF LIABILITY

- 8.1 To the extent permitted by law:
- (a) Seller will not be liable for any breach of statutory obligation or implied condition or warranty in respect of Goods and/or Services (or materials used in connection with Services) supplied to Buyer;
- (b) Seller shall under no circumstance be liable in any way whatsoever to Buyer for any form of loss, damage or expense sustained or incurred by Buyer or any other party in consequence of or resulting directly or indirectly out of the supply of Goods or Services by Seller, the use or performance thereof, any breach by Seller of any contract incorporating these Conditions of Sale, or the negligence of Seller. Without limiting the generality of the foregoing, Seller is not liable in any circumstance whatsoever for any indirect or consequential losses, loss of profits or use, any rectification costs or any third party claims in connection with Goods, Services or the contract;
- (c) without limiting the generality of clause 8.1(b), Seller shall under no circumstance be liable in any way whatsoever for any form of loss, damage to property or expense, including without limitation any indirect or consequential losses, loss of profits or use, any rectification costs or any third party claims in connection with Goods, Services or the contract caused by or in any way relating to without limitation, water, leakages, flooding or hydraulic changes, such as, without limitation, water hammer or pressure variations; and
- (d) should any law render a provision herein void or ineffective, Buyer agrees that the liability of Seller is limited to:
- (e) the repair or replacement of those Goods supplied, the supply of goods equivalent to those supplied, or the payment of the cost of replacing or repairing the Goods at the option of Seller; (ii) the supplying again of those Services supplied (or of those materials used in connection with Services supplied) or the payment of the cost of having the Services supplied again, which gave rise to the breach, loss or damage, at the option of Seller.

9. CLAIMS

- 9.1 Seller will not be liable for any claim for breach of any warranty given under clause 11 unless Buyer satisfies Seller that Buyer has strictly complied with any instructions of Seller relating to the relevant Goods and/or Services.

9.2

- (a) Buyer will: notify Seller in writing if Goods or Services fail to comply with the relevant warranties within seven (7) days of delivery of the relevant Goods or performance of relevant Services; and preserve as far as possible for Seller's inspection, Goods that are alleged not to comply with the relevant warranties.

10. TERMINATION

- 10.1 Buyer may terminate in whole or in part any contract for the supply of Goods and/or Services before the supply has been made provided the following conditions are satisfied:
- (a) the written approval of an authorised employee of Seller has been obtained; and
- (b) Buyer agrees to pay any cancellation charge, being a genuine pre-estimate of Seller's loss as determined and specified by Seller.
- 10.2 Seller reserves the right immediately to terminate or suspend Seller's performance of the whole or any outstanding part of any contract for the supply of Goods and/or Services without incurring any liability to Buyer in any of the following circumstances:
- (a) Buyer fails to take delivery of or pay for Goods and/or Services by the due date or breaches any other term of the contract;
- (b) Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;
- (c) Seller notifies Buyer of having reasonable grounds for suspecting that an event in clause 10.2(b) has occurred or will occur, or that Buyer will not pay for Goods and/or Services on the due date;
- (d) there has been a substantial increase in Seller's costs of manufacture and supply of Goods and/or Services between the date of the contract and the date of delivery or despatch arising from circumstances beyond Seller's control where the contract is for a fixed price and Buyer and Seller have failed to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase within thirty (30) days of Seller notifying Buyer of such increase;
- (e) contractual performance by either Seller or Buyer is delayed or prevented due to any cause or circumstance.
- 10.3 Termination by Seller under clause 10.2 shall be without prejudice to Seller's other remedies and Seller's right to recover payment from Buyer for any Goods and/or Services provided by Seller including those previously provided by Seller.

11. WARRANTY

Subject to clause 8 above, Seller warrants its Goods and/or Services in accordance with the warranty agreement supplied with the Goods and/or Services if all conditions herein and therein are satisfied.

12. FORCE MAJEURE

Seller shall not be liable for failure to deliver the Goods and/or supply the Services for any reason whatsoever outside the reasonable control of Seller including, without limitation to the generality of the foregoing industrial action, war, governmental action or regulation, act of God, riots, or non availability of stock or materials. Any such failure shall not affect the obligation of Buyer to pay for Goods already delivered.

- (c) separate bank account any insurance monies received by Buyer for Goods supplied to Buyer but owned by Seller;
- (d) Buyer will store each delivery of Goods separately, clearly identified as Seller's property and in a manner to enable them to be identified and cross-referenced to particular invoices where reasonably possible;
- (e) Buyer will not pledge or allow any lien, charge or other interest to arise over Goods; and
Buyer may use or sell Goods in the ordinary course of business, provided that Buyer

13. SEVERABILITY

If any provision of these Conditions of Sale is or becomes invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision shall be and continue to be valid and enforceable in accordance with their terms.