

1. These terms apply to orders that we place with you for Goods and/or Services. They supersede terms and conditions that you may provide to us.

**Purchase Orders, Agreement Particulars and Contract**

2. There will be a Purchase Order which accompanies these terms. The Parties may also execute Agreement Particulars. These terms are incorporated by reference into those documents.

3. Our Contract with you will commence on the earlier of the date you accept these terms through your counter-execution of our Agreement Particulars or upon your acceptance of our Purchase Order. Notwithstanding the execution of Agreement Particulars, we will have no commitment to purchase Goods or Services until we issue you with our Purchase Order.

4. You need to accept or reject our Purchase Order within 7 days of receipt. If you do not or if you start to perform it, you are deemed to have accepted it and the Purchase Order will be binding. If there is any inconsistency between executed Agreement Particulars and our Purchase Order, you must tell us in writing, so we can rectify the inconsistency. In any event, the Agreement Particulars will prevail if there is an inconsistency.

5. If there is any inconsistency between these terms and the Agreement Particulars, Purchase Order or any other Contract Documentation, these terms apply to the extent of such inconsistency, unless the inconsistent term is expressed to be a Special Condition which prevails to the extent of such inconsistency.

6. We may issue a variation request to our Contract with you at any time. You must tell us in writing within 7 days of the request whether this variation will change the Price or Delivery Date or any other term of the Contract, and then we will tell you in writing if we want to proceed with our variation request. If you do not tell us within this timeframe, you are 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.

7. We may cancel a Purchase Order prior to delivery of the Goods or performance of the Services with no liability, subject to the terms of this **clause 7**. In the event of a binding Purchase Order for Goods made to our specifications, we will reimburse you (at our discretion) for either: (a) your reasonable out-of-pocket costs (excluding for your labour and staff costs) that you necessarily incurred before the cancellation, upon proof and provided that you have mitigated your losses; or (b) where there is a specified sum to be paid for work done under the Contract, a pro rata amount which reflects the work you have performed up to the date of cancellation.

**Supply and term**

8. Except where a fixed-term (**Fixed-Term**) for the Contract is stated, or except where another termination notice period is stated, in the

Contract, we may terminate the Contract for convenience by providing 14 days notice in writing at any time. We will have no liability upon such termination except as outlined in **clause 7**.

9. Our Contract will end on the earlier of:

- (a) termination by either Party pursuant to the terms of the Contract;
- (b) the expiry of the Fixed-Term (if any) stated in the Contract; or
- (c) the date we tell you that the supply of the Goods and/or Services has been completed to our satisfaction under the Contract.

10. Notwithstanding **clause 9** and the expiration of a Fixed-Term, if we continue to order Goods or Services from you and you continue to deliver or perform these, and the Contract has not otherwise been replaced by a written agreement between the parties, then the Contract will be deemed to continue until either Party gives one month's notice of termination in writing to the other and will continue to apply until performance and completion of any binding Purchase Order.

**Obligations applicable to both Goods and Services**

11. You will supply us the Goods and/or Services in accordance with the Contract. Unless agreed in writing, you are not an exclusive supplier to us of the Goods and/or Services and we do not commit to purchase a minimum amount of Goods and/or Services from you.

12. You will not contravene any applicable law, regulation, code of practice or standard governing occupational health and safety or the environment which exists in the place of manufacture or supply of the Goods or place of performance of the Services.

13. You acknowledge that you have read and agree to our [Supplier Code of Conduct](#), which can be accessed at [www.airliquide.com.au/en/terms.html](http://www.airliquide.com.au/en/terms.html) and which we may amend from time to time by providing you with notice).

14. Where the Delivery Location for Goods and/or Services is our site, we will give you non-exclusive access at the Delivery Location for you to deliver, install and/or commission the Goods or supply the Services and complete any other obligations you have to us. You must not interfere with our activities or operations, and you must comply with all laws and reasonable directions and guidelines we provide you at the Delivery Location. You must ensure that, after the performance of your activities, you leave the Delivery Location secure, clean, orderly and fit for our immediate use.

15. Where relevant to the provision of the Goods or Services, you will comply with export controls, customs and foreign trade regulations (**Foreign Trade Regulations**). If information is needed from us to comply with Foreign Trade Regulations, you must ask us in writing within a reasonable period after receipt of our Purchase Order, and we will endeavour to provide it subject to any laws or embargos/sanctions.

### **Obligations applicable to supply of Goods**

16. You must comply with all laws applicable to the manufacture, sale, delivery, labelling and quality of the Goods.
17. Unless otherwise stated in the Contract:
  - (a) You must safely and securely pack and prepare the Goods for shipment. They must be labelled with the order date, our Purchase Order number, the Delivery Location, and our Delivery Location representative's name. If we ask, you must dispose of all packaging at your cost.
  - (b) You must arrange transport for and deliver the Goods, at your cost (including any duties and any other transport costs) to the Delivery Location on the Delivery Date. We may suspend your delivery of the Goods.
18. Title in the Goods passes to us upon delivery to us or when we pay for them, whichever is earlier. When Goods are delivered we must sign your delivery docket that includes a description of the Goods and the Purchase Order number. You must give us a copy of this. Goods are not to be delivered in instalments and they cannot be left unattended at the Delivery Location. Risk in the Goods passes to us when we sign your delivery docket.
19. We may test the Goods or require you to do so (at your cost) at the Delivery Location or elsewhere. The Goods must successfully complete the acceptance testing and meet the acceptance criteria (**Acceptance Testing**) (if any) in the Contract. If none are specified, the Goods must comply with your obligations and warranties provided in these terms and at law. In no event shall we be considered to have accepted Goods prior to fully inspecting them at or after delivery for compliance with the Contract. We will seek to inspect delivered Goods as soon as practicable in the normal course of business. Notwithstanding any acceptance (deemed or otherwise), we retain the right to reject goods and to enforce our other rights under the Contract if after fuller inspection or use we otherwise become aware of Defects.
20. If the Goods fail Acceptance Testing or do not otherwise comply with the Contract, we may decide to reject all or some of them. You must, at your cost and if we ask, remove the rejected Goods, refund any payment we have made, and/or repair or replace them.
21. If the Goods are not received by the Delivery Date, without prejudice to our other rights under these terms, we shall have the right to terminate the Contract.

### **Obligations applicable to performance of Services**

22. You must supply the Services (including any Deliverables):
  - (a) expeditiously and, in any case, by no later than the Delivery Date;
  - (b) according to any service levels in the Contract or, if not stated, as we reasonably require;

- (c) at the Delivery Location;
  - (d) in accordance with all relevant laws;
  - (e) if the Delivery Location is our site, then in accordance with our policies and procedures advised to you in advance in writing;
  - (f) in accordance with our reasonable directions as advised from time to time;
  - (g) using the Key Personnel and, if the Key Personnel cannot do so, other suitably experienced people approved by us (acting reasonably); and
  - (h) where applicable, the Services must be free of any computer virus, disabling device or code, or other harmful or destructive code.
23. If you know or suspect that you are non-compliant with **clause 22**, you must immediately tell us and take all steps to fix it. This notice does not prejudice our rights in the Contract.
  24. If we believe you are not (or, in the future, may not be) compliant with **clause 22**, we may (without prejudice to any other right we have under the Contract) require you to comply with our rectification plan.
  25. We will notify you without unreasonable delay when we have checked that the Services (including the Deliverables) are supplied according to the Contract. Notwithstanding any other term, we are not liable to pay you for the Services until we give you this notice. Notwithstanding providing you notice of acceptance of the Services, we retain our any other rights under the Contract in the event we later become aware of any Defects in the Services.
  26. If we give you access to our systems (for example, computer or communications):
    - (a) we may revoke access at any time and for any reason and you will not be held liable for any breach of the Contract which results only because of your access being revoked by us;
    - (b) you will comply with our policies and directions in relation to our systems, which we can amend at any time. We will provide you with up-to-date copies of our policies; and
    - (c) you will indemnify us for any loss and damage (including loss of profits, loss of income, consequential or indirect loss and damage) arising from your failure to comply with these policies and directions.

### **Warranties and indemnities in relation to Goods and Services**

27. Where relevant to Goods and/or Services, you warrant that:
  - (a) you have the lawful right to supply them to us and we will have quiet possession;
  - (b) they are free of encumbrances;
  - (c) they will be provided with all due skill, care and diligence;
  - (d) you will provide adequate information and any reasonable information and/or training which we reasonably request relating to

- them, including in the case of Goods, their maintenance, use or operation;
- (e) they will correspond to any specification issued by us and agreed by you;
  - (f) where Goods are supplied by reference to any sample or description, they will correspond with such sample or description;
  - (g) they are fit for purpose, new and of acceptable quality and are free from defects in design, materials and workmanship; and
  - (h) they comply with relevant laws and applicable industry standards including any relevant laws in the place of manufacture of the Goods or place of performance of the Services, including in relation to:
    - (i) their safety, manufacture, packaging, labelling, transportation and sale; and
    - (ii) their nature, substance, quality, weight and measurement.
28. If you supply us with something that you have not manufactured or created, you assign to us the benefit of any warranty that the manufacturer or creator has granted you under any contract or by law, to the extent that the benefit of any warranty or entitlement is assignable.
29. In the case of Goods to be re-supplied by us to end users in Australia, you warrant 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.
30. You warrant that the operation of your business complies with all laws, including laws relating to employment, the environment and health and safety, bribery and corruption. You also warrant that you and the Key Personnel have:
- (a) not been prosecuted or fined in relation to health, safety or environmental laws or matters;
  - (b) no actual or perceived conflict of interest with us; and
  - (c) the necessary experience, skills, qualifications, knowledge, competence, licences and permits to perform the Contract.
31. Without limitation to any other right we have, you indemnify us for our Costs from:
- (a) injury, loss or damage to any person or property due to your (including your personnel or representatives) act or omission in connection with the Contract;
  - (b) any breach of the Contract including any warranty; and
  - (c) any negligent or wrongful act or omission by you (including by your personnel or representatives) in connection with the Contract, except to the extent they result from our (including our personnel or representatives) negligent act or omission or a breach of the Contract.
32. We are not liable for any indirect, punitive or consequential expense, loss or damage, 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 your claims for similar losses.
- Defects**
33. If we notify you during the Defects Liability Period that there are Defects:
- (a) you must fix them and the cause(s) within the timeframe we reasonably request (depending on the consequences to our business) and, if you do not, without prejudice to any other right we have and at your risk, cost and expense, we will do what is reasonably necessary (in our 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 sub-clause (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 you organise a Defect to be fixed, in so doing, you must minimise disruption to our business.
- Price and payment**
34. Provided that you have complied with the Contract, and you invoice us no later than twelve (12) months after the delivery of the Goods or the performance of the Services, we will pay you the Price for the Goods and/or Services.
35. You must not increase the Price, unless we have agreed to the increase in writing.
36. You will only invoice us when the Goods have been received by us and/or the Services completed according to the Contract (if any). We are not liable to pay you the relevant Price where we have provided notice of Defects under **clause 33**, until the Defects are fixed to our reasonable satisfaction and according to the Contract.
37. Your invoices must comply with applicable GST Laws and refer to our Purchase Order number. Your 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 required for us to determine the amount payable to you. You permit us, at all reasonable times and with reasonable notice, access to all records, including books of account and operating records, to substantiate the amount claimed.

38. Except where **clause 42** applies, we will pay your duly issued tax invoice within 30 days after the end of month in which we receive it.
39. We may deduct from the invoiced Price any amounts that you owe us.
40. Our 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 we may have.
41. We will not reimburse you for any out-of-pocket costs you incur in connection with supply of the Goods and/or Services in the Contract unless we specifically agree 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 you can reasonably substantiate to us were directly incurred by you in connection with the supply, and must have received our prior written approval.
42. 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 also applies (and replaces **clause 38**):
  - (a) if you submit a Payment Claim earlier than as stated in the Contract, we will deem it to be submitted on the date in the Agreement Particulars and/or Purchase Order;
  - (b) within 10 Business Days of receipt of a valid Payment Claim (including your tax invoice), we will give you a payment schedule setting out the amount (and the basis) we propose to pay;
  - (c) we will pay you 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 days) of a Payment Claim;
  - (d) if a payment schedule shows an amount owed to us by you, you must pay us within 10 Business Days of a payment schedule; and
  - (e) if you do not submit a Payment Claim in accordance with **clause 42(a)**, we may issue a payment schedule.

#### **Confidential Information**

43. Each Party may only use or permit the use of Confidential Information of the other Party for the purpose of supply under the Contract.
44. Each Party must not disclose the Confidential Information of the other Party to any other person other than to their officers, independent contractors or employees who need to know it in order for them to perform an obligation under the Contract.
45. 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.
46. The Parties warrant that their officers, independent contractors or employees will not do

anything the Parties have agreed not to do in **clauses 43 to 45**.

47. The obligations imposed by this clause do not apply to disclosure on a confidential basis to a Party's professional advisers or financiers, or as required by law or to enforce the terms of this Contract. 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.
48. 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 43 to 47**; 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 43 to 47**.
49. Each Party must, on termination or expiry of the Contract, or when requested in writing by the other Party, 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.
50. 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 49** and made the required deletions from any storage device forming part of any computer.

#### **Ownership and assignment of intellectual property**

51. You agree that all Intellectual Property in Project Material shall be our exclusive property. You assign absolutely to us, with effect from the date of this Contract, the whole of the your 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 you 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.

52. You must notify us promptly of any Project Material produced, created or developed by your officers, independent contractors or employees.
53. You assign to us absolutely, by way of assignment of future copyright, the whole of your 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.
54. You agree to assign to us absolutely all your 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 53**.
55. You agree to do all acts and execute all documents, and to ensure that your officers, independent contractors or employees do all acts and execute all documents, necessary to secure our ownership of the entire Intellectual Property in respect of all Project Material. You irrevocably appoint each of our directors from time to time severally as your attorney to do all acts and execute all documents which you are obliged to do or execute by this clause.
56. You must tell us if there is any suspected, threatened or actual infringement of any Intellectual Property in the Project Material. You agree to provide any assistance reasonably required by us in relation to the enforcement of any Intellectual Property in Project Material against third parties. We shall reimburse you for all reasonable costs and expenses incurred by you in providing such assistance, provided such expenses do not, in any way, result from a breach of this Contract by you.
57. You grant us 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 your 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.
58. We grant you 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 us to use, reproduce and exploit) any of our Background Material and Project Material to the extent necessary for you to comply with the Contract.
59. You warrant that our use, reproduction or exploitation of your Background Material, the Project Material or the Deliverables will not infringe the rights, including Intellectual Property, of any third party.
60. Without limitation to any other remedy that we may have, if you have breached 59, you must, at no cost to us, procure all licences and consents necessary to enable us to obtain the full benefit of this Contract.

#### **Insurance**

61. You 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 you under the Contract. Those insurances shall be on terms and with an insurer satisfactory to us (acting reasonably) and, except to the extent we otherwise agree, 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; and (c) professional indemnity insurance on a claims made basis of not less than \$10 million per event. If we ask, you must immediately give us evidence of the currency of these insurances.

#### **Default and termination**

62. If you are unable to pay your debts or expenses when they fall due, you must tell us immediately. If you suspend payments or, in our reasonable view, have payment or liquidity problems, we may ask you to promptly provide us with reasonable financial information to assess your ability to perform the Contract. We will keep this information confidential and only use this information for the purpose of assessing your ability to comply with the Contract and to exercise our rights under the Contract.  
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: (a) the other Party is likely to be, in the first Party's reasonable opinion, insolvent; (b) the other Party is placed in receivership, have a liquidator appointed or enter into any other form of external administration or any arrangement with their creditors; (c) the other Party (or their personnel) are charged with any criminal offence in relation to bribery or corruption; (d) the other Party fails to remedy a breach of the Contract within 7 days of written notice requiring such remedy; or (e) the other Party breaches the Contract and that breach is, in the first Party's opinion, unable to be remedied. We may terminate the Contract immediately by giving you notice if you fail to comply with our rectification plan under **clause 24**.
63. Subject to **clause 7**, if we terminate the Contract, you forfeit any right to payment under the Contract (except for Goods and/or Services retained by us) and we can recover from you any costs, losses or damages suffered or incurred by us that are in connection with your breach of the Contract and/or such termination including any amounts already paid by us for Goods and/or Services which have not been supplied or which have Defects or which have been rejected by us. If requested by us, you will fully co-operate in the transition of supply to a new supplier and promptly provide all information reasonably requested by us.
64. If the Contract expires or is terminated, and a Party so requests, the other Party must give the first Party any information or documentation (including any computer code if relevant) containing Intellectual Property Rights of the first

Party which the other Party has or has control over in connection with the Contract, or destroy or delete it. If the latter, a Party may ask to view it or ask the other Party to certify that it has been done.

### Governing Law and Disputes

65. If the Goods or Services are being delivered in Australia, the Contract is governed by the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts of Victoria, Australia and those courts with authority to hear appeals from the Victorian courts. If the Goods or Services are being delivered in New Zealand, the Contract is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.
66. 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 this Agreement (**Dispute**). Your senior manager and ours will try to resolve the Dispute within 14 days of either of us giving notice that there is a Dispute (**Dispute Notice**). If that fails, the Dispute will be referred to a mediator who will conduct a mediation within a further 60 days from the date of the mediator's appointment.
- (a) If the Goods or Services are to be or have been supplied in Australia, then the mediator will be agreed between us or, failing agreement within 28 days of the Dispute Notice, decided by the President of the Law Institute of Victoria. The mediation shall be conducted in Melbourne.
- (b) If the Goods or Services are to be supplied in New Zealand, then the mediator will be agreed between us or, failing agreement within 28 days of the Dispute Notice, decided by the chairperson or any other office holder of the New Zealand chapter of LEADR. The mediation shall be conducted in Auckland.
67. The mediator shall conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree within 14 days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally. If the mediation fails, either Party can relevantly commence legal proceedings. Despite a Dispute, the Contract must be performed.

### Other

68. All indemnities and any clauses in the Contract which expressly or impliedly have effect after termination will continue to be enforceable after termination.
69. There is no relationship of agency, partnership or employment between the Parties, and you have no authority to bind us to any third party. You are responsible to pay for all of your staff and representatives' costs and payments (for example, wages, superannuation, taxes, leave

entitlements, insurances, permits and licences etc).

70. 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.
71. The Contract contains the entire agreement between the Parties. It supersedes all earlier negotiations, representation or agreements with respect to its subject matter.
72. The Contract may only be changed by written agreement between the Parties and it may be executed in counterparts.
73. A Party must not:
- (a) subcontract the supply of the Goods and/or Services; and/or
- (b) assign any right in the Contract or novate it (except to a related body corporate of that Party),
- without the other Party's written consent. A Party's consent may be subject to further terms that they decide, and (except if they agree to a novation) the assignor remains fully responsible for the performance by other persons of the contract and are liable for any of their breaches, acts or omissions. The other Party's consent to any assignment, novation or subcontracting may not be inferred only from their acceptance of Goods or Services from another person other than the first Party.
74. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.
75. 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.
76. 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.
77. The following definitions apply unless the context requires otherwise:

**Agreement Particulars** means the document entitled as such or other similar order document issued by us to you.

**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 the Contract, including the fact that the Party is supplying to the other Party or acquiring from the other Party under the Contract, as well as the information described in the Agreement Particulars, whether disclosed by that Party to the other Party, or created or discovered by the other Party under or in anticipation 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 these terms, the information in our Agreement Particulars and/or Purchase Order and any other Contract Documentation, as may be amended in writing from time to time.

**Contract Documentation** means any documentation relating to our requirements for the Goods or Services which is incorporated by reference into the Contract.

**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 us and costs, damages or other monies paid or payable by us to any customer, end user or other Party as a result of Defects, and includes any costs or liabilities incurred by us 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.

**Defects** means any failure to comply with the warranties contained in **clause 27(d)** or any defect, deficiency, mistake, fault or omission in relation to the Goods and/or Services other than a defect caused by us. Defect includes a defect which crystallises with respect to a particular Good during the Defects Liability Period as well as any design, material or workmanship defect which affects a batch of Goods delivered, even if the relevant failure of a particular Good does not appear with respect to all Goods during the Defect Liability Period.

**Defects Liability Period** means, in relation to the Goods, 36 months commencing on: (a) where we are the end user, the date of our acceptance of the Goods, unless a longer period is specified in your quotation or description of the Goods, in which case it shall be such longer period; or (b) where we are not the end user but on-supply the Goods or incorporate them into or assemble them onto other goods which we on-supply, 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. In relation to Services and Deliverables, Defects Liability Period means 12 months after our acceptance of the relevant Services.

**Deliverables** means anything supplied or to be supplied by you under the Contract, including anything specified as a deliverable in the Agreement Particulars.

**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 our 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.

**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 trade marks; 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 as stated in the Contract.

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

**Party** means either you or us and **Parties** means you and we together.

**Payment Claim** means a claim for payment which meeting the requirements of applicable construction laws and containing sufficient detail for us to calculate the amount payable to you, including a tax invoice issued in accordance with **clause 37**.

**Price** means the total price for the supply of the Goods and/or Services as specified in the 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 you; inclusive of GST (except where stated to be GST exclusive) and all other applicable taxes, duties, levies, charges and costs for you to perform your obligations in the Contract.

**Project Material** means all Material produced, created or developed in the course of this Contract, or as a result of your 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 our document entitled as such or other similar order document issued by us to you.

**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.

**We, our** or **us** (unless the context requires otherwise) means Air Liquide Australia Limited ABN 57 004 385 782 or Air Liquide W.A. Pty Ltd ABN 52 008 694 166 or Air Liquide Australia Solutions Pty Ltd ABN 78 602 866 106 (in each case of Level 9, 380 St Kilda Road, Melbourne, Victoria 3004, Australia) or Air Liquide New Zealand Limited Company No 117492 (of 19 Maurice Road, Penrose, Auckland 1061, New Zealand) as stated to be the purchaser in the Purchase Order, Agreement Particulars or elsewhere in the Contract.

**You** or **your** refers to the entity stated as the supplier in the Purchase Order, Agreement Particulars or elsewhere in the Contract.