



## General Terms and Conditions of Supply

### 1. Interpretation

---

1.1 In these General Terms and Conditions:

- (a) **Agreement** means the combination of any Quotation accepted by Customer as well as this, the General Terms and Conditions and any other written communications expressly agreed to between the parties as forming the Agreement.
- (b) **Business Day** means Monday to Friday, except for public holidays.
- (c) **Cadar Filters** means Cadar Filters Pty Ltd ACN 682 145 295.
- (d) **Customer** means the entity or persons named in the Quotation and/or receiving goods/services from Cadar Filters.
- (e) **Delivery Date** means the delivery date for the Goods set out in the Quotation or any written variation to that date agreed between the parties;
- (f) **Goods** means all products, supplies, raw materials or fees or services supplied by Cadar Filters to the Customer (excluding Plant but including software) and used for the purpose of producing an output. Where the context so permits, the terms 'Goods' or 'Services' shall be interchangeable for the other. Services shall include designs and related management and audit/ consulting services.
- (g) **Guarantor** means, where the Customer is a company (whether in its capacity as a trustee company or as the Customer itself), each of the director/s of that company jointly and severally, from time to time.
- (h) **GST** has the meaning defined within *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (i) **Hourly Rates** means Cadar Filter's standard hourly rates as specified by Cadar Filters in the Quotation or otherwise agreed to by Customer;
- (a) **Notification** means when either Cadar Filters or the Customer communicates with the other party in writing of any matter including that within the agreement;
- (b) **Plant** means any equipment, item or product (or part thereof) supplied to Customer (other than Goods) and which is used in production or processing;
- (c) **Price** means the purchase price for the Plant or Goods set out in the Quotation;
- (d) **Quotation** means the written Quotation including any variation thereto and as agreed between Cadar Filters and Customer;
- (e) **Site** means Customer's site specified in the Quotation;
- (f) **Specifications** means the specifications for the Plant or Goods as set out in the Quotation;
- (g) **Terms** means these General Terms and Conditions of Supply together with any other Customer Responsibilities as set out by Cadar Filters forming part of the Agreement;

(h) **Third Party Component** means a component of the Plant or Goods supplied by a third party. Third Party shall be construed accordingly.

1.2 If there is a conflict between the Quotation and these Terms, the Quotation will prevail.

## **2. Scope and Term**

---

2.1 Cadar Filters will supply the Plant or Goods to Customer pursuant to the Agreement.

2.2 Any Agreement will commence when the Quotation is accepted by Customer and will continue in force as long as Cadar Filters is supplying Plant or Goods to Customer under that Agreement.

2.3 By placing an order for Goods and/or Plant, or accepting delivery of Goods and/or Plant, or otherwise accepting these Terms or acting in a manner that indicates acceptance of these Terms, the Customer is deemed to have accepted and is bound, jointly and severally, by these Terms.

2.4 Any supply of Goods and/or Plant by Cadar Filters to a Customer made after the date of acceptance of these Terms is a supply pursuant only to the Agreement (which incorporates these Terms) and excludes anything to the contrary.

2.5 Without limiting clause 2.4, any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with the Agreement, shall not apply, nor shall they constitute a counteroffer.

2.6 Each supply of Goods does not give rise to a new or separate Agreement unless otherwise specified in writing.

2.7 The Agreement supersedes any prior Agreement with Cadar Filters regarding the supply of Goods, unless otherwise agreed in writing.

2.8 These Terms may be varied by Cadar Filters by written notice to the Customer.

## **3. Price and Payment**

---

3.1 The Price shall be:

- (a) exclusive of GST unless expressly quoted otherwise or as set out in the Quotation or as indicated on any invoice provided by Cadar Filters to Customer.
- (b) the Price is as at the date of delivery of the Plant or Goods (or part thereof) according to Cadar Filters's current price list; or
- (c) Cadar Filters's estimated price or its fee which will be valid for the period stated in the Quotation or otherwise for a period of sixty (60) days.

3.2 Cadar Filters reserves the right to change the Price:

- (a) if a variation to the Plant or Goods which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of work; or
- (d) if a variation occurs as a result of fluctuations in currency exchange rates; or
- (e) A period of more than 30 days passes.

- 3.3 At Cadar Filters' sole discretion, a non-refundable deposit may be required.
- 3.4 Time for payment for the Plant or Goods being of the essence, the Price will be payable by Customer on the date/s determined by Cadar Filters, and specified in writing by Cadar Filters, and if not specified in writing by Cadar Filters then on delivery of the Plant or Goods.
- 3.5 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between Cadar Filters. and Customer.
- 3.6 Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to Customer by Cadar Filters nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.7 Unless otherwise stated the Price does not include GST. In addition to the Price Customer must pay any applicable GST, without deduction or set off of any other amounts, at the same time and on the same basis as Customer pays the Price. In addition, Customer must pay any other taxes and duties that may be applicable in addition to the Price (plus GST) except where they are expressly included in the Price.
- 3.8 Without prejudice to its other rights and remedies, Cadar Filters may, until payment is received in full by Cadar Filters:
- (a) suspend the manufacture and supply of Plant or Goods or any undelivered components of same, or the provision of Services under this Agreement, and Customer will be liable on default for all legal and agency costs incurred in recovering all overdue amounts.
  - (b) Partially complete the supply of Plant or Goods;
  - (c) Seek immediate payment of any and all outstanding amounts, and any amounts that have been invoiced but may not have yet fallen due;
  - (d) Recover any and all outstanding amounts against any security provided under the Agreement;
  - (e) Terminate the Agreement.
- 3.9 If Cadar Filters does anything set out in clause 3.8, it is not liable for any loss suffered as a result by the Customer or any third party.
- 3.10 Where this Agreement has been entered into by an agent (or a person purporting to act as agent) on behalf of Customer, the agent and Customer shall be jointly and severally liable for payment of all amounts owing to Cadar Filters or by Cadar Filters to any third party under this agreement as well as any fees and expenses due to Cadar Filters under this Agreement.
- 3.11 Where Services are carried out on a time charge basis, Cadar Filters may purchase such incidental Goods and/or services as are reasonably required for Cadar Filters to perform the Services. The cost of obtaining such incidental Goods and/or services shall be payable by Customer.

#### **4. Delivery of Goods - including Installation of Plant where relevant.**

---

- 4.1 Subject to clauses 4.2 and 4.3, the Goods will be delivered to the Site by Cadar Filters or its carrier at Customer's cost, unless provided for otherwise in the Quotation.
- 4.2 Cadar Filters may charge Customer for all storage, transportation, crane hire and other expenses incurred in delivering the Goods including any work performed by Cadar Filters's personnel at the Hourly Rates if not included in the Quotation.
- 4.3 Cadar Filters will use reasonable endeavours to deliver the Goods by the delivery date(s) stated but that date is an estimate only and Cadar Filters will not be liable for any delay in delivery.

- 4.4 Subject to any express agreement by the parties to the contrary:
- (a) Customer will be responsible for installing and provisioning any Plant including connections to other works at the Site; and
  - (b) where Cadar Filters agrees to assist with installation and provisioning, Cadar Filters will charge Customer for such assistance at its Hourly Rates, and for all expenses incurred in providing such assistance.
- 4.5 Customer will, at its own cost:
- (a) obtain all necessary resource consents and regulatory approvals for installing and provisioning the Plant at the Site;
  - (b) provide reasonable access to the Site to Cadar Filters's personnel to the extent required to deliver the Goods or Plant to Customer and provide any other services pursuant to this Agreement;
  - (c) ensure the safety of the Site and notify Cadar Filters's personnel of any safety procedures to be followed at the Site; and
  - (d) prepare the Site for the delivery, provisioning and installation of the Goods or Plant.
- 4.6 Customer indemnifies Cadar Filters against all loss, liability, costs or expenses incurred by Cadar Filters because of:
- (a) failure or delay by Customer to perform any of its obligations under this Agreement;
  - (b) failure or refusal of Customer to take delivery of the Goods on or after the Delivery Date;
  - (c) any unforeseen failure or delay by any third-party crane operator in lifting the Goods onto the Site;
  - (d) Customer arranging for the Goods to be lifted onto the Site.
- 4.7 Customer's liability under clause 4.6 includes liability for:
- (a) any waiting time for Cadar Filters's personnel (charged at the Hourly Rates);
  - (b) any costs incurred by Cadar Filters or levied by a supplier of Third-Party Components for storage, transportation or insurance of the Goods or any components or portion of the Goods;
  - (c) any loss suffered by Cadar Filters in relation to the purchase of Third-Party Components as a result of increases to foreign exchange rates where delivery of the Goods is delayed by more than 30 days after the agreed date for such installation.

## **5. Access to Site and Underground Locations**

---

- 5.1 Customer shall ensure that Cadar Filters has clear and free access to the Site at all times to enable Cadar Filters to effect delivery of the Goods.
- 5.2 Prior to Cadar Filters commencing any work Customer must advise Cadar Filters of the precise location of all underground services on the site and clearly mark the same. The underground mains and services Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site.
- 5.3 Prior to Cadar Filters commencing any work, the Customer must ensure that the Site is safe for Cadar Filters to provide its Plant and/or Goods, and maintain appropriate insurance to cover injury to employees and contractors of Cadar Filters occurred whilst on Site due to Site Conditions or the act/omission of the

Customer; and/or if not appropriate, then inform Cadar Filters clearly of the Site risks and perform appropriate safety inductions prior to attendance on Site.

## **6. Producer Statements – Plant only**

---

- 6.1 Cadar Filters will have access to inspect the Plant at the Site following delivery of the Plant or, where Cadar Filters assists with installation and provisioning of the Plant following such provisioning.
- 6.2 Following the inspection of the Plant under clause 6.1, any Producer Statement which Cadar Filters is required to provide will be provided.
- 6.3 Customer acknowledges that the provision of a Producer Statement under clause 6.2 does not constitute a warranty or guarantee in respect of the Plant and that Customer's sole rights in respect of the Plant are set out in clauses 9 and/ or 13.

## **7. Risk and Ownership**

---

- 7.1 Risk of the Plant or Goods passes to Customer on delivery, but ownership of same does not pass to Customer until Customer has paid all amounts owing under this Agreement.
- 7.2 While ownership of the Plant or Goods remains with Cadar Filters, Customer must:
  - (a) not sell, lease, create a security interest in or permit any lien over, or part with possession of the Plant or Goods; and
  - (b) keep the Plant and Goods insured with a reputable insurance company against risk of loss or damage by hazards normally insured against.
- 7.3 Capitalised terms in this clause 7.3 have the meaning given to those terms in the Personal Property Securities Act 2009 (Cth) (**PPSA**).
  - (a) To secure the due and punctual performance of all of the Customer's obligations to Cadar Filters (present or future, actual or contingent), whether pursuant to the Agreement or otherwise, the Customer grants a security interest to Cadar Filters in all Goods (and their proceeds) now and in the future supplied by Cadar Filters to the Customer (or to its account).
  - (b) Cadar Filters and the Customer acknowledge that the Agreement constitutes a Security Agreement and entitles Cadar Filters to claim:
    - (i) a charge over all present and after-acquired property (AIPAAP) of the Customer in favour of Cadar Filters; and
    - (ii) a Purchase Money Security Interest (PMSI) in favour of Cadar Filters over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and
    - (iii) a security interest over the proceeds of sale of the Collateral referred to in clause 7.3(b)(i) as original collateral.
  - (c) The Goods supplied under the Agreement fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to the Agreement.
  - (d) The Proceeds of sale of the Collateral referred to in clause 7.3(b)(ii) falls within the PPSA classification of "Account".
  - (e) Cadar Filters and the Customer acknowledge and agree that Cadar Filters, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to the Agreement and in the relevant Proceeds.

- (f) To the extent permissible at law, the Customer:
- (i) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to Cadar Filters.
  - (ii) agrees to indemnify Cadar Filters on demand for all costs and expenses, including legal costs and expenses on a solicitor / Customer basis, associated with the:
    - (A) registration or amendment or discharge of any Financing Statement registered by or on behalf of Cadar Filters; and
    - (B) enforcement or attempted enforcement of any Security Interest granted to Cadar Filters by the Customer;
  - (iii) agrees that sections 130 and 143 of the PPSA will not apply to the Agreement or the Security under the Agreement;
  - (iv) agrees to waive its right to do any of the following under the PPSA:
    - (A) receive notice of removal of an Accession under section 95;
    - (B) receive notice of an intention to seize Collateral under section 123;
    - (C) object to the purchase of the Collateral by the Secured Party under section 129;
    - (D) receive notice of disposal of Collateral under section 130;
    - (E) receive a Statement of Account if there is no disposal under section 132(4);
    - (F) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged;
    - (G) receive notice of retention of Collateral under section 135;
    - (H) redeem the Collateral under section 142; and
    - (I) reinstate the Security Agreement under section 143.
- (g) The Customer undertakes to:
- (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Cadar Filters may reasonably require to
    - (A) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Security Register;
    - (B) register any other document required to be registered by the PPSA; or
    - (C) correct a defect in a statement referred to in clause 9(h)(i)(A).
  - (ii) not register a Financing Change Statement in respect of a Security Interest without the prior written consent of Cadar Filters;

- (iii) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Cadar Filters;
  - (iv) immediately advise Cadar Filters of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- (h) Cadar Filters and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by the Agreement, to the extent permissible by law.
- (i) The Customer waives their rights to receive notices under sections 118 and 121(4) of the PPSA.
- (j) Unless otherwise agreed to in writing by Cadar Filters, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- (k) The Customer must unconditionally ratify any actions taken by Cadar Filters under this clause 9.
- (l) All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

## **8. Reliance**

---

- 8.1 Cadar Filters shall be entitled to rely on the accuracy of any plans, specifications and other information provided by Customer. Customer acknowledges and agrees that in the event that any of this information provided by Customer is inaccurate, Cadar Filters accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 Where Cadar Filters is required to install the Plant Customer warrants that the structure of the premises or equipment in or upon which the Plant is to be installed or erected is sound and will sustain the installation and work incidental thereto and Cadar Filters shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.3 Any advice, recommendation, information, assistance or service provided by Cadar Filters in relation to Plant, Goods and/ or Services supplied is given in good faith, is based on Cadar Filters's own knowledge and experience and shall be accepted without liability on the part of Cadar Filters and it shall be the responsibility of Customer to confirm the accuracy and reliability of the same in light of the use to which Customer makes or intends to make of the Plant Goods or Services.
- 8.4 Customer acknowledges that Cadar Filters is only responsible for parts that are replaced by Cadar Filters, and in the event that other parts, subsequently fail, Customer agrees to indemnify Cadar Filters against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

## **9. Defects in Goods**

---

- 9.1 Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify Cadar Filters of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. Customer shall afford Cadar Filters an opportunity to inspect the Goods within a reasonable time following delivery if Customer believes the Goods are defective in any way. If Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Cadar Filters has agreed in writing that Customer is entitled to reject, Cadar Filters's liability is limited to either (at Cadar Filters's discretion) replacing the Goods or repairing the Goods.
- 9.2 Goods will not be accepted for return for any reason other than those specified in clause 9.1 above.

## **10. Returns of Goods**

---

- 10.1 Returns of Goods will only be accepted provided that:

- (a) Customer has complied with the provisions of clause 9.1; and
- (b) Cadar Filters has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at Customer's cost within seven (7) days of the delivery date; and
- (d) Cadar Filters will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

10.2 Cadar Filters may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of up to ten percent of the value of the returned Goods plus any freight. Non-stocklist items or Goods made to Customer's specifications are under no circumstances acceptable for credit or return.

## **11. Overdue Accounts**

11.1 **Interest will accrue on overdue amounts from the due date specified in writing, and if not specified in writing, then from the date of delivery pursuant to section 101 of the Civil Procedure Act 2005 (NSW).**

11.2 If Customer owes Cadar Filters any unpaid amount, Customer shall indemnify Cadar Filters from and against all costs and disbursements incurred by Cadar Filters in recovering the debt including but not limited to internal administration fees, legal costs on an indemnity basis, Cadar Filters's collection agency costs, and bank dishonour fees.

11.3 Further to any other rights or remedies Cadar Filters may have under this Agreement, if a Customer has made payment to Cadar Filters by credit card, and the transaction is subsequently reversed, Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Cadar Filters under this clause 11, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to Customer's obligations under this Agreement.

11.4 Without prejudice to any other remedies Cadar Filters may have, if at any time Customer is in breach of any obligation (including those relating to payment) under these Terms Cadar Filters may suspend or terminate the supply of Goods to Customer. Cadar Filters will not be liable to Customer for any loss or damage Customer suffers because Cadar Filters has exercised its rights under this clause.

11.5 Without prejudice to Cadar Filters's other remedies at law Cadar Filters shall be entitled to cancel all or any part of any order of Customer which remains unfulfilled and all amounts owing to Cadar Filters shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Cadar Filters becomes overdue, or in Cadar Filters's opinion Customer will be unable to make a payment when it falls due;
- (b) Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of Customer or any asset of Customer.

## **12. Cancellation**

12.1 In the event that Customer cancels delivery of the Goods Customer shall be liable for any and all loss incurred (whether direct or indirect) by Cadar Filters as a direct result of the cancellation (including, but not limited to, any loss of profits).

12.2 Cancellation of orders for Goods made to Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed. All other cancellations are at Cadar Filters' sole discretion.



### **13. Limited Warranty - Plant**

---

- 13.1 Cadar Filters will use its reasonable endeavours to ensure that the Plant (excluding any Third-Party Components) and any assistance provided by Cadar Filters with installing and provisioning the Plant under clause 4 will comply with any agreed Specifications in all material respects.
- 13.2 If, for any reason the Plant or component does not materially comply with the agreed Specifications, Customer's sole remedy for such non-conformity shall be limited to, either repair or replacement of the Plant or component by Cadar Filters (Limited Warranty).
- 13.3 Where Plant or Goods are alleged to be defective and breach the Limited Warranty, Cadar Filters will arrange for inspection or testing by Cadar Filters at the cost of the Customer, with such cost to be borne by the Customer at first instance. If the Plant is found to breach the Limited Warranty, Cadar Filters will then reimburse the Customer for all costs and expenses reasonably incurred in carrying out such inspection or testing.
- 13.4 The Limited Warranty as given above is subject to the following terms:
- (a) Cadar Filters is not liable for any defect in the Plant caused by fair wear and tear, abnormal or unsuitable conditions of use or any neglect or default of Customer or any third party; and
  - (b) Cadar Filters is not liable for any breach of the Limited Warranty unless it is notified in writing within 3 months of the Delivery Date and provided Cadar Filters has been given reasonable opportunity to inspect the Plant.
- 13.5 Cadar Filters will have no liability under the Limited Warranty in respect of the Plant if:
- (a) the total Price for the Plant has not been paid; or
  - (b) the Plant has been altered or modified by Customer or any other party without Cadar Filters' prior written consent.
- 13.6 The Limited Warranty does not extend to any Third-Party Components, in respect of which Customer will only be entitled to the benefit of any warranties given to Cadar Filters of such Third-Party supplied Components. Cadar Filters will use reasonable endeavours to assign to Customer any warranties received from such third supplier(s) and will assist Customer (at Customer's cost) to enforce such warranties on Customer's behalf.
- 13.7 Customer acknowledges that:
- (a) the Plant supplied to Customer under this Agreement is supplied for business purposes and the Australian Consumer Law does not apply; and
  - (b) To the fullest extent permitted by law, all implied warranties are excluded, and all terms, conditions and warranties (except those given in writing by Cadar Filters or its suppliers or manufacturers) relating to the quality or fitness for the purpose of the Plant are excluded.

### **14. Insurance and Limitation of Liability**

---

- 14.1 If required, Customer shall maintain such insurance as may be reasonably necessary to protect Customer from any liability arising in connection with this Agreement.
- 14.2 Cadar Filters shall be under no liability whatsoever to Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by Customer. To the fullest extent permitted by law, Cadar Filters' total liability under this Agreement will not exceed in aggregate the lesser of the actual loss or damage suffered by Customer or the total amount paid by Customer under this Agreement.
- 14.3 Cadar Filters will not be liable to Customer for any delay in delivery, installation or provisioning of the Plant or Goods.

- 14.4 If Cadar Filters is found liable to Customer (whether in contract, tort or otherwise), and Customer and/or a Third Party has contributed to the loss or damage, Cadar Filters shall only be liable to the proportional extent of its own contribution.

## **15. Guarantee**

---

- 15.1 In consideration of Cadar Filters entering into an Agreement with the Customer, the Guarantor hereby:
- (a) guarantees to Cadar Filters the due and punctual payment of all moneys covenanted in an Agreement or agreed to be paid, and the due and punctual observance and performance and observance by the Customer of the Agreement; and
  - (b) indemnifies Cadar Filters and agrees at all times hereafter to keep Cadar Filters indemnified from and against all claims, demands, actions, suits and proceedings and all costs (including legal costs and disbursements on a full indemnity basis), expenses, loss and damage made against, suffered, paid or incurred by Cadar Filters consequent upon or arising directly or indirectly of any breach, non-observance or non-performance by the Customer of any of the Terms and Agreement; and
  - (c) charges all real property both present and future and wheresoever situated with the amount of indebtedness owed to Cadar Filters on any account whatsoever, and shall immediately upon demand being made by Cadar Filters sign all documents and do all things that Cadar Filters may reasonably require to be signed and done to further secure to Cadar Filters the amount of such indebtedness to Cadar Filters including, without limitation mortgages of real property, and consents to caveats that Cadar Filters may wish to lodge against any dealings in any real property of the Guarantor's and further undertakes not to object to the lodging of such caveat or charge or take any steps to remove any such caveat.
- 15.2 The Guarantor agrees that:
- (a) the guarantee and indemnity in this clause 15 shall not be prejudicially affected by any other security or guarantee given in favour of Cadar Filters
  - (b) the guarantee and indemnity shall be a continuing guarantee and indemnity and shall be irrevocable and remain in full force and effect until the due and complete performance of all the Customer's obligations to Cadar Filters;
  - (c) the liability of the Guarantor shall not be affected by:
    - (i) any variation, amendment or addition to the Terms or the Agreement (whether with or without the consent or knowledge of the Guarantor);
    - (ii) any determination of the Agreement (whether by effluxion of time, re-entry, forfeiture, surrender or otherwise);
    - (iii) any absolute or partial release of the Customer or any Guarantor or any compromise with the customer or any Guarantor;
    - (iv) any exercise or purported exercise by Cadar Filters of any of its other rights under the Terms or the Agreement; or
    - (v) any other act, matter or thing that may or would otherwise prevent Cadar Filters from relying upon the guarantee and indemnity given by a Guarantor;
  - (d) if there is more than one person forming the Guarantor, this guarantee and indemnity is given by those persons jointly and severally;
  - (e) despite any other terms contained in the Agreement to the contrary, if the Agreement is terminated or becomes or is rendered void, voidable, unenforceable or in any way inoperative in whole or in part, the

liability of the Guarantor shall remain as if the Agreement remained in force to the extent required to cover the performance of any obligations pursuant to the provisions of this guarantee and indemnity; and

- (f) if the Customer becomes bankrupt or goes into liquidation and the trustee or liquidator disclaims the Terms or an Agreement, the obligations of the Guarantor contained in this clause 15 shall extend to any loss or damage suffered or incurred by Cadar Filters as a result of such disclaimer and Cadar Filters shall not be required, before calling upon the Guarantor to make good such loss or damage, to prove or take any other steps in the bankruptcy or liquidation.

## **16 General**

---

- 16.1 The failure by either party to enforce any provision of these terms shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions shall be governed and interpreted according to the laws of New South Wales, Australia and Cadar Filters and the Customer consent and submit to the jurisdiction of the courts of New South Wales, Australia. Notwithstanding that any provision of the terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the terms shall continue in full force and effect.
- 16.3 Neither party shall assign all or any part of their rights and obligations under this agreement without the written consent of the other party. Cadar Filters may sub- contract some of its Services to a third party from time to time.
- 16.4 Customer agrees that Cadar Filters may amend these terms and conditions by notifying Customer in writing. These changes shall be deemed to take effect from the date on which Customer accepts such changes, or otherwise at such time as Customer makes a further request for Cadar Filters to provide Plant or Goods to Customer.
- 16.5 To the maximum extent permitted by law, and without limiting any other provision of the Agreement, Cadar Filters is not liable for any delay in performing any of its obligations under the Agreement if such delay is caused by circumstances beyond Cadar Filters' reasonable control, and Cadar Filters is entitled to a reasonable extension of time for the performance of such obligations.
- 16.6 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.
- 16.7 Cadar Filters has not and will not assume any obligation as Customer's agent or otherwise which may be imposed upon Customer from time to time pursuant to any workplace health and safety law.
- 16.8 Customer shall give Cadar Filters not less than fourteen (14) days prior written notice of any proposed change of ownership of Customer and/or any other change in Customer's details (including but not limited to, changes in Customer's name, address, contact phone and email address). Customer shall be liable for any loss incurred by Cadar Filters as a result of Customer's failure to comply with this clause.
- 16.9 Electronic signatures and information shall be deemed to be accepted by either party.
- 16.10 Cadar Filters shall be under no liability whatsoever to the Customer for any direct (to the extent permissible by law), indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Cadar Filters of these terms and conditions (alternatively Cadar Filters's total liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

- 16.11 The Customer agrees that Cadar Filters may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Cadar Filters to provide Goods to the Customer. No waiver or alteration of these conditions shall be binding on Cadar Filters unless assented to in writing by its duly authorised officer.
- 16.12 The Customer must not make, express, transmit, speak, write, verbalise or otherwise communicate in any way any remark, comment, message, information, declaration, communication or other statement of any kind (whether verbal, in writing, electronically transferred or otherwise) that might reasonably be construed to be critical of, or derogatory or negative towards, Cadar Filters; or cause, further, assist, solicit, encourage or knowingly permit any other person to do so, or otherwise support or participate in any other person doing so.
- 16.13 The Customer acknowledges that to provide the Goods, Cadar Filters may need to assess, provide opinions and give advice on works conducted by others. Such advice is not intended to be disparaging of any other parties and is given only as a necessary first step to quoting for and providing the Goods.
- 16.14 Where Cadar Filters has designed, drawn or developed Goods for the Customer, then the Copyright in any designs and drawings and documents shall remain the property of Cadar Filters. Under no circumstances may such designs, drawings and documents be used without the express written approval of Cadar Filters.
- 16.16 Sales of Goods and/or Plant shall not confer the Customer any rights or interest in any Trademarks, Patents, Copyrights, Industrial Design or other intellectual property rights of Cadar Filters in respect thereof. The Customer shall not dispute or conspire to dispute or question the title of Cadar Filters in respect of such rights relating to the Goods. All design details, specifications, software, technical handbooks, drawing or other data supplied to the Customer remain Cadar Filters property and Cadar Filters retains the right to have all such data returned upon request. All information contained in such data is Copyright and shall be kept confidential by the Customer, except to the extent that the Customer can establish that such information has been previously made known to it from other sources. All software is not transferable and is restricted to the use by Cadar Filters's Customer only.
- 16.16 The Customer warrants that all designs, specifications or instructions given to Cadar Filters will not cause Cadar Filters to infringe any Patent, registered Design or Trademark in the execution of the Customer's order and the Customer agrees to indemnify Cadar Filters against any action taken by a third party against Cadar Filters in respect of any such infringement.