

TERMS AND CONDITIONS

DEFINITIONS

In these Terms:

"ACL" means the Australian Consumer Law;

"Agreement" means any agreement entered into or request for the provision of goods or services by FILTERFIT PTY LTD to the Customer, including but not limited to any Orders submitted or any credit application made by the Customer to FILTERFIT PTY LTD or these Terms;

"Anticipated Delivery Date" anticipated date for delivery and installation of the goods and completion of the services specified in a Quotation;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from FILTERFIT PTY LTD.

FILTERFIT PTY LTD (ACN 082 929 128) 24-26 Japaddy St, Mordialloc, Victoria 3195;

"goods and services" means the services provided by FILTERFIT PTY LTD to the Customer including but not limited to air and liquid filters and filtration systems by FILTERFIT PTY LTD to the Customer as described in a Quotation or invoice;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"INCO Terms 2010" means the International Commercial Terms published by the International Chamber of Commerce that are widely used in International commercial transactions or procurement processes;

"Intellectual Property" means all copyright, trademarks, designs, specifications, confidential information (whether registrable or not) owned or licensed by FILTERFIT PTY LTD in respect of the goods and services, or their installation, operation, location or design;

"Order" means the acceptance by the Customer of a quotation or invoice provided by FILTERFIT PTY LTD to the Customer concerning the proposed supply of goods or services, whether by written, verbal, electronic or other means.

"PPSA" means the *Personal Property Securities Act* 2009;

"Price List" means any price list issued by FILTERFIT PTY LTD from time to time in relation to the price payable for the goods or services;

"Quotation" means any written quotation or estimate provided by FILTERFIT PTY LTD to the Customer concerning the proposed supply of goods or services;

Site" means the site where the goods are to be delivered and installed; and

"Terms" means these Terms and Conditions.

1. BASIS OF AGREEMENT AND ORDERS

1.1 Unless otherwise agreed by FILTERFIT PTY LTD in writing, these Terms apply exclusively to every Agreement and prevail to the extent of any inconsistency and cannot be varied, altered or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

1.2 Any Quotation provided by FILTERFIT PTY LTD to the Customer concerning the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation only to the Customer to place an Order based upon that Quotation; and
- (c) subject to the Customer entering into and accepting this Agreement and accepting these Terms.

1.3 The Terms may include additional terms in FILTERFIT PTY LTD Quotation. The specific terms of the Quotation will prevail over these Terms to the extent of any inconsistency.

1.4 The Agreement is accepted by the Customer upon the earlier of:

- (a) FILTERFIT PTY LTD receiving a copy of the Terms signed by the Customer; or
- (b) FILTERFIT PTY LTD confirming its acceptance of an Order from the Customer; or
- (c) FILTERFIT PTY LTD providing the Customer with the goods or services ordered by the Customer.

1.5 Price Lists and other publications and sales literature by FILTERFIT PTY LTD do not constitute an offer.

1.6 FILTERFIT PTY LTD in its absolute discretion may refuse to accept any Order.

1.7 It is the Customer's responsibility to provide FILTERFIT PTY LTD with its specific requirements in relation to the goods or services.

1.8 FILTERFIT PTY LTD may vary these Terms by written notice to the Customer at any time. Any variations will apply to orders placed by the Customer after the date of notice.

1.9 Any typographical, clerical or other errors or omissions in any sales literature, Quotations, Prices Lists, invoices or other documents issued by FILTERFIT PTY LTD are subject to correction by FILTERFIT PTY LTD without liability.

2. PRICING

2.1 All prices are quoted in Australian Dollars unless otherwise stated.

2.2 Unless otherwise agreed in writing, prices specified whether by Quotation, verbally or in a Price List, for the supply of the goods and services excludes taxes, duties or imposts, including import levies and duties, on or in relation to the goods and services, including, without limitation GST.

2.3 Whether or not the cost of shipment, freight, delivery, insurance and other charges arising from the point of dispatch of the goods from FILTERFIT PTY LTD storage facility/factory to the Customer's Site and applicable INCO terms ("Additional Terms and Charges") are included in the price will depend on the nature of the goods and services Ordered by the Customer. Any Additional Terms and Charges are applicable and payable by the Customer in accordance with FILTERFIT PTY LTD Quotation.

2.4 The Customer must pay to FILTERFIT PTY LTD any amounts specified in clauses 2.2 and 2.3 in addition to payment of the price of goods or services.

3. PRICING VARIATIONS

3.1 If the Customer requests any variation to the Order placed, FILTERFIT PTY LTD may, in its discretion:

- (a) increase the price to account for the variation, or
- (b) provide a revised Quotation for the goods or services.

3.2 Where:

- (a) there is any change in the costs incurred by FILTERFIT PTY LTD in relation to the goods or services (including but not limited to changes in personnel or materials costs);
- (b) the Customer requests or requires a different goods or services to those initially specified; or
- (c) the Customer fails to give FILTERFIT PTY LTD adequate instructions or unreasonably delays in the provision of instructions

then FILTERFIT PTY LTD may vary its price to take account of any such change, by notifying the Customer before providing the goods and services.

4. PAYMENT

4.1 Payment for the goods and services must be made by the Customer to FILTERFIT PTY LTD as provided in the Quotation.

4.2 Time for payment is of the essence. Payment must be made to FILTERFIT PTY LTD without any deduction, withholding or set-off by the Customer or any other person.

4.3 Payment must be made by cash, cheque, bank cheque or electronic transfer or credit card, although payment by cheque will not be deemed to

be made until the proceeds of the cheque have cleared. Receipts for payment will only be issued upon request.

4.4 FILTERFIT PTY LTD reserves the right to require the Customer to pay a deposit and delay provision of the goods or services or the ordering of any capital equipment from any agent or other third party until a deposit has been received from the Customer in accordance with FILTERFIT PTY LTD Quotation. FILTERFIT PTY LTD will not be liable for any loss or damage suffered by the Customer or any third party arising out of the Customer's failure to make timely payment for the goods or services.

4.5 FILTERFIT PTY LTD's payment terms are thirty **(30) days from the date of invoice**, unless otherwise stated in the Quotation.

5. PAYMENT DEFAULT

5.1 If the Customer defaults in payment by the due date of any amount payable to FILTERFIT PTY LTD, then all money which would become payable by the Customer to FILTERFIT PTY LTD at a later date on any account, may at the sole discretion of FILTERFIT PTY LTD, become immediately due and payable without notice to the Customer, and FILTERFIT PTY LTD may (without prejudice to any other remedy available to it):

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Supreme Court of Queensland Act 1995* for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify FILTERFIT PTY LTD from, all costs and expenses (including without limitation all legal costs on a solicitor own client basis and expenses) incurred by FILTERFIT PTY LTD resulting from the default in taking action to enforce compliance with the Terms, to recover any goods, to enforce, protect or maintain its Security Interest in the goods or to recover any sum due;
- (c) cease or suspend for such period as FILTERFIT PTY LTD thinks fit, supply of any further goods or services to the Customer;
- (d) by written notice to the Customer, terminate any contract with the Customer to the extent that it is not performed by FILTERFIT PTY LTD;

without liability or any effect on FILTERFIT PTY LTD accrued rights under any Agreement.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at FILTERFIT PTY LTD option:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator or similar functionary appointed.

6. PASSING OF PROPERTY

6.1 Until FILTERFIT PTY LTD receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to FILTERFIT PTY LTD by the Customer:

- (a) title and property in all goods remains vested in FILTERFIT PTY LTD and does not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for FILTERFIT PTY LTD;
- (c) the Customer is required to hold the proceeds of any sale of the goods on trust for FILTERFIT PTY LTD in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee; and
- (d) FILTERFIT PTY LTD may without notice, enter any premises where it suspects the goods may be and dismantle, detach and remove them (notwithstanding that the goods may have been attached to other goods not the property of FILTERFIT PTY LTD), and for this purpose the Customer irrevocably licences FILTERFIT PTY LTD to enter such premises and also indemnifies FILTERFIT PTY LTD from and against all costs, claims, demands or actions by any party arising from such action;

6.2 In addition to any rights FILTERFIT PTY LTD may have under Chapter 4 of the PPSA, until payment of all and any amounts owing by the Customer to FILTERFIT PTY LTD are received:

- (a) the Customer will keep the goods separate, where possible, until

FILTERFIT PTY LTD has received payment in full and any other obligations owed by the Customer to FILTERFIT PTY LTD are met;

- (b) FILTERFIT PTY LTD may give notice to the Customer to return the goods to FILTERFIT PTY LTD. Upon receipt of such or upon such notice being given, any rights of the Customer to obtain ownership or any other interest in the goods will cease;
- (c) the Customer will not encumber or charge the goods or register any Security Interest or permit any other person to register a Security Interest in the goods or grant or otherwise give any interest in the goods whilst the goods remain the property of FILTERFIT PTY LTD;
- (d) if there is any inconsistency between FILTERFIT PTY LTD's rights under this clause 6 and its rights under Chapter 4 of the PPSA, this clause 6 prevails; and
- (e) any difference or loss incurred by FILTERFIT PTY LTD in respect of the value of any re-possessed goods will be recoverable by FILTERFIT PTY LTD from the Customer in addition to any amounts owing by the Customer to FILTERFIT PTY LTD

7. PERSONAL PROPERTIES SECURITIES ACT

7.1 The Customer acknowledges and agrees that this Agreement is the accepted and adopted security agreement between the parties. Unless otherwise stated, a term contained in this Agreement that is defined in the PPSA (but not otherwise defined in this Agreement) has the meaning given to it in the PPSA.

7.2 The Customer acknowledges and agrees that this Agreement creates and that FILTERFIT PTY LTD has a Security Interest for the purposes of the PPSA in all goods and any proceeds previously supplied or that will be supplied in the future by FILTERFIT PTY LTD to the Customer, including but not limited to the lease of any goods by FILTERFIT PTY LTD to the Customer.

7.3 The Customer acknowledges and agrees that this Security Interest is registrable in the Personal Property Securities Register and this Security Interest secures all moneys owing by the Customer to FILTERFIT PTY LTD under this Agreement or otherwise.

7.4 The Customer grants to FILTERFIT PTY LTD where and when applicable, a purchase money Security Interest (PMSI) to the extent that it secures payment

- of the amounts owing in relation to the relevant goods in accordance with, and to the extent prescribed by, section 14 of the PPSA.
- 7.5 The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- 7.6 The Customer acknowledges that the Security Interest over the goods or their proceeds arising under this clause 7 is a PMSI under the PPSA to the extent that it secures payment of the amounts owing in relation to the goods.
- 7.7 The Customer will do everything reasonably required of it by FILTERFIT PTY LTD to enable FILTERFIT PTY LTD to register its Security Interest with the priority FILTERFIT PTY LTD requires and to maintain those registrations including:
- (a) signing any documents and/or providing any information which FILTERFIT PTY LTD may reasonably require to register a financing statement or a financing change statement in relation to a Security Interest; or
 - (b) correcting a defect in a statement referred to in clause 7.7(a).
- 7.8 The Security Interests arising under this clause 7 will be perfected by FILTERFIT PTY LTD prior to or when the Customer obtains possession of the goods and the parties confirm they have not agreed that any Security Interest arising under this clause 8 attaches at any later time.
- 7.9 FILTERFIT PTY LTD does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 7.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interests created under this Agreement, the Buyer agrees that sections 95, 96, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of the Security Interest(s).
- 7.11 The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including the security agreement between FILTERFIT PTY LTD and the Customer.
- 7.12 The Customer agrees to keep and maintain all goods free of any charge, lien, or Security Interest except as created under this Agreement and not otherwise to deal with the goods in a way that will, or may, prejudice the rights of FILTERFIT PTY LTD under this Agreement or the PPSA.
- 7.13 The Customer irrevocably grants to FILTERFIT PTY LTD the right to enter any premises or property of the Customer without notice, and without being in any way liable to the Customer or any other person, if FILTERFIT PTY LTD has cause to exercise any of its rights under the PPSA, and the Customer agrees to indemnify FILTERFIT PTY LTD against any such liability.
- 7.14 The Customer must notify FILTERFIT PTY LTD immediately in writing if the Customer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA in respect of this Agreement.
- 8. RISK AND INSURANCE**
- 8.1 Unless otherwise agreed in writing or set out in the terms contained in the Quotation, the risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer on an ex-works basis in accordance with the INCO Terms 2010.
- 8.2 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods or services supplied by FILTERFIT PTY LTD.
- 8.3 The Customer indemnifies FILTERFIT PTY LTD in respect of any loss, claim, action or damage arising out of any of the matters referred to in this clause 8.
- 9. ACKNOWLEDGMENTS**
- 9.1 The Customer acknowledges that:
- (a) it has not unreasonably relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by FILTERFIT PTY LTD in relation to the goods or services or their use or application.
 - (b) it has the sole responsibility of satisfying itself that the goods or services are suitable for the Customer's use or contemplated use.
- 10. CUSTOMER'S OBLIGATIONS**
- 10.1 The Customer is responsible for ensuring the accuracy of any specifications and requirements in respect of the goods and services and for giving FILTERFIT PTY LTD any necessary information relating to the goods and services within a reasonable time.
- 10.2 The Customer must:

- (a) ensure that the Site is available to and accessible by FILTERFIT PTY LTD and its servants or agents by the Anticipated Delivery Date specified in the Quotation to enable delivery and installation of the goods;
 - (b) allow FILTERFIT PTY LTD servants and agents unencumbered and uninterrupted access to the goods at all reasonable times to deliver, install, dismantle, detach, remove, inspect, test, adjust, maintain, repair or replace them;
 - (c) be responsible for providing a clean and safe Site;
 - (d) ensure that it has suitable protection and insurance for the goods from the time of delivery; and
 - (e) ensure that it has all necessary materials, facilities, services and adequate assistance for installation and testing of the goods.
11. **DELIVERY AND INSTALLATION**
- 11.1 FILTERFIT PTY LTD will arrange for the delivery of the goods to the Customer, at the Customer's cost and delivery of the goods will be deemed to have occurred at upon delivery of the goods to the Site.
- 11.2 The Customer indemnifies FILTERFIT PTY LTD against any loss or damage suffered by FILTERFIT PTY LTD, its sub-contractors or employees as a result of delivery and installation, or frustrated delivery, except where caused by FILTERFIT PTY LTD negligence.
- 11.3 If the Customer is to collect the goods itself, then the Customer must arrange, at its own cost, for collection of the goods from FILTERFIT PTY LTD premises within 7 days of notification that the goods are ready. If the Customer does not collect the goods within this time, then the Customer will be deemed to have taken delivery from such date and may, at the discretion of FILTERFIT PTY LTD, be liable for storage charges payable weekly on demand.
- 11.4 The liability of the Customer to pay any amount to FILTERFIT PTY LTD on the delivery date will not be affected irrespective of whether or not the Site is ready by the Anticipated Delivery Date or the Customer is able to physically take delivery of the goods on the Anticipated Delivery Date or other agreed date.
- 11.5 Any period or date for delivery of goods or provision of services stated by FILTERFIT PTY LTD is intended as an estimate only and is not a contractual commitment. FILTERFIT PTY LTD will use its reasonable endeavours to meet any

estimated dates for delivery of the goods or completion of the services and the Customer indemnifies FILTERFIT PTY LTD from any costs, losses, expenses, claims or actions arising out of any such delay.

12. **LIABILITY**

12.1 Except as specifically set out in these Terms, or contained in any warranty statement provided with the goods or services, any term, condition, warranty or consumer guarantee in respect of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded to the maximum extent permitted by law.

12.2 Repair or replacement of the goods, or part of the goods, or re-supply of the services is the absolute limit of FILTERFIT PTY LTD's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party to the maximum extent permitted by law.

12.3 FILTERFIT PTY LTD is not liable for:

- (a) any indirect or consequential losses or expenses suffered by the Customer or any third party, however caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party;
- (b) any loss or damage suffered by the Customer or any third party where FILTERFIT PTY LTD has failed to deliver goods or services or fails to meet any delivery date or cancels or suspends the supply of goods or services; and
- (c) any loss or damage suffered by the Customer in relation to any services provided by the Customer's servants or agents.

12.4 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.

13. **VARIATION AND CANCELLATION**

13.1 If, through circumstances beyond FILTERFIT PTY LTD control, FILTERFIT PTY LTD is unable to provide the goods or services, then FILTERFIT PTY LTD may, by written notice to the Customer and without any liability to the Customer:

- (a) make changes to the goods and services supplied, provided that the end performance of the goods or services is not materially prejudiced; or
- (b) cancel any Order (even if it has already been accepted).

- 13.2 No purported cancellation or suspension of an Order by the Customer is binding on FILTERFIT PTY LTD after that Order has been accepted.
- 13.3 Notwithstanding clause 13.2, if FILTERFIT PTY LTD accepts the Customer's cancellation of an Order, FILTERFIT PTY LTD may, in its discretion:
- (a) charge the Customer for the cost of any items ordered or made prior to the cancellation of the Order; or
 - (b) retain the Deposit paid by the Customer.
- 13.4 The Customer shall be liable for any costs incurred or arising out of any variation made by the Customer to an Order that has been accepted by FILTERFIT PTY LTD, including but not limited to freight and the cost of additional or replacement goods. The Customer acknowledges that it bears the risk and costs of any adverse or other effect on the performance or suitability of the goods or services arising out of any such variation.
- 13.5 Without limiting the generality of this clause 13, if goods or services are supplied by FILTERFIT PTY LTD in accordance with any particular drawings, designs, specifications or instructions provided by the Customer ("Custom Order"), and the Customer wishes to vary or cancel the Custom Order, then subject to clause 13.3 and 13.4:
- (a) If FILTERFIT PTY LTD has not yet commenced production of the Custom Order, cancellation or variation of same will not be subject to any additional fee or charge;
 - (b) If production of the Custom Order has commenced and the Customer wishes to cancel the Custom Order, the Customer agrees to pay the full cost of the Custom Order goods and a cancellation fee set by FILTERFIT PTY LTD in its discretion;
 - (c) If production of the Custom Order has commenced and the Customer wishes to vary the Custom Order, the Customer will unconditionally indemnify FILTERFIT PTY LTD from and against any losses, costs, liability, or expenses arising out of the variation of the Custom Order in addition to paying a variation fee set by FILTERFIT PTY LTD in its absolute discretion.

14. WARRANTY

- 14.1 FILTERFIT PTY LTD offers a limited warranty for its goods and services against defects and workmanship and materials, subject to the limitations and exclusions set out in this warranty

which is given subject to and in addition to other rights and remedies the Customer has under any law in relation to the goods to which this warranty relates, including but not limited to the rights provided by the ACL. This warranty does not limit or restrict the Customer's rights.

- 14.2 Where the ACL applies, the goods and services come with guarantees that cannot be excluded under the ACL. The Customer is entitled to replacement or a refund for a major failure and for compensation for any other foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 14.3 FILTERFIT PTY LTD warrants that, subject to the exclusions and limitations set out in these Terms, the goods and services provided by FILTERFIT PTY LTD will be free from defects in materials and workmanship under normal usage ("Warranty"), for the period within twelve (12) months of the date that the goods are delivered to Site by FILTERFIT PTY LTD ("Warranty Period"). Products manufactured or supplied by any other party will be subject to their own manufacturer's warranties and warranty periods.
- 14.4 To the maximum extent permitted by law, this Warranty does not cover
- (a) products packaged or labelled by someone other than FILTERFIT PTY LTD or its authorised agents;
 - (b) products not used in compliance with the specifications or goods not cared for or used, serviced or maintained in accordance with the product manuals, instructions or training provided by FILTERFIT PTY LTD;
 - (c) defects due to misuse, alteration, unauthorised repair or negligent handling, or defects due to lack of care neglect or accident by the Customer, or servant or agent of the Customer, including but not limited to storage, handling or cleaning of the goods;
 - (d) personal injury, property damage, consequential or economic loss, however caused;
 - (e) modification, repair or service of the goods by someone other than FILTERFIT PTY LTD; or
 - (f) goods that have been subject to abnormal conditions, whether of temperature, water, humidity, pressure, stress or similar.

- 14.5 To the maximum extent permitted by law and other than the Warranty stated above, FILTERFIT PTY LTD makes no representations or warranties of any kind whatsoever express or implied in respect of the goods and services.
- 14.6 All Warranty claims must be made within the timeframe stipulated in this warranty for the warranty to be honoured by FILTERFIT PTY LTD.
- 14.7 If a defect appears in the goods or services before the end of the Warranty Period and FILTERFIT PTY LTD finds the goods or services to be defective in materials or workmanship, FILTERFIT PTY LTD will, in its sole discretion, either:
- (a) replace or repair the goods or the defective part of the goods free of charge;
 - (b) cause the goods or the defective part of the goods to be repaired or replaced free of charge;
 - (c) re-supply the services or part of the services; or
 - (d) refund the purchase price of the goods or services to the Customer.
- 14.8 If a fault covered by this Warranty occurs, the Customer must notify FILTERFIT PTY LTD in writing of the fault, including details of the nature of the warranty claim and the purchase order number. FILTERFIT PTY LTD will contact the Customer and, where possible, assess the claim over the telephone and otherwise investigate the Claim to determine whether the Warranty applies.
- 14.9 Provided that a claim is made within the Warranty Period and the Warranty applies, all direct costs associated with labour and replacement parts will be borne by FILTERFIT PTY LTD. FILTERFIT PTY LTD may, in its sole discretion:
- (a) choose to have the goods returned to FILTERFIT PTY LTD for any warranty repair, with the costs of transport borne by FILTERFIT PTY LTD; or
 - (b) choose to travel to the Customer's Site to effect warranty repairs, with the cost of travel to be borne by FILTERFIT PTY LTD.
- 14.10 Where a valid warranty claim is made by the Customer in accordance with these Terms and it is accepted by FILTERFIT PTY LTD the cost of repaired or replaced goods or services and all labour associated with same will be borne by FILTERFIT PTY LTD.
- 14.11 Where FILTERFIT PTY LTD incurs costs in investigating a warranty claim that is ultimately deemed by FILTERFIT PTY LTD not to be valid, the Customer shall be liable to reimburse FILTERFIT PTY LTD for all such costs incurred by FILTERFIT PTY LTD.
- 14.12 The Warranty is limited to defects in the materials or workmanship of the goods or services and does not cover expendable parts, consumable items or the replacement of parts due to fair wear and tear.
- 14.13 This warranty is in addition to any statutory warranties available to the Customer that cannot be excluded.
15. **RETURNS**
- 15.1 Subject to the ACL and to clause 15.3, FILTERFIT PTY LTD will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless:
- (a) the Customer notifies FILTERFIT PTY LTD with full details as soon as reasonably practicable after delivery specifying the shortage or defect; and
 - (b) FILTERFIT PTY LTD is given the opportunity to inspect the goods and services and investigate the complaint before any further dealing.
- 15.2 If the Customer fails to give the notice as required in clause 15.1, it is deemed to have accepted the goods and services and will be bound to pay for them.
- 15.3 Where FILTERFIT PTY LTD accepts any claim for shortages, damage or non-compliance with the Agreement, FILTERFIT PTY LTD may, at its option, repair or replace the goods, re-supply the services, or refund the price of the goods or services.
- 15.4 FILTERFIT PTY LTD will not, under any circumstances, accept goods for return that:
- (a) are damaged due to not being stored or handled in accordance with FILTERFIT PTY LTD instructions or any legislative requirements; or
 - (b) have been altered in any way without authorisation from FILTERFIT PTY LTD.
- 15.5 Subject to clause 15.9, the Customer must obtain FILTERFIT PTY LTD prior written approval for the return of goods and pay all freight charges associated with return.
- 15.6 The Customer must return the goods in new condition together with proof of purchase and original packaging, where possible.
- 15.7 FILTERFIT PTY LTD may, in its absolute discretion, accept the return of any goods for credit within 14 days of delivery or otherwise within a reasonable time from delivery. This timeframe may vary from product to product and may depend on the type of product purchased and the price paid.

- 15.8 When the Customer notifies FILTERFIT PTY LTD they are returning the goods, the goods will become FILTERFIT PTY LTD property provided FILTERFIT PTY LTD accepts the return of the goods in accordance with clause 15.7 and only once FILTERFIT PTY LTD has replaced or paid compensation to the Customer in respect of the goods. All goods returned must be in a reasonable and clean condition, subject to the notified defect.
- 15.9 Where the ACL applies, and FILTERFIT PTY LTD considers that the returned goods have breached a consumer guarantee under the ACL, the Customer must return the goods to FILTERFIT PTY LTD at its cost unless the cost of returning, removing or transporting the goods is significant. If this is the case, FILTERFIT PTY LTD will collect the goods at its expense and within a reasonable time. In any other case, any goods returned to FILTERFIT PTY LTD will be at the expense of the Customer.
16. **INTELLECTUAL PROPERTY & SPECIFICATIONS**
- 16.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 16.2 The Customer must not register or record or attempt to register or record the Intellectual Property or any derivative works in respect of same including but not limited to any amendment, modification or improvement thereof or part thereof, or anything similar to it, or aid or abet anyone else to do so.
- 16.3 Any Intellectual Property provided to the Customer by FILTERFIT PTY LTD remains FILTERFIT PTY LTD's exclusive property and must be returned to FILTERFIT PTY LTD on demand (as applicable) and must not be copied or communicated to any third party without FILTERFIT PTY LTD express written consent.
- 16.4 The Customer must not at any time (and must not direct any other party to) create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property without FILTERFIT PTY LTD prior written consent.
- 16.5 FILTERFIT PTY LTD reserves the right to change the specifications of the goods and services at any time without notice and without liability.
- 16.6 If goods and services are supplied in accordance with any particular drawings, designs, specifications or instructions provided by the Customer, then the Customer agrees to indemnify FILTERFIT PTY LTD from and against any losses, expenses, claims, demands or actions awarded against or incurred by FILTERFIT PTY LTD in connection with any third party claim for infringement of any intellectual property rights.

17. **FORCE MAJEURE**

- 17.1 FILTERFIT PTY LTD shall have no liability whatsoever under these Terms to the extent that such fulfilment is prevented by circumstances beyond its reasonable control, including but not limited to:
- (a) industrial disputes, strikes, lockouts;
 - (b) accident or breakdown;
 - (c) import or export restrictions and embargoes;
 - (d) act of God, explosion, flood, tempest or fire;
 - (e) act of terrorism, act of war, sabotage, insurrection, civil disobedience or requisition;
 - (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery.
- 17.2 If an event of force majeure occurs, FILTERFIT PTY LTD may terminate the Agreement by written notice to the Customer without any liability for any costs, damages, loss or claims suffered by the Customer arising out of such termination.
18. **MISCELLANEOUS**
- 18.1 The laws of Victoria from time to time governs the Terms.
- 18.2 Failure by FILTERFIT PTY LTD to enforce any of these Terms shall not be construed as a waiver of any of FILTERFIT PTY LTD rights.
- 18.3 If any of the Terms are unenforceable it must be read down so as to be enforceable or, if it cannot be so read down, the term must be severed from these Terms without affecting the enforceability of the remaining terms.
- 18.4 A notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed to be received upon the sender's communications machine confirming such transmission.
- 18.5 The parties may agree for FILTERFIT PTY LTD to provide additional goods or services from time to time. Any varied or additional goods and services will be provided by FILTERFIT PTY LTD to the Customer in accordance with these Terms, as amended or updated from time to time.
19. **CREDIT REPORTING**
- 19.1 The Customer consents to FILTERFIT PTY LTD obtaining credit information about the Customer and providing a credit report in relation to the Customer or exchanging credit information about the Customer to third parties for the purposes of

providing goods and services to the Customer in accordance with these Terms.

20. PRIVACY AND FINANCIAL INFORMATION

20.1 The Customer acknowledges and consents to the use by FILTERFIT PTY LTD and its employees, officers and agents of its personal and financial information for the purposes of:

- (a) the supply of goods and services to the Customer;
- (b) assessing and approving any credit application of the Customer;
- (c) obtaining reports in relation to any application for credit or the Customer's credit history; or
- (d) general marketing purposes and otherwise in accordance with the FILTERFIT PTY LTD privacy policy from time to time, which is available upon request

20.2 Other than in the circumstances allowed under the relevant privacy laws or its privacy policy, FILTERFIT PTY LTD will not disclose the Customer's personal information to other parties. The Customer may contact FILTERFIT PTY LTD's privacy officer at any time to access or change any personal information provided to FILTERFIT PTY LTD by calling +61 39587 7330.

20.3 The Customer irrevocably authorises FILTERFIT PTY LTD to seek and use any reports from a credit reporting agency of its choosing containing personal information about the Customer in relation to the collection of any monies owing by the Customer to the extent permitted by law. The Customer consents to FILTERFIT PTY LTD giving

any information relating to the collection of any outstanding amounts to any credit-reporting agency to the maximum extent permitted by law.

20.4 The Customer will provide any and all necessary instructions and/or authorities required by FILTERFIT PTY LTD accountants, debtor insurers and bankers to enable FILTERFIT PTY LTD to make investigations from time to time into the Customer's trading and financial position.

20.5 The Customer's details, including its purchases will be added to FILTERFIT PTY LTD database and will be used by FILTERFIT PTY LTD:

- (a) to identify the Customer;
- (b) to assist in providing goods and services to the Customer, including but not limited to the processing of any application for or granting of credit and the management and administration of those services;
- (c) to provide the Customer with information about the goods in undertaking risk assessment management and in gathering data and disclosing data to third parties such as
 - (i) Insurance brokers and insurers;
 - (ii) Credit reporting agencies; and
 - (iii) Financial institutions; and

for the purposes of providing promotional or marketing information to the Customer in relation to the goods and services provided by the FILTERFIT PTY LTD Groups.