

CONDITIONS OF SALE

1 Interpretation

1.1 In these conditions the following words will have the following meaning:

Supplier means either SEA, SES and related bodies corporate either of them that supplies Products, as named overleaf.

Purchaser means the person or other legal entity nominated as purchasing Products and named overleaf.

Manufacturer means the corporation manufacturing a Product, as identified in the documentation accompanying that Product.

Products means products listed overleaf which are the subject of these conditions of sale.

Loss means any and all losses (including but not only indirect or consequential loss and loss of profits, business and business opportunities) damages, claims, liabilities and demands and all expenses, legal and otherwise (including but not limited to all legal fees and disbursements incurred) of whatsoever kind and nature.

2 Terms of Payment

2.1 Purchaser must pay the price of Products in the manner nominated overleaf. Unless otherwise stated, terms of payment are 30 days from date of invoice.

2.2 Prices stated overleaf exclusive of goods and services and value added taxes, customs duty (if supplied to a country other than the same country as Supplier's address shown overleaf), sales tax, freight charges and other delivery costs. These must all be paid by Purchaser in addition to the price shown overleaf. However, these items will be included in the price if these items are expressly stated overleaf as included in the price.

2.2 If payment is not made within the period allowed for payment Supplier will have a right to charge interest at a rate equivalent to two (2) per centum in excess of such rates as may be charged from time to time by Supplier's bankers for overdraft accommodation, calculated from the date on which payment was due to the date of full and final payment.

3 Title and Risk

3.1 Title in Products will remain vested in Supplier and will not pass to Purchaser until payment for Products has been made in full. If default is made by Purchaser in payment, Supplier will have the right at Supplier's absolute discretion and without further notice to enter from time to time upon Purchaser's premises and remove any or all of the Products. Supplier reserves the full right to dispose of Products in such circumstances.

3.2 Products will be at Purchaser's risk immediately upon dispatch from Supplier's warehouse or delivery to Purchaser or into the custody of anyone acting on Purchaser's behalf, whichever is the sooner.

3.3 If nominated overleaf, Supplier will arrange for delivery of Products to Purchaser at Purchaser's risk and expense. In this event, Supplier may, if so requested by Purchaser and then at Purchaser's expense, arrange insurance cover for Products.

3.4 Supplier will make reasonable efforts to have the Product delivered on the date agreed to between the parties but Supplier shall be under no liability whatsoever should delivery not take place on this date for whatever reason.

4 Acceptance and Return

4.1 Purchaser may inspect Products forthwith upon delivery and must give notice in accordance with Clause 5 if Purchaser alleges Products are not in accordance with these conditions. If Purchaser fails to give such notice, Products will be deemed to have been accepted by Purchaser. Claims for non-delivery must be made within fourteen (14) days after date of delivery.

4.2 Claims to return Products and obtain credit are subject to approval by an authorised representative of Supplier. Supplier will allow Purchaser a credit for the cost of Products accepted for return subject to a deduction of a handling charge of 20% of the invoiced value of the returned Products and any freight charges paid by Supplier for the original shipment of those Products. Supplier will not be obliged to accept for return Products which have been used. Products must be returned in their original packing.

5 Limited Warranty

5.1 Supplier warrants (**this Limited Warranty**) that:

(a) Products manufactured by Supplier will be free from defects in material and workmanship for a period of one (1) year from the date of supply;

(b) Products manufactured by a Manufacturer other than Supplier will be free of defects in material and workmanship for a period stated in Manufacturer's printed warranty accompanying those Products.

5.2 If any Product or part thereof does not comply with this Limited Warranty Supplier and/or the Manufacturer will at their election replace that Product, or pay the cost of replacing that Product or acquiring an equivalent Product, or repair that Product.

5.3 Any claim under this Limited Warranty must be made within the relevant warranty period stated in paragraph 5.1 above and must be notified in writing to Supplier within thirty (30) days after discovery of the defect giving rise to the claim. No claims will be met until Manufacturer, Supplier or their duly authorised representative has inspected Products subject to the claim. These Products must be returned freight pre-paid to such place as Manufacturer, Supplier or their representative may reasonably specify for inspection. Purchaser must ship Products back in their original packaging, and insure the shipment or accept the risk of loss or damage during shipment.

5.4 This Limited Warranty will not apply to any Product or part thereof which has been repaired, altered or modified in any way whatsoever by any person other than the Manufacturer or Supplier or their authorised service representatives; installation, use or maintenance of Products other than in accordance with instructions; failure to perform preventative maintenance; accident, abuse or misuse.

5.5 Supplier and Manufacturer make no express warranties beyond those stated here. Supplier and Manufacturer disclaim all other warranties, express or implied, including without limitation implied warranties or merchantability and fitness for a particular purpose. Some jurisdictions do not allow limitations on implied warranties, so this limitation may not apply to Purchaser. The above Limited Warranty gives Purchaser specific legal rights and Purchaser may also have other rights which vary from one jurisdiction to another.

6 Liability and Indemnity

6.1 Some jurisdictions pursuant to product liability law or otherwise do not allow the exclusion or limitation of incidental or consequential damages or other limitations of liability. The following paragraphs 6.1, 6.2 and 6.3 only apply where and to the extent permitted by law.

6.2 The liability of Supplier shall, at the election of Supplier be limited to:

- (a) replacement of Products or supply of the equivalent;
- (b) payment of the cost of having Products repaired;
- (c) repair of Products; or
- (d) refund of the cost of Products.

6.2 Neither Supplier nor Manufacturer will have any liability to any person for any Loss suffered or incurred by any person in relation to Products, and Supplier and Manufacturer exclude all and any other liability for loss suffered by Purchaser and any such person claiming Loss arising out of supply of Products to Supplier including (but without limiting the generality thereof) any Loss caused by or resulting directly or indirectly from any failure, breakdown, defect or deficiency of whatsoever nature or kind in any Products or any loss or damage caused by the negligence of the Manufacturer, Supplier, their respective officer, agents, employees, officers and sub-contractors.

6.3 Purchaser must indemnify and keep Supplier indemnified against all Loss suffered or incurred by Supplier or any person claiming Loss arising out of supply of Products to Supplier or any subsequent use of Products arising out of or in any manner connected with the use of Products caused by the negligent or willful act or omission of Purchaser or its employees, agents or contractors or failure to use Products in accordance with Supplier's or Manufacturer's instructions or common or accepted industry practice.

6.4 Purchaser must at Purchaser's own expense defend any and all actions referred to in paragraph 6.3 above and must pay all legal costs and other costs and expenses arising therefrom.

7 Purchaser's Safety Obligations

7.1 Purchaser acknowledges that:

- (a) Supplier does not give advice or assistance in relation to specification of Products for particular industrial or other working conditions; and
- (b) Products will not operate to specification unless regularly cleaned and maintained, replaceable parts (such as filters) are replaced in accordance with specification, and persons using Products read all accompanying instructions and are trained as to proper fitting, use and care of Products.

7.2 Purchaser is responsible for selection of appropriate Products for particular industrial or other working conditions and appropriate training of persons in fitting and use of Products. Purchaser agrees that prior to use of any Product by any person that Purchaser will:

- (a) do all that is necessary to ensure that the person is properly trained as to fitting and use of that Products and that the Product is used only in accordance with Supplier's specifications;
- (b) inspect Products and make its own assessment of their suitability having regard to Purchaser's intended use for these Products; and
- (c) comply with any recommendation made by the New South Wales Department of Industrial Relations (or any authority in any other State or Territory governing similar matters in relation to Products).

7.2 Purchaser must, upon Supplier's request, provide to Supplier documentation detailing the steps taken by Purchaser in compliance with paragraph 7.2(a), (b) and (c).

7.3 Purchaser will indemnify and keep indemnified Supplier against any claim arising out of Purchaser's failure to comply with paragraph 7.2.

8 GENERAL

8.1 These conditions are the entire understanding of the parties to the exclusion of any and all prior agreements or understandings either oral or written, provided that if Products are supplied pursuant to a written distribution or reseller agreement between Supplier and Purchaser the terms of that agreement will prevail over these conditions to the extent of any inconsistency. No subsequent variation of these conditions shall have effect unless expressly agreed to in writing by both parties.

8.2 These conditions shall be governed by the laws applicable in the State of New South Wales, Australia, as in force from time to time.

8.3 If any of these conditions, not being of a fundamental nature, is held to be illegal or unenforceable, the validity and enforceability of the remainder of these conditions shall not be affected.

8.4 No waiver, consent or indulgence made or given by Supplier in relation to any breach or failure in Purchaser's performance shall be construed as a variation of these conditions or as a waiver of Supplier's rights in the event that such breach or failure continues or recurs.