



## TERMS + CONDITIONS OF SUPPLY - GOODS

### 1. OUTLINE

1.1 These terms and conditions of supply (**Terms**) and any special conditions (together, the **Contract**), apply to the supply of all Goods by Stulz.

1.2 Any Contract however arising will be subject to these Terms unless Stulz otherwise expressly agrees in writing.

1.3 The descriptions, illustrations and performance attributes contained in Stulz's issued catalogues, price lists and other advertising matter do not form part of these Terms.

1.4 These Terms supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply, performance or expected results of the Goods and prevail over all other terms to the extent of any inconsistency.

1.5 Specific conditions may apply with respect to third party products and services such as licences of intellectual property. The Customer agrees to be bound by such conditions to the extent relevant.

### 2. QUOTATION + ORDERS

2.1 The Customer agrees to be bound by these Terms upon accepting a Quotation or providing to Stulz an Order form for Goods.

2.2 Stulz may provide the Customer a Quotation at the Customer's request.

2.3 Unless otherwise agreed by Stulz, a Quotation is valid until 30 days after its date.

2.4 Stulz may refuse any Order, including an Order made pursuant to a Quotation.

2.5 Stulz will not be bound, unless otherwise agreed by Stulz in writing:

2.5.1 by any variation, modification or waiver of a Quotation;

2.5.2 by any conditions attaching to an Order or acceptance of a Quotation; or

2.5.3 to provide any Goods that are not included in a Quotation.

2.6 Prices quoted in a Quotation are based on Stulz's costs as at the Quotation date. Any alteration to the details of the Quotation before Stulz's acceptance of an Order by Stulz may be added to the Customer's account.

2.7 Prices in a Quotation are applicable to that Quotation only.

2.8 Every Quotation is subject to and conditional upon any necessary import or export costs.

2.9 If the Customer requests any additions or modifications to the Goods the subject of a Quotation or an Order which Stulz has accepted, Stulz may, at its discretion, adjust the Quotation or Order as necessary having regard to the nature and extent of such additions or modifications.

2.10 If auxiliary components are included in a Quotation or an Order but are not expressly named, Stulz may, at its discretion, supply such auxiliary components from an appropriate source.

### 3. SPECIFICATIONS

3.1 Unless otherwise agreed by Stulz, all Specifications that Stulz submits to the Customer are for quotation purposes only and must not be used for construction purposes.

3.2 Any deviation by the Customer from the Specifications will not vitiate any Contract with Stulz nor form any grounds for any Claim against Stulz except as permitted by law.

3.3 All Specifications that Stulz supplies to the Customer are Stulz's property and returnable to Stulz on demand. Such documents must not, without Stulz's prior written approval, be used, copied or reproduced for any purpose.

### 4. PRICE VARIATIONS – GST, TAXES AND DUTIES

4.1 GST, import duty, or any other statutory charges (if any) included in a Quotation are based on the rates and methods of assessment in force as at the Quotation date.

4.2 All variations to the supply of Goods due to amendments made to any relevant laws will be to the Customer's account.

4.3 Stulz may increase the quoted price of imported Goods to reflect any increase in rates of currency exchange, freight, insurance and cartage on the declared value of such imported components of equipment that may occur between the relevant Quotation date and the final invoice date. Any increase in such charges will be to the Customer's account and payable as invoiced by Stulz.

### 5. TERMS OF PAYMENT

5.1 Unless otherwise agreed, the Price will be payable by the date stated for payment in any delivery docket, invoice or statement that Stulz may issue to the Customer.

5.2 If the Customer does not accept delivery on the Delivery date stipulated in a Quotation (or at any extended date as Stulz agrees to), the Customer will pay to Stulz:

5.2.1 the Price no later than 30 days after the invoice date; and

5.2.2 any reasonable storage and insurance charges Stulz incurs for the Goods from the day following the Delivery date until the date that the Goods are delivered to the Customer.

5.3 The Customer must, upon Stulz's request where applicable, provide Stulz with a bank guarantee or other collateral in such form and amount as Stulz may determine appropriate in the circumstances.

### 6. DEFAULT INTEREST

6.1 If the Customer fails to pay to Stulz the Price (or any part of it) on the due date then, Stulz may charge default interest on that unpaid amount accruing from and including the due date(s) for that payment until that amount is paid in full. The default interest rate will be 10% p.a. (compounded daily).

6.2 Any payment the Customer makes will first be credited against any default interest accrued pursuant to clause 6.1.

6.3 The Customer may not set off against any payment any Claims it may have against Stulz.

### 7. DELIVERY

7.1 Upon accepting an Order, Stulz will provide the Customer with the estimated Delivery time considering the then known circumstances. The Customer must provide to Stulz full particulars as soon as possible to enable Stulz to commence and complete the manufacture or procurement of the Goods.

7.2 The Customer must take Delivery of the Goods within three Business Days of the agreed Delivery date or date of notification of availability.

7.3 Subject to this clause 7, risk in the Goods passes to the Customer on the delivery date set out in a Quotation or otherwise agreed by Stulz. Subject to clause 26, title in the Goods passes to the Customer upon full payment of the Price for the Goods.

7.4 Unless otherwise stated in the Quotation, Stulz will deliver the Goods to the Customer free-on-truck from one of Stulz's nominated warehouses. Any additional charges will be invoiced to the Customer.

7.5 If Stulz delivers the Goods to an address specified by the Customer:

7.5.1 the Customer or its representative must be present at the agreed place and time for Delivery and must sign the Delivery docket as acknowledgement that:

A the Goods described on the Delivery docket have been delivered and comply with the Order; and

B that the Customer accepts any applicable Delivery surcharges;

7.5.2 if the Customer or its representative are not present, Stulz may unload the Goods at the agreed place for Delivery, after which Stulz will no longer be responsible in any way for the Goods, delivery having deemed to have taken place and risk passed to the Customer; and

7.5.3 unless otherwise agreed by Stulz prior to Deliver, Stulz's responsibility for the Goods ceases at the kerbside of the delivery address.

7.6 If at the Customer's request, a delivery vehicle crosses the kerblines in the course of making a Delivery, the Customer:

7.6.1 is responsible for providing safe and adequate access for the vehicle, accompanying persons and the Goods;

7.6.2 must pay for all damage and injury to any person and to any public or private property which may result; and

7.6.3 is responsible for any costs associated with enabling the delivery vehicle to exit the delivery site.

7.7 Stulz, at its discretion, may deliver the Goods on pallets or timber packaging, which upon delivery become the Customer's responsibility.

7.8 The Customer waives any Claim for shortage of any Goods delivered unless such a Claim has been lodged with Stulz within a reasonable time from the date of Delivery of the Goods to the Customer.

7.9 Unless Stulz receives from the Customer a written notice within a reasonable time of Delivery, the Goods will be deemed to be in all respects in accordance with the agreement for supply of those Goods.

### 8. PART DELIVERY OR DELAY

8.1 Unless otherwise agreed in writing, Stulz may make part Deliveries of any Order. These Terms will apply separately to each such part Delivery. Stulz's failure to make a Delivery of the total Order will not invalidate any of these Terms.

8.2 Where Stulz makes part Delivery, Stulz may invoice the Customer for the Goods delivered on each separate Delivery. Stulz is not obligated to make any further Delivery until all moneys owed to Stulz for prior Deliveries have been paid in full.

8.3 Stulz's Delivery times are estimates only. Except as required by law, Stulz has no Liability to the Customer for any Loss arising from the late or non-delivery of any Goods.

8.4 If a delay arises from or is contributed to by any cause beyond Stulz's reasonable control, the Delivery time will be extended commensurately and such delay will not constitute a breach of the Contract.

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## 9. CANCELLATION FEES

9.1 If at any time the Customer purports to terminate and/or repudiate or cancel a Contract, without prejudice to any other rights or remedies which Stulz may have, the Customer must pay to Stulz an amount equivalent to the Loss incurred by Stulz as a result of the termination and/or repudiation, as determined by Stulz acting reasonably and being immediately due and payable upon the termination and/or repudiation date.

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## 10. EVENT OF DEFAULT

10.1 If the Customer incurs a Default Event, Stulz may at its discretion:

10.1.1 require the Customer to immediately pay all moneys owed to Stulz;

10.1.2 refuse to extend any further credit to the Customer;

10.1.3 retake possession of any Goods which have not been paid for or that Stulz has title in;

10.1.4 cancel all warranty obligations relating to Goods not paid for (to the extent permitted by law);

10.1.5 take such steps as Stulz may deem necessary to mitigate the damages suffered including putting to use, hiring out, selling or disposing of any Goods supplied or to be supplied under these Terms; and

10.1.6 pursue any other remedies available to Stulz in connection with these Terms.

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## 11. INSURANCE

11.1 Stulz is only responsible for damage to Goods up to the point of Delivery, as specified in the Quotation, after which the Goods will be at the Customer's risk in all respects.

11.2 Upon written request, Stulz may act as agent on the Customer's behalf to dispatch and insure the Goods. Any resulting freight and insurance fees will be charged to the Customer's account and are payable in accordance with these Terms.

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## 12. TESTS

The Customer must pay Stulz the costs of any test, if requested or required by the Customer in order to determine the performance for the Goods, unless the cost of such testing is specifically included in a Quotation.

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## 13. ACCESS

13.1 The Customer must ensure that the area where the Goods are to be installed is free and clear so as to allow any and all machinery associated with the installation to enter the site and complete such installation without hindrance or any risk of injury to the installer or their equipment.

13.2 The Customer is liable for the cost of all labour, equipment or other material provided and dispatched by Stulz due to a postponement or cancellation of access to the relevant job site.

13.3 The Customer must ensure that the area where the Goods are installed allows for adequate access for the purpose of carrying out any necessary repairs or servicing of the Goods.

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## 14. COMMISSIONING

14.1 The Customer must have the Goods installed and all auxiliary services operative in accordance with Stulz's instructions prior to requesting Stulz to commission the Goods (if included in the Quotation).

14.2 If upon arrival on site Stulz's Personnel find that the Goods are not ready for commissioning, all extra costs incurred, including costs of transportation and accommodation, will be charged to the Customer's account and the Customer must pay any such costs as invoiced by Stulz.

14.3 Stulz's costs for carrying out commissioning (if stated as included in the Quotation) are based on Stulz's normal working hours. Overtime rates and site allowance will be charged to the Customer's account and the Customer will pay any such costs as invoiced by Stulz.

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## 15. NOISE + VIBRATION

15.1 The Customer is responsible for selecting an appropriate site for the installation of Goods so as not to create a noise nuisance.

15.2 Stulz is not responsible for any noise and/or vibration emanating from the Goods unless specifically provided for in the Quotation.

15.3 Any performance figures that Stulz gives are estimates only. Any information that Stulz provides concerning noise and vibration in relation to the Goods is given in an advisory capacity only and is not part of these Terms, any warranty or any representation.

15.4 Stulz has no Liability to the Customer for Loss arising from the failure of the Goods to attain such figures unless specifically guaranteed in writing and such guarantee is subject to the recognised tolerances applicable to such figures.

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## 16. GOODS WARRANTY

16.1 Stulz warrants that the Goods (excluding third party goods such as software which may be governed by separate conditions) are free from material defects except such defects as normally being regarded as being commercially acceptable (**Goods Warranty**).

16.2 This Goods Warranty extends for a period of 12 months from the date of installation of the Goods or for a period of 18 months calculated from the invoice date of the Goods (whichever period expires first), unless otherwise stated in writing.

16.3 Stulz will during the Goods Warranty period and subject to the limitations stated below, repair or replace at its option, any component or part of the Goods which its examination shows to be defective.

16.4 Stulz's obligations under this Goods Warranty are limited (to the extent permitted by law) to repairing or furnishing a replacement part from its nearest nominated spare parts outlet to replace any part which has proven to have been defective.

16.5 The Customer is liable for all transport charges incurred in returning defective components or parts for repair or replacement together with the cost of returning them to the Customer, unless relevant laws required otherwise.

16.6 A replacement part supplied by Stulz during the Goods Warranty period will be covered by the Goods Warranty for the unexpired portion of the original warranty or for a period of 90 days from the date of installation of the replacement part, whichever is later.

16.7 This warranty against defects is provided in addition to other rights and remedies the Customer may have at law. Stulz's goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage. You are 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.

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## 17. LABOUR WARRANTY

17.1 Stulz may provide a labour warranty for STULZ branded Goods, which may only be purchased by the Customer together with a Stulz maintenance contract on such terms and conditions prevailing at that time, to cover the labour costs of removal and replacement of faulty components and parts by Stulz the subject of this warranty (**Labour Warranty**). This clause does not displace the Customer's statutory rights and is subject to clause 20.

17.2 Unless otherwise agreed by Stulz, labour costs in respect of the following are not included in the Labour Warranty:

17.2.1 the replacement of any consumables including but not limited to air filters, v-belts, refrigerant, humidifier bottles, lubricants, spare parts and any related transport costs;

17.2.2 the diagnosis of faults;

17.2.3 overhauls and/or significant repairs to the Goods; and

17.2.4 non-maintainable Goods such as, but not limited to, ductwork, pipework, water-cooled condensers or pneumatic piping;

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## 18. WARRANTY LIMITATIONS + THE CUSTOMER'S RESPONSIBILITIES

18.1 The Customer is responsible for and must meet all charges, costs and expenses in respect of:

18.1.1 making the Goods accessible for service;

18.1.2 all transportation, travelling, insurance and communication expenses necessarily incurred in the provision of component parts for the Goods at locations other than at Stulz's service branches; and

18.1.3 any surcharge applicable in respect of providing this warranty outside normal working hours.

18.2 The Customer warrants and represents to Stulz that it has:

18.2.1 full power and authority to enter into and do all things required by these Terms; and

18.2.2 obtained all consents, permissions and licences necessary for it to perform its obligations under these Terms.

18.3 The Customer indemnifies and must keep Stulz indemnified against any and all Loss (including for injury or death to Stulz Personnel) arising in connection with any of the following:

18.3.1 any breach of these Terms by the Customer or its Personnel; and

18.3.2 the actions, omissions, negligence or misconduct of the Customer or its Personnel in connection with these Terms.

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## 19. LIMITATION OF LIABILITY

19.1 To the full extent permitted by law, Stulz excludes all Liability for Loss that Stulz would otherwise have to the Customer in connection with this Contract, except to the extent that Stulz has accepted Liability in this Contract.

19.2 Stulz excludes all Liability for Loss in respect of any:

- 19.2.1 Goods whose serial number, identification or installation plate attached to those Goods has been altered, rendered illegible or removed; or
- 19.2.2 light globes, glass components or refrigerant lost or damaged during shipment or during the relevant warranty period.
- 19.3 Stulz excludes all Liability for Loss in respect of:
- 19.3.1 the Customer's failure to provide Delivery particulars in accordance with clause 7.1;
- 19.3.2 alterations to Goods for which Stulz is not responsible;
- 19.3.3 damage or failure caused by unusual or non-recommended use or application of the Goods; or
- 19.3.4 Goods which have been:
- A subject to misuse, abuse, negligence or accidents;
- B connected to improper, inadequate or faulty power supply, water or drainage services or exhaust duct or flues;
- C operated using incorrect, insufficient or contaminated fuels, lubricants, coolants, refrigerants or additives;
- D installed, maintained, operated otherwise than in accordance with Stulz's instructions and good work practices;
- E serviced or repaired using replacement parts (other than those approved by Stulz) or use of any accessories which were not manufactured by and approved by Stulz;
- F damaged as a result of fire, abrasion, chemicals, corrosion, deterioration due to extremes of environment, foresight objects or impact;
- G (in case of a compressor or a compressor-bearing product) used in a system or application which will cause inadequate compressor lubrication or liquid flood back to the compressor; or
- H (in the case of liquid chilling or compressor sets) commissioned or serviced otherwise than by Stulz or its nominee.
- 19.4 To the full extent permitted by law, Stulz's total Liability to the Customer in connection with this Contract is limited to the total Price paid under this Contract.
- 19.5 In no circumstances will Stulz have any Liability to the Customer for:
- 19.5.1 any Consequential Loss;
- 19.5.2 Loss to the extent the Customer has failed to take reasonable steps to minimise or mitigate such Loss; or
- 19.5.3 Loss to the extent the Customer's acts or omissions have caused or contributed to such Loss.

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## 20. STATUTORY RIGHTS

- 20.1 If the Customer is a consumer for the purposes of the ACL, certain statutory guarantees and rights will apply to the Customer but subject to these Terms (as applicable).
- 20.2 Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law,

statute or regulation which cannot be lawfully excluded, restricted or modified.

## 21. GST

- 21.1 Unless otherwise stated, the Price and other amounts payable, with respect to any taxable supply are exclusive of GST.
- 21.2 The Customer must pay Stulz all GST in addition to any other amounts payable to Stulz, which will be payable by the Customer when required to pay for the relevant goods and services.
- 21.3 Stulz will issue a tax invoice for any taxable supply to the Customer, which will enable the Customer, if permitted by the GST Law, to claim a credit for GST paid by the Customer.
- 21.4 If GST is payable for a taxable supply by a third party, Stulz will request that party to provide the Customer with a tax invoice.

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## 22. OPERATING MANUALS

- 22.1 If requested, and at Stulz's sole discretion, Stulz may supply to the Customer no more than four copies of Stulz's operating instruction manuals for the Goods. A charge may apply on request for additional copies of such manuals.
- 22.2 Any manuals are provided for general information only. The Customer acknowledges that Stulz is not responsible for, and accepts no liability in relation to, the Customer's conduct in connection with any information set out in such manuals.

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## 23. PRODUCT CHANGES

- 23.1 Subject to the Customer's rights under law, pursuant to Stulz policy of continuous product development and improvement, Stulz may:
- 23.1.1 make minor modifications to Goods without notice; and
- 23.1.2 deliver revised designs or models of Goods against any Order modifications of a major nature which may affect Stulz's contractual responsibilities to the Customer for acceptance (if applicable).
- 23.2 Where Goods are ordered from information supplied from a manufacturer or other supplier, Stulz has no Liability to the Customer for any alterations or amendments made by the manufacturers or other suppliers without notice to Stulz.

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## 24. INTELLECTUAL PROPERTY

- 24.1 **Stulz's intellectual property:** All of Stulz's Intellectual Property Rights in and relating to the production, development and supply of the Goods, including but not limited to illustrations, specifications and other literature remains Stulz's property.
- 24.2 **Limited licence:** Stulz grants to the Customer a non-transferrable, non-exclusive, revocable limited licence to use Stulz's Intellectual Property Rights in respect of the Goods for the sole purpose of the Customer's use of the Goods in accordance with this Contract.
- 24.3 **Infringement:** The Customer must inform Stulz immediately if it becomes aware of any third party intellectual property infringement Claim in relation to Stulz's Intellectual Property Rights.
- 24.4 **Confidentiality:** The Customer must keep confidential and will not use any of Stulz's confidential information without Stulz's prior written consent.

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## 25. DISPUTE RESOLUTION

- 25.1 The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

25.2 If any dispute arises in relation to any Contract, either party may serve on the other a notice of dispute.

25.3 Within ten days after service of a notice of dispute referred to in clause 25.2 the parties must confer, acting in good faith, at least once to attempt to resolve the dispute and failing resolution of dispute, to explore and if possible, agree on methods of resolving the dispute. At each conference, each party must be represented by a person having authority to resolve the dispute in the course of the conference.

25.4 If a dispute cannot be resolved in accordance with the provisions of clause 25.3 or if at any time either party reasonably considers that the other party is not making reasonable efforts to resolve the dispute or not acting in good faith, either party may by notice in writing refer the dispute to arbitration.

25.5 The parties must within ten days of receipt of the further notice of dispute referred to in clause 25.4 agree to the identity of an arbitrator failing which, at the expiry of that period, the party who served the notice of dispute may request the President (or their nominee) for the time being of the Institute of Engineers Australia to nominate a single arbitrator pursuant to the rules of commercial arbitration of that institute and the decision of the arbitrator will be final and binding on the parties. A party may be represented at the arbitration by a legal practitioner.

25.6 This clause does not prejudice the right of either party to seek urgent interlocutory relief or an injunction.

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## 26. SECURITY INTEREST + TITLE

- 26.1 This clause 26 sets out the **Security Agreement** between the Customer and Stulz.
- 26.2 The Customer grants to Stulz a purchase money security interest (**PMSI**) in the Goods as security for all or part of the payment of the Price for the Goods.
- 26.3 Stulz's security interest attaches to the Collateral by virtue of the Customer's possession of the Goods as bailee under clause 26.7.
- 26.4 Stulz may, without notice, apply to register a financing statement with respect to the PMSI described in this clause 26.
- 26.5 Until full title in the Goods has passed to the Customer, the Customer must ensure that:
- 26.5.1 the Goods are identifiable and distinguishable from any other goods that may be in the Customer's possession; and
- 26.5.2 the particular Goods to which any particular Invoice relates is readily identifiable.
- 26.6 The Customer must not assign, charge, encumber, mortgage, or permit any lien to arise over, or any security interest (other than this Security Interest) to attach to the Goods without Stulz's prior written consent
- 26.7 After Delivery of the Goods, until full payment of the Price has been made, the Customer possesses the Goods as bailee only.
- 26.8 Until payment of the Price in full for the Goods has been received by Stulz, Stulz may, without notice, seize the Goods and/or appoint any person to be a receiver of all or any of the Goods if the Customer incurs a Default Event.
- 26.9 For the purposes of carrying out seizure under clause 26.8, Stulz may without notice, enter the Customer's premises and seek any and all remedies provided under Chapter 4 of the PPSA, and any other remedies provided at law or in equity or otherwise, without liability for any damage caused.
- 26.10 The Customer may only sell all or any of the Goods to a third party in respect of which full payment

of the Price has not been received by Stulz if Stulz provides its written consent.

26.11 Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA do not apply and do not place any obligations on Stulz in the Customer's favour.

26.12 The Customer waives its right to receive from Stulz a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to these Terms and this Security Agreement.

26.13 The Customer must reimburse Stulz for all costs and/or expenses incurred or payable by Stulz in relation to registering, maintaining or releasing any financing statement in respect of this Security Agreement.

26.14 The Customer must immediately notify Stulz in writing of any change of name.

26.15 The Customer acknowledges receipt of a copy or due notice of these Terms and this Security Agreement.

## 27. FORCE MAJEURE

27.1 If Stulz becomes unable wholly or in part by a Force Majeure Event to carry out an obligation under this Contract:

27.1.1 that obligation will be suspended for the duration of the Force Majeure Event; and

27.1.2 Stulz will not have any Liability to the Customer for any Loss arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.

27.2 Notwithstanding the above, if a delay or failure by Stulz to perform Stulz's obligations under this Contract due to a Force Majeure exceeds 20 Business Days, either party may immediately terminate this Contract by providing 5 Business Days' notice to the other party.

## 28. GENERAL

28.1 Time is of the essence for all obligations of each party under these Terms.

28.2 The failure by either party at any time to enforce any of these Terms or to exercise any right under these Terms will not constitute a waiver of the same or affect that party's right thereafter to enforce the same.

28.3 These Terms may only be varied in writing by all parties except as otherwise stated in these Terms.

28.4 Any provision of these Terms which is prohibited, unenforceable or invalid in whole or in part is only ineffective to the extent of the prohibition, unenforceability or invalidity. This does not affect the remaining part of that provision or the other provisions of these Terms, which will continue in full force and effect.

28.5 The Customer may not assign, dispose of or otherwise transfer these Terms or any rights or obligations under these Terms without Stulz's prior written permission.

28.6 Stulz may assign, in part or in full, its rights under these Terms without the Customer's consent.

28.7 This Contract constitutes the full and complete agreement between the parties relating to the subject matter contained in these Terms.

28.8 A notice, request, consent or other communication to be given in connection with any agreement arising out of the Quotation or Terms must be in writing addressed according to the particulars for that party given in this Contract, or to another address for that party as may be notified in writing by that

party. A communication may be delivered by hand, prepaid post or email.

## 29. GOVERNING LAW + JURISDICTION

29.1 This Contract is governed by the laws of the State of New South Wales.

29.2 The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.

## 30. INTERPRETATION + DEFINITIONS

30.1 **Defined terms:** In this document, unless otherwise provided, the following terms will have their meaning as specified:

**ACL** means the Australian Consumer Law.

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, Australia and concludes at 5.00 pm on that day.

**Claim** means any claim, demand, suit, execution, expenses, verdict, judgment, investigation, obligations, action, cause of action, proceeding or prosecution of any kind, whether in contract, tort (including negligence), at common law, in equity, under statute or otherwise however arising.

**Consequential Loss** means any:

- (a) Loss which does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
- (b) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss or corruption of data, loss of value of equipment (other than cost of repair), loss of opportunity, expectation loss, loss of goodwill or reputation, loss of bargain or loss arising out of any Claims by third parties and any other form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not foreseeable or contemplated and whether caused by negligence or otherwise even if such Loss arises directly or naturally in the usual course of things from that breach, action or inaction.

**Contract** has the meaning given to it in clause 1.1.

**Customer** means the party identified on a Quote or an Order or to whom Stulz supplies the Goods in accordance with this Contract.

**Default Event** if any of the following occurs:

- (a) the Customer fails to pay any sum payable under these Terms on or before the due date for payment of that sum;
- (b) 2 (two) days has expired after the Customer was provided with a notice to remedy a breach or non-performance of any of its obligations under these Terms;
- (c) the Customer goes into compulsory or voluntary liquidation, become bankrupt or enter into an arrangement or composition for the benefit of its creditors or become, or is deemed to be, bankrupt or insolvent;
- (d) the Customer appoints (or allows the appointment of) under any Act or instrument or by order of any Court a Manager, Administrator, Trustee, Receiver, a Receiver Manager, or a Liquidator over its, or in relation to any part of its, assets;
- (e) the Customer suspends payment generally or without cause cease or threaten to cease to carry on its business or are unable to pay its debts within the meaning of the provisions of the *Corporations Act 2001* (Cth); or
- (f) any Goods become at risk.

**Delivery** means the delivery or supply of the Goods as set out in the Quotation or otherwise agreed by Stulz.

**Force Majeure Event** means any event or circumstance that:

- (a) is not within Stulz's reasonable control;
- (b) Stulz are not reasonably able to prevent or overcome by the exercise of reasonable care; and
- (c) causes Stulz to fail to perform any of Stulz's obligations under this Contract, but does not include any event or circumstance that arises as a result of any:
  - (d) lack of funds for any reason or any other inability to pay; or
  - (e) negligent act or omission by Stulz.

**Goods** means goods, plant, equipment and components as the case may be or Contract requires.

**Goods Warranty** has the meaning given to it in clause 16.1.

**GST and GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

**Intellectual Property Rights** means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

**Labour Warranty** has the meaning given to it in clause 17.1.

**Liability** means any legal liability, whether arising in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise.

**Loss** means losses, damages, liabilities, charges, expenses, compensation, fine, penalty, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Order** means any order for or any statement of intent or offer to purchase any Goods or any direction to proceed with engineering, procurement, manufacture or shipment of Goods placed by the Customer with Stulz.

**Personnel** means, in relation to a person, that person's officers, employees, agents, nominees, authorised representatives, carriers, delegates, sub-contractors.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the purchase price payable for particular Goods, whether stated in a Quotation, Order, or otherwise agreed by Stulz.

**Quotation** means any proposal or quotation that Stulz gives to the Customer with respect to the proposed supply of Goods.

**Specification** means specifications, drawings, particulars of weights and dimensions and any technical documentation relating to Goods specified in a Quotation.

**Stulz** means Stulz Oceania Pty Ltd (ACN 051 480 098).

**Terms** has the meaning given to it in clause 1.1.

30.2 **Interpretation:** In the Contract, unless the context otherwise requires or permits:

- 30.2.1 references to a party will include as the context requires that party's respective executors, administrators and successors;
- 30.2.2 references to the Contract include any annexures and schedules to the Contract and

any other document expressly incorporated  
as part of the Contract; and

- 30.2.3 if the day on which any act, matter or thing is  
to be done under or pursuant to the Contract  
is not a Business Day, that act, matter or thing  
may be done on the next Business Day.