



TERMS + CONDITIONS OF SUPPLY - SERVICES

1. OUTLINE

1.1 These General Terms + Conditions (including Schedules) (**General Terms**) and the Principal Terms constitute this **Agreement**.

1.2 The Principal Terms will prevail to the extent of any inconsistency with these General Terms.

2. THE SERVICES

2.1 Stulz will during the Term, in consideration of the Price, provide the Services from the Commencement Date in a timely and efficient manner, using reasonable skill and care in accordance with this Agreement.

3. SERVICE CALL PROCEDURES

3.1 Stulz will provide service and breakdown call-outs resulting from failings or error in the system design, capacity, configuration or operational requirements of the Plant.

3.2 To arrange for a Service Breakdown Call the Customer must call the Stulz Telephone Support Line.

3.3 Service Breakdown Calls may be subject to additional fees set out in the Service Call Out Rates.

3.4 If the Customer cancels a Service Breakdown Call less than 48 hours prior to scheduled dispatch of a Stulz Service Technician, and does not reschedule the Service Breakdown Call within 48 hours from the cancellation, Stulz may invoice Customer a cancellation fee of 30% of the minimum call out amount (based on the minimum call out duration in the Service Call Out Rates).

4. PRICE

4.1 Customer will pay the Price in accordance with the Principal Terms. Any applicable discounts must be agreed with Stulz in writing.

4.2 The following costs and expenses are not included in the Price for the Services, except for the Comprehensive Maintenance Service Package:

4.2.1 all costs associated or connected with Plant consumables, including but not limited to air filters, v-belts, refrigerant, humidifier bottles and any related transport costs; and

4.2.2 cost of parts, shipping and labour. In such circumstances Stulz will provide a quote to the Customer for acceptance and parts will be replaced by Stulz once agreed to by the Customer.

4.3 Except where otherwise agreed in the Principal Terms, Stulz may charge the Customer additional fees for, and the Customer agrees to pay for, the following services (**Additional Fees**):

4.3.1 providing any services not included in the Comprehensive Maintenance Service Package or the Maintenance Service Package (as relevant);

4.3.2 performing overhauls and/or significant repairs to the Plant;

4.3.3 providing non-maintainable Plant items such as, but not limited to, ductwork, pipework, water-cooled condensers or pneumatic piping;

4.3.4 providing Plant items such as refrigerants, lubricants and spare parts, unless otherwise agreed in writing by Stulz;

4.3.5 performing maintenance or undertaking repairs to bring the Plant to a quality acceptable to undertake the Services;

4.3.6 conducting repairs, maintenance or replacement that results from or was contributed to by:

A Plant that Stulz, acting reasonably, deems to be obsolete or is past its life cycle expiry and can no longer be maintained without complete replacement due to non-availability of parts or components;

B a recommendation or requirement of an insurance company, Government or other statutory authority;

C the Customer's failure to report a known malfunction, and/or caused by intentional non-replacement or late replacement of worn or defective Plant parts by the Customer;

D the negligence or misuse of the Plant by the Customer or a third party;

E external communications malfunctions, faulty Customer equipment interfaces (including cabling), fluctuations or failure of electrical power outside of operating specifications;

F failings or error in the system design, plant capacity, configuration or operational requirements;

G use of improper Plant consumable materials; and/or

H any other cause beyond Stulz's reasonable control;

4.3.7 normal daily or weekend functions of stopping, starting and logging the performance of the Plant or related recording equipment;

4.3.8 attending the Customer's site to undertake any of the Services or any other work outside the hours of 8am-4.30pm Monday – Friday (excluding public holidays);

4.3.9 repetitive Service Breakdown Calls where Stulz cannot identify a fault or malfunction with the Plant;

4.3.10 where Stulz attends the Customer's site at an agreed time to undertake the Services or other work as requested by the Customer and is denied or unable to access the site. In such circumstances, Stulz may regard the Services the subject of the service call as completed;

4.3.11 additional services that are provided to the Customer and the Customer's request agreed from time to time and not included in the Services; and/or

4.3.12 the Service Call Out Rates.

5. PERSONNEL

5.1 The Customer must permit Stulz and its Personnel to enter the Customer's premises for the

purposes of providing the Services and for undertaking an inspection of the Plant.

5.2 Stulz will ensure its Personnel obey the reasonable instructions of representatives of the Customer and observe any reasonable conditions of the Customer in relation to work, health and safety.

5.3 Stulz will ensure that its Personnel involved in providing the Services to the Customer are suitably qualified and skilled to perform the Services.

6. CUSTOMER RESPONSIBILITIES

6.1 During the Term, the Customer must:

6.1.1 do all things necessary to ensure the health and safety of Stulz Personnel on the Customer's premises, including providing safe means of access to the Plant and complying with relevant legal and regulatory requirements;

6.1.2 if Stulz Personnel are injured in any way while performing the Services on the Customer's premises, allow Stulz to undertake an incident investigation and provide Stulz with all necessary assistance and cooperation;

6.1.3 provide Stulz with access to all information within the Customer's possession or control which is reasonably required by Stulz to provide the Services;

6.1.4 make available to Stulz, on reasonable notice, its Personnel familiar with the Customer's organisation, operations and business practices to the extent reasonably necessary for Stulz to provide the Services;

6.1.5 co-operate with Stulz to the extent necessary to enable Stulz to provide the Services;

6.1.6 provide access for Stulz and its Personnel to all Plant to be serviced or maintained pursuant to this Agreement including access to existing building services as required;

6.1.7 advise Stulz in writing if any modifications, changes or additions are made or planned for the Plant;

6.1.8 provide to Stulz, upon request, concise fault reporting information for the Plant, including:

A serial and model number;

B site address or location;

C contact details of a contact person at site address, including name, telephone number and email address;

D location at site address and instructions for access;

E nature of the fault and symptoms;

F time of failure;

G fault priority; and

H any access restrictions; and

6.1.9 provide to Stulz a purchase order at the time a Service Breakdown Call is made.

7. WARRANTIES + INDEMNITIES

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

- 7.1.1 full power and authority to enter into and do all things required by this Agreement; and
- 7.1.2 obtained all consents, permissions and licences necessary for it to perform its obligations under this Agreement.
- 7.2 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:
- 7.2.1 any breach of this Agreement by the Customer or its Personnel; and
- 7.2.2 the actions, omissions, negligence or misconduct of the Customer or its Personnel in connection with this Agreement.

8. LIMITATION OF LIABILITY

- 8.1 To the full extent permitted by law, Stulz excludes all Liability for Loss that Stulz would otherwise have to Customer in connection with this Agreement, except to the extent that Stulz has accepted Liability in this Agreement.
- 8.2 Stulz excludes all Liability for Loss in respect of any:
- 8.2.1 malfunction or failure of the Customer's plant or equipment or interruption to the relevant power supply;
- 8.2.2 delays whatsoever in attendance of Stulz at the Customer's premises;
- 8.2.3 goods or services that are supplied or carried out or provided to the Customer by a third party even where forming part of the Services; or
- 8.2.4 any accidents, injury, breakage or damage to the equipment, machinery, appliances or property of the Customer or any third party.
- 8.3 To the full extent permitted by law, Stulz's total Liability to Customer in connection with this Agreement is limited to the total Price paid under this Agreement.
- 8.4 Nothing in this Agreement excludes, restricts or modifies or purports to have the effect of excluding, restricting or modifying 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.
- 8.5 In no circumstances will Stulz have any Liability to the Customer for:
- 8.5.1 any Consequential Loss;
- 8.5.2 Loss to the extent the Customer has failed to take reasonable steps to minimise or mitigate such Loss; or
- 8.5.3 Loss to the extent the Customer's acts or omissions have caused or contributed to such Loss.

9. GST

- 9.1 Unless otherwise stated, the Price and other amounts payable, with respect to any taxable supply are exclusive of GST.
- 9.2 The Customer must pay to 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.
- 9.3 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.
- 9.4 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.

10. PAYMENT DEFAULT

- 10.1 If the Customer fails to make payment in accordance with this Agreement, Stulz may:

- 10.1.1 upon written notice immediately cease providing the Services to the Customer; and
- 10.1.2 charge default interest on the overdue 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).
- 10.2 Any payment the Customer makes will first be credited against any default interest accrued pursuant to clause 10.1.2.
- 10.3 The Customer may not set off against any payment any Claims it may have against Stulz.

11. DEFAULT AND TERMINATION

- 11.1 Unless expressly excluded in the Principal Terms, the occurrence of any of the following events will be an **Event of Default**:
- 11.1.1 the Customer fails to pay any sum payable under this Agreement on or before the due date for payment of that sum;
- 11.1.2 the Customer fails to perform or observe any of its obligations under this Agreement (apart from a failure to pay) that is not remedied or capable of being remedied within 2 (two) Business Days of Stulz giving written notice of the default; and/or
- 11.1.3 the appointment of an administrator, receiver, receiver and manager, provisional liquidator, trustee or any similar official in respect of the Customer or any of its assets.
- 11.2 If an Event of Default occurs, Stulz may immediately terminate this Agreement by notice in writing to the Customer.
- 11.3 Upon termination or expiry of this Agreement:
- 11.3.1 Stulz will immediately cease providing the Services;
- 11.3.2 neither party will have any further obligations under this Agreement other than:
- A in respect of any Liability for antecedent breach; or
- B any Liability in respect of provisions of this Agreement which are expressed to continue in full force and effect notwithstanding termination; and
- 11.3.3 the balance of all payments under this Agreement must be immediately paid up to and including the date of such termination or expiry of this Agreement.
- 11.4 If Customer terminates and/or repudiates this Agreement during the Term, 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.

12. FORCE MAJEURE

- 12.1 If Stulz becomes unable wholly or in part by a Force Majeure Event to carry out an obligation under this Agreement:
- 12.1.1 that obligation will be suspended for the duration of the Force Majeure Event; and
- 12.1.2 Stulz will not have any Liability to Customer for any Loss arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.
- 12.2 Notwithstanding the above, if a delay or failure by a party to perform its obligations under this Agreement due to a Force Majeure Event exceeds 180 days, any party may immediately terminate this Agreement on providing notice to the other Parties, such notice to take effect 5 Business Days after the date of such notice.

13. DISPUTE RESOLUTION

- 13.1 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.
- 13.2 If any dispute arises in relation to the Agreement, either party may serve on the other a notice of dispute.
- 13.3 Within ten days after service of a notice of dispute referred to in clause 13.2 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.
- 13.4 If a dispute cannot be resolved in accordance with the provisions of clause 13.3 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.
- 13.5 The Parties must within ten days of receipt of the further notice of dispute referred to in clause 13.4 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.
- 13.6 This clause does not prejudice the right of either party to seek urgent interlocutory relief or an injunction.

14. INTELLECTUAL PROPERTY

- 14.1 **Intellectual property:** All of Stulz's Intellectual Property Rights in and relating to the production, development and supply of the Services, including but not limited to illustrations, specifications and other literature remains Stulz's property.
- 14.2 **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 Services for the sole purpose of the Customer's use of the Services in accordance with this Agreement.
- 14.3 **Infringement:** Customer must inform Stulz immediately if they become aware of any third party intellectual property infringement Claim in relation to Stulz's Intellectual Property Rights.
- 14.4 **Confidentiality:** Customer must keep confidential and will not use any of Stulz's confidential information without Stulz's prior written consent.

15. GENERAL

- 15.1 Time is of the essence for all obligations of each party under this Agreement.
- 15.2 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.
- 15.3 This Agreement may only be varied in writing by all Parties except as otherwise stated in this Agreement.
- 15.4 The Customer may not assign, dispose of or otherwise transfer this Agreement or any rights or obligations under this Agreement without the prior written permission of Stulz, such permission not to be unreasonably withheld.

15.5 Stulz may assign, in part or in full, its rights under this Agreement without the consent of the Customer.

15.6 This Agreement constitutes the full and complete agreement between the Parties relating to the subject matter contained in this Agreement.

15.7 Any provision of this Agreement that 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 this Agreement, which will continue in full force and effect.

15.8 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 the Agreement, 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.

16. GOVERNING LAW + JURISDICTION

16.1 This Agreement is governed by the laws of the State of New South Wales.

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

17. DEFINITIONS + INTERPRETATION

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

Additional Fees has the meaning given to it in clause 4.3.

Agreement has the meaning given to it in clause 1.1.

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, liability, 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.

Commencement Date means the date Stulz commences providing the Services as specified in the Principal Terms.

Comprehensive Maintenance Service Package has the meaning stated in the Principal Terms.

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.

Customer means the person or entity detailed in the Principal Terms.

Event of Default has the meaning given to it in clause 11.1.

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 (or will cause) 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 by Stulz to pay; or
 - (e) negligent act or omission by Stulz.

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

Government means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST and GST Law has the meaning given to it in the *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.

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.

Maintenance Service Package has the meaning stated in the Principal Terms.

Personnel means, in relation to a person, that person's officers, employees, agents, nominees, authorised representatives, carriers, delegates, sub-contractors and in the case of Stulz, the Stulz Service Technicians.

Plant means the Customer's plant, equipment, goods or related systems for which Stulz will provide the Services.

Price has the meaning stated in the Principal Terms.

Principal Terms means the "Principal Terms & Conditions" these General Terms are attached to (including any schedules and Special Conditions).

Service Breakdown Call a telephone call made by the Customer to the Stulz Telephone Support Line requesting that work be undertaken on the Plant that is excluded from the Services.

Service Call Out Rates has the meaning stated in Schedule 1 of the Principal Terms.

Services means the services Stulz agrees to provide from time to time in accordance with clause 2.

Special Conditions means any further agreed conditions marked "Special Conditions".

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

Stulz Service Technician means a Stulz Personnel suitably qualified and skilled to perform the Services.

Stulz Telephone Support Line means the telephone line available 24 hours per day, every day by calling the number advised by Stulz to Customer.

Term has the meaning stated in the Principal Terms.

17.2 **Interpretation:** In this Agreement, unless the context otherwise requires or permits:

17.2.1 references to a party will include as the context requires that party's respective executors, administrators and successors;

17.2.2 references to this Agreement include any annexures and schedules to this Agreement and any other document expressly incorporated as part of this Agreement;

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

17.3 Any terms used in these General Terms which are defined in the Principal Terms will have the meaning as set out in the Principal Terms and Conditions and vice versa unless the context otherwise requires or provides.