

# Alfa Laval New Zealand Ltd

## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS & INTERPRETATION

**"Alfa Laval"** means Alfa Laval New Zealand Limited, ACN 607 247.

**"Contract"** means the Contract for the supply of the Equipment and/or Services by Alfa Laval to the Customer which is comprised of these terms and conditions (including any amendments agreed in writing), the "Quotation" and any documents supplied to the Customer at the time of the delivery of the goods.

**"Consequential Loss"** means:

- (a) any special, indirect, or consequential loss or damages, including but not limited to:
  - i. pecuniary loss or damage not consequential upon injury or damage;
  - ii. loss of profit or revenue, or loss of actual or anticipated or future profit or revenue;
  - iii. loss arising from downtime of facilities;
  - iv. costs of standby of personnel;
  - v. loss of production, raw materials or end product;
  - vi. loss of opportunity or opportunity cost;
  - vii. loss of business, business reputation or goodwill;
  - viii. loss of use of plant or equipment (including vessels);
  - ix. costs of capital;
  - x. loss of benefit of contract;
  - xi. loss connected to or arising out of the Customer's performance of its obligations under this Contract;
  - xii. any other indirect or consequential loss or damage; and
  - xiii. loss which does not arise directly or naturally from a breach of contract by the Customer; and/or
- (b) direct loss or damages of the kind contemplated by categories (a)(i)-(ix) of this definition, arising at any time, whether or not foreseen or foreseeable and irrespective of cause and whether a Claim in respect of it arises at common law, equity, statute, restitution or any other principle of law or equity.

**"Customer"** means the person nominated in the Quotation.

**"Claim"** means, in relation to a person, any claims, cause of actions, proceedings, liabilities, suits or demands made against the person concerned, however they arise and whether they are present or future, fixed or unascertained, actual or contingent.

**"Equipment"** means the goods, equipment, parts and supplies described in the Quotation and/or as otherwise agreed by the parties.

**"Force Majeure Event"** includes but is not limited to war or acts of war (whether declared or undeclared), revolution or acts of public enemies, acts of God, acts of terrorism, natural disaster, storm, fire, epidemic, riot or civil disturbance, tempest strike, lock out, other industrial action, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Alfa Laval.

**"Gross Negligence"** means any act or failure to act which was deliberate, or which was conducted with reckless disregard to take such care as is obviously required in the circumstances to avoid any harmful and serious consequences for the other party.

**"Order"** means the document sent from the Customer to Alfa Laval accepting a Quotation.

**"Price"** means the amount specified in the Quotation.

**"Quotation"** means the document containing Alfa Laval's offer to the Customer to provide the Equipment and/or any Services including any specification, user guide, warranty details or product information supplied with the Quotation.

**"Services"** means the repair, maintenance, refurbishment, or other services as described in the Quotation.

**"Site"** means the physical location where the Equipment will be installed.

### 2. FORMATION OF CONTRACT

- 2.1 The Contract will be formed when the Customer accepts the Quotation or Alfa Laval accepts any amendment to the Quotation made by the Customer.
- 2.2 In the event of any inconsistency between the Quotation and other document provided to the Customer, including these terms and conditions, the Quotation will prevail.

### 3. PRICE

- 3.1 The Price only includes Equipment and Services specified in the Quotation and are provided Ex Works (EXW Incoterms 2020) unless otherwise specified in the Quotation.
- 3.2 The Price excludes all taxes, duties, other charges or fees and GST unless provided otherwise in the Quotation.
- 3.3 The Customer must obtain all necessary licences, permits and approvals for the delivery, installation and use of the Equipment and the Services.
- 3.4 If Alfa Laval is delayed in the delivery of the Equipment, and/or the execution and completion of any Services through no fault of its own, Alfa Laval is entitled to increase the Price to reflect any additional costs incurred because of such delay.

### 4. TITLE AND RISK

- 4.1 Equipment supplied by Alfa Laval to the Customer will be at the Customer's risk immediately upon Ex-Works (Alfa Laval factory/warehouse) either:
  - (a) delivery of the Equipment to the Customer, the Customer's agent or into the Customer's custody or control;
  - (b) collection of the Equipment by the Customer or the Customer's nominated carrier or agent.
- 4.2 Title in the Equipment supplied by Alfa Laval to the Customer will not pass to the Customer until such time as Alfa Laval has been paid all monies owing to it by the Customer.
- 4.3 The Customer may not sell the Equipment where any part of the Price is outstanding unless prior agreement is reached with Alfa Laval.
- 4.4 Until final payment has been made, the Customer must properly segregate and store the Equipment that remains the property of Alfa Laval until all payments are made and insure all Plant and Equipment, against damage or destruction by theft, fire or other event for the full replacement value of the Equipment and ensure that Alfa Laval is named as a co-insured.

### 5. PAYMENT TERMS

- 5.1 The Customer must pay Alfa Laval the Price in accordance with any payment schedule set out in the Quotation or, if no payment schedule exists, within thirty (30) days from date of invoice by Alfa Laval.
- 5.2 Should the Customer fail to pay any amount when due to Alfa Laval, the Customer is liable to pay interest of 1.0% per month on amounts overdue or such lesser amount determined by Alfa Laval.
- 5.3 The Customer must pay the Price by electronic funds transfer or as otherwise agreed.

- 5.4 In the event the Customer does not comply with the terms of payment set out in this Clause 5, Alfa Laval may suspend the Contract including withholding delivery. If payment has not been made within 30 days of a suspension under this clause 5.4, Alfa Laval may terminate the Contract and demand the Customer return any Equipment in its possession, failing which Alfa Laval may enter the site or premises to recover the Equipment. All costs associated with recovering the Equipment shall be a debt due and owing to Alfa Laval from the Customer.

## **6. DELIVERY**

- 6.1 Alfa Laval must appropriately mark, label and pack the Equipment in a manner suitable to protect the Equipment during its transport.
- 6.2 Unless otherwise specified in a Quotation, the time for delivery of the Equipment or for completion of the Services will start to run on the latter of receipt by Alfa Laval of any advance payment or any applicable security for the remainder of the Price or acceptance of the Order by Alfa Laval.
- 6.3 Alfa Laval's ability to deliver the Equipment in a timely manner or to execute and complete the Services in a timely manner will depend on the timely performance of the Customer's obligations in the Contract. If the Customer fails to perform any of its obligations in a timely fashion, Alfa Laval will have no liability to the Customer whatsoever for any resulting delay to Alfa Laval's performance.
- 6.4 Alfa Laval will use all reasonable endeavours to deliver the Equipment by the agreed date for delivery. Alfa Laval will promptly notify the Customer in writing if Alfa Laval anticipates it will be delayed in delivery. If Alfa Laval is responsible for any late delivery, the Customer will be entitled to claim liquidated damages. The liquidated damages shall, for each completed week of delay, be payable at a rate of 0.5% of the Price attributable to the delayed part of the delivery. The liquidated damages shall not exceed 10% of the part of the Price attributable to the subject of the delayed delivery. Customer will forfeit its right to claim liquidated damages if Customer has not lodged a claim in writing for such damages within 30 days after the agreed date for delivery. If maximum liquidated damages have been reached, the Customer may, and in case Alfa Laval has still not delivered, terminate the Contract in respect of such parts of the delivery which cannot, as a consequence of Alfa Laval's failure to deliver, be used as intended by the Customer. Liquidated damages and termination of the Contract are the only and sole remedies available to the Customer in case of delay. Further, the winding up of the purchase order (i.e. return of any products already delivered against repayment of the purchase price) shall be the sole consequence of the termination.
- 6.5 If Alfa Laval is unable to deliver Equipment or supply Services at an agreed time due to any acts or omissions of the Customer or the Customer's agents, employees, consultants or contractors, the Customer must pay Alfa Laval in accordance with Clause 5 as though the Equipment had been delivered on time.
- 6.6 If the Customer is unable or unwilling to accept delivery of the Equipment at the time agreed, Alfa Laval will arrange for the storage of the Equipment at the risk and cost of Customer, including all transportation, warehousing and any other costs and equipment shall be considered as having deemed to be delivered and Alfa Laval shall become entitled to claim all payments due against Delivery. Alfa Laval

may, acting reasonably, in event Customer does not agree and pay as aforementioned, can treat the failure to accept delivery of the Equipment or supply of the Services as repudiation by the Customer and may terminate the Contract for breach by Customer and claim damages and costs.

## **7. WARRANTIES**

### **7.1 Warranties on Equipment**

- (a) Alfa Laval warrants that the Equipment will be: (i) free from defects in design, material and workmanship; and (ii) free of any claims by third parties.
- (b) Unless otherwise provided in any Quotation, the above warranties will be in effect for a warranty period on each item of Equipment manufactured by Alfa Laval (or a related entity) of twelve (12) months from its mechanical startup or eighteen (18) months from delivery, whichever comes first.
- (c) If any Equipment fails to conform to the above warranties Alfa Laval will, at Alfa Laval's option, repair or replace the non-conforming Equipment at Alfa Laval's cost, or refund in part or in whole, the Price of any item of Equipment found to be defective during the warranty period. The Customer must notify Alfa Laval, in writing, of alleged defects as soon as possible and no later than the expiry of the warranty period.
- (d) Any repair or replacement of Equipment will be subject to the above warranties. However, the warranty period for repairs or replacement is one (1) year from the date of the repairs or replacement but no longer than two (2) years from the shipment of the original item replaced.
- (e) If Alfa Laval does not replace, repair, or refund, as applicable, within a reasonable time after written notice from the Customer, Customer may get it done so at the reasonable expense of Alfa Laval and Alfa Laval's payment of the expenses incurred by the Customer shall be in full settlement of Alfa Laval's liability as compensation for the defect in question.
- (f) Alfa Laval will have no responsibility for damage caused to the Equipment by ordinary wear and tear; use not in accordance with the Equipment specification; improper storage, erosion and corrosion or installations, repairs, maintenance, operations or modifications undertaken by any person not under Alfa Laval's direct supervision.
- (g) All in-out cost or expense incurred regarding removing the defective part and reinstalling repaired / replacement shall be to the account of Customer.
- (h) Repair, replace, and refund as set forth in this Clause 7.1, are the sole and exclusive remedies available for the Customer regarding Equipment that do not meet the warranties set forth in this Clause 7.1.

### **7.2 Warranties on Service**

- (a) Where Alfa Laval provides a Quotation to the Customer, it is based on inputs provided by Customer about the Equipment requiring Services, which might be different when Equipment is actually thoroughly inspected and repaired. The Customer acknowledges that additional Services may be found to be required other than as first disclosed in the Quotation;
- (b) The Customer must pay Alfa Laval's then standard charges for the provision of any such additional Services.

- (c) Alfa Laval warrants that the Services will be performed using reasonable skill and care. Alfa Laval shall comply with industry standard engineering principles in carrying out the Services.
- (d) When providing Services in respect of products not manufactured by Alfa Laval or its related entities, Alfa Laval will perform the Services in accordance with the available technical guidelines provided by the manufacturer, but does not warrant that the requirements in those user guides are adequate or appropriate.
- (e) Unless otherwise stated in any Quotation, period of warranty for Services is three (3) months and for parts used is twelve (12) months from delivery.
- (f) Alfa Laval will at its expense rectify or reperform any Services that do not comply with the warranty in clause 7.2(c) that the Customer notifies to Alfa Laval during the warranty period for Services.
- (g) The warranty period for reperformed Services is three (3) months but no longer than six (6) months from the original performed service.
- (h) Re-performance as set forth in this Clause 7.2, is the sole and exclusive remedy available for the Customer regarding Services that do not meet the warranties set forth in this Clause 7.2.

### **7.3 Warranties in General**

The warranties provided under Clause 7 are for the benefit of the Customer and cannot be assigned.

### **7.4 No Implied Rights**

Except as otherwise expressly stated in this Contract, Alfa Laval and Customer each expressly disclaim any and all representations, warranties or conditions relating to any Equipment or Services provided under this Contract, whether express, implied or statutory, including any warranties of title, non-infringement, merchantability or fitness for a particular purpose.

## **8. VARIATION ORDERS**

- 8.1 The Customer may request variations to the Order. Alfa Laval has no obligation to accept a variation until both Alfa Laval and the Customer have agreed and executed a variation order form.
- 8.2 Unless otherwise specified in the variation order form, any Price increase attributable to the variation order will be paid in accordance with Clause 5.

## **9. INSPECTION OF EQUIPMENT**

- 9.1 The Customer is entitled to inspect the Equipment before Ex-Works delivery
- 9.2 Unless otherwise agreed in writing, the Customer must promptly unpack and inspect the Equipment upon delivery. The Customer must notify Alfa Laval within fifteen (15) days after delivery of any missing, damaged or defective items of Equipment. Failure to notify will invalidate any warranty claim under Clause 7 for any defect or damage to the Equipment which would have been apparent upon a reasonable inspection of the Equipment.

## **10. DRAWINGS & TECHNICAL DATA & INTELLECTUAL PROPERTY**

- 10.1 Drawings, models, technical data, specifications and other information related to the Equipment or items supplied by Alfa Laval ("Information") will remain the exclusive property of Alfa Laval and shall be returned or destroyed upon request by Alfa Laval. The Customer acknowledges that all copyright and other intellectual property rights in the Information remains vested in Alfa Laval. The Customer will treat and must require its officers, employees, agents, consultants

and contractors to treat all Information (except that part of the Information already in the public domain or known to the Customer prior to its disclosure by Alfa Laval) as confidential and must not disclose it to any third parties or utilise it other than for the purposes anticipated by the Contract.

- 10.2 Any drawings or data of the Customer will remain the property of the Customer. Alfa Laval shall have a licence to use the drawings or data to the extent necessary to allow Alfa Laval to fulfil its obligations.
- 10.3 The Customer must comment on any drawings, which are specified in any Quotation as requiring the Customer's approval, within 10 days after receipt of the drawings. If comments are not made within this timeframe then approval will be deemed.
- 10.4 The Customer must not make any changes to Alfa Laval's drawings without prior written consent. If the Customer changes any drawings without consent, any warranty under clause 7 will cease to apply to the extent the issue arises out of or relates to the Customer's changes.
- 10.5 If Customer becomes aware of any claim against the Customer in regards to intellectual property rights, Customer shall notify Alfa Laval in writing of such claim promptly upon receiving notice of any such claim, and must provide Alfa Laval with all available information and cooperate in the defence of the claim. Alfa Laval shall control the defence of, and at its sole option, defend or settle any and all claims, including any settlement, negotiations or appeals.

## **11. LIMITATION OF LIABILITY**

- 11.1 Notwithstanding any other provision of the Contract, but subject always to clauses 11.2, 11.4 and 11.5, Alfa Laval's liability to Customer in relation to the Contract, whether for breach of contract, in tort (including for negligence), for breach of statutory duty, under any rule of strict liability or otherwise, shall:
  - (a) exclude any liability for Consequential Loss; and
  - (b) in aggregate, never exceed a maximum cumulative amount equal to 100 percent of the Price.
- 11.2 Alfa Laval shall however always remain fully liable for damages caused by Alfa Laval's (or its employees, agents, contractors or consultants) wilful misconduct, Gross Negligence or fraudulent misrepresentation and/or for death or personal injury caused by Alfa Laval's negligence.
- 11.3 The Customer shall be fully liable to Alfa Laval against any losses, damages, costs or expenses including legal costs on a solicitor/client basis arising out of Customer's (or its employees, agents, contractors or consultants) wilful misconduct, Gross Negligence or fraudulent misrepresentation and/or for death or personal injury caused by Customer's negligence.
- 11.4 Any limitation or exclusion of liability is only intended to apply to the extent permitted by law. To the extent permitted by law the Customer's remedy for such non-excludable rights and remedies are limited to at Alfa Laval's sole discretion:
  - (a) for goods: replacement, repair, payment of replacement or payment or repair; and
  - (b) for services: re-supply or payment of the cost of re-supply.
- 11.5 This Clause 11 survives termination or expiry of the Contract under Contract, general law, equity, statute or otherwise. The Customer acknowledges that this Clause 11 shall not be varied, and no amendment will be valid or effective, unless agreed in writing by the Customer and authorised signatory of Alfa Laval.

## **12. FORCE MAJEURE**

- 12.1 If performance of Alfa Laval's obligations under the Contract is prevented, restricted or affected by a Force Majeure Event, Alfa Laval will give notice of such cause to the Customer and Alfa Laval will be relieved from the performance of its obligations for the duration of such Force Majeure Event.
- 12.2 The Customer must pay Alfa Laval for the Equipment manufactured or delivered or for Services performed up to the date of notice under clause 12.1.
- 12.3 Any security for payment of the Price must be extended for a period equivalent to the delay. The time for delivery of the Equipment shall be extended for a period equivalent to the delay.
- 12.4 If a Force Majeure Event continues for more than 6 months, either party may terminate the Contract upon written notice to the other party.

## **13. TAKE OVER AND PERFORMANCE CRITERIA**

- 13.1 If required in a Quotation, Alfa Laval shall test the Equipment in the manner specified to determine whether the Equipment achieves the Take Over and Performance Criteria. Alfa Laval will not be obliged to begin or continue with any tests unless or until the following conditions and any other conditions specified by Alfa Laval in writing have been met:
  - (a) the Customer has made available all information, material, facilities, equipment and personnel to allow Alfa Laval to undertake the tests;
  - (b) any equipment not supplied by Alfa Laval will be correctly installed, compatible and to the satisfaction of Alfa Laval; and
  - (c) all payments due to Alfa Laval have been made.
- 13.2 The test procedure will be as agreed between Alfa Laval and the Customer, or failing the reaching of an agreement, as Alfa Laval deems reasonably appropriate.
- 13.3 If the Equipment fails to meet the Take Over and Performance Criteria, Alfa Laval must at its own cost make any alterations and adjustments to the Equipment as Alfa Laval deems appropriate. Alfa Laval may then repeat the tests.
- 13.4 If, after making adjustments and alterations, part of the Equipment is unable to meet the Take Over and Performance Criteria, the Customer's remedy is to accept that portion of the Equipment at an adjusted price based on the ratio between the actual level of performance and the guaranteed level. The maximum price adjustment will be 20%. If the actual performance is less than 80% of the guaranteed level, the Customer may, instead of the said price adjustment, return that portion of the Equipment for a refund of its Price.
- 13.5 The foregoing is the Customer's sole and exclusive remedy for failure to meet the Take Over and Performance Criteria.

## **14. TERMINATION**

- 14.1 Alfa Laval may terminate this Contract by 15 days' written notice to the Customer if:
  - (a) the Customer breaches any term of the Contract and fails to rectify within 30 days of notice from Alfa Laval requesting such rectification;

- (b) the Customer fails to accept delivery of the Equipment for a period of 30 days after notice has been given that Equipment is ready for deliver;
  - (c) the Customer is unable to pay its accounts as they fall due; or
  - (d) any other provision of the Contract that entitles Alfa Laval to terminate the Contract or the Customer commits any other material breach of the Contract.

- 14.2 In event of Termination of contract, Alfa Laval shall be entitled to be paid for all material sourced, work in progress, Equipment delivered, Services performed, storage or demurrage costs and also damages arising out of termination.

## **15. RESOLUTION OF DISPUTES**

In the event of a dispute, either party may serve a notice of dispute on the other that sets out details of the dispute. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules and Venue of Arbitration shall be Sydney, Australia

## **16. REPRESENTATIONS**

The Customer acknowledges that it has not relied upon or been induced by any representations by Alfa Laval not expressly set out in the Contract.

## **17. MISCELLANEOUS**

- 17.1 The Customer must not assign any benefit or obligation without the prior written consent of Alfa Laval.
- 17.2 Unless otherwise specified, the Quotation will remain open and valid for a period of 30 days from the date of issuance and afterwards will automatically become null and void if this timeframe is not extended by Alfa Laval in writing.
- 17.3 The Price quoted by Alfa Laval is based on the estimates of raw material, engineering costs, input costs, tariffs, surcharges and or currency rate as on the date of submission of quote. Alfa Laval reserves the right to revise the quote price and or adjust the contract price to effect for any escalation in cost of raw material, energy prices, freight cost, tariffs, taxes, rates, inflation or change in forex rate of currency in which input raw material is sourced.
- 17.4 The Equipment and the Services are sold only pursuant to this Contract. Alfa Laval is not bound by any other terms which appear or may be found in any of the Customer's documents.
- 17.5 If any provision of this Contract is held invalid, illegal or unenforceable such provision will be severed and the remainder of the provisions will continue in full force and effect as if this Contract had been executed with the provisions severed.

## **18. GOVERNING LAW**

This Contract will be governed by the laws of New Zealand.