



In these terms and conditions **Dräger** means Draeger New Zealand Limited (company number 6253409) or any related company. The **Customer** means the person, firm, corporation, government or semi-government authority purchasing Services from Dräger. **Service** means any repair or maintenance activities.

**1. General**

These terms and conditions shall apply to all performances of Dräger with the delivery of Services, supply of spare parts or related events.

Dräger is not bound by any terms or conditions contained in any purchase order, purchase form or other similar document of the Customer delivered to Dräger with respect to the purchase of or order for Service which are at variance with, in derogation from or additional to these terms and conditions. The Customer is bound by these Service terms and conditions notwithstanding anything to the contrary in such purchase order, purchase form or other similar document.

**2. Contract**

These terms and conditions shall prevail over any other terms and conditions that may be inconsistent or contrary to those contained herein.

These terms and conditions shall apply to the exclusion of all other agreements and prior representations, unless subsequently evidenced in writing by Dräger and the Customer, and, together with each invoice and any supplementary agreement or other agreed document that references or is ancillary to these terms and conditions, shall form part of the Services Agreement between Dräger and the Customer.

**3. Provision of Service**

**3.1. Resources**

Dräger will provide Service Engineers who are deemed competent to perform the tasks for the Services quoted/agreed to.

Service functions will be carried out between 08:30 – 17:00, Monday – Friday excluding public holidays.

Where Service functions are required outside of the contracted hours, or outside of the agreement/quote, such Service cannot be guaranteed. If it can be provided, it will be at an hourly rate in accordance with Dräger's current price list.

**3.2. Compliance**

Equipment covered by these terms and conditions will be maintained by Draeger in accordance to the manufacturer's specification with due regard to requirements and guidelines published by the manufacturer, Australian/New Zealand Standards, the Australian Therapeutic Goods Administration, any relevant government body and the guidelines set forth by the New Zealand Medicines and Medical Devices Safety Authority and the Standard for Australian Healthcare Facilities (ACHS).

**3.3. Accessibility**

It is the Customer's responsibility to ensure that the equipment to be serviced is made accessible during the agreed contracted hours and for adequate time so Dräger is able to fulfil its obligations.

Should equipment not be accessible at the agreed scheduled time of servicing, Dräger, at its discretion, may charge the Customer a service fee, which is a genuine pre estimate of Dräger's relevant losses.

Dräger's repair obligation shall be suspended during any period in which Dräger does not have access to equipment as scheduled for any reason not within Dräger's reasonable control. Dräger shall not be liable for the Customer's equipment being out of service or any consequences or issues arising from this.

**3.4. Validity of Maintenance Training**

At Dräger's sole discretion, a company may be approved by Draeger to operate as an Authorised Service Agent. In this situation, service personnel will need to successfully complete maintenance training and any refreshers as required.

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Maintenance certification for individuals is only valid whilst in the employment of the Authorised Service Agent or company in which they received the training. Individuals are not permitted to undertake service work with a third party or on their own.

**3.5. Replacement Parts, Spare Parts and Wear and Tear Items**

Where the maintenance option in the Service Agreement includes a fixed sum for provision of spare parts, this will include parts required to render the equipment operational to manufacturer standards. Consumable and operator replaceable parts are not included and will be charged separately.

Consumable and operator replaceable items include, but not limited to, flow sensors, cables, O2 fuel cells, filters, user exchangeable batteries, patient and supply hose.

**3.6. Exclusions**

Where the maintenance option in the Service Agreement is selected, the following exclusions apply:

- i. Maintenance of accessories and attachments or other devices external to the equipment;
- ii. Repair of damage resulting from malicious acts, vandalism, any abnormality or failure of electrical supply, accident, transportation, war, acts of God, including lightning, explosion, water damage (including from damaged pipes, fire sprinklers and the like), neglect or misuse, or any other cause beyond the reasonable control of Dräger;
- iii. Failure to provide the appropriate operational environment for the equipment. This would include but is not limited to incorrect operational line voltage, unsuitable temperature and humidity, failure to observe manufacturer recommendations on cleaning and sterilising as detailed in the operators manual supplied with the equipment;
- iv. Accessories or devices not described in these terms and conditions or in the Service Agreement; and
- v. Service required as a result of modifications and/or system changes not endorsed by Dräger.

**4. Variations to Service Agreement** In the event the Customer requests any changes to these terms and conditions and/or the quote provided by Dräger and such request is made by the Customer either at the time of placing the order or thereafter, any such change will only be accepted at Dräger’s sole discretion. Such changes will only take effect when agreed in writing by Dräger and may result in a price variation.

In the case where Dräger needs to alter these terms and conditions or the Service Agreement, the Customer will be notified of any such occurrence with 60 day notice

**5. Pricing**

All quoted prices are exclusive of GST.

The price for Services provided shall be as quoted in writing by Dräger. If a price is not quoted, then the price will be in accordance with Dräger’s current price list. Verbal quotations are subject to written confirmation.

**6. Payment Terms**

Payment is to be made to Dräger for Services provided within thirty (30) days from the date of invoice. Any credit card payments will incur a credit card surcharge fee.

Fees payable for the Services provided are to be paid in advance on or prior to the commencement date of the agreement.

If the Customer fails to comply with the terms of payment then:

- the Customer agrees that it will pay Dräger interest from the due date of payment to the date payment is made in full (both before and after judgement) equal to two (2) per centum per month on all monies from time to time in respect of goods and/or Services including all charges from time to time owing by the Customer.
- the Customer shall be liable for all costs (including GST) relating to any legal action taken by the Dräger to recover moneys due from the Customer, payable by the Customer to the Dräger on demand; and
- Dräger reserves the right to discontinue or suspend any future Service to the Customer.

**7. Cancellation**

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- (a) The Customer may terminate the supply of Services at no charge provided written notice is received by Dräger no later than 1 week before the commencement date of the Services. After this date, Dräger is entitled to charge the Customer for any reasonable expenses incurred by Dräger for the provision of Services.
- (b) Subject to clause 7(a) above, either party can terminate these terms and conditions on 90 day written notice and Dräger is entitled to charge the Customer for any reasonable expenses incurred or work undertaken pursuant to these terms and conditions since the commencement date.
- (c) On cancellation of these terms and conditions pursuant to this clause 7, any amounts in credit will be refunded to the Customer.

**8. Intellectual Property**

"**Intellectual Property Rights**" means all intellectual property rights including all course material, copyright, patents, registered and unregistered trademarks, trade secrets and know-how, and all other intellectual property rights resulting from intellectual activity.

Dräger owns all Intellectual Property Rights in anything which is undertaken during the provision of Services including, but not limited to, all service documents and presentations which may be provided in training or in any other circumstances.

**9. Confidentiality**

The party ("**Receiving Party**") to whom Confidential Information is disclosed by another party ("**Disclosing Party**") must not disclose Confidential Information to any person without first obtaining the disclosing party's written consent.

The Receiving Party may disclose Confidential Information if:

- it is legally required to do so;
- if the Confidential Information is needed for the performance of duties or directly related to the Service being delivered; and
- the Receiving Party first notifies the proposed disclosure to the Disclosing Party and receives consent to do so.

The Receiving Party must declare the confidential nature of the Confidential Information and require the person receiving this to treat it confidentially.

It is a condition of any permitted disclosure that the Receiving Party must notify the Disclosing Party promptly if the Receiving Party becomes aware of any unauthorised disclosure by a third party. The Receiving Party must give the disclosing party all assistance reasonably required by that party in connection with any proceedings which it may institute against any persons for the disclosure.

For the purposes of this clause 9 "**Confidential Information**" includes, without limitation, all information relating to types and availability of goods and services, financial information, contracts, contractual obligations and benefits, documentation procedures, plans, client lists, designs, activities, suppliers, and agents of the owner or any related party.

**10. Insurances**

For the term of provision of the Services, the Customer must effect and maintain with a reputable insurer, the following insurance policies:

- Public Liability
- Plant and Equipment
- Workers Compensation [Note: to be checked with NZ]

The Customer acknowledges and agrees that it is the Customer's responsibility to assess and consider the risk and scope of insurances to ensure that Services provided delivered on the Customer site are undertaken with full coverage.

**11. Warranties**

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The Consumer Guarantees Act 1993 ("**CGA**"), the Fair Trading Act 1986 ("**FTA**") and other statutes may impose warranties, conditions and obligations on Dräger which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided herein, and except as provided for under the CGA or the FTA, to the extent permitted by law, all other warranties (whether implied or otherwise) not set out in this clause 10, or in other documents provided to the Customer by Dräger and which specifically relate to the Services are excluded. [

Dräger warrants that the goods sold and Services delivered are free from defective materials and workmanship.

In the event of equipment failure arising during the warranty period, Dräger will repair, or at its option replace or credit (at its discretion) those of the goods which, upon examination are found by Dräger to be defective in workmanship and/or materials.

The warranty period for Services is 12 months on parts and labour from the date of the provision of the Service. Any goods requiring repair, maintains its original warranty period but the parts and labour will have the Service warranty period.

The warranty set out above applies if:

- the Dräger product is used, maintained and inspected as outlined in the manufacturer’s instruction for use manual or other information sheets as supplied by Dräger;
- the original purchaser or end-user’s obligation to have all repairs to the Dräger product and/or replacement of parts carried out promptly; and
- all corrective maintenance must be performed by Dräger authorised personnel.

The warranty set out above does not apply where there is:

- failure to comply with the all applicable use, maintenance and training requirements, including but not limited to exposure to certain chemicals, improper decontamination, excessive heat, misuse, abuse, misapplication, improper installation, improper operation, negligence, accidental damage or normal wear and tear;
- any unauthorised repairs, alterations, modifications or adjustments to the items or its components;
- the defect becomes apparent more than 12 months from date of Service;
- the goods have not been used or stored in accordance with instructions issued by Dräger;
- the Customer fails to notify Dräger of the claim under this clause within fourteen (14) days of the defect becoming apparent and to return the goods to Dräger on its request to do so; or
- the indicated shelf life of the goods has expired.

## 12. Liability

In any event Dräger limits its liability for breach of condition or warranty to either of the following at Draegers election:

- 12.1.2.1 the supplying of the Services again; or
- 12.1.2.2 the payment of the cost of having the Services supplied again.

Dräger will not be liable for any loss, injury, expense or damage to the Customer or any person to whom the Service is delivered on the part of Dräger, its suppliers, servants, agents, successors or assigns

12.2 The warranties set out above shall be additional to any non-executable warranties to which the Customer may be entitled pursuant to any statute.

## 13. Indemnity

To the fullest extent permitted by law, the Customer is liable in respect of, and agrees to indemnify and at all times hereafter keep indemnified and hold Dräger and its officers, employees and agents and each of them harmless against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which is paid, suffered, incurred or is liable for (including legal costs on a solicitor and client basis) (together “the loss”) as a result of any unlawful, negligent, reckless or deliberately wrongful act or omission of the Customer (or its employees, agents, subcontractors or the subcontractors employees) in the performance of the equipment on which the Service is performed. The Customer agrees that this indemnity survives termination of these terms and conditions.

The Customer’s liability in respect of, and indemnity given in, this clause will be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of Dräger, its officers, employees or agents caused or directly contributed to the loss.

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**14. Acquisition of Services**

The Customer warrants that the Services are not acquired predominantly for personal, domestic or household use and it is acknowledged and agreed that:

- (a) the Lessee is acquiring the Services for the purposes of a business in terms of sections 2 and 43(2) of the CGA;
- (b) the Services are supplied and acquired in trade for the purposes of the FTA and the parties agree to contract out of sections 9, 12A and 13 of the FTA; and
- (c) all warranties, conditions and other terms implied by the CGA or sections 9, 12A and 13 of the FTA or any other statute or common law are excluded from this SRTC to the fullest extent permitted by law and that such exclusion is fair and reasonable.

**15. Fit for Purpose**

The Customer shall not rely upon Dräger’s expertise or judgement as to fitness or suitability of use for which the Customer may require the goods and or Service.

**16. Governing Law and Jurisdiction**

These terms and conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, of New Zealand.

**17. Force Majeure**

To the extent permitted by law, the Customer releases Dräger from all and any liability for and in relation to, or occurring out of, any failure or transaction in performance of its obligation hereunder due in part or in whole to any cause whatsoever beyond Dräger’s reasonable control.

**18. Waiver**

Failure by Dräger to insist upon strict performance by the Customer of any terms and conditions contained herein shall not be taken to be a waiver thereof or of any rights of Dräger in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion and shall not discharge the Customer from any of its obligations pursuant to these terms and conditions.

**19. Notices**

All notices on accounts shall be in writing and may be hand delivered or mailed postage pre-paid addressed to the postal address of either Dräger or the Customer as notified to the other from time to time in writing.

Any such notice or demand or account shall be deemed to have been received five (5) business days after dispatch if sent by mail, or the next business day if delivered by hand or facsimile transmission or email.

**20. Severance**

If at any time a provision of these terms and conditions is, or becomes, illegal, invalid or unenforceable in any respect under the law of New Zealand, that will not affect or impair the legality, validity or enforceability of any other provisions of these terms and conditions.

**21. Voidability of Terms and Conditions**

The Customer acknowledges that these terms and conditions are subject to any rights and obligations arising between the parties pursuant to any legislation or by implication of a law and specifically acknowledge that these terms and conditions are not intended and will not operate to override any rights and obligations that cannot be excluded at law. To the extent that any term or condition herein is void, voidable or repugnant to the provisions of any applicable legislation of New Zealand then these terms and conditions shall be read as if that term or condition were deleted and the balance of these terms and conditions shall be enforceable.

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