

# **Draeger Australia Pty. Ltd.**

## **Terms and Conditions of Sale for Goods & Services for Draeger Australia Pty. Ltd.**

In these terms and conditions Dräger means **Draeger Australia Pty Ltd ACN 098 885 539** or any related corporation or legal entity. The Customer means the person, firm, corporation, government or semi-government authority purchasing goods and/or services from Dräger. Goods means such products as Dräger may at its discretion agree.

### **1 Scope of Application, General**

1.1 Any delivery of goods and provision of services (hereinafter collectively "**Goods**") by Dräger to the Customer shall be subject to these GTC set forth herein. These GTC form a constituent part of all offers, orders and agreements between Dräger and the Customer, to the full extent permitted by law, to the exclusion of other agreements, statements or collateral warranties and/or representations.

1.2 Alternative deviating terms and conditions, unless agreed to in writing by both parties, do not apply. Dräger and the Customer may agree to terms and conditions deviating from these GTC only if in writing and signed by Dräger, such terms shall then have priority over these GTC to the extent of any inconsistency. These GTC have precedence and apply even if Dräger provides the Goods with knowledge but without actual written confirmation and acceptance of the alternate deviating terms and conditions of the Customer.

1.3 Dräger is entitled to withdraw at any time from this agreement fully or partly by written notice without cause and without any further liability to the Customer. Any and all other rights pursuant to the GTC of sale remain unaffected,

### **2 Scope of Performance**

2.1 Offers to Dräger shall always be non-binding. Orders shall be deemed accepted only if Dräger confirms in writing same or carries out the order. The description of Goods as stipulated on invoices or orders or brochures are provided by way of identification only and the use of that description shall not constitute a description under any contract of sale by description. The offer by Dräger shall govern the scope of performance. Statements as to weight and measurements in brochures and offers are according to best knowledge but are not guaranteed properties. Dräger reserves the right to reasonable performance modifications. The functions of any software shall be limited to

the description in the performance specifications. Dräger may use components that are as good as new or that have been rendered/refurbished as good as new.

2.2 Offers and contracts that require an export license or approval by export control authorities (e.g. due to embargo) are subject to the condition precedent that such export license or approval is granted. The performance of a contract will be subject to the granting of export licenses by the competent export control authorities.

2.3 The Customer acknowledges that any export or use of Dräger Goods outside of Australia and/or New Zealand without the prior written consent of Dräger is strictly prohibited.

2.4 Technical norms serve as performance specification only, provided Dräger does not expressly provide a separate guarantee in writing for compliance with such technical norm. All warranties as to properties or shelf-life must be provided separately and in writing by Dräger.

2.5 Dräger shall retain, without limitation, any and all ownership rights, copyrights and intellectual property rights included in drawings, technical documents and other data, information and documentation, including in electronic form; and these may not be disclosed to third parties without Dräger's prior written consent.

2.6 In all instances of resale of Goods, the Customer is responsible to comply with all applicable rules and regulations (eg. export). The Customer shall defend and indemnify Dräger from all costs and claims based on the violation of rules and regulations by the Customer.

2.7 Dräger shall not be responsible for any delay or other failure in performing its contractual obligations, if the performance of such obligations is prevented or materially affected as a direct or indirect result of any pandemic. Such causes include, without limitation, non-punctual or incorrect delivery by suppliers, impairment of Dräger's own production due to employee absences or precautionary measures. In such cases the delivery time shall be extended automatically.

### **3 Software**

3.1 Should software be included in the scope of delivery, Dräger grants to the Customer subject to the following terms a non-exclusive and non-transferable right of use therein.

3.2 All rights in know-how and products including intellectual property right (e.g. inventions, copyrights) are retained by Dräger. Dräger owns and may use know-how acquired in connection with the performance of its contractual obligations without limitation for its own commercial purposes.

3.3 If software is delivered as a component of a Good or intended for a specific Good (eg. firmware), the Customer may use the software/firmware only with the specified Good. Use of software/firmware together with other equipment shall require Dräger's express written consent.

3.4 User documentation is provided in adequate form for the software's intended purpose. Any further documentation, in particular software/firmware documentation or documentation for maintenance purposes shall require a separate express written agreement.

3.5 Unless Dräger expressly grants the Customer a multiple user License (see Clause 10.4), the Customer shall receive a single user License (see Clause 10.4) in the software (i.e. the Customer may simultaneously use the software on only one end device). However, solely for backup purposes, the Customer may make one backup copy. In the event of a multiple user License, the Customer shall comply with the installation instructions furnished by Dräger and shall keep a record of the location of every installation. Such records shall be submitted to Dräger upon request.

3.6 Software shall be furnished exclusively in machine readable form as object code.

3.7 Except where expressly allowed by Dräger in writing, the Customer may not modify, engage in reverse engineering, translate, extract or otherwise link the software to other programs. The Customer may not remove from any data carriers alpha-numerical and other labels and manufacturer information in particular, copyright notices and shall transfer same without modification to any backup copy.

3.8 The Customer may not lease the software or grant sublicenses. Software acquired in conjunction with a device may only be transferred to third parties together with sale of said device.

Software may be transferred to third parties only if the Customer does not grant to the third party rights to use the software exceeding the License granted to the Customer by Dräger. In the event of resale, the Customer may not retain any copy of the software. Multiple user Licenses may be transferred only in their entirety.

3.9 If Dräger provides third party software, such as Open Source Software, (i.e. software for which Dräger holds only a derivative license), the terms and conditions of use agreed between Dräger and its licensor shall apply in addition and shall have priority. Dräger shall submit such terms and conditions of use to the Customer upon request. Should such terms and conditions of use be violated by the Customer, both Dräger and the licensor shall be entitled to assert any resultant claims and rights in their own name.

3.10 The Customer agrees to store the software and any documentation carefully in order to preclude any abuse.

3.11 The sale/transfer of software does not include an obligation by Dräger to provide software maintenance services. This shall require a separate written agreement.

#### **4 Prices & Payment Terms**

4.1 Prices are excluding valued added tax (e.g. GST). Prices do not include packaging carriage insurance, storage, installation and shipping which are payable by the Customer.

4.2 Unless otherwise agreed in writing, Orders shall be payable upon placement without any deductions in the agreed currency (unless advised otherwise A\$). The Customer shall bear any costs associated with payment and payment methods.

4.3 Dräger reserves the right without notice to alter the price of Goods whether or not a deposit or part payment has been received by Dräger for such Goods and to invoice the Customer for any such extra amount where the costs of the Goods to Dräger has altered due to circumstances beyond its control including but without limiting the generality of the foregoing any variation in Dräger's exchange rates, GST or other taxes, levies, imposts, duties, premiums, fees or charges however designed and to correct errors and omissions.

4.4 Unless otherwise Dräger agrees in writing, all invoice issued by Dräger will be payable within 30 days for Goods delivered and is also payable in respect of every part-delivery notwithstanding that the balance of the Order has not been or will not be delivered.

4.5 If the Customer fails to make any payment when due, Dräger is entitled to charge a late premium charge of two (2) percent per month on all monies outstanding and/or discontinue/suspend the supply of Goods to the Customer.

## **5 Shipping, Packaging, Passing of Risk**

5.1 Risk in the Goods shall pass to the Customer no later than upon shipping of the Goods, even if freight prepaid delivery is agreed, and even if deliveries by instalments are made or Dräger has agreed to provide other services, such as commissioning or installation.

Should shipment be impossible or delayed without any fault on the part of Dräger, risk shall pass to the Customer upon notification that the Goods are ready for shipment.

5.2 Should Dräger carry out commissioning or installation of the Goods being delivered within the framework of the supply agreement, risk shall pass to the Customer upon acceptance by the Customer. Should acceptance not be effected within twelve (12) days following written notification of readiness for acceptance, risk shall pass to the Customer upon expiry of such period, unless Dräger is responsible for the non-acceptance. Should commissioning or installation be delayed for any reason whatsoever, risk shall pass to the Customer no later than three months after shipment.

5.3 Should software be furnished by way of electronic communications media (e.g. via the Internet), risk shall pass when the software leaves Dräger's control.

5.4 In the absence of specific instruction from the Customer, Dräger will select the carrier and make such agreement with the carrier on behalf of the Customer as Dräger in its absolute discretion deems appropriate.

## **6 Delivery and Delivery Time**

6.1 Dräger will endeavour to deliver/provide the Goods within the Customer's required delivery period, but subject to Clause 6.2 shall not in any event be liable for any loss or damage directly or indirectly sustained from any failure to deliver within such period. Time shall not be the essence of this contract and any delay shall not be the basis of the Customer's cancellation of this contract.

6.2 Dräger shall not be liable for any loss or damage resulting from any delay or failure to give notice of any delay in delivery. Any cause of delay beyond the reasonable control of Dräger, shall entitle Dräger to extension of time for the period of delay.

6.3 Dräger reserves the right to deliver the Goods by instalments at its absolute discretion and in such circumstances the Customer shall accept delivery of such Goods by instalments.

6.4 Where in order to deliver or collect Goods, Dräger or its carrier enters upon the Customer's premises the Customer shall provide full and safe access to Dräger or its carrier and shall be liable for and indemnify Dräger and its carrier against the cost of all loss, damage to property and injury to persons, occurring directly or indirectly as a result of the failure by the Customer to ensure the said full and safe access (and for collection, Goods are complete and ready to collect).

6.5 The Customer shall be responsible for providing adequate labour and/or material handling equipment for the loading and unloading of Goods at its premises or delivery point.

6.6 The deadline for provision of Goods shall be reasonably extended in the event of Force Majeure, in particular, in the case of natural events, mechanical damage and other unforeseeable operational disruptions, measures within the context of industrial disputes, in particular, strike and lockout, and in the event of unforeseeable hindrances and incorrect or late self-delivery, provided Dräger is not responsible therefor. Should the relevant delivery or service become impossible or a hardship due to the aforementioned circumstances, Dräger may rescind the agreement fully or partially.

6.7 Any voluntary return of Goods must have the prior written consent of Dräger and be within 10 days of delivery to the Customer and be returned at the sole expense of the Customer (including any re-stocking fee of at least 15 percent of entire Order applied by Dräger).

6.8 If the Goods are voluntarily returned to Dräger which then Dräger is unable to resell to a third party or resell for the same amount as was sold to the Customer, then Dräger may charge the Customer an amount equal to the loss incurred as a result of the Customer returning the Goods.

## **7 Retention of Title**

7.1 Notwithstanding any credit granted to the Customer or anything contained in these GTC, Dräger shall retain the full legal and beneficial ownership and title in and to all the Goods delivered to the Customer by Dräger (including products into which the Goods have been incorporated) until the Customer has paid to Dräger the full amount due on all outstanding invoice(s) to Dräger ("**Retained Goods**"). Until then the Customer will hold and sell the Retained Goods as agent and fiduciary for Dräger and the Customer shall store the Retained Goods separately and with the interest of Dräger as owner clearly marked on the Retained Goods and the area in which they are stored.



7.2 The Customer will ensure that the Retained Goods are kept in good and serviceable condition. The Customer will secure the Retained Goods from risk, damage and theft; and keep the Retained Goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer's own goods.

7.3 Regardless of any processing or reworking of the Retained Goods, Dräger shall retain ownership in the products at any stage and level of processing. Such reworking or processing shall be affected free of charge to Dräger and without any obligation on the part of Dräger.

Any processing, linking or combination by the Customer with other items not owned by Dräger shall give rise to co-ownership by Dräger in the new object in proportion to the invoice value of the Retained Goods to the other objects used by the Customer at the time of such processing, linking or combination. Moreover, the provisions concerning the Retained Goods shall apply mutatis mutandis to any new object created as a result of such processing, fixing or combination.

Should the Retained Goods be fixed with buildings or other components of real property belonging to the Customer or otherwise, the Customer agrees the Retained Goods are not a fixture and agrees to separate the Retained Goods in the event of any default in payment at Dräger's request, and to acknowledge/transfer ownership in such items to Dräger. Such items shall continue to be deemed Retained Goods within the meaning of these GTC. Any rights of retention, in particular, based on reimbursement of outlays for maintenance or improvement of such items shall be excluded as against Dräger.

7.4 The Customer may resell Retained Goods during the ordinary course of business if it retains title in the Retained Goods in accordance with the provisions of this Clause 7. The Customer shall hold any proceeds of sale as trustee for Dräger to the extent of the unpaid invoiced price of those Retained Goods and the proceeds of the sale shall be forwarded to Dräger in full as soon as is reasonably practicable after receipt by the Customer and the Customer hereby assigns to Dräger any and all receivables based on resale of the Retained Goods and under the retention of title agreed to by it to secure any and all receivables of Dräger (including future receivables) under the business relationship, irrespective of whether the Retained Goods are resold without or following processing and irrespective of whether they are sold to one or more purchasers. Dräger hereby accepts such assignment. Upon request by Dräger the Customer shall notify its purchasers about this assignment.

Until revocation by Dräger, the Customer is authorised to collect the assigned receivables. Dräger is entitled to revoke this direct debit authorisation if the Customer fails to meet its payment obligations towards Dräger. Upon revocation the Customer shall identify the receivables and the respective debtors and submit all information and documents required to collect the receivables and to inform the debtors about the assignment. Dräger is entitled to inform the debtors about the assignment itself.

7.5 The Customer may not make any dispositions/encumbrances over the Retained Goods, in particular, pledges, liens or transfers by way of security, other than those specified in Clauses 7.3 and 7.4.

7.6 In case of breach of contract by the Customer, in particular, in the event of a default in payment, Dräger may rescind the agreement upon written notice without liability to the Customer and repossess the Retained Goods. The Customer shall be obliged to return the Retained Goods. Dräger may (and/or in particular when any application to commence insolvency proceedings over the Customer's assets) demand the immediate return of the Retained Goods.

7.7 Levies of execution, attachments and other dispositions and interventions by third parties shall be notified by the Customer to Dräger without undue delay.

7.8 If the Customer does not pay for any Retained Goods on the due date then Dräger is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer in which the Retained Goods are stored at such premises) and use reasonable force to take possession, custody or control of the Retained Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever and such retaking possession, custody or control shall be at the expense of the Customer.

7.9 The Customer agrees that where the Retained Goods have been retaken into the possession of Dräger, Dräger has the absolute right to sell or deal with the Retained Goods, and if necessary sell the Retained Goods with the name of the Customer on those Retained Goods and the Customer hereby grants an irrevocable license to Dräger to do all things necessary to sell the Retained Goods bearing the name of the Customer.

7.10 The Customer shall provide Dräger with extensive support in order to protect Dräger's ownership rights in the Retained Goods in accordance with the domestic legal system of the delivery location and destination. Consequently, the Customer acknowledges that by virtue of Clause 7.1 and 7.4 (above), Dräger has a security interest (including purchase money/price



security interest and/or first ranking security interest) in the Retained Goods for the purposes of the *Personal Property Securities Act 2009 (Cth)* (PPS Act) (or other equivalent local legislation) and to the extent applicable the PPS Act (or other equivalent local legislation) applies.

7.11 The Customer acknowledges that Dräger may do anything reasonably necessary, including but not limited to registering any security interest which Dräger has over the Retained Goods on the Personal Property Security Register (or other equivalent local registry) established under the PPS Act (or other equivalent local legislation) in order to secure and perfect the security interest and comply with the requirement of the PPS Act (or other equivalent local legislation) at the Customer's expense.

7.12 The Customer agrees to do all things reasonably necessary to assist Dräger to undertake the matters set out in Clause 7.11 (above).

7.13 The Customer hereby waives any rights or entitlements in respect of Retained Goods provided by the PPS Act (or equivalent local legislation) to any notification or information required to be provided by Dräger under the PPS Act (or any equivalent local legislation).

7.14 Except to the extent that the Customer is an individual purchasing Goods wholly or predominantly for personal domestic or household purposes, in order to secure the Customer's due and punctual performance of all its obligations to Dräger (including the payment of all monies owing) under the Contract or otherwise, the Customer charges all of its legal and beneficial interest (present and future) in any and all real property and all present and after acquired property. On Dräger's request, the Customer must at its cost execute any documents and do all things required by Dräger to more fully document or better secure a charge arising under this clause on such terms as it sees fit or to register a charge or security interest in respect of any of the Customer's real and personal property including, effect and maintaining registrations on the PSS Act. The Customer also consents to Dräger lodging caveats in respect of any of the Customer's property. The Customer appoints Dräger or an authorised office of Dräger to be its attorney for the purpose of executing and registering such documents.

## **8 Notice of Defects, Acceptance**

8.1 The Customer shall inspect deliveries without undue delay following receipt in order to ascertain acceptance and any quantitative errors and transport damage. In the event of transport damage, a damage record shall be prepared in order to secure any compensatory damage claims against the

carrier (post, rail, shipping agent, etc.). Such damage record shall be sent to Dräger without undue delay.

8.2 Defects can be asserted in writing only within ten (10) days of receipt of the Goods, unless the relevant defect is latent. Latent defects and defective performance of other services shall be notified to Dräger in writing immediately following discovery thereof, provided that such notice is given prior to Warranty Period expiration in Clause 9.

8.3 Should the Customer be prevented from taking delivery and/or acceptance due to Force Majeure circumstances (Clause 6.6), the deadline for notice of defects and/or acceptance, shall be reasonably extended by no more than that period of Force Majeure.

8.4 Dräger may notify the Customer about readiness for acceptance (but in default, upon delivery). Should acceptance not take place within ten (10) days following notification of readiness for acceptance (but in default, upon delivery), the Goods shall be considered accepted by the Customer upon expiry of such period. The same shall apply to any partial delivery/acceptance of Goods.

## 9 Defects Liability

9.1 Should there be a defect in any Goods provided by Dräger and should notice thereof have been given in a timely manner within the meaning of Clause 8.2 of the GTC, Dräger shall, at its choice, remedy the defects without charge or deliver defect-free replacement or pay for the cost of replacing the Goods ("**Substitute Performance**"), provided the defect was solely the responsibility of Dräger. In the event of a defect in software, Dräger may also provide a new software release in lieu of repair.

9.2 There shall be no defect if the Goods are suitable for normal use and manifest the quality that is normal for items of the same kind that could be expected by the Customer. In particular, the Customer is aware that given the current state of technology it is not possible to create software that is fully free and clear of errors. Moreover, there shall be no quality defect in assembly/installation instructions if assembly/installation could have been carried out free and clear of any errors/defects. Moreover, no quality defect shall lie in the event of inappropriate or improper use, incorrect storage, erroneous assembly/installation or start-up by the Customer or third parties, regardless of wear and tear, erroneous or negligent handling, improper maintenance, use of inappropriate operating resources, defective construction work, or chemical, electrochemical or electrical influences for which Dräger is not responsible, software errors that cannot be reproduced and in the event of

defects that do not arise in last software release furnished to the Customer by Dräger, provided the Customer can be reasonably expected to use the last software release provided. The delivery of a marginally different item or a marginally different number of items than agreed, shall not entitle the Customer to claim damages or rescind the agreement.

9.3 The Customer shall provide Dräger with the necessary time and opportunity to perform any and all remedial measures. In particular, upon request, the Customer shall send the delivered Goods to Dräger or a workshop to be specified by Dräger. Otherwise Dräger shall be discharged from liability for any consequences. Defects in delivered software shall be described in as much detail as possible. Only in urgent cases where safety is at risk or in order to prevent unreasonably excessive damage (with prior written notification to Dräger) may the Customer remedy the defect itself.

9.4 Any claims on the part of the Customer based on the expenses required for Substitute Performance, in particular, transport, travel, work and material costs shall be excluded, including if such expenses occur because the Customer moved the delivered Goods to a different destination than the agreed delivery destination, unless the removal of the Goods conforms to the intended use of the Goods. Moreover, Dräger may refuse to render Substitute Performance if this would be associated with unreasonable costs.

9.5 Any parts that are removed and replaced by Dräger within its defect-related liability, those removed/replaced parts shall become the property of Dräger.

9.6 Should the Customer or a third party perform improper repairs, Dräger shall not be liable for any resulting damages. The same shall apply to any modifications to the delivered Goods performed without Dräger's prior written consent including to any software extension effected by the Customer or a third party over and above the interface provided by Dräger.

9.7 Any defect-related liability shall be excluded for used goods, except for components that are sold as good as new or that have been rendered/refurbished as good as new.

9.8 Claims on the part of the Customer for defect-related liability pursuant to this Section 9 and 11 to the extent legally possible, shall become time barred twelve (12) months ("**Warranty Period**") following delivery of the Goods in the event of a purchase and work performance contract (or if otherwise agreed in writing, following start up of the delivered item or acceptance of performance).

9.9 To the extent legally possible and notwithstanding Dräger's liability under Clause 11 of these GTC, any additional claims or claims other than those governed by this Clause 9 on the part of the Customer during the Warranty Period against Dräger or its vicarious agents based on defect-related liability shall be excluded.

## **10 Intellectual Property Rights and Copyrights**

10.1 Dräger shall supply the Goods free and clear of third party intellectual property rights and copyright ("**Intellectual Property Rights**"). Should a third party assert legitimate claims against the Customer based on the infringement of Intellectual Property Rights by the Goods delivered by Dräger and used in accordance with this Agreement, Dräger shall be liable towards the Customer in accordance with the following provisions.

10.2 Dräger shall, at its choice and at its expense, either arrange a license for the relevant Goods, modify them such that the relevant Intellectual Property Right is not infringed, or exchange them. Clause 11 of the GTC shall apply to compensate the damages claim. The foregoing obligations shall lie only if the Customer notifies Dräger immediately in writing of the claims asserted by the third party, and does not acknowledge any infringement to the third party, and Dräger retains a discretion in relation to any and all measures in mounting a defence and settlement negotiations without notice to the Customer. Should the Customer cease use of the service, it shall notify the third party that cessation of use does not constitute an acknowledgement of any infringement of an Intellectual Property Right.

10.3 Claims on the part of the Customer shall be excluded if the Customer is responsible for the infringement of any Intellectual Property Right or if the infringement of the Intellectual Property Right is caused by use by the Customer or by an application not authorised in writing by Dräger, by a modification by the Customer, or by use of the service in conjunction with products not delivered by Dräger.

10.4 Unless agreed otherwise in writing, Dräger grants to the Customer a revocable, non-exclusive, non-transferable, royalty-free, license (but not to reverse engineer, change, modify or vary) to use and to allow the Customer the full use and enjoyment of those Goods purchased in accordance with this Agreement ("**License**") of any Intellectual Property Rights.

10.5 To the extent legally possible and notwithstanding Dräger's liability under Clause 11 of these GTC, any additional claims or claims other than those governed by this Clause 10 on the part of the Customer against Dräger or its

vicarious agents based on legal defect in Intellectual Property Rights shall be excluded.

## **11 Liability and Warranties**

11.1 All rights, representations, guarantees, warranties, conditions, undertakings, remedies or other terms in relation to the Goods that are not expressly set out in this Agreement to the maximum extent permitted by law are excluded and no terms shall be implied into this agreement as a matter of fact or law.

11.2 To the extent legally possible and notwithstanding any other clause, Dräger's aggregate liability to the Customer arising under or in connection with this Agreement, whether based in contract, (including negligence), equity, statute, by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the lesser of the value of the Goods ordered or A\$50,000.00.

11.3 To the extent legally possible and notwithstanding any other clause, Dräger will not be liable to the Customer for any indirect or consequential loss, however it arises or for any loss of profit, loss of revenue, loss of opportunity, loss of use, loss of anticipated profits, damage to goodwill, loss of customers or loss of anticipated savings.

11.4 The Customer shall take any and all necessary and reasonable steps in order to prevent or limit damage. In particular, the Customer shall ensure the regular backing up of software, programs and data. Therefore, Dräger shall be only liable for reasonable effort and expense for the re-procurement of data subject to the requirements of Clauses 11.1 to 11.3 and subject to the Customer having ensured that such data can be reconstructed from other data material backup.

11.5 Compensatory damage claims against Dräger or its vicarious agent other than those governed by this Clause 11, whatever legally permissible, shall be excluded. No other warranties or conditions either express or implied by law are made with respect to these Goods. Dräger is not liable for any non-compulsory and/or excludable local law statutory provisions.

## **12 Compliance with Laws, Anti-Corruption**

12.1 The Customer warrants that it is acting in accordance with applicable laws, including antitrust laws and regulations on anticorruption and money laundering, antibribery, antislavery and other criminal law provisions.

12.2 If there is reason to suspect that the Customer is in breach of above obligations, Dräger is entitled to terminate the Agreement without notice. In the event of such termination,

(i) Dräger is released from any obligation to execute the Agreement,

(ii) the Customer shall indemnify and keep harmless Dräger and its employees against any and all damages to the extent such damages are based on the Customer's violation of its obligations under this Clause 12.

### **13 International Trade Compliance**

13.1 The Customer certifies that:

(i) the Goods will not be used for any restricted activity that supports the development, production, handling, usage, maintenance, storage, inventory or proliferation of any weapons of mass destruction and its delivery systems or participation in transaction with the persons engaged in such activities;

(ii) it will not subsequently export or otherwise re-sell the Goods to any person or country that is subject to any sanction imposed pursuant to a decision of the United Nation Security Council

### **14 Export Control Regulations**

14.1 The Parties undertake to comply with all applicable export control regulations of international and national authorities. This may include screening business partners with regard to current sanctions lists by the UNO or other organisations. In order to conduct export control checks the Customer, upon request by Dräger, shall provide to Dräger all information pertaining to the ultimate buyer and/or end user of the Goods, as well as any existing export control restriction regarding the Goods.

14.2 Dräger is not obliged to perform deliveries, orders and other obligations under this Agreement, if that performance is hindered by the applicable export laws and regulations of international and national authorities. The Customer is not entitled to claim damages or compensation if Dräger refrains from deliveries for above reasons.

### **15 Safety Provisions & Indemnity**

15.1 The Customer shall be responsible for compliance with applicable local/domestic statutes, regulations and safety provisions, in particular, in relation to admission, installation, operation, maintenance and repair of the delivered Goods and agrees to comply therewith. The Customer shall



indemnify Dräger against any and all claims deriving from non-compliance with such provisions by the Customer.

15.2 In the event of the Customer has resold the Goods:

(i) the Customer shall at its own cost, maintain records for 11 years after resale of the Goods to the third party purchaser, containing product no. and serial no., name and address of the third party purchaser, date of dispatch, location and installation, handing-over, training and after-sales service performances. If Dräger requests access to such records for Goods tracing, recall purposes or corrective actions, the Customer shall immediately make such records available to Dräger.

(ii) the Customer shall without delay notify Dräger in writing of any incident associated with Goods that may have caused or contributed to a third party purchaser or any other person's harm, and of any event that might require Dräger to trace back or recall any Good or to undertake corrective action because of a serious quality deficiency of a Good;

(iii) Dräger may instruct the Customer to perform recall actions or corrective actions for Goods which may include appropriate information disclosure as collected under Clause 13.2 ("**Corrective Actions**"). The Customer shall perform all actions as instructed by Dräger for a Corrective Action, in particular maintenance measures and documentation, and shall inform Dräger in writing about completion of such Corrective Actions.

(iv) The Customer shall not support any unauthorised or arrange service agents to service the Goods and will not supply any service, repair or parts to any third party purchaser or arranged service agents without Dräger prior written approval.

15.3 To the full extent permitted by law the Customer

(i) agrees to indemnify and at all times hereafter to keep indemnified and hold Dräger, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the Customer's use, possession, ownership or resale to a third party or out of the use, possession or ownership by such third party of the Goods or any part or parts thereof whether separately or in combination with any other equipment or material.

(ii) agrees that the indemnity in Clause 13.3(i) shall survive the termination of this contract and shall extend to cover all alleged defaults or defects in the Goods or part(s) thereof or instruction supplied for use in connection with the

Goods or out of any failure of the Goods to perform a particular task or to achieve a particular result or to comply with any particular specification.

## **16 Forum and Applicable Law**

16.1 These GTC and the contract shall be governed by and construed in accordance with the laws from time to time, of the State of Victoria and to the exclusion of the United National Convention on International Sale of Goods and its conflict of laws rules.

16.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts sitting in Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

16.3 In the interpretation of the Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared the documents forming part of the Agreement or any part of it.

16.4 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

16.5 None of the terms of the Agreement shall be varied, amended, waived, discharged or released except with the prior written consent of Dräger. No action, consent, conduct or representation by Dräger, other than prior written consent, shall constitute any amendment, variation, waiver, discharge or release of the Customer's obligations to strictly comply with the Agreement.

16.6 All prior statements and representations or collateral warranties that may have been given whether oral or in writing by Dräger or its servants or agents prior to the delivery of the Goods are expressly excluded to the full extent allowed by law and accordingly Dräger is released by the Customer from any liability as a result of such statement or representation.

## **17 Privacy and Waiver**

17.1 Any 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.

17.2 The Customer hereby consents to the terms of Dräger's Data Protection and Privacy Statement and the local law in relation to any personal information provided by the Customer.

17.3 The Customer agrees that Dräger may seek a credit report and may give to and seek from other credit providers and any providers that may be named in a credit report issued by a credit reporting agency information about their credit arrangements. The Customer understands that this information may include personal information, and information about their credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive under the *Privacy Act, 1988 (Cth)*.

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