

INTERPRETATION

1. In these Terms and Conditions, unless the context otherwise requires:
 - (a) **AES** means Alemir International Pty Ltd ABN 14 080 228 708 trading as Active Environmental Solutions;
 - (b) **Credit** means a line of credit or credit account (if any) offered to the Customer by AES;
 - (c) **Customer** means the party who is specified as the Customer in the Sales Order Form or any other party who places an Order and includes the party's transferees, successors and permitted assigns. Where the Customer is more than one person or entity, the liability of each such person or entity in relation to the Order is joint and several;
 - (d) **Delivery Address** means the Delivery Address as specified in the Sales Order Form;
 - (e) **Delivery Fee** means the Delivery Fee or freight (if any amount) as specified in the Sales Order Form;
 - (f) **Delivery/Collection Date** means the date and time listed as the Product Delivery/Collection Date and Time in the Sales Order Form, or any other date and time that AES agrees in writing to deliver the Products to the Customer;
 - (g) **Deposit** means the Deposit as specified in the Sales Order Form;
 - (h) **Encumber** means an encumbrance or security interest including but not limited to a mortgage, fixed charge, floating charge, pledge, lien, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement or a subordination to a right of a person or an adverse or competing interest of another person or security interest (within the meaning of the *Personal Property Securities Act 2009* (Cth));
 - (i) **Force Majeure Event** means any act of God; war or other civil commotion, strikes, lockouts, stoppages and restraints of labour; breakdown of machinery; inability to obtain raw materials or fuel; fire or explosion; any government action; or any other cause not a consequence of either party's own fault;
 - (j) **GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) 1999* (Cth);
 - (k) **Order** means an order for Products and/or Services and/or a request for AES to supply Products and/or Services to the Customer or nominee of the Customer (including but not limited to a purchase order);
 - (l) **Price** means the Total Price Payable as specified in the Sales Order Form;
 - (m) **Products** means the items listed in the Sales Order Form together with any associated items including but not limited to all associated manuals, tools, maintenance records, spare parts, consumable items, software, accessories and attachments;
 - (n) **Sales Order Form** means the Sales Order Form to which these Terms and Conditions are attached or these Terms and Conditions accompany;
 - (o) **Services** means the services listed in the Sales Order Form; and
 - (p) **Services Completion Date** means the Services Completion Date as listed in the Sales Order Form, or any other date and time that AES agrees in writing to complete the Services by.

USAGE OF TERMS AND CONDITIONS

2. These Terms and Conditions are incorporated into any contract or arrangement between AES and the Customer for the supply of the Products and/or the Services, or any other goods and/or services by AES to the Customer. They shall apply to the exclusion of all terms and conditions conflicting with or purporting to modify them whether issued before or after the date these Terms and Conditions come into effect (including but not limited to any terms and conditions on any order form or request form produced by the Customer), except where otherwise agreed by AES and the Customer in a document signed by both parties.
3. AES may at any time change these Terms and Conditions by publishing new terms and conditions, in which case the new terms and conditions will come into effect 14 days after they are published. The new terms and conditions will come into effect notwithstanding that the Customer does not receive notice of any change to these terms and conditions (including if the notice was accidentally omitted to be given).

ORDERS

4. Each Order constitutes an offer by the Customer to AES and is subject to acceptance by AES.
5. AES may accept an Order by sending written notification to the Customer. Any Order accepted by AES shall constitute a contract between the Customer and AES.
6. The Customer shall not cancel an Order, or change the Delivery/Collection Date, without the written consent of AES. In the event the Customer purports to cancel an Order, or change the Delivery/Collection Date, such attempt may, at AES' election, be construed as a repudiation by the Customer of the contract between the parties, and the Customer shall pay to AES all losses, damages, costs, interest, fees, charges (including handling charges) and expenses incurred or suffered by AES and its suppliers (if any) as a result of the Customer's repudiation of the contract. The Customer shall have no recourse whatsoever against AES as a result of any election made by AES under this clause 6.
7. Without prejudice to AES' rights under clause 6, in the event the Customer seeks to change the Delivery/Collection Date for any period longer than 14 days, and AES agrees to accept the requested change in the Delivery/Collection Date, the Customer shall pay to AES all losses, damages, costs, interest, fees, charges (including handling charges) and expenses incurred or suffered by AES and its suppliers (if any) as a result of the delay.
8. An Order shall not be varied by the Customer unless the variation is in writing and accepted by AES in writing.

PAYMENT

9. All prices charged by AES are subject to change without notice and unless otherwise specified, are inclusive of any GST. AES' price lists or price catalogues do not constitute an offer by AES to supply any item set out in the price lists or price catalogues.
10. Subject to the terms of any Credit and that Credit not having been withdrawn, the Customer must pay to AES the Price:
 - (a) within 30 days from the date of invoice; or
 - (b) as otherwise agreed by the Customer and AES and approved by AES in writing.
11. If any payment is made by an accepted credit card, being either Visa, Mastercard or AMEX, credit card charges will apply. The

charge for AMEX cards shall be 3% including GST) and for Visa and Mastercard shall be 1.5% (including GST).

12. If the Customer has been granted Credit then AES can in its sole discretion immediately, at any time and without notice to the Customer withdraw the Credit, and also cancel any Orders. The Customer shall have no recourse whatsoever against AES as a result of any decision made under this clause 12 to cancel Credit and/or any Orders.
13. The Customer must also pay to AES:
 - (a) the Delivery Fee, at the same time the Price is payable; and
 - (b) GST (at the same time the Price is payable) and all other applicable taxes, duties, levies, penalties and any other government charges payable in relation to the supply of Products or provision of Services on demand by AES.
14. If the Customer defaults in the payment of any sum of money due to AES, AES may charge interest at a rate 2% above the rate specified from time to time under the *Penalty Interest Rates Act 1983* computed in respect of the amount of which default is made and the period of such default, and may cancel any Orders in existence (without prejudice to any other rights or remedies of AES). The Customer shall have no recourse whatsoever against AES as a result of any decision made under this clause 14 to cancel any Orders.
15. The Customer must make all payments to AES in accordance with these Terms and Conditions without set-off, deduction or counterclaim.

PROVISION OF THE SERVICES

16. Save for a Force Majeure Event, AES shall use its best endeavours to provide the Services by the Services Completion Date.
17. Unless otherwise agreed by the parties in writing, AES shall not be responsible for providing anything other than the Services (including any variations to the Services).
18. The Customer may, before the Services Completion Date, request that AES vary the Services or complete additional work but such variations shall be of a character and extent contemplated by the Services and be capable of being carried out by AES.
19. A request for any variation to the Services from the Customer shall be in writing and will specify a reasonable time by which AES shall provide a written estimate of the time, cost and effects of the variation.
20. AES shall be under no obligation to complete any variations to the Services requested by the Customer. If AES does elect to complete variations to the Services requested by the Customer, the Customer shall pay for any variations to the Services at rates negotiated by the parties which shall be in addition to the Price. In all other respects, the variation will be completed in accordance with these Terms and Conditions as amended by the agreed scope of work for the variation.

FORCE MAJEURE EVENT

21. If AES becomes unable, due to the occurrence of a Force Majeure Event, to carry out any obligation, in whole or in part, placed on it by these Terms and Conditions, that obligation, so far as it is affected by the Force Majeure Event, will be suspended during the period the Force Majeure Event continues.

DELIVERY/COLLECTION DATE AND SERVICES COMPLETION DATE

22. The Customer acknowledges that the Delivery/Collection Date and the Services Completion Date are estimates only and should AES be unable to deliver the Products, or make them available for collection by the Customer, by the Delivery/Collection Date, or provide the Services by the Services Completion Date then:
 - (a) AES shall have no liability whatsoever to the Customer in relation to any loss, damage or expense incurred or suffered by the Customer as a result of AES' failure to deliver the

Products or make them available for collection by the Customer by the Delivery/Collection Date, or AES' failure to provide the Services by the Services Completion Date;

- (b) the Delivery/Collection Date or the Services Completion shall be extended by any amount of time deemed necessary by AES; and
 - (c) AES may at its sole discretion cancel any Order, in which case any amounts paid to AES by the Customer shall be repaid as soon as practicable. The Customer shall have no recourse whatsoever against AES as a result of any decision made under this clause 22(c) to cancel any Orders.
23. If the Customer is to collect the Products (as opposed to the Products being delivered to the Delivery Address), the Customer must do so from the address stated on the Sales Order Form within 1 hour of the Delivery/Collection Date, or immediately upon being notified by AES that the Products are ready for collection.
 24. AES may deliver the Products in instalments.
 25. Where AES engages an agent to deliver the Products or provide the Services, written confirmation from the agent that the Products have been delivered or the Services provided shall constitute proof that the Order has been fulfilled.
 26. If the Services involve or include the repair or maintenance of any Products, or any other items requested by a Customer, then the references to Delivery/Collection Date, Delivery Address and Delivery Fee in these Terms and Conditions apply in relation to the provision of these Services.

TITLE TO THE PRODUCTS

27. The Products remain the property of AES (and AES retains title to the Products) until the Price and any other payment or sum due to AES has been paid in full by the Customer (notwithstanding that the Customer goes into liquidation or becomes bankrupt).
28. The Customer must not offer, sell, assign, sub-let, mortgage, pledge, Encumber or otherwise deal with the Products in any way which is inconsistent with or would detract from AES' ownership of the Products until the Price and any other payment or sum due to AES has been paid in full by the Customer. If requested by AES, the Customer must ensure the Products are clearly identifiable as the property of AES.
29. The Products shall be kept at the Customer's business address (as specified in the Sales Order Form), and shall not be removed from that location without notifying AES until the Price and any other payment or sum due to AES has been paid in full by the Customer. Provision of the Products to a third party in any form shall not relieve the Customer of its obligation to pay the Price or to comply with any other obligation under these Terms and Conditions.
30. In the event that the Customer is in default of its obligations under these Terms and Conditions, any Order or any other contract that exists between the Customer and AES, AES will at its election be entitled to the immediate return of the Products and for this purpose may enter the Customer's premises to recover any Products. If AES so elects, the Customer must at its cost take all necessary action (including obtaining the consent of any third party) to enable AES to exercise its rights under this clause 30.

USE OF PRODUCTS

31. Except to the extent that AES has made express representations in writing, the Customer shall be responsible for determining the suitability of the Products for the purpose for which they are intended, and acknowledges and agrees that AES is not necessarily aware of that purpose and that the Customer has not relied on AES' advice.
32. In accordance with the provisions of the *Trade Practices Act 1974* (Cth), the Customer agrees that the Products and Services are either:
 - (a) not of a kind ordinarily acquired for personal, domestic or household use or consumption; or
 - (b) being acquired for resupply or to be used in the course of a process of production or manufacture in the Customer's business.
33. In accordance with the provisions of the *Trade Practices Amendment (Australian Consumer Law) Act 2009* (Cth) (and its related legislation), the Customer acknowledges and agrees that the Products and Services are not goods and services whose acquisition is wholly or predominately for personal, domestic or household use or consumption.

DISCREPANCY OF PRODUCTS

34. If the quantity of the Products is more than that ordered by the Customer in the Sales Order Form, the Customer must immediately inform AES in writing and AES may (at its election) charge the Customer for the excess Products or recover the excess Products from the Customer.
35. Unless otherwise stated by AES in writing, the exact specifications, dimensions and masses quoted in respect of any Products are approximate and subject to change without notice and subject to commercial tolerances.
36. No Products corresponding with an Order shall be returned to AES by the Customer without the prior written consent of AES. If AES consents to the return of the Products, AES shall not be required to accept the Products by way of return unless:
 - (a) the delivery charge for the return of the Products to AES is first paid by the Customer; and
 - (b) the Products are unused and undamaged.

DEFAULT

37. In addition to the Customer's obligation to pay interest set out in clause 14 and without limiting any other right or remedy available to AES, the Customer must pay to AES any costs, damages, expenses or losses suffered or incurred by AES as a result of the Customer's failure to pay to AES on the due date all sums outstanding from the Customer to AES (including, without limitation, any debt collection and legal costs).
38. Upon the occurrence of an Event of Default, AES may by notice in writing to the Customer:
 - (a) elect that all monies owing by the Customer to AES under these Terms and Conditions, any Order or any other contract that exists between the Customer and AES (including but not limited to any Credit) whatsoever become immediately due and payable in full by the Customer; and/or
 - (b) terminate an Order, or all Orders with the Customer.
39. In respect of any terminated Order, the Customer must pay to AES any and all losses, damages, costs, interest, fees, charges (including handling charges) and expenses incurred or suffered by AES and its suppliers as a result of the Customer's default of these Terms and Conditions and the subsequent cancellation of the Order. The Customer shall have no recourse whatsoever against AES as a result of any termination of an Order under clause 38.
40. The Customer must give AES full details of any Event of Default as soon as it becomes aware that an Event of Default has occurred.

41. Each of these events or circumstances is an **Event of Default**:
 - (a) the Customer fails to comply with these Terms and Conditions or the terms of any contract or Order between the Customer and AES;
 - (b) the Customer being an individual is declared bankrupt or becomes of unsound mind;
 - (c) the Customer enters into any composition or arrangement with its creditors or goes into liquidation (voluntarily or otherwise) or has a receiver or liquidator or trustee or administrator or similar official appointed over all or part of its assets;
 - (d) the Customer ceases or threatens to cease to carry on all, or substantially all, of its business or operations;
 - (e) an order being made, or the Customer passing a resolution, or any other step is taken, for the Customer's winding up (including but not limited to an application being made to a court for an order for its winding up);
 - (f) the Customer becomes or is declared or is deemed to be insolvent, or is unable or deemed to be unable to pay its debts, or stops or threatens to stop payments generally;
 - (g) the Customer undergoes a change in its control or ownership not approved by AES in writing; or
 - (h) an event or circumstance occurs in relation to the Customer which is analogous to any event or circumstance specified in paragraphs (b) to (f).

LIABILITY

42. The Customer shall inspect all Products immediately upon delivery or collection of the Products. Any claim by the Customer relating to any defect in the Services or the Products, or any shortage or other nonconformity to an Order, shall be notified in writing to AES within 72 hours of the Delivery/Collection Date or the Services Completion Date. Unless such written claim is received by AES within this period, the Customer shall be deemed to have accepted the condition of the Products, conformity of the Products and/or the completion of the Services (as the case may be) in accordance with the Order. If the Customer makes a claim under this clause 42, the Customer shall pay for the Products and/or the Services pending determination of the claim by AES.
43. The parties acknowledge that, under applicable State and Commonwealth law, certain clauses, conditions, guarantees and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of goods or of services which cannot be excluded, restricted or modified by agreement (**Non-excludable Rights**).
44. Except to the extent of Non-excludable Rights, AES will not be liable for:
 - (a) any claim by the Customer or any other person, including without limitation, any claim relating to or arising from all clauses, conditions, guarantees and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise; and
 - (b) any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by AES in writing, and the liability of AES for any such matters is hereby excluded.
45. Where (and to the extent) permitted by law the liability of AES for a breach of a Non-Excludable Right can be limited, AES' liability is limited, at AES' election, to one of the following:
 - (a) replacement of the Products or supply of equivalent products;
 - (b) resupply of the affected Services;

- (c) repair of the Products;
 - (d) payment of the costs of replacing the Products or acquiring equivalent products;
 - (e) payment of the cost of providing equivalent services to the affected Services; or
 - (f) payment of the cost of having the Products repaired.
46. Notwithstanding any other provision in these Terms and Conditions, AES is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for any:
- (a) increased costs or expenses;
 - (b) loss of profit, revenue, business, contracts or anticipated savings;
 - (c) loss or expense resulting from a claim by a third party;
 - (d) special, indirect or consequential loss, damage or expense; or
 - (e) death or personal injury, whatsoever and howsoever arising.
47. To the full extent permitted by law, AES' liability to the Customer for all claims made by the Customer, whether arising under contract, negligence or any other tort, under statute or otherwise, will not exceed in aggregate the amounts paid by the Customer under these Terms and Conditions.

GENERAL

48. These Terms and Conditions can only be amended, supplemented, replaced or novated by another document signed by the parties.
49. These Terms and Conditions contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and Conditions and has no further effect.
50. The rights of AES are cumulative and are in addition to any other rights of that party.
51. All contracts between the Customer and AES (including but not limited to these Terms and Conditions) are governed by the laws of the State of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.
52. Any provision of these Terms and Conditions which is unenforceable, illegal or void or partly unenforceable, illegal or void is, where possible, to be severed to the extent necessary to make these Terms and Conditions enforceable.
53. No failure or partial failure by a party to enforce any of its rights under these Terms and Conditions constitutes a waiver or partial waiver of that right, and no waiver is effective unless it is in writing and signed by authorised representatives of each party.
54. The Customer shall not assign its rights, or novate its obligations, under these Terms and Conditions without the prior written consent of AES. AES may assign its rights, or novate its obligations under these Terms and Conditions, without obtaining the consent of the Customer.
55. Each party must promptly sign all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete these Terms and Conditions and all transactions incidental to it.
56. All notices and other communications provided for or permitted under these Terms and Conditions or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to the parties' respective contact details notified to each other from time to time.