

Procurement Terms and Conditions

Wesfarmers Kleenheat Gas Pty Ltd (“**Kleenheat**”) requires that the supplier or contractor (“**the Contractor**”) specified in a Kleenheat purchase order or work request (“**the Order**”) supply Kleenheat with the goods (“**the Goods**”) and/or services (“**the Services**”) specified in the Order and the Contractor has agreed to provide the Goods and/or Services on the following terms and conditions:

1. Issue and Acceptance of Order

- 1.1 The Order is Kleenheat’s offer to the Contractor for the Contractor to supply the Goods and/or Services described in the Order to Kleenheat on the terms and conditions contained herein. Acceptance of the Order by the Contractor shall constitute a binding contract between Kleenheat and the Contractor to supply the Goods and/or Services specified in the Order on the terms and conditions contained herein.
- 1.2 The following documents shall apply to, and be deemed to be incorporated in, a contract formed by acceptance of the Order (“the Contract”):
 - (a) the Order;
 - (b) these Procurement Terms and Conditions; and
 - (c) all documents attached to the Order or incorporated in the Order by reference.
- 1.3 The Contractor shall not provide the Goods and/or Services to Kleenheat without obtaining an Order from Kleenheat.
- 1.4 The Contractor must ensure that the Order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of the Goods and/or Services.
- 1.5 If the Contractor is unwilling or unable to accept the offer made by Kleenheat in the Order under the terms and conditions specified herein, the Contractor shall immediately contact Kleenheat and advise in writing of any variations it requires to be made for the acceptance or rejection in writing by Kleenheat.
- 1.6 If the Contractor proceeds with the manufacture or supply of the Goods and/or Services without first requesting or receiving Kleenheat’s written acceptance of variations proposed by the Contractor, then the Contractor is deemed to have accepted the terms and conditions contained herein and the terms of the Order.
- 1.7 Except as provided in clause 1.2, no addition to or modification of the Contract will bind either of the parties unless it is made in writing and signed by both of them.
- 1.8 If a written contract exists between Kleenheat and the Contractor for the supply of the Goods and/or Services, the terms and conditions of the written contract shall take precedence over these Procurement Terms and Conditions to the extent of any inconsistency.

2. Warranties

- 2.1 The Contractor warrants that the Goods:
 - (a) shall be of merchantable quality and fit for their intended purpose;
 - (b) shall be manufactured and delivered strictly in accordance with the requirements of the Contract, including but not limited to any drawings, specifications and other instructions of Kleenheat given for the purpose of the Contract;
 - (c) shall be free from defects in design, materials and workmanship;
 - (d) do not and will not infringe the intellectual property rights of any third party;
 - (e) shall comply with the requirements of any relevant statutes, regulations or legally applicable standards;
 - (f) shall be new on delivery to Kleenheat; and
 - (g) shall be in accordance with and shall perform in accordance with the Contractor’s technical specifications.

- 2.2 The Contractor warrants that the Services:

- (a) shall be performed strictly in accordance with the requirements of the Contract, including but not limited to any drawings, specifications and other instructions of Kleenheat given for the purpose of the Contract;
- (b) shall be rendered with due skill and care;
- (c) do not and will not infringe the intellectual property rights of any third party; and
- (d) shall comply with the requirements of any relevant statutes, regulations or legally applicable standards.

- 2.3 Clause 2.1(c) shall not apply in respect of a defect in design where the design was provided or specified by Kleenheat with no input from the Contractor. Clauses 2.1(d) and 2.2(c) shall not apply where the infringement of intellectual property rights arose from the Contractor’s compliance with a design or method of working provided, specified or directed by Kleenheat with no input from the Contractor.

- 2.4 Without limiting any other provision of the Contract, the Contractor agrees to provide Kleenheat or procure the provision to Kleenheat of all applicable manufacturers’ warranties with respect to the Goods.

- 2.5 Kleenheat relies on the Contractor’s skill and judgment. The Contractor undertakes to advise Kleenheat whenever the Contractor believes that compliance with a specification of Kleenheat would render the Goods and/or Services unsuitable for Kleenheat’s requirements.

3. Price and Payment

- 3.1 The price payable for the Goods and/or Services shall be that specified on the Order, and includes all applicable packaging, freight and insurance charges and all taxes, duties, charges, levies and fees payable on or in respect of the Goods and/or Services, with the exception of GST.

- 3.2 The Contractor must furnish Kleenheat with an invoice:

- (a) For Services – upon completion of the Services specifying Kleenheat’s Order number, setting out the amount the Contractor asserts is payable by Kleenheat, and the basis for its calculation.
- (b) For Goods –
 - (i) in respect of each consignment of Goods delivered;
 - (ii) as soon as practicable after and in any event within thirty (30) days of each delivery of the Goods; and
 - (iii) specifying Kleenheat’s Order number, the amount due to the Contractor, the date of delivery of the Goods to which the invoice relates, a description (including the quantity) of the Goods delivered (by item if applicable) and the Contractor’s address for payment.

- 3.3 The Contractor’s invoice must be sent to Kleenheat at the address referred to in the Order or as otherwise directed by Kleenheat.

- 3.4 Kleenheat shall pay the Contractor’s invoices by Electronic Funds Transfer within thirty (30) days of the end of the calendar month in which the invoice is received by Kleenheat.

- 3.5 If Kleenheat disputes any amount claimed in an invoice, Kleenheat shall give written notification to the Contractor stating the reasons for the dispute within 30 days after receipt of the disputed invoice. Kleenheat may withhold disputed amounts until the dispute has been settled.

- 3.6 In addition, Kleenheat may withhold payment of the amount charged for Services performed, or any instalment of that amount, if the Contractor’s performance of the Services is unsatisfactory, or if the Contractor is in breach of the Contract.

- 3.7 Kleenheat is entitled to set off against monies otherwise due to the Contractor any monies that may be due or owing by the Contractor to Kleenheat.
- 4. Delivery**
- 4.1 The Goods shall be delivered by the date specified in the Order or where a delivery schedule is specified, on the scheduled dates. The Contractor must perform the Services for Kleenheat by the date specified in the Order or in accordance with the schedule for completion of the Services specified in the Order, whichever is applicable.
- 4.2 Subject to clause 5.4 and subject to Kleenheat's right to reject any defective Goods and/or Services, title shall pass to Kleenheat on delivery to Kleenheat or its agent at the nominated place of delivery. The Goods will be deemed to have been delivered only when they have been delivered and unloaded at the nominated delivery point in accordance with the requirements of the Contract.
- 4.3 The Contractor shall pack the Goods to ensure that no loss or damage results from weather or transportation.
- 4.4 Kleenheat shall specify the method of delivery required at the time of placing of the Order. Where the Contractor arranges transportation of the Goods, risk remains with the Contractor until the Goods are delivered to the nominated place of delivery. Where Kleenheat nominates that delivery is to be made to a carrier engaged by Kleenheat, then risk will pass on delivery of the Goods to such carrier.
- 5. Timeliness**
- 5.1 Time is of the essence in the performance of the obligations under the Contract.
- 5.2 If any circumstances arise which may delay the provision of the Goods and/or Services, the Contractor shall immediately notify Kleenheat of the circumstances and propose a revised delivery date or delivery schedule which Kleenheat may elect to agree or not agree to in its sole discretion.
- 5.3 The Contractor acknowledges that Kleenheat may return part or all of any shipment of Goods received outside the delivery date(s) specified in the Order and charge the Contractor with any loss or expense sustained as a result of the Contractor's failure to deliver as agreed. The exercise by Kleenheat of its rights under this clause shall be without prejudice to any claim for damages or other rights it may have against the Contractor.
- 5.4 The Contractor acknowledges that Kleenheat may terminate the Contract if the Contractor does not provide the Goods and/or Services by the date(s) specified in the Order and Kleenheat shall not be liable to pay for any Goods and/or Services which are delivered outside of the date(s) specified in the Order (unless Kleenheat elects to accept the relevant Goods and/or Services or the parties have agreed in writing to extend the relevant date).
- 6. Site Work**
- 6.1 Where the Contractor has been engaged to perform Services at Kleenheat's or any third party's premises, or the Contractor, its employees, subcontractors or agents provides work in connection with the installation or fitting of the Goods or enters upon Kleenheat's or any third party's premises for any other reason, the Contractor shall, and shall procure that its employees, agents and subcontractors shall:
- perform all work in a manner that is safe and complies with all applicable occupational health and safety regulations and legislation;
 - perform all work in a proper and workmanlike manner;
 - ensure that all personnel involved in the provision of the Services are suitably experienced and trained, and all plant and equipment used in the provision of the Services is in good working order;
 - perform all work so as not to impede, or interfere with any activities being carried out on the relevant premises;
 - comply with Kleenheat's safety regulations and any directions or orders issued by Kleenheat in regard thereto;
 - where working on a third party site, comply with the third party's safety regulations and any directions or orders issued by the third party in regard thereto; and
 - provide at their own expense (except where otherwise specified) all labour, tools, equipment and material necessary to complete the work.
- 6.2 Prior to commencing the Services, the Contractor shall identify any hazards which may be associated with the performance of the Services. The Contractor shall ensure that all identified hazards are assessed for risk and further controlled to eliminate or manage such risks (Job Safety Analysis). The Contractor must supply documents to support such assessment to Kleenheat prior to any Services being undertaken to allow for additional risk controls and authority to commence site works. All documents must be signed by the Contractor and Kleenheat to provide evidence of this process.
- 6.3 The Contractor shall remove and replace at the request of Kleenheat any employee, agent or subcontractor who fails to perform the Services satisfactorily, misbehaves or is absent from the site or fails to comply with instructions.
- 7. Quality and Inspection**
- 7.1 The Contractor shall establish and maintain a quality assurance program and quality control procedures to ensure that the quality of the Goods and/or Services is delivered and maintained at a consistently high standard.
- 7.2 On request and after being given reasonable notice, the Contractor shall arrange for Kleenheat's representative to have access to the premises or processes of the Contractor or its subcontractors for the purposes of inspecting any materials, Services, work in progress or finished Goods in the course of being supplied to or manufactured for Kleenheat.
- 7.3 Such inspection shall not be deemed to be acceptance by Kleenheat of the materials, work, Services or Goods inspected or affect any obligation of the Contractor under the Contract.
- 8. Defective Goods and/or Services**
- 8.1 All Goods and/or Services shall be subject to inspection and/or testing by Kleenheat. Any inspections or tests conducted by Kleenheat will not relieve the Contractor from its obligations under the Contract.
- 8.2 If, at the time of delivery of the Goods or completion of the Services (as the case may be) or at any time during the Defects Liability Period, any Goods and/or Services are not in accordance with the standard or quality required under the Contract or are damaged or defective in design, materials or workmanship or otherwise fail to meet the requirements of the Contract ("defective Goods and/or Services"), Kleenheat may either:
- require the Contractor to replace the defective Goods and/or Services; or
 - require the Contractor to repair and make good the defective Goods and/or Services.
- Unless otherwise agreed, the Defects Liability Period shall be a period of twelve (12) months from the date of delivery of the Goods or completion of the Services, as the case may be.
- 8.3 If the Contractor fails to replace, repair or make good any defective Goods and/or Services to the satisfaction of Kleenheat after being requested to do so by Kleenheat, Kleenheat may replace, repair or make good the defective Goods and/or Services at the cost of the Contractor.
- 8.4 Any Goods rejected by Kleenheat may be returned to the Contractor at the Contractor's risk and expense. The Contractor must refund any purchase price paid by Kleenheat for any rejected Goods and reimburse Kleenheat for all packing, handling and transportation expenses incurred by Kleenheat in returning rejected Goods.
- 8.5 The exercise by Kleenheat of its rights under this clause 8 does not prejudice any other rights Kleenheat may have against the Contractor for breach of contract.
- 9. Indemnities**
- 9.1 The Contractor shall indemnify and keep indemnified Kleenheat from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by Kleenheat and arising directly or indirectly out of or in connection with:
- any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods and/or Services hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
 - the failure of the Goods and/or Services to conform to or fulfil any term or condition of the Contract; or
 - the Contractor's performance or non-performance (including the performance or non-performance of any of the Contractor's employees, subcontractors or agents) of the

Contract including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods.

- 9.2 The Contractor's liability to indemnify Kleenheat will be reduced in proportion to the extent that such claims, damages or losses were caused by or contributed to by the negligence of Kleenheat.

10. Insurance

- 10.1 The Contractor warrants that it has obtained and maintains throughout the duration of the Contract (including any Defects Liability Period) all insurance cover required by law and by the Contract including but not limited to the following:

- (a) Public and Products Liability Insurance with a limit of liability of not less than twenty million dollars (\$20,000,000) for any one occurrence;
- (b) Workers' Compensation and Employers Liability Insurance in accordance with the law of the State or Territory in which the work is performed (including common law liability as required by law);
- (c) Motor Vehicle Third Party Injury and Property Damage Insurance with a limit of liability of not less than twenty million dollars (\$20,000,000) for any one occurrence;
- (d) if the Contractor carries dangerous goods, the Contractor's motor vehicle insurance policy must be specifically endorsed to cover third party property damage resulting from the carriage of dangerous goods with a limit of liability of not less than five million dollars (\$5,000,000) for any one occurrence, including cover in respect of any loss or damage and costs of clean up or removal incurred by or on behalf of a public authority as a result of a fire, explosion, leakage or spillage of dangerous goods in, on or from the vehicle. This insurance policy is in addition to any other insurance the Contractor is required to hold by law; and
- (e) Compulsory Motor Vehicle Third Party Liability Insurance as required by law in the State or Territory in which the work is performed.

- 10.2 The Contractor must ensure that any subcontractor engaged by the Contractor in relation to the Goods and/or Services effects and maintains the insurances nominated in this clause 10.

- 10.3 Where the Contract includes the provision of Services, the insurances required under clauses 10.1 and 10.2 shall:

- (a) note Kleenheat for its respective rights and interests as Principal to this Agreement; and
- (b) in respect of Workers' Compensation insurance include a Principal's Indemnity extension in favour of Kleenheat as Principal to the Contract.

- 10.4 Where the Contract requires the Contractor to provide professional advice or to prepare or provide any design, formula or specification, the Contractor shall effect Professional Indemnity insurance with a minimum cover of not less than five million dollars (\$5,000,000) for any one claim. Any Professional Indemnity policy must be maintained for a period of three years following completion of this Agreement.

- 10.5 On request, the Contractor shall provide certificates of currency as evidence of the insurances the Contractor or its subcontractors are required to effect under the terms of the Contract.

- 10.6 If the Contractor fails to effect or maintain any such insurance as specified above, Kleenheat may effect or maintain such insurance and recover from the Contractor as a debt or set off against any amount payable to the Contractor, any premium so paid by Kleenheat.

11. Intellectual Property Rights

- 11.1 Where the Contract requires the Contractor to prepare or provide any design, formula, specification or drawings, the Contractor agrees to assign to Kleenheat absolutely:

- (a) the copyright subsisting in any work created by the Contractor or any of its employees, agents or subcontractors in the course of the Services and which is the subject of copyright; and
- (b) all rights in respect of any practice, concept, product, process or design the Contractor or any of its employees, agents or subcontractors creates, develops, discovers or first reduces to practice in the course of the Services and

in respect of which intellectual property rights are capable of being protected or registered.

- 11.2 The Contractor agrees to sign all documents and do all acts and things necessary to ensure that legal ownership of copyright and other intellectual property rights vests in Kleenheat.

- 11.3 Any design, formula, specification, drawings or other documents or information made available by Kleenheat for use by the Contractor for the purposes of the Contract always remains the property of Kleenheat. The Contract does not give the Contractor any right, title or interest in Kleenheat's documents or information and the Contractor must use Kleenheat's documents and information solely for the purpose of providing the Goods and/or Services to Kleenheat under the terms of the Contract.

12. Variations

- 12.1 Kleenheat may from time to time by written notice to the Contractor vary the Goods and/or Services by increasing or decreasing the quantity of the Goods and/or Services or by amending the character or quality of the Goods and/or Services.

- 12.2 If Kleenheat varies the Goods and/or Services, Kleenheat and the Contractor shall agree on any necessary adjustment to the agreed price to reflect the variation. Any adjustment will be based on the Contractor's agreed or usual hourly rates plus disbursements.

13. Breach

If the Contractor breaches the Contract or if it advises Kleenheat that it is not or will not be able to perform all or any of its obligations under the Contract then, without limiting any other right or remedy Kleenheat may have, Kleenheat may acquire the Goods and/or Services (or their nearest reasonably available substitute) from a third party or third parties. The Contractor must pay to Kleenheat on demand the whole of any cost, expense, loss or damage suffered or incurred by Kleenheat as a result of the Contractor's breach of the Contract, including any additional cost to Kleenheat of acquiring substitute Goods and/or Services from a third party, and those amounts shall be a debt due from the Contractor to Kleenheat.

14. Termination

- 14.1 Kleenheat may, without prejudice to any other rights or remedies hereunder, forthwith terminate the Contract by notice in writing if:

- (a) the Contractor is in default of any term or condition of the Contract; or
- (b) the Contractor breaches any applicable laws or regulations or acts in a manner which is substantially prejudicial or harmful to Kleenheat or is guilty of serious misconduct, fraud or dishonesty; or
- (c) the Contractor stops or suspends or threatens to stop or suspend payment of all or a class of its debts; or
- (d) the Contractor is insolvent within the meaning of the Bankruptcy Act or the Corporations Act or is presumed to be insolvent by reason of any provision of the Bankruptcy Act or the Corporations Act; or
- (e) the Contractor has an administrator appointed within the meaning of section 9 of the Corporations Act; or
- (f) the Contractor has a controller within the meaning of section 9 of the Corporations Act appointed to all or any of its assets or undertaking; or
- (g) an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court is made or other steps are taken against or in respect of the Contractor (other than frivolous or vexatious applications, proceedings, notices or steps) for its bankruptcy, winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and any such application, order or proceeding is not withdrawn within 21 days.

- 14.2 If Goods to be supplied under the Contract are of standard stock of the Contractor, then Kleenheat may terminate the Contract upon written notice to the Contractor, so far as it relates to any unshipped or undelivered portion of Goods, without further obligation hereunder except payment (subject to the other terms hereof) for the Goods shipped or delivered prior to termination.

- 14.3 If the Contract requires Goods to be manufactured to Kleenheat's specification or requires the Contractor to install or fit Goods, then at any time prior to completion of the work to be performed in fulfilment of the Contract, Kleenheat may terminate the Contract upon written notice to the Contractor, and upon receipt of such notice the Contractor shall stop all work hereunder, except as may be otherwise directed by Kleenheat. Upon termination under this

clause 14.3, Kleenheat shall pay to the Contractor an amount equal to:

- (a) the completed pro-rata amount of the contract price; and
- (b) five percent (5%) of the amount calculated in paragraph (a).

The amount described in paragraph (a) shall be agreed by both parties and shall reflect the amount completed or committed at the date of termination provided that at such date the Contractor is not in breach of any of these terms or conditions, and provided further that such amount shall not exceed the total contract price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.

14.4 Termination of the Contract does not affect any accrued rights or remedies of either party.

15. Notices

Any notice in connection with the Contract shall be deemed to be sufficiently given if sent by facsimile to the facsimile number provided by each party for that purpose, or delivered to either party personally or by forwarding the same to either party by pre-paid post at the registered office of the relevant party. E-mail notifications will be valid if they can be demonstrated to the satisfaction of Kleenheat to be reliable, accurate and authentic.

16. General

16.1 The Company reserves the right to obtain similar Goods and/or Services from any other supplier.

16.2 The Contract is confidential to Kleenheat and neither its terms nor any particulars or any documents or information relating to it may be published or disclosed to any third party by the

Contractor (except to the extent necessary for the purposes of the Contract) without Kleenheat's prior written consent. This obligation of confidentiality shall survive the termination of the Contract.

16.3 The Contract shall be governed by and construed according to the laws of the State or Territory in which the work is performed and the parties shall submit to the jurisdiction of the Courts of that State or Territory.

16.4 A party will effectively waive its rights under the Contract only if it waives those rights in writing signed by that party.

16.5 The Contractor shall not directly or indirectly subcontract or assign the Contract or any of its rights or obligations under the Contract or any part of the Contract without obtaining Kleenheat's prior written consent which may be granted unconditionally or upon such conditions as Kleenheat thinks fit, and may be withheld by Kleenheat in its absolute discretion. The appointment of subcontractors by the Contractor shall not relieve the Contractor from any liability or obligation under the Contract. The Contractor shall be liable for the acts and omissions of subcontractors and their employees, officers, agents and contractors as if they were acts and omissions of the Contractor. The Contractor shall ensure that its subcontractors comply with the terms of the Contract.

16.6 The Contractor performs all work hereunder as an independent contractor and not as an agent or employee of Kleenheat.

16.7 The Contractor will maintain a true and correct set of records in connection with the Work and all related matters for a period of not less than two (2) years after the date of completion of the Work.