

FENNER CONVEYORS CONDITIONS OF SALE

1. INTERPRETATION

- (a) These Conditions of Sale shall be subject to the provisions of the Australian Consumer Law and any statutory amendment or re-enactment thereof for the time being in force which the Company is not capable of excluding, restricting or modifying.
- (b) In these Conditions of Sale, the words "**Australian Consumer Law**" means the law set out in *Schedule 2 of the Competition and Consumer Act 2010 (Cth)* and any corresponding state or territory legislation; "**Company**" means the party named as accepting the order under these Conditions of Sale being any of the following: Fenner Dunlop Australia Pty Ltd ACN 080 570 574, Australian Conveyor Engineering Pty Ltd ACN 117 381 138, Agile Maintenance Service Pty Ltd & Fenner Dunlop Australia partnership ABN 91 342 398 023, Conveyor Products and Solutions Pty Ltd ACN 103 699 207, Conveyor Pulleys and Solutions Pty Ltd ACN 620 887 523 or any of its subsidiaries as defined in *section 9 of the Corporations Act 2001 (Cth)*; "**Confidential Information**" means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the goods or services or the Company's business but does not include information which is or becomes generally available in the public domain (other than through any breach of confidence) and information which has been independently developed by the other party; "**Consequential Loss**" means any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by a party or any other person that is indirect or consequential; "**Consumer**" has the meaning given to it in section 3 of the *Australian Consumer Law*; "**Consumer Guarantee**" has the meaning given to it in *Part 3-2 of the Australian Consumer Law*; "**goods**" means any goods agreed to be supplied to the Purchaser by the Company under these Conditions of Sale; "**GST**" has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; "**person**" includes corporation; "**PPSA**" means *Personal Property Securities Act 2009 (Cth)* (including any amendment or re-enactment thereof); "**Purchaser**" shall mean and include the person to whom goods or services is supplied by the Company and shall include any person offering to contract with the Company on these Conditions of Sale; "**Related Body Corporate**" has the meaning given to it in the *Corporations Act 2001 (Cth)*; "**services**" means any services to be performed for the Purchaser by the Company under these Conditions of Sale and "**Tax Invoice**" has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (c) In these Conditions of Sale, any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. APPLICATION OF CONDITIONS OF SALE

These Conditions of Sale apply to all orders placed by the Purchaser as an overarching agreement. Any order placed by the Purchaser is deemed to be an order incorporating these Conditions of Sale notwithstanding any inconsistencies which may be introduced in the order itself or any other document of the Purchaser. Any terms and conditions contained in any order or other document of the Purchaser which are not embodied herein are expressly excluded and these Conditions of Sale take precedence. No variation to these Conditions of Sale shall be binding on the Company unless agreed in writing and signed by a duly authorised representative of the Company.

3. ACCEPTANCE

- (a) Acceptance by the Purchaser of these Conditions of Sale (as amended by the Company from time to time) may be by any one of the following ways:
- i. by signing where indicated below and returning a copy of these Conditions of Sale to the Company;
 - ii. by performing an act that is done with the intention of accepting these Conditions of Sale (including but not limited to continuing to order the goods and/or services); or
 - iii. by oral acceptance.
- (b) Any tender made by the Company may be withdrawn at any time before acceptance by the Purchaser. If not accepted within 60 days from the date of tender, it shall be deemed to have been withdrawn.

4. ORDERS

Any quotation made by the Company is not an offer to sell the goods or to provide the services and no order given in pursuance of a quotation shall bind the Company until accepted by it in writing or by the commencement of supply of the goods and/or performance of the services. The Company reserves the right to reject or not process any order placed by the Purchaser.

5. DELIVERY AND PERFORMANCE

- (a) Any date quoted for delivery of the goods and/or performance of the services is an estimate only and subject to the Australian Consumer Law, the Company shall not be liable to the Purchaser for any loss or damage howsoever arising for failure to deliver the goods and/or perform the services on or before the quoted date. The Purchaser shall accept and pay for goods and/or services when tendered notwithstanding any failure by the Company to deliver the goods or perform the services by the quoted date. The terms of payment shall apply upon written advice to the Purchaser that goods are ready for delivery whether in whole or in part.
- (b) The Company will use all commercially reasonable efforts to deliver the goods for which it has accepted an order to the agreed delivery location by the quoted date. Except where the Purchaser has rights or remedies under the Australian Consumer Law which cannot be excluded, the Company shall not be liable to the Purchaser or any other party for any loss, damage or injury whatsoever (including Consequential Loss) and the Purchaser is not entitled to cancel an order or repudiate this contract by reason of any delay in delivery of the goods or performance of the services.
- (c) The Company reserves the right to deliver the goods by instalments. If delivery is made by instalments, the Purchaser shall not be entitled:
- i. to terminate or cancel the order; or
 - ii. to any loss or damage howsoever arising,
- in connection with the failure of the Company to deliver any instalments on or before the quoted date.
- (d) Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Purchaser's order.

6. CANCELLATION

Any order may only be cancelled, varied or suspended by the Purchaser with the prior written consent of the Company and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify the Company for any reasonable costs, expenses or charges incurred by the Company in preparation for and in the execution of an order.

7. QUANTITIES AND QUALITY

- (a) All goods are supplied subject to reasonable availability to the Company of suitable materials and components and the Company reserves the right to substitute suitable alternative materials and components where necessary.
- (b) Whilst every effort is made to ensure their accuracy, the description, illustrations and materials contained in any catalogue price list, brochures, leaflets or other descriptive matter provided by or on behalf of the Company represent the general nature only of the items described therein and save where the Company has accepted an order of goods and/or services specified as so described or illustrated, shall not form any part of an order or agreement or amount to any representation or warranty in respect of the goods and/or services except to the extent that the Australian Consumer Law applies.
- (c) The Purchaser warrants that any goods supplied or services performed by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any intellectual property rights of third parties and that any such designs, drawings or specifications shall be complete in every respect to enable the Company to supply the goods and/or perform the services in compliance with all requirements of the Purchaser or of any applicable law. The Purchaser shall indemnify and hold harmless the Company against any action, loss, cost, claim or damage (including Consequential Loss) that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.
- (d) The Purchaser warrants that any design, drawing or specification supplied to the Company shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable the Company to supply the goods and/or perform services to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether of the Purchaser or the Purchaser's customer or howsoever arising at law and the Purchaser shall indemnify the Company fully in respect of loss, damages, costs and expenses (including Consequential Loss) incurred by the Company which results from any incompleteness in the Purchaser's specification or design.
- (e) Subject to the Australian Consumer Law, the Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the Purchaser, that any goods supplied or services performed by the Company which are based upon any designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and the judgment of the Company for the fitness of the goods or services for any purpose of the Purchaser.
- (f) The Purchaser's materials and parts shall be delivered to the Company free of all charge to the Company. All materials removed as part of the Company's processes or as a consequence of performing the services become the property of the Company and are allowed for in the Company's estimate or quotation.

- (g) The Company shall not be liable for the value of any of the Purchaser's materials and parts sent for fitting or other purposes, or for any loss or damage whatsoever resulting from the performance of any works on the Purchaser's material and parts by the Company.
- (h) The Purchaser's materials or parts sent for fitting shall be suitable in every way for the machining, cutting or fitting specified in the order and the Company is to have no obligation to check such suitability. The Purchaser will pay the Company for work done and for consequential damage to machines and tools of the Company arising directly or indirectly from any unsuitability of the Purchaser's materials or parts.

8. ACCESS AND ASSISTANCE

- (a) In respect of any work done by the Company in relation to goods to be supplied to or services to be performed for the Purchaser at a location other than the Company's premises, it shall, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances shall be suitable for the Company, failing which the Company shall be entitled to charge a reasonable increase in the price of the goods or services which reflect the increased costs to the Company incurred due to the prevailing circumstances.
- (b) Where services are to be performed on the Purchaser's premises, the Purchaser agrees to provide the Company on a timely basis with such access, utilities and equipment as the Company may reasonably require in order to perform the services. If the Purchaser fails to provide such assistance, the Company will be entitled to delay performance of the services until such time as the Purchaser has complied with this obligation and charge a reasonable increase in the price of the goods or services which reflect the increased costs to the Company incurred due to the prevailing circumstances.

9. WAIVER

Failure by the Company to insist upon strict performance of any term of these Conditions of Sale or to enforce its rights under these Conditions of Sale shall not be deemed a waiver thereof or of any rights which the Company may have and shall not, and nor shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

10. GUARANTEE AND WARRANTY

- (a) Except when the Australian Consumer Law applies and the conditions, warranties and rights implied by that law cannot be excluded, restricted or modified:
 - i. all representations, promises, statements, warranties and conditions (whether statutory, express or implied) regarding any goods supplied or services performed by or on behalf of the Company are expressly excluded;
 - ii. no claim can be made by the Purchaser against the Company unless the Purchaser notifies the Company in writing of the facts or matters which form part of any such claim within 14 days of the Purchaser becoming aware of the same;
 - iii. the Company shall not be liable to the Purchaser for Consequential Loss which arises out of or in connection with this contract; and

- iv. the Company's liability for any and all loss or damage resulting from any cause whatsoever will be limited (at the Company's discretion) to in the case of goods supplied to the Purchaser, the replacement or repair of the goods or the cost of having the goods replaced or repaired or, in the case of services performed for the Purchaser, a refund of the price paid for the services.
- (b) Where the Australian Consumer Law applies and permits the Company to limit the remedies available to it for a breach of a Consumer Guarantee, the Company hereby limits its remedies to such Consumers for a breach of a Consumer Guarantee, in the case of goods, to the repair or replacement of the goods, the supply of equivalent goods or the payment of the cost of having the goods repaired or replaced or having equivalent goods supplied and, in the case of services, to supplying the services again or paying the cost of having the services supplied again.
- (c) Except to the extent that the Purchaser is entitled to a remedy under the Australian Consumer Law, the Company shall not be liable for:
 - i. any defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation repair or alteration (other than to the extent caused by the Company);
 - ii. any transport, installation, removal, labour or other costs;
 - iii. goods not manufactured or services not performed by it but the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the manufacturer of such goods and/or services under a warranty given by the manufacturer provided that nothing contained in this sub-clause shall limit the rights of the Purchaser to proceed against the Company pursuant to the Australian Consumer Law; or
 - iv. technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the supply of goods or performance of services for or to the Purchaser provided always that the Company has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.
- (d) The Purchaser:
 - i. acknowledges that selecting goods and/or services requires the Purchaser to use its own skill and judgement as to which goods and/or services meets the Purchaser's requirement;
 - ii. warrants that it has such skill and judgement and undertakes to exercise it at all times in selecting goods and/or services;
 - iii. agrees it will be responsible for ensuring that goods and/or services selected are fit or suitable for the Purchaser's purpose; and
 - iv. agrees that subject to any rights or remedies that the Purchaser has under the Australian Consumer Law which cannot be lawfully excluded, the Company shall not be responsible for any selection made by the Purchaser and will not have any liability to the Purchaser for any loss, damages, costs or expenses suffered by the Purchaser as a result thereof.

11. INSOLVENCY & DEFAULT

- (a) If:
- i. the Purchaser defaults in any payment due hereunder;
 - ii. a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;
 - iii. a liquidator, provisional liquidator, administrator, receiver, controller or receiver and manager is appointed over the property or any part of the property of the Purchaser;
 - iv. the purchaser makes or proposes to make any arrangement with its creditors;
 - v. the Purchaser becomes insolvent, is wound up or enters into bankruptcy; or
 - vi. execution is levied upon the assets of the Purchaser for an amount in excess of \$1,000 and is not satisfied within seven days,
- then the Company may at its option:
- vii. withhold further deliveries of goods;
 - viii. cease performing services;
 - ix. cancel any orders; and/or
 - x. give notice to the Purchaser requiring that all sums due and payable to the Company on any account whatsoever be paid not later than seven days from the date of the notice and if all sums due are not paid by the said date, sell the goods or any part of them to meet all sums owing to the Company and all expenses on the sale,
- without prejudice to its rights hereunder.
- (b) The Company may at any time and from time to time upon such terms as it may determine waive any of its rights under clause 11(a), but without prejudice to its rights thereafter to rely upon the happening thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- (c) Where the Company elects to withhold goods or services or cancel orders under clause 11(a) and the Purchaser has paid for such goods or services, the Company must refund the Purchaser; however in applying the refund, the Company is entitled to exercise its rights of set off pursuant to clause 25(g).

12. TITLE LIEN

- (a) Title to the goods to be delivered will not pass to the Purchaser until payment in full for the goods and all other amounts owing by the Purchaser to the Company (whether under this or any other agreement) has been received by the Company.
- (b) Until the date of final payment of all amounts referred to in clause 12(a) above, the Purchaser:
- i. shall store the goods so that they are clearly identified as the property of the Company and will hold the goods as a fiduciary bailee of the Company;

- ii. shall not dispose of the goods except in the ordinary course of the Purchaser's business or move the goods from the Purchaser's premises without the Company's prior written consent;
 - iii. acknowledges and warrants that the Company has a security interest for the purposes of the PPSA in the goods and that such security interest attaches to the goods when the Purchaser obtains possession of the goods;
 - iv. must not allow any person other than the Company to have or acquire any security interest in the goods for the purposes of the PPSA;
 - v. must insure the goods for their full insurable or replacement value (whichever is higher) with a reputable insurer; and
 - vi. must not remove, deface or obliterate any identifying mark or number on any of the goods.
- (c) Despite anything to the contrary in this clause 12, the Purchaser may use the goods in its production processes or resell the goods before ownership has passed to the Purchaser. Any sale of the goods by the Purchaser shall be solely on the condition that such sale shall be on the Purchaser's own behalf in the ordinary course of the Purchaser's business at full value and the Purchaser shall deal as principal when making such sale. In such circumstances, title to the goods shall pass from the Company to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- (d) In addition to any lien to which the Company may, by statute or otherwise, be entitled, the Company shall, in the event the Purchaser fails to pay for the goods in full as required under these Conditions of Sale or becomes insolvent, enters into bankruptcy or is wound up, be entitled to:
- a. without notice and without liability to the Purchaser (or any person claiming through the Purchaser) enter any premises where it suspects the goods may be located in order to search for and remove the goods without committing a trespass (even though they may be attached or annexed to other goods or land not the property of the Purchaser) and for this purpose the Purchaser irrevocably licenses the Company to enter such premises and undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising such rights; and
 - b. a general lien on all property or goods belonging to the Purchaser in its possession (although such goods or some of them have been paid for) for the unpaid price of any other goods sold and delivered to the Purchaser by the Company under this or any other arrangement understanding or contract.

13. RISK

- (a) Unless otherwise agreed in writing all goods shall be at the Purchaser's risk upon delivery to the Purchaser's premises (or a third party site nominated by the Purchaser) or upon such goods being made available for collection or loading by the Purchaser or the Purchaser's carrier or agent.
- (b) Purchaser shall take delivery of the goods promptly upon the delivery date or dates, or at the intervals stated in this agreement or as soon thereafter as Purchaser is notified by the Company that the goods are available for delivery. If for any reason the Purchaser fails to call off or give delivery instructions, or take delivery of the goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then,

without prejudice to any other rights of the Company hereunder, the Company shall be entitled to store or arrange for the storage of the goods and if it does so:

- i. it shall so inform the Purchaser in writing;
- ii. the Purchaser must pay or reimburse the reasonable costs (including insurance) of such storage from the due date, or the date of notification as stated above, until delivery to the Purchaser; and
- iii. if 30 days after the day on which the Company notified the Purchaser that the goods were ready for delivery, the Purchaser has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the goods and, charge the Purchaser for any shortfall below the quoted or list (as applicable) price of the goods.

14. PAYMENT

- (a) Unless otherwise agreed in writing payment terms are net cash 30 days from the end of the month in which, in the case of goods, the goods are delivered to the Purchaser or the Purchaser's carrier or agent or, in the case of services, the services are completed by the Company.
- (b) If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that they are ready, the Purchaser shall be deemed to have taken delivery of the goods and the terms of payment shall apply from such date.
- (c) The Company may require the payment of a deposit which, in such circumstances, must be paid by the Purchaser upon submitting the relevant order to the Company unless otherwise agreed between the parties.
- (d) The Company may charge the Purchaser on any overdue amounts interest at the rate that is equal to the maximum percentage specified by the Reserve Bank of Australia as the 'Cash Rate Target' as at the date the relevant invoice was issued, plus 2%.
- (e) If the Company must take steps or action to recover any amount due to it, the Purchaser will be responsible for all costs and disbursements incurred by the Company in recovering the monies due.
- (f) The timing of payment is of the essence in all cases.
- (g) The Purchaser shall not in any circumstances or for any reason whatsoever be entitled to make any deduction or withhold any sum from the price by way of set-off or counterclaim.

15. PRICE

- (a) Except for when a price has been quoted or otherwise expressly agreed in writing, the price of the goods and/or services shall be the Company's list price current at the date of the Company's acceptance of the order plus the amount which the Company is required to pay on account of any excise, GST or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the goods or services.
- (b) Where a price has been quoted, the price of the goods and/or services shall be Company's quoted price. All prices quoted are valid for the period stated on the quotation or if no period is stated, for 30 days after which time they may be altered by the Company.

- (c) The Company reserves the right by giving notice to the Purchaser (Price Variation Notice) at any time before delivery or performance to increase the price of the goods and/or services to directly reflect any increase in the cost to the Company which is due to:
- i. any factor beyond the control of the Company (such as increases in raw materials or labour, foreign exchange fluctuation, currency regulation or alteration of duties); or
 - ii. any change in delivery dates, quantities or specifications of the goods or services which is requested by the Purchaser or any delay caused by any instructions of the Purchaser or failure by the Purchaser to give adequate information or instructions (**Purchaser Cause**).

If the Company gives the Purchaser a Price Variation Notice for reasons other a Purchaser Cause, the Purchaser may cancel the order by giving the Company notice of cancellation within 5 Business days after receiving the Company's Price Variation Notice. If the Purchaser does not give a notice of cancellation within that time, the Purchaser will be deemed to have accepted the price increase under the Price Variation Notice.

- (d) Unless otherwise specified, any prices quoted do not include transportation costs. Goods shall be supplied "ex works" under the International Chamber of Commerce Incoterms 2010.
- (e) Unless otherwise agreed, packing will be charged for in addition to the price of the goods and packing cases and materials are not returnable. The goods will be suitably packed for withstanding the conditions of normal delivery/shipment. Tropical or other special packing will only be supplied on written request and will also be charged for in addition to the price.

16. GST

If any supply made by the Company under or in connection with these Conditions of Sale is a taxable supply, the Purchaser must pay to the Company, in addition to any amount or consideration payable by the Purchaser in relation to that supply, the amount of any GST payable in respect of the taxable supply at the time the consideration for the supply is payable.

17. SAMPLES

Subject to any Consumer Guarantees that may apply, all samples are sent and inspected solely to enable the Purchaser to judge the quality of the bulk and shall not render any sale a sale by sample. All samples are to remain the property of the Company and shall be returned to the Company on request.

18. TOOLING DIES & OTHER MATERIALS

- (a) All patterns, dies, moulds or other equipment used in the manufacture of the goods or the performance of the services shall remain the property of the Company unless otherwise expressly agreed in writing.
- (b) The Purchaser shall not permit any third party to use such equipment nor disclose to any third party any technical, dimensional or design details or any other information in respect of such equipment at any time.
- (c) All designs, drawings, specifications, brochures, catalogues, websites, price lists, advertising material and computer software are the copyright of and shall remain the

property of the Company and must not be copied, reproduced or divulged either directly or indirectly to any other person without the Company's prior written permission.

- (d) The Purchaser shall not use the Company's name, logo or other intellectual property rights in advertising or publicity without the Company's prior written consent.

19. PPSA

- (a) Unless a contrary intention appears, words or expressions used in this clause 19 that are defined in the PPSA have the same meaning given to them in the PPSA.
- (b) If the Company determines that these Conditions of Sale or the supply of the goods creates a security interest in its favour over any personal property, the Company may apply for any registration, or give any notification, in connection with that security interest and the Purchaser must promptly, upon the Company's request, do anything to:
 - i. provide more effective security over the relevant personal property;
 - ii. ensure that any such security interest in favour of the Company is at all time enforceable, perfected and otherwise effective and ranks as a first priority security interest;
 - iii. enable the Company to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
 - iv. enable the Company to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPSA.
- (c) Neither party will disclose to a person or entity that is not a party to this contract, information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available.
- (d) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under these Conditions of Sale or the supply of the goods, the Purchaser agrees that the following provisions of the PPSA will not apply:
 - i. section 96 (person with an interest in the whole may retain accession);
 - ii. section 117 (obligations in land secured by personal property and land);
 - iii. section 120 (enforcement of security interest in liquid assets);
 - iv. section 121(4) (enforcement of liquid assets – notice to grantor);
 - v. section 123 (secured party may seize collateral);
 - vi. section 125 (obligation to dispose of or retain collateral);
 - vii. section 126 (apparent possession of collateral);
 - viii. section 130 (notice of disposal), to the extent that it requires the Company to give notice to the Purchaser;
 - ix. section 132(3)(d) (contents of statement of account after disposal);
 - x. section 132(4) (statement of account if no disposal);
 - xi. section 142 (redemption of collateral); and

xii. section 143 (reinstatement of security agreement).

- (e) Without limiting clause 19(d) above, the Company does not need to give the Purchaser any notice required under the PPS Law unless the requirement for the notice cannot be excluded.

20. FORCE MAJEURE

- (a) Without prejudice to the generality of any previous exclusion or limitation of liability but subject to any rights or remedies either party has under the Australian Consumer Law which cannot be excluded, neither party shall be liable for any failure to fulfil any term of any transaction (other than payment terms) governed by the Conditions of Sale if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not within that party's control.
- (b) If, due to a circumstance outside of the Company's control, the Company is able to fulfil some but not all of the demand for its goods and/or services, the Company may allocate its available supplies and resources amongst its customers in such a manner as the Company in its absolute discretion considers to be fair.

21. ANTI-BRIBERY LAWS

The Purchaser shall:

- (a) in performing its obligations under these Conditions of Sale, comply with all applicable laws, statutes, regulations and codes from time to time and hold all required permits and licences required to receive and utilise the goods and/or services;
- (b) comply with all laws relating to anti-bribery, anti-corruption, anti-slavery and human trafficking (including the Modern Slavery Act 2018 (Cth) and any other similar laws in any other jurisdiction in Australia from time to time)) and any policies of the Company relating thereto as notified to the Purchaser from time to time and not contravene any such law or policy;
- (c) promptly notify the Company if any request or demand for financial or other advantage of any kind is received by the Purchaser in connection with the provision of the goods or the performance of the services or if any foreign public official is appointed as an officer or employer of or acquires an interest in the Purchaser;
- (d) have and enforce as appropriate its own policies and procedures to ensure compliance with this clause 21; and
- (e) ensure that any person for whom the goods or services are to be provided complies with this clause 21.

22. CONFIDENTIAL INFORMATION

- (a) The Purchaser is authorised to use the Confidential Information in the following circumstances only:
 - i. to its officers, employees and contractors who need to know the Confidential Information for the purpose of using or selling the goods or services supplied under these Conditions of Sale subject to the Purchaser taking reasonable steps to ensure that any such persons are fully aware of the confidential nature of the Confidential Information before the disclosure is made;

- ii. where disclosure is required by law, provided that the Purchaser has given the Company notice where practicable and provided all assistance and co-operation which the other party reasonably considers necessary for that purpose; and
 - iii. to professional advisers of the Purchaser provided that the recipients are subject to obligations of confidentiality,
and must not otherwise use or disclose any Confidential Information.
- (b) The obligations under this clause 22 will survive the termination or expiry of these Conditions of Sale.

23. CREDIT REPORTING AND PRIVACY

- (a) The Purchaser consents to the Company obtaining from a credit-reporting agency a credit report containing personal credit information about the Purchaser in relation to any credit provided by the Company.
- (b) The Purchaser and agrees that the Company may exchange information about the Purchaser with any credit providers named in a consumer credit report issued by a reporting agency for the following purposes:
- i. to assess an application by the Purchaser;
 - ii. to notify other credit providers of a default by the Purchaser;
 - iii. to exchange information with other credit providers as to the status of this credit account, where the Purchaser is in default with other credit providers; and
 - iv. to assess the credit worthiness of the Purchaser.
- (c) The Purchaser consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.
- (d) The Company may give, information about the Purchaser to a credit reporting agency for the following purposes:
- v. to obtain a consumer credit report about the Purchaser; and
 - vi. to allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.
- (e) The Purchaser agrees that personal data provided by the Purchaser may be used and retained by the Company for the following purposes and for other purposes as may be agreed between the Purchaser the Company or required by law from time to time:
- i. the provision of goods and services;
 - ii. the marketing of goods or services by the Company, its agents or distributors in relation to the Company's goods and services;
 - iii. analysing, verifying or checking the Purchaser's credit, payment and status in relation to provision of goods and services;
 - iv. processing of any payment instructions, direct debit facilities and credit facilities requested by the Purchaser; and
 - v. enabling the daily operation of the Purchaser's account and the collection of amounts outstanding in the Purchaser's account in relation to the goods or services.

24. EXPORT CONTROL

24.1 Michelin Group Position

The Purchaser shall comply with the Michelin Group Positions, which may contain more restrictive provisions than the Trade Restrictions as defined below. The Michelin Group Positions are based on commercial considerations and other compliance concerns, including but not limited to: money laundering and corruption concerns and concerns related to the financing of terrorism. These Michelin Group Positions apply to the goods sold as spare parts or incorporated in a higher-level assembly (such as fitted unit, a ground vehicle, a plane, etc...). As of signature date of these Conditions of Sale, the list of countries to which the Company refuses and prohibits any direct or indirect sales (including transit across these countries) is as follows: Cuba, Iran, North Korea, Syria. This list is subject to changes during the term of the agreement and the Company reserves the right to regularly notify such changes to the Purchaser in writing.

24.2 Trade Restrictions

- (a) The Purchaser shall comply with all applicable laws and regulations with regard to the supply, sale, transfer, export, re-transfer, or re-export of the goods and/or services, including but not limited to those relating to: trade sanctions (including but not limited to comprehensive or sectoral embargoes and restricted parties) and export controls (including but not limited to military or dual usage goods), altogether defined hereafter as "Trade Restrictions". For the avoidance of doubt, all applicable laws and regulations could include those originating out of the United Nations, the European Union, the Organisation for Security and Co-operation in Europe ("OSCE"), or the United States of America.
- (b) The Purchaser shall not cause the Company to, either directly or indirectly, risk any potential violation of any applicable Trade Restrictions. Furthermore, the Purchaser will not supply, sell, transfer, export, re-transfer, re-export, or otherwise make available or use any goods and/or services supplied by the Company in order to circumvent, evade or avoid any applicable Trade Restrictions.
- (c) The Purchaser shall only supply, sell, transfer, export, re-transfer, re-export, otherwise make available or use goods as permitted by applicable law and shall not supply, sell, transfer, export, re-transfer, re-export, or otherwise make available, either directly or indirectly, any goods and/or services:
 - i. to any individual, entity or body resident, located, registered, incorporated, domiciled or headquartered in any jurisdiction targeted by applicable Trade Restrictions;
 - ii. to any "Restricted Person": Restricted Person shall mean any individual, entity or body either: (i) specifically designated or listed under Trade Restrictions; (ii) owned or controlled by any person specifically designated or listed under Trade Restrictions; or, (iii) acting for or on behalf of any person specifically designated or listed under Trade Restrictions and
 - iii. for any use, purpose or activity which is prohibited or otherwise restricted under Trade Restrictions.
- (d) Where the Company has reasonable cause to suspect that any goods and/or services may be or has been supplied, sold, transferred, exported, re-transferred, re-exported, otherwise made available to any jurisdiction targeted by applicable Trade Restrictions, or to a Restricted Person, or for any use, purpose or activity which is prohibited or otherwise restricted under Trade Restrictions, the Company reserves the right to:

- i. immediately suspend its performance under the Conditions of Sale;
 - ii. request further information or documentary evidence from the Purchaser, including but not limited to:
 - A. any licences, authorisations, permits, or approvals obtained by the Purchaser with respect to the supply, sale, transfer or export of the goods and/or services;
 - B. any end user certificates or undertakings supplied to the Purchaser;
 - C. any shipping or commercial documentation, including: invoices; or, bills of lading, in order to verify the end use(s) or end user(s) of the goods and/or services.
 - iii. take any other appropriate measure regarding its commercial relationship with the Purchaser.
- (e) The Purchaser certifies that, as of the date hereof, neither Purchaser, nor any of the Purchaser's group companies, nor any of their respective directors or officers is a Restricted Person. The Purchaser shall immediately notify the Company if the Purchaser, or any of the Purchaser's group companies, or any of their respective directors or officers becomes a Restricted Person. Furthermore, the Purchaser shall immediately inform the Company if the Purchaser is or become aware or has reasonable cause to suspect that either the Purchaser, or any of the Purchaser's group companies, or any of their respective directors or officers may become a Restricted Person.
- (f) In the event that any goods and/or services supplied by the Company is re-supplied, re-sold, re-transferred, re-exported, re-distributed or otherwise made available to any third party, the Purchaser shall take all actions reasonably necessary to ensure that such third parties: (a) comply with any applicable Trade Restrictions and Michelin Group Positions; and, (b) do not cause the Company to directly or indirectly violate any applicable Trade Restrictions or Michelin Group Positions.
- (g) The Purchaser shall indemnify and hold harmless the Company from and against any losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, any expense of litigation or settlement, and court costs, arising from any noncompliance with Trade Restrictions or Michelin Group Positions by the Purchaser. The Purchaser shall be responsible for any act or omission of the Purchaser, its officers, employees, affiliates, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

25. MISCELLANEOUS

- (a) The contract formed between the Company and the Purchaser in connection with these Conditions of Sale is personal to the Purchaser and must not be assigned to a third party without the prior written consent of the Company.
- (b) The Company may in its discretion and without notification to the Purchaser sub-contract the whole or any part of the production or delivery of the goods agreed to be sold to the Purchaser.
- (c) Any notice required or permitted to be given by either party to the other under these Conditions of Sale shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

- (d) These Conditions of Sale shall be governed by the laws of the State of Victoria and the Purchaser submits to the non-exclusive jurisdiction of the courts of that state.
- (e) If a provision of these Conditions of Sale would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these Conditions of Sale.
- (f) Except as expressly stated in these Conditions of Sale and subject to the Australian Consumer Law, these Conditions of Sale constitute the entire agreement between the parties and no conditions, understanding or agreement purporting to modify or vary the terms of these Conditions of Sale shall be binding on the Company unless otherwise agreed in writing and signed by the Company.
- (g) The Company may set off from any amounts it owes to the Purchaser or the Purchaser's Related Body Corporate, any amounts the Purchaser or the Purchaser's Related Body Corporate owes to the Company or the Company's Related Body Corporate.
 - a. Each indemnity contained in this agreement is a continuing obligation, independent from the other obligations of the parties and survives the termination or expiry of an order or these Conditions of Sale. It is not necessary for a party to incur an expense or make a payment before enforcing a right of indemnity conferred by these Conditions of Sale or to mitigate its loss.
- (h) These Conditions of Sale supersede all previous terms and conditions imposed by the Company and may be altered by the Company giving the Purchaser 30 days' notice. The amended terms shall be binding on any orders placed by the Purchaser after the notice expires.
- (i) Any provision of these Conditions of Sale that expressly or by implication are intended to come into or continue in force on or after termination shall remain in full force and effect.