

**1 SCOPE AND TERM OF AGREEMENT**

1.1 This document contains the agreed Terms of Trade between Donaldson Australasia Pty Ltd (ABN 78 000 521 200) ("we", "us" or "our") and the person or entity named in any attached or previously signed credit application, proposal, quotation or Purchase Order, or if purchasing via our website, then the person making the online purchase ("the purchaser", "you", "your") (together "the parties") for the supply by us to you of goods the "Goods") and/or services (the "Services"). It is intended that these Terms together with any credit application, proposal, quotation or Purchase Order to which these terms are attached or in which these terms are referred, together make up a legally binding agreement between you and us ("agreement").

1.2 This agreement may be accepted by doing any one or more of the following:

- 1.2.1 Signing these Terms;
- 1.2.2 Signing a credit application, proposal or quotation issued by us in which these Terms were attached or referred to; or
- 1.2.3 Issuing a purchase order or similar request for us to supply Goods or Services in response to a quotation or proposal or otherwise after having received notice of these Terms.

1.3 An order, either verbally or in writing, for the Goods and/or Services ("Purchase Order") from you shall be deemed to be an offer by you to purchase the Goods and/or Services. You will be bound to proceed with the purchase of Goods or Services upon placement of the Purchase Order. Acceptance of your offer will occur when you receive verbal or written acknowledgement, or upon delivery, whichever occurs first.

1.4 Each Purchase Order constitutes a separate agreement for the provision of Goods and/or Services described in the Purchase Order ("Supply Agreement"). The terms of each Supply Agreement consists of our quotation (if any), the Purchase Order and these Terms of Trade. All other terms or conditions including those in your offer are excluded, unless agreed in writing at the time of acceptance. For the avoidance of doubt, even where you attach or refer to other terms and conditions in a Purchase Order or other request for a quotation or supply of Goods and/or Services, received after these Terms have been accepted ("additional terms"), such additional terms are expressly excluded from this agreement and any Supply Agreement and will be of no force or effect against us even if we have commenced supplying the Goods or Services identified in your request, unless we expressly agree otherwise (by notice in writing, signed by a director).

1.5 In each Supply Agreement:  
1.5.1 references to this agreement are to be read as references to the Supply Agreement; and

1.5.2 in the event of any inconsistency between these Terms of Trade and the terms of a Purchase Order or our quotation (if any), the Terms of Trade will prevail.

1.6 Each Supply Agreement is a separate agreement which is independently terminable. Termination of any Supply Agreement (or of all Supply Agreements) does not have the effect of terminating these Terms of Trade or any other Supply Agreement, unless we expressly provide in writing.

**2 VARIATION TO CUSTOMERS' BUSINESS STRUCTURE**

2.1 Should there be any variation to any of the information supplied by you in your credit application with us or in the structure of your business (such as a conversion to or from a company or trust, or the appointment of new Directors or a change in shareholding), we must be immediately notified in writing. Until a new credit application form is signed and approved in writing by us, the original applicant to the credit application and those person(s) who signed as guarantor(s) and indemnifier(s) shall remain liable to us as though all Goods and Services were supplied to the original applicant.

**3 PRICE & TAXES**

3.1 We will supply the Goods and/or Services according to our standard published prices from time to time.

3.2 Unless otherwise stated, all prices quoted/stated do not include sales tax, goods and services tax or any other tax, duty or impost levied over the Goods and/or Services in Australia or elsewhere. All such taxes, duties and imposts will be added to the price at the designated rate unless, in the case of Australian sales tax (where it is applicable), a tax exemption number is stated or exemption certificate is provided at the time of order.

3.3 If GST is imposed in Australia on any supply made under or in connection with this agreement, we may recover from you an amount on account of GST, such amount to be in addition to the price or any other amount or consideration payable under this agreement and to be calculated by multiplying the price or any other amount or consideration payable by you for the relevant supply, by the prevailing GST rate. Any amount on account of GST recoverable from you under this clause, shall be calculated without any deduction or set-off of any other amount and is payable by you upon demand by us, whether such demand is by means of an invoice or otherwise.

3.4 All such taxes, duties & imposts will be added to the price at the designated rate.

3.5 Unless stated otherwise, all prices, quotes or other amounts are in Australian Dollars (AUD\$).

3.6 We reserve the right to make any changes necessary to the price to cover any cost variation, including (but not limited to):

3.6.1 any act or omission on your part or the part of your agents;

3.6.2 to correct any typographical or clerical errors which may be present in the prices, deliveries or specifications in any quote or offer; or

3.6.3 where you request, or we deem there to be, a variation in the scope of the supply of Goods and/or Services.

3.7 Any increases in our costs beyond our control will result in the price being increased by the same amount. In this paragraph the term "costs" includes statutory charges (other than sales tax), the price paid by us for raw materials, components, goods or services (including and dependent on rates of overseas exchange, customs duty, primage, insurance, freight & tariff), variations in commodity prices, labour rates (including and dependent on the statutory hours per week, workers' compensation, long service leave, superannuation, sick and holiday pay & public holidays) and any other costs beyond our control.

3.8 We are not obliged to commence any supply associated with any variation identified in accordance with clauses 3.6 or 3.7 unless and until you acknowledge and accept in writing the variations and associated costs implications contained in our notice.

**4 VALIDITY**

4.1 Unless otherwise stated, quotations are open for a period of fourteen (14) days from the date of quotation and thereafter are subject to confirmation before acceptance. We reserve the right to withdraw, either verbally or in writing, any quotation prior to acceptance of your offer.

**5 SUPPLY IN ACCORDANCE WITH SPECIFICATIONS**

5.1 We will manufacture and supply the Goods and/or supply the Services ordered by you and identified on the Purchase Order.

5.2 The Goods will be manufactured according to any specifications set out in the Purchase Order.

**6 DELIVERY & RISK**

**6.1 Delivery Date**

6.1.1 Time will not be of the essence under this agreement. Dates given for delivery are stated in good faith but are not to be treated as a term of this agreement.

6.1.2 Unless warranted in writing by us to the contrary, delivery dates are approximate only and although every reasonable effort will be made by us to deliver Goods and/or Services by the estimated delivery date, any failure by us to deliver by any particular date will not constitute a breach of this agreement and will not entitle you to cancel this agreement, void any part thereof, or claim compensation.

6.1.3 Where we agree in writing to guarantee a delivery date, to the extent permitted by law, we will not be liable for failure to fulfil or delays in fulfilling the order where fulfilment is prevented, delayed or hindered by strikes, lockouts, accidents, shortages, of material or labour, shipping delays, wars or any other cause (whether similar or dissimilar) beyond our control.

6.1.4 All delivery dates are dependent upon the timely receipt by us of your Purchase Order and all necessary particulars required for production and delivery of the Goods and supply of any Services.

**6.2 Part Deliveries**

6.2.1 We reserve the right to dispatch part of the order and you will be invoiced in respect of such part delivery in accordance with the payment terms set out herein.

**6.3 Date and Place of Delivery**

6.3.1 Delivery of the Goods will be "Ex Works" (Incoterms 2010) unless otherwise stated on our quotation or as otherwise agreed in writing.

6.3.2 The parties may agree alternative delivery terms and, if defined by "Incoterms" published by the International Chamber of Commerce, they will have the meaning given to them in such definition.

6.3.3 Unless otherwise agreed by us, deliveries shall be made during normal working hours and at your cost and risk. In the event you or your agent is not on site to accept the delivery, then our store person or driver's signature denoting the time, date & place of delivery, shall be deemed to be your acceptance of the said delivery.

6.3.4 Subject always to the remaining provisions of this clause 6, where we agree to make delivery of the Goods to a location other than our nominated premise, our obligation to deliver the Goods will not extend beyond delivery immediately inside the boundary of the address details provided by you and agreed by us.

6.3.5 In the event that:

(a) you or your agent is not available at the delivery location to accept the delivery of the Goods; or

(b) we or our delivery driver, in their absolute discretion, deem your nominated delivery site unsafe or inaccessible, then we reserve the right to not make the delivery of the Goods until such time as the issues in relation to the site have been rectified or an alternative time or address for delivery is arranged with us. In the meantime the Goods will be taken to and stored at our premises at your expense and any subsequent re-delivery will be at your expense.

6.3.6 You (or your agent) must carefully inspect, check and test the Goods immediately after they are delivered and the Services immediately after they are completed. Any claims with respect to damage, shortage or defect will only be considered if made in the first instance by telephone within the earlier of 3 days of delivery or completion or 48 hours from test or inspection or testing in accordance with clause 9, and also in writing within 7 days of delivery or completion.

**6.4 Packing, Crating, Transport and Insurance**

- 6.4.1 Unless stated otherwise in writing, the quoted price includes packing and crating in accordance with our standard practice. Any other packing or crating requested by you or deemed necessary by us will be payable by you.
- 6.4.2 Unless stated otherwise in writing, no allowance has been made in our price for transport, insurance & unloading costs. Should you require us to arrange these services, the cost of those services will be payable by you on demand. If you select a carrier for delivery to you, you do so on the express understanding that the carrier is acting as agent for you with respect to freight and safe carriage.
- 6.5 **Site Conditions**
- 6.5.1 No responsibility or accountability will be held by us for any ground or site conditions, or actions by other parties (including you or your Contractor's), which may cause delay or variation to this agreement. Any additional cost incurred as a result of ground or site conditions shall be subject to automatic variations under the agreement and any difference shall be to your account.
- 6.6 **Risk**
- 6.6.1 The risk of loss of or damage to the Goods will pass to you on delivery in accordance with clause 6.3 and, notwithstanding clause 8, you must, at your own expense, effect full insurance on the Goods against any loss or damage from such time that the Goods are at your risk.
- 6.7 **Shortage in Delivery or Damage or Loss in Transit**
- 6.7.1 If on delivery there are shortages in the quantity of Goods delivered or if there is any breakage or loss of Goods, you must advise us and the carrier within three days of receipt of the consignment. In the event of non-delivery of a consignment both we and the carrier must be notified in writing. A failure to notify us in the timeframes provided in this agreement of any shortage, breakages or loss of Goods and/or Services shall be deemed to be equivalent to an irrevocable acceptance of the Goods and/or Services.
- 6.8 **Force Majeure**
- 6.8.1 We shall not be liable for any failure to deliver, or delay in the delivery of the Goods or supply of the Services due to any cause beyond our reasonable control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labour disputes, governmental actions or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event our production is curtailed for any of the above reasons, we may allocate its production among our various customers.
- 7 **SERVICES**
- 7.1 With respect to any Purchase Order containing a request for Services, you must:
- 7.1.1 cooperate with us in all matters relating to the Services and provide such access to your premises, and such other facilities as may reasonably be requested by us, for the purposes of performing Services;
- 7.1.2 respond promptly to any request we make to provide direction, information, approvals, authorisations or decisions that are reasonably necessary for us to perform Services in accordance with the requirements of this agreement;
- 7.1.3 provide such materials or information as we may request to carry out the Services in a timely manner and ensure that any materials, equipment or information you supply are complete and accurate in all material respects;
- 7.1.4 obtain and maintain all necessary permits, approvals, licenses and consents necessary for the Services; and
- 7.1.5 comply with all applicable laws in relation to Services.
- 8 **RETENTION OF TITLE**
- 8.1 Until each invoice is paid in full, ownership of the Goods remains with us. Title to the Goods for each separable portion shall pass to you on payment of the full price of each respective portion.
- 8.2 After delivery, but while ownership of Goods remains with us:
- 8.2.1 you must ensure that the Goods are stored at your place(s) of business and are clearly marked by you in such a manner to ensure that they are readily identifiable as our property;
- 8.2.2 you may (unless we advise you otherwise) use, lease at market rates, or sell for full value, the Goods in the ordinary course of your business. However, if you receive payment from a third party, you agree to hold such parts of the proceeds as relate to the Goods, separately and in identifiable form, on trust for us. Such parts shall be deemed to be equal in dollar terms to the amount owing by you to us at the time of the receipt of such proceeds;
- 8.2.3 except as provided in clause 8.2.2, you must not grant anyone any interest in or charge over the Goods; and
- 8.2.4 you must insure the Goods at your cost, naming us as loss payee, for full replacement cost against all risks. We may apply the proceeds of any insurance payment to reduce the amount that you owe us.
- 8.3 Notwithstanding the foregoing or anything to the contrary contained in this agreement the parties agree:
- 8.3.1 We take a security interest under the Personal Property and Security Act 2009 (Cth) ("PPSA") in:
- (a) all present and after acquired Goods including any Services supplied by us in connection with the provision of those Goods;
- (b) any proceeds of any sale of the Goods in accordance with clause 8.2.2; and
- (c) any proceeds of the insurance referred to in clause 8.2.4, to secure (with equal priority) payment of all amounts that you owe us; and
- 8.3.2 the security interest will continue until you have paid all amounts owing to us in accordance with clause 15.
- 8.4 You:
- 8.4.1 agree that we may register (either or both) financing statements and financing change statements under the PPSA in any Goods supplied by us to you;
- 8.4.2 will promptly sign any further documents, provide any further information, or do any other things that we reasonably require at your own expense to enable us to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement); and
- 8.4.3 indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing change statement or releasing any collateral charged by the statement; and
- 8.4.4 will not register or permit to be registered a financing statement or a financing change statement in any goods in which we have a security interest without our prior written consent; and
- 8.4.5 will give us 14 days' prior written notice of any change in your name, business practice or any other details, and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details.
- 8.5 You agree that:
- 8.5.1 any purchase by you on credit terms from us or retention of title supply pursuant to this clause 8 will constitute a purchase money security interest ("PMSI") as defined under section 14 of the PPSA;
- 8.5.2 the PMSI granted herein will continue to apply to any goods hereafter acquired or proceeds of sale arising from the sale of any of the goods supplied by us under this agreement; and
- 8.5.3 to the extent permitted by law, and for better securing payment of all amounts owing by you to us under this agreement plus any costs or charges, you hereby charge all of your real and personal present and after-acquired property in favour of us;
- 8.5.4 we will continue to hold a security interest in goods presently or after acquired by you in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods.
- 8.6 You agree to waive your right to receive:
- 8.6.1 a verification statement confirming registration of a financing statement or a financing change statement relating to any security interest arising in connection with the supply of present and acquired goods from us;
- 8.6.2 a notice of our proposal to remove personal property that has become an accession in accordance with section 95 of the PPSA;
- 8.6.3 a notice of our proposal to dispose of any personal property under section 130 of the PPSA;
- 8.6.4 a notice of our proposal to retain any personal property under section 135 of the PPSA;
- 8.6.5 details of any amounts paid to other secured parties in a statement of account provided by us under section 132(3)(d) of the PPSA; and
- 8.6.6 a statement of account under section 132(4) of the PPSA.
- 8.7 You agree that:
- 8.7.1 we are under no obligation to dispose of or retain any secured property seized by us within a reasonable time under section 125 of the PPSA;
- 8.7.2 following a default, you have no rights to redeem the secured property under 142 of the PPSA; and
- 8.7.3 you have no rights to reinstate this agreement following a default under section 143 of the PPSA.
- 8.8 Except if section 275(7) of the PPSA applies, you agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available and agree not to request that such information is disclosed. We also agree to maintain confidence of information in accordance with this clause 8.8.
- 8.9 This clause 8 will survive the termination of the agreement to the extent permitted by law.
- 8.10 In the event you are in default of the payment terms stated in clause 15 or the credit limit approved by us then you without reservation irrevocably grant to us the right of entry to any of the properties under your control where the Goods are reasonably expected to be stored. You must indemnify us and hold us and our servants and agents harmless in relation to loss or damage as a result of the retaking of possession of the said Goods. Further, in the event we exercise our right of retaking possession of the said Goods, you grant to us power of sale to resell the said Goods and you further acknowledge that any shortfall owing after the said Goods are resold will be your responsibility.
- 9 **INSPECTION AND TESTS**
- 9.1 Subject to clause 11.4, upon receipt of the Goods, you have the right to inspect the Goods and to conduct an inspection or run tests to determine whether the Goods received conform to the specifications set out in the agreement.
- 9.2 Any inspection of or tests performed on the Goods conducted by us will be in accordance with our standard practice and will occur at a place of our choice. If any inspection of or test performed on the Goods has been specifically requested by you, you will be subject to an additional charge (including the cost of all Goods used in testing, and any other expenses incurred), whether or not the Goods are conforming. We will notify you when any tests requiring a witness on your behalf are ready to be carried out. If not carried out within three (3) days of that notice, those tests may

proceed in the absence of your witness but shall be deemed as to have taken place in that witness's presence.

**10 GUARANTEES**

- 10.1 This clause 10 is subject always to the operation of clauses 11, 12 and 13.
- 10.2 **Guarantees as to Goods:** You may be entitled to the benefit of guarantees provided under the Australian Consumer Law in respect of the Goods. However, you acknowledge that any guarantee excludes and that we will not be liable for:
  - 10.2.1 replacement or repairs which are required as a result of improper use of the Goods by you or a third party ; and
  - 10.2.2 damages arising from any act or omission by you where your act or omission has caused the Goods to become of unacceptable quality, or you have failed to take reasonable steps to prevent the Goods from becoming of unacceptable quality.
- 9.2 **Guarantees as to Services:** You may be entitled to the benefit of guarantees provided under the Australian Consumer Law in respect of the Services.

**11 WARRANTIES**

- 11.1 You acknowledge and agree that you are solely responsible for determining whether the Goods and/or Services are suitable for your intended purpose.
- 11.2 **Warranty for Defective Goods**
- 11.2.1 Unless otherwise stated in our quotation or agreed by us at the time of acceptance of your Purchase Order, the warranty period for the supply of Goods shall be:
  - (a) one year from the date of delivery of the Goods; or
  - (b) in respect of the major structural components of the Goods, 10 years from the date of delivery,
 ("Goods Warranty Period").
- 11.2.2 We warrant that the Goods will on their delivery to you conform with the description in the relevant Supply Agreement or agreed by us in writing at the time of acceptance of your Purchase Order, and that they will be free from defects as at the delivery date ("Goods Defects Warranty")
- 11.3 **Warranty for Services**
- 11.3.1 We warrant that the Services will on the date of supply to you conform with the description in the relevant Supply Agreement and that they will be free from defects as at the delivery date ("Services Defects Warranty")
- 11.3.2 Unless otherwise required by law or stated in our quotation or agreed by us at the time of acceptance of your Purchase Order, the warranty period for the Services Defects Warranty shall be three months from the date of delivery of the completed service ("Services Warranty Period").
- 11.4 Nothing in this clause 11 is intended to limit, restrict or exclude any obligation on our part that applies under any law in force in Australia and that may not lawfully be limited, restricted or excluded, including without limitation the Australian Consumer Law.
- 11.5 **Warranty Conditions - Non-Consumer**
- 11.5.1 Clause 11.5 applies if you are not a "Consumer" (as that term is defined under the relevant part of the Australian Consumer Law). If you are a Consumer, the Warranty Conditions in clause 11.6 applies.
- 11.5.2 If there is a breach by us of any warranty provided by us in relation to the Goods, we will do one or more of the following at our discretion, which will be your sole remedy in respect of such breach:
  - (a) in the case of Goods, either replace the Goods, supply equivalent goods, repair the Goods, or return the invoiced price of the Goods to you; or
  - (b) in the case of Services, either the supply to you again of the relevant Services or the payment to you of the cost of having the Services supplied again by us.
- 11.5.3 All claims with respect to a breach of warranty must be made by you to us in writing within the warranty period stated in clauses 11.2.1 or 11.3.2 (as applicable), otherwise we will not be liable for the defect, breach or non-conformance.
- 11.5.4 The repair of Goods on site is at our option. The cost of returning any defective Goods to us shall be borne by you.
- 11.5.5 Except as expressly provided in this clause 11, but subject to clause 12 and to the extent permitted by law:
  - (a) we will not be liable to you for any loss, damage (whether direct or indirect, special or consequential) or injury resulting from any breach of warranty or any defective material, faulty workmanship or otherwise howsoever arising out of this agreement or the installation or use of the Goods or their resale or the provision of any services, whether or not caused by our negligence or default or by the negligence or default of our employees or agents or otherwise; and
  - (b) all other terms, conditions, warranties and guarantees implied or imposed by statute, common law or otherwise in relation to the Goods (including without limiting the generality of the foregoing any implied or imposed warranty or guarantee that the Goods are suitable or fit for any particular use or purpose or that the Goods will comply with a sample) or the Services are hereby excluded
- 11.5.6 Second hand Goods are not subject to the warranty contained in this clause 11.5 unless specifically stated in the quotation or agreed in writing at the time of acceptance of your Purchase Order.
- 11.6 **Warranty Conditions - Consumer**

- 11.6.1 Clause 11.6 applies if you are a Consumer (as that term is defined under the relevant part of the Australian Consumer Law). If you are a non-Consumer, the Warranty Conditions in clause 11.5 applies.
- 11.6.2 The benefits to you of this express warranty are in addition to other rights and remedies you have under the Australian Consumer Law.
- 11.6.3 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 11.6.4 If there is a breach by us of any warranty provided by us in regard to the Goods or Services provided under this agreement then we will:
  - (a) repair or replace the Goods or relevant parts;
  - (b) resupply or rectify the services; or
  - (c) where we determine that it is not feasible to repair or replace the Goods or rectify the services, refund to you the amount invoiced for the Goods or services.
- 11.6.5 To claim the warranty you must write to us within the relevant Goods or Services Warranty Period specifying the nature of the defect, breach or non-conformance. All written correspondence must be sent to:
 

Donaldson Australasia Pty Limited  
Attention: **Technical Services**  
PO Box 153  
WYONG NSW 2259  
Phone: +61 2 4350 2000  
Fax: +61 2 4351 2036  
Email: [ifsorders@donaldson.com](mailto:ifsorders@donaldson.com)
- 11.6.6 If you make a warranty claim in accordance with this clause 11, you will be responsible for all expenses associated with the warranty claim other than the costs of the repair, replacement, rectification or refund for the Goods or Services including the cost of returning any defective Goods to us.
- 11.7 **Warranty regarding Information:** We do not warrant the accuracy, sufficiency or completeness of any information provided by you. Liability for any loss or damages arising out of information provided by you remains your sole liability and you indemnify us and hold us harmless to the extent that we suffer or incur any loss, damages, cost, expense or liability arising directly or indirectly out of the inaccuracy or incompleteness of such information.
- 12 **LIMITATION OF LIABILITY**
- 12.1 If you are not a Consumer (as that term is defined under the relevant part of the Australian Consumer Law), then to the extent permitted by law:
  - 12.1.1 we will not under any circumstances be liable for any contingent, indirect, consequential or special losses (including but not limited to loss of profit or income, loss of business opportunity, business interruption, increased expense of operation or any financing and holding costs), damages or injuries arising directly or indirectly from this agreement or any performance or failure to perform this agreement, whether in contract, tort, negligence, strict liability or otherwise, including (but not limited to) our negligence, default or misconduct even if informed of the possibility of such damages;
  - 12.1.2 except where the Goods are second-hand goods, our liability arising from the performance or failure to perform the Supply Agreement whether in contract, tort, negligence, strict liability or otherwise, is limited to, at our option:
    - (a) replacement of the Goods or the supply of equivalent or replacement goods;
    - (b) payment of the cost of replacing the Goods or of acquiring equivalent goods; or
    - (c) repayment of any part of the purchase price of the Goods which has been paid by you;
  - 12.1.3 where the Goods are second-hand goods, we will not have any obligation to replace, repair or repay you the purchase price (or part thereof) of the Goods;
  - 12.1.4 we will have no liability to you whatsoever for any loss or for damage to property caused by any act or omission (including negligent acts or omissions) by us or our employees or contractors, wherever occurring or arising in connection with this agreement; and
  - 12.1.5 in respect of any other obligation, breach or liability (including any obligation, breach or liability of our employees, agents, suppliers or subcontractors) under or in connection with a supply, or any failure to perform a supply which is not covered under clauses 12.1.1, 12.1.2, 12.1.3 and 12.1.4 (including the supply of second-hand goods), our maximum liability which may arise under any principle of law (including but not limited to breach of contract, tort, negligence, or under an indemnity) shall be limited and completely discharged by the payment of an amount equivalent to the aggregate of the purchase price paid by you in respect of Supply Agreements for the 12 month period prior to the event giving rise to the liability.
- 12.2 If you are a Consumer (as that term is defined under the relevant part of the Australian Consumer Law), our liability for the failure to comply with a guarantee required under the Australian Consumer Law is limited as follows:
  - 12.2.1 if the failure cannot be remedied or is a major failure as defined in the Australian Consumer Law (a "Relevant Failure"), our liability is as stated in the Australian Consumer Law in respect of that Relevant Failure;

- 12.2.2 if such failure is not a Relevant Failure and if the Goods are not of a kind ordinarily acquired for personal, domestic or household use, then in our absolute discretion:
- (a) if the failure is in respect of Services, our liability is limited to the supply of those Services again or the payment of the cost of having those Services re-supplied;
- (b) if the failure is in respect of Goods, our liability is limited to replacement of the Goods, the supply of equivalent goods, the repair of the Goods or the cost of replacing the Goods or having them repaired.
- 12.3 You acknowledge and agree that our liability and obligation to honour any claim under of in connection with this Agreement does not extend to rectification of defects, loss or damage:
- 12.3.1 caused or contributed to by the storage, installation, use or operation of any part of the Goods or completed Services otherwise than in accordance with our guidelines or specifications and under normal working conditions;
- 12.3.2 resulting from reasonable wear and tear or adverse or unintended environmental conditions;
- 12.3.3 arising out of or in connection with the misuse, neglect or wilful destruction of any part of the Goods or completed Services;
- 12.3.4 resulting from maintenance, repair or modification of the Goods other than with our prior written consent;
- 12.3.5 caused by or to the Goods or completed Services as a result of continued use of any part of the Goods or Services after a defect has been detected or out to have been detected.
- 12.3.6 We will use reasonable endeavours to transfer to you any warranties given by third party manufacturers where any part of the Goods contain products or components not manufactured by us ("third party goods"), however we will not be responsible for negotiating with manufacturers on your behalf in relation to the third party goods. You acknowledge that any guarantee and warranty provided under this agreement does not extend to and expressly excludes third party goods. You should familiarise yourself with the terms of any warranty provided by the manufacturer of, or otherwise attaching to, third party goods.
- 12.4 You agree to indemnify us against all losses and expenses which we may suffer or incur due to your failure to observe your obligations under this agreement; and any claims made against us by any third party arising out of any act or omission by you in connection with this agreement.
- 12.5 You agree to release and hold us harmless from any liability whatsoever arising in connection with any dispute between us and you as to whether any interest registered on the Personal Property Security Register constitutes a valid security interest capable of registration.
- 12.6 Notwithstanding any other provision of this agreement, including this clause 12, to the extent permitted by applicable law, the limitations and exclusions stated in this agreement, including this clause 12, will apply regardless of whether liability arises from breach of contract, tort (including but not limited to our negligence, default or misconduct or the negligence, default or misconduct of our employees, representatives or agents), by operation of law, or otherwise.
- 12.7 If you are not a Consumer as defined under the relevant part of the Australian Consumer Law, then to the extent permitted by law all causes of action against us, arising out of or in connection with the supply of the Goods shall expire unless brought within six months of the time of accrual thereof.
- 13 **PRODUCT DISCLAIMER**
- This clause 13 applies to the extent that the Goods comprise of any dust collector or air filtration products.**
- 13.1 **Donaldson Industrial Air Filtration dust collectors (Torit DCE) and other air filtration products are marketed, sold and manufactured by us for a variety of applications. Some of those applications (such as grain handling/processing and woodworking) include processes or materials with inherent fire and explosion hazards. Set out below are our rights and responsibilities as well as your rights and responsibilities (including the rights and responsibilities of the users of the Goods) in respect of the use of any such air filtration products.**
- 13.2 **You hereby acknowledge and agree to, and must ensure that any users of the Goods including air filtration products are aware of, the following:**
- (a) **we are neither an expert nor a certified consultant for fire, spark or explosion detection, suppression and control;**
- (b) **we do not provide engineering consulting services or fire, spark or explosion detection, risk reduction and management advice or services;**
- (c) **we do not advise on your (or any user of the Goods) compliance obligations under relevant legislation**
- (d) **there are many factors which contribute to fires and explosions, which are out of our control. These factors include but are not limited to the design and maintenance of the ductwork, fire suppression and detection systems, as well as worker procedure and error; and**
- (e) **we therefore do not guarantee the suitability of the Goods in respect of a particular installation or application and assume no liability for loss, damages, costs, expenses or other liability arising out of fires and explosions:**
- (i) **caused by the improper use of the Goods in a particular installation or application if you are Consumer (as defined under the relevant part of the Australian Consumer Law); and**
- (ii) **caused by the use of the Goods in a particular installation or application if you are not a Consumer (as defined under the relevant part of the Australian Consumer Law)..**
- 13.3 **Donaldson Industrial Air Filtration products are available with sprinkler taps and/or explosion vents, but the fitness of these devices for a particular application or installation is your responsibility to ascertain. We recommend that all dust control system designs be reviewed and approved by an expert consultant who is responsible for the integrity of the system design and compliance with locally accepted codes and applicable laws. We also recommend that proper maintenance procedures and work practices be followed to maintain any dust control system in safe operating condition.**
- 13.4 **We request that you work with us during the proposal and design stages of the projects so that we may recommend an appropriate dust collector for given dust control systems.**
- 13.5 **Notwithstanding the above, you acknowledge and agree that selection and implementation of the appropriate filtration systems is your responsibility and you release us and hold us harmless from any and all claims, suits, loss, cost, damage (including incidental or consequential damage) or expense that arises directly or indirectly from your selection and implementation of any filtration system.**
- 13.6 **We may from time to time make suggestions and referrals to you of third party consultants, suppliers and other experts that we believe in good faith are suitable to give you advice and consultancy services in relation to the selection, installation and use of the appropriate filtration system and guidance on fire and explosion risk reduction and management.**
- 13.7 **Should we or any of our employees or agents at any time give any advice to you on any matter set out at clause 13.2 at your request or otherwise, you acknowledge that such advice, whilst given in good faith, may not be accurate or correct. You release and forever discharge us in respect of such advice and indemnify us against any loss, cost, expense, damage or injury which may be caused or contributed to in reliance upon or otherwise as a result of such advice.**
- 13.8 **The disclaimer in clause 13 applies to goods to be supplied under all quotes and proposals made by us for any air filtration products. Acceptance and/or approval of quotes and/or proposals include the acceptance of this disclaimer.**
- 14 **NUCLEAR APPLICATION EXCLUSION**
- 14.1 Goods and Services supplied by us under this agreement are not intended for use in any nuclear or nuclear-related applications. You hereby accept the Goods and Services in accordance with this restriction on use and agree to communicate this restriction in writing to any and all subsequent purchasers or users of the Goods and Services. You agree to release us and hold us harmless from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of the Goods and Services in any nuclear or nuclear-related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that our liability is based on negligence or strict liability.
- 15 **PAYMENT**
- 15.1 Individual deliveries or deliveries of separate instalments may be invoiced separately and shall be paid for accordingly.
- 15.2 Payment is only received by us when the payment is made in cash, or when the proceeds of other methods of payment are cleared and credited to our bank account.
- 15.3 Payments by cheque are not deemed to have been made until such time as the cheque has been duly honoured.
- 15.4 **No Credit Account**
- 15.4.1 Unless a credit account is held by you with us, you must pay for the Goods in full on or before the date of shipment.
- 15.5 **Credit Account**
- 15.5.1 A credit account will be opened only if you are approved by our Credit Department.
- 15.5.2 If a credit account is held by you then except where varied in writing, we may:
- (a) at the end of each month submit to you progress invoices for work completed or materials (including imported items) in transit which are purchased by us prior to completion of delivery to you of the Goods;
- (b) invoice the full value of the Goods on delivery; and
- (c) charge you storage charges if a delay in delivery occurs for more than two weeks after completion of manufacture due to circumstances beyond our control.
- 15.5.3 All invoices must be paid in full (without any set-off or counterclaim) and payment must be received by us within 30 days of the date of the invoice, unless otherwise agreed in writing.
- 15.5.4 We reserve the right, at anytime upon written notice, to alter, suspend or withdraw credit facilities, or to change our standard terms of credit or the credit terms provided in this agreement, when (in our sole discretion) your financial condition so warrants.

- 15.6 **Default in Payment**
- 15.6.1 Should payment not be made in accordance with our payment terms, we may in addition to our other rights, charge you weekly interest on the overdue amount based on the prevailing Commonwealth Bank of Australia base corporate overdraft rate for facilities under \$100,000 plus 3%, calculated from the date payment was due to the date of full and final payment.
- 15.6.2 Payment will be first credited against interest accrued.
- 15.6.3 If you fail to pay any amount to us when due, whether in respect of this or any other agreement between us, we may, in addition to any other rights we may have, either suspend further deliveries of Goods or terminate this agreement, in either event we will be entitled to payment from you for Goods and Services already delivered, in the process of being delivered and Goods in the course of manufacture and/or request satisfactory security before credit is restored.
- 16 **RETURNS, CREDITS AND CANCELLATION**
- 16.1 Other than in respect of our obligations pursuant to clauses 10, 11 and 12, and subject to any rights you may have under the Australian Consumer Law, we do not accept the return of any Goods. We may in our absolute discretion provide credits for the return of standard stock items provided the Goods are:
- 16.1.1 returned within fourteen (14) days of delivery, to our warehouse at your expense; and
- 16.1.2 accompanied by a delivery docket stating our original invoice number and reason for return; and
- 16.1.3 returned in original packaging, unused, undamaged and saleable.
- 16.2 A restocking fee of 20% of original net invoice value will apply to all Goods returned except where Goods are returned in accordance with clauses 10 and 12, have been wrongly supplied or are faulty or are otherwise returned in accordance with your rights (and if such rights cannot be excluded) under the Australian Consumer Law.
- 16.3 Goods manufactured to your order or specification can not be returned for credit under any circumstance, other than in accordance with clauses 10, 11 and 12 or if you are entitled to do so in accordance with your rights (and if such rights cannot be excluded) under the Australian Consumer Law.
- 16.4 To the extent permitted by law, you may only cancel the order with our written consent and upon payment of reasonable and appropriate cancellation charges to be determined by us, which will include, but is not limited to, engineering specifically required for the order, outside purchases, vendor cancellation or restocking charges, manufacturing processes completed before cancellation, administrative costs and other actual costs already incurred by us in fulfilling the order. Changes to orders after completion of engineering will attract additional engineering fees and will result in delays in shipment and will be subject to clauses 3.6-3.8.
- 17 **INTELLECTUAL PROPERTY**
- 17.1 **Ownership of Rights**
- 17.1.1 In placing your Purchase Order, you acknowledge and agree that all intellectual property rights in respect to the Goods or their manufacture (as applicable) are owned exclusively by us, except for copyright in designs, specifications or drawings provided by you.
- 17.2 **Restrictions on Use etc.**
- 17.2.1 You must not without our prior written consent decompile, disassemble, reverse engineer, manufacture, duplicate or modify any of the Goods or components thereof nor reproduce, copy or disclose nor permit others to reproduce, copy or disclose any of our designs, specifications or drawings.
- 17.3 **Infringement**
- 17.3.1 In the event of any claim for infringement of intellectual property (including but not limited to a registered design, trade mark, copyright, letters patent, or rights of confidentiality) relating to any Goods or components thereof (other than Goods or components based on a specification or design provided or specified by you), we will either replace or modify such Goods or component with non-infringing Goods or components or procure for you the right to use such Goods or components, provided we are given the full opportunity to conduct all negotiations in respect of such claims. To the extent permitted by law, in no event will we be liable for any losses arising from use or non-use of any such infringing Goods or components.
- 17.3.2 You warrant that any specification, design or instructions specified or provided by you or on your behalf to us will not cause us to infringe any rights of another party (including but not limited to intellectual property rights) and you agree to indemnify us and keep us indemnified for and against any loss or damage suffered by us arising from any breach of that warranty.
- 17.3.3 Notwithstanding the limitations set out in clause 17.2, if you (or any person on your behalf) does alter, modify or develop any of our Goods or any component thereof, then subject to any intellectual property rights existing in any third party, all intellectual property rights then existing in the Goods or components as altered, modified or developed will immediately vest in us upon their creation. You must do all things and sign all documents to ensure vesting occurs in a timely fashion if for some reason it does not occur immediately upon creation.
- 18 **CONFIDENTIALITY**
- 18.1.1 Neither party will, without the prior written approval of the other party, disclose the other party's confidential information, which includes the content of this Agreement, any information of a party which is marked confidential and any information which is by its nature confidential.
- 18.1.2 You hereby expressly consent to us releasing or disclosing to our third party suppliers all drawings, specifications or other documents provided by you in connection with an order, where that release or disclosure is (in our reasonable opinion) required for us to complete the order or otherwise comply with this Agreement.
- 18.1.3 A party will not be in breach of this clause in circumstances where it is legally compelled to disclose the other party's confidential information or where such confidential information is already in the public domain other than as a result of that party's breach of this Agreement.
- 18.1.4 Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement to its solicitors, auditors, insurers and accountants.
- 18.1.5 This clause 18 will survive the termination or completion of this Agreement.
- 19 **BANKRUPTCY, LIQUIDATION AND DEFAULT**
- 19.1 If you default in due observance or performance of any or all of your obligations herein or, if you are a person and die or commit an act of bankruptcy, or if you are a company and you take or have taken against you any action for the winding up or the placing of the company under official management, administration, liquidation or receivership other than for the purposes of reconstruction, we may without prejudice to any other rights herein or at law give notice to you of our intention to do any or all of the following:
- 19.1.1 treat the agreement as repudiated and sue for breach;
- 19.1.2 suspend manufacture or delivery of the Goods;
- 19.1.3 claim the return of all Goods where title has not yet transferred to you;
- 19.1.4 retain any security given or monies paid by you and apply this against the assessed loss and damages incurred by us in performing the contract; or
- 19.1.5 make all outstanding amounts immediately due and payable.
- 20 **SERVICE OF NOTICE**
- 20.1 Notices are deemed to have been delivered if left at the party's last known address, sent to the party's last known address by pre-paid ordinary mail (or if the address is outside Australia, be pre-paid air mail) or by facsimile to the last known facsimile number of the party, provided the transmitting facsimile records the successful transmission of the facsimile.
- 21 **ARBITRATION**
- 21.1 If at any time any question, dispute or difference ("Dispute") whatsoever should arise between the parties in connection with or arising out of this agreement, then either party to this agreement may give to the other notice in writing of the existence of such Dispute.
- 21.2 If the parties are unable to mutually resolve such Dispute within 21 days, then the parties shall submit the Dispute to arbitration by a sole arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an arbitrator appointed by the President for the time being of the President or Acting President for the time being of the NSW Chapter of The Institute of Arbitrators & Mediators, Australia. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the Dispute. The award of the arbitrator shall be final and binding on the parties, including any determination on the costs. The venue of the arbitration shall be in Newcastle, Australia.
- 22 **INDEMNITY**
- 22.1 If you are Consumer (as defined under the relevant part of the Australian Consumer Law) and if we suffer any damage, loss, claim, action or expense as a result of your improper installation, use or application of the Goods, or your failure to comply with any obligation under this agreement, you must indemnify us and keep us indemnified in respect of such damage, loss, claim, action or expense.
- 22.2 If you are not a Consumer (as defined under the relevant part of the Australian Consumer Law) and if we suffer any damage, loss, claim, action or expense as a result of your installation, use or application of the Goods or as a result of your resale of the Goods, or your failure to comply with any obligation under this agreement, you must indemnify us and keep us indemnified in respect of such damage, loss, claim, action or expense.
- 22.3 You further agree to indemnify us for any legal costs and disbursements on a lawyer and own client basis incurred by us in respect of this agreement, or other documentation required while credit is being offered in consequence of this agreement, and you further agree to indemnify us for any dishonoured cheque fees incurred and in the event that your account is in default of the agreement, to indemnify us against its collection fees and legal costs.
- 23 **WAIVER**
- 23.1 No failure to exercise nor any delay in exercising any right, power or remedy under this agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 24 **GENERAL**
- 24.1 Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the agreement.
- 24.2 No right, interest or obligation in this agreement can be assigned or subcontracted by you without our prior written consent. We may assign, sub-contract or otherwise transfer any right, obligation or benefit under this agreement, or any part thereof, to any other party without your consent.

