



A.C.N. 067 591 155 A.B.N. 24 067 591 155  
SUPPLIERS OF CONVEYOR BELTING AND TRANSMISSION EQUIPMENT

15 PELMET CRESCENT  
THOMASTOWN VIC 3074  
AUSTRALIA

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## **STANDARD TERMS AND CONDITIONS OF SALE**

All goods and services purchased from F & D O'Connor ("the Company") are sold subject to the following Terms and Conditions of Sale ("Terms and Conditions") and these Terms and Conditions shall prevail notwithstanding any other document, terms and conditions and/or anything else except a written agreement signed by the Customer and the Company, except only for such terms as are implied by or under any law and which cannot be excluded.

### **1. Price & Goods and Services Tax ("GST")**

1.1 Prices may be altered without notice and all goods will be charged at the price at the time of order. Any GST and/or any other Government imposts whatsoever applicable to the supply of goods and/or services will be payable by the Customer. Australian law exempts exports from GST.

### **2. Payment**

- 2.1 Standard trading terms are strictly thirty (30) days and that payment is due 30 days from the month in which invoiced or charges are debited to the account.
- 2.1 The Customer shall pay all accounts on or before the due date and acknowledge that should payment become overdue, the account may be suspended without notice until the account is brought within trading terms.
- 2.3 Interest may be charged on any overdue amounts at a rate fixed pursuant to the Penalty Interest Rate Act 1983.
- 2.4 The Customer shall pay any and all costs, fees and expenses, inclusive of commission, legal expenses and disbursements incurred in obtaining or attempting to obtain payment of any overdue account.
- 2.5 If the Customer defaults in any payment, or if in the opinion of the Company, the Customer is unlikely to be able to meet its liability as it falls due then the Company may as its option, cancel the Customers account until all payments have been made to the Company's satisfaction.

### **3. Returns and Credits**

- 3.1 No goods will be accepted for return unless the Company authorises the return in writing. A restocking fee will apply to any goods returned. The Customer shall prepay delivery of any returned goods.
- 3.2 The Company shall not accept the return of the following goods:

3.2.1 Goods reworked from standard,

**3.2.2** belts cut to length,

**3.2.3** Belts cut to non-standard widths.

3.3 All products manufactured by the Company or which are supplied by the Company as the Sole Australian Agent, are warranted to be of good material and workmanship and to be free from defects at the time they leave the Companies premises. Any part or parts which, under normal use and service, are proven to be defective within three months from date of delivery may, upon examination by the Company, be repaired or replaced free of charge. All such parts must be returned, freight pre-paid to the Company premises in Thomastown for inspection. This warranty shall not apply to parts which have been reworked or subject to negligence, accident, damage or improper operation, maintenance, storage or installation.

#### **4. Implied Terms**

It is hereby acknowledged by the Company that, under applicable State, Territory and Commonwealth law, certain conditions and warranties may be implied in the contract between the Company and the Customer and rights and remedies conferred upon the Customer and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ('**Non-excludable Rights**'). The limitations below are subject to these Non-excludable Rights.

Subject to the above, the Company disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Customer or other parties, by statute the common law equity trade custom or usage or otherwise and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.

The Company's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the Customer an amount equal to;

- (1) the cost of replacing the Goods;
- (2) the cost of obtaining equivalent Goods; or
- (3) The cost of having the Goods repaired, whichever is the lowest amount.

Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

#### **5. Indirect Loss**

Accordingly, subject to Clause 4, in no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Customer arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Customer as a result of a breach by the Company of

its obligations or otherwise including but not limited to economic or moral loss of profits or revenue or costs arising from such breach.

## **6. Indemnity**

Subject to Clause 4, the Customer shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from any of the following:

- (a) as a result of the Customer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
- (b) as a result of any other negligence or other breach of duty by the Customer; or
- (c) As a result of any compliance or adherence by the Company with any instructions of the Customer in relation to the Goods or their manner of fabrication.

## **7. Caveat**

8.1 In consideration of the Company selling the goods to the Customer, the Customer agrees to charge the Customer's interest in any land held by the Customer, in favor of the Company to secure payment of all monies due to the Company, whether contingently or otherwise (the "Charge"). The Customer acknowledges that the Company may lodge a caveat in respect of the Company's rights and interests pursuant to the Charge (the "Caveat").

8.2 Any registration fees and solicitor-client legal costs relating to the Charge and/or Caveat shall be paid by the Customer upon request. The Company may pay any such cost or expense itself and may recover such costs from the Customer as monies owing to the Company.

## **9. Property & Risk**

9.1 The risk of loss or damage to the Goods shall pass to the Customer on delivery;

9.2 Property in the Goods shall not pass from the Company to the Customer until the Customer has paid all monies outstanding from the Customer to the Company on any account in full;

9.3 The Customer agrees to store the Goods separately and mark them so as to render them identifiable as being made from or with goods which are the property of the Company.

## **10. Rights in relation to the Goods –**

10.1 In connection with the Goods while they remain the property of the Company, the Customer agrees with the Company that:

10.1.1 The Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Customer;

10.1.2 the Customer cannot claim any lien over the Goods;

- 10.1.3 The Customer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;
- 10.1.4 where the Customer is in actual or constructive possession of the Goods:
  - 10.1.4.1 The Customer will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
  - 10.1.4.2 It is in possession of the Goods as a bailee of those Goods and owes the Company the duties and liabilities of a bailee.
- 10.2 If the Customer supplies any of the Goods to any person before all moneys payable by the Customer have been paid to the Company (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer), the Customer agrees that:
  - 10.2.1 .2.1it holds the proceeds of re-supply of the Goods on trust for and as agent for the Company immediately when they are receivable or are received;
  - 10.2.2 it must either pay the amount of the proceeds or re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company;
  - 10.2.3 any accessory or item which attaches to any of the Goods by an act of the Customer or any person at the direction or request of the Customer becomes and remains the property of the Company until the Company is paid;
  - 10.2.4 if the Customer fails to pay for the Goods within the period of credit (if any) extended by the Company to the Customer, the Company may recover possession of the Goods at any site owned, possessed or controlled by the Customer and the Customer agrees that the Company has an irrevocable licence to do so.

## **11. Cancellation**

- 11.1 Once an order has been accepted by the Company, it can only be cancelled, varied or suspended (whether in whole or in part) upon the following terms and conditions:
  - 11.1.1 Where manufacture of the goods has not commenced;
  - 11.1.2 Agreement by the Company in writing;
  - 11.1.3 The Customer agrees to pay all cost; expenses and liabilities incurred by the Company in consequence of the cancellation, variation or suspension on the order and accept consequential delay.

## **12. Limitation of Liability**

- 12.1 The Company shall not be liable for delay in delivery arising from any cause, including negligence on its part. The Customer shall not be relieved from any obligation to accept or pay for goods by reason of delay in delivery or dispatch; in no event shall the Company be responsible for any loss of profits, penalties, expenditure or damages incurred by the Customer arising out of any delay in delivery.

- 12.2 No claim by the Customer for failure to deliver, short deliver, supply of incorrect goods, faulty goods and pricing errors shall lie unless made in writing within 7 days of delivery or in case of failure to deliver, expenditure of damages incurred by the Customer arising out of any delay in delivery.
- 11.3 Any claim, loss and/or damages arising directly or indirectly from the sale or supply or failure to supply or supply of faulty goods by the Company or from the breach whatsoever and howsoever of a contract to sell or supply goods by the Company to the Customer (including any claim arising through negligence or willful act of the Company) shall be limited to the invoice price of the goods or at the Company's option the replacement to the goods.
- 11.4 The Company is not responsible for any damage whatsoever which may be caused to third parties as a result of any breach of contract by the Company.
- 12.5 The Customer hereby indemnifies the company for any claims whatsoever and howsoever made by a third party against the Company for any default of Company in relation to or directly or indirectly arising from any contract and/or arrangement made between the Company and the Customer.