



Donaldson Company Inc. General Terms and Conditions of Sale - Australasia

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 you (together "the parties") for the supply by us to you of goods (the "Goods") and/or services (the "Services") and these Terms of Trade will prevail over all prior negotiations, proposals or correspondence or previous dealings between the parties and any other notification purported to be provided or delivered by or on behalf of you.

1.2 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. Acceptance of your offer will occur when you receive verbal or written acknowledgement, or upon delivery, whichever occurs first.

1.3 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.

1.4 In each Supply Agreement:

1.4.1 references to this agreement are to be read as references to the Supply Agreement; and

1.4.2 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.

1.5 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. Except if we expressly provide in writing, termination of the Terms of Trade does not terminate any Supply Agreement that may be in force as at the effective date of termination of the Terms of Trade.

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 or with us in the structure of your business (such as a conversion to or from a company or trust, or the appointment of new Directors), 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 and 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; and/or,

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.

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.

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 and 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 entitle you to cancel the agreement or void any of these Terms of Trade 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 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.

6.4 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 7, 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.

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, labor 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. Retention of Title

7.1 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 the full payment price of each respective portion.

7.2 After delivery, but while ownership of Goods remains with us:

7.2.1 you must ensure that the Goods are stored at your place(s) of business and they shall be marked accordingly by you in such a manner as they are readily identifiable as our property;

7.2.2 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 relates to the Goods, separately and in identifiable form, on trust for us. Such part 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;

7.2.3 except as provided in clause 7.2.2, you must not grant anyone any interest in or charge over the Goods; and

7.2.4 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.

7.3 In the event you are in default of the payment terms stated in clause 12 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.

8. Inspection and Tests

8.1 Subject to clause 8.2, 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.

8.2 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.

9. Guarantees

9.1 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:

9.1.1 replacement or repairs which are required as a result of improper use of the Goods by you or a third party ; and

9.1.2 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 If the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then except for those guarantees that cannot by law be limited or excluded, all guarantees in respect of the Goods (including but not limited to guarantees as to acceptable quality and fitness for purpose) are hereby limited to :

(a) the replacement of the Goods or the supply of equivalent goods;

(b) the repair of the Goods;

(c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

(d) the payment of the cost of having the Goods repaired.

10. Warranties

10.1 Warranty for Defective Goods

10.1.1 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 Dust Collectors, 10 years from the date of delivery, ("Goods Warranty Period").

10.1.2 We warrant that the Goods will on their delivery to you conform with the description in this 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")

10.2 Warranty Conditions - Non-Consumer: Clause 10.2 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 10.1 applies.

10.2.1 If the Goods provided by us to you are substantially in accordance with the requirements of the agreement between the parties, excluding minor omissions or minor defects which do not substantially affect normal use of the Goods, you must promptly advise the date of acceptance within 48 hours from delivery of the Goods to you in accordance with clause 6 or completion of the Services, otherwise acceptance will be deemed to have been notified on the expiration of that period.

10.2.2 Any Goods which have been rejected by you will be repaired or replaced by us (at our discretion). If the Goods are rejected, the notice must state the reasons for the rejection, otherwise we will not be obliged to accept the notice of rejection.

10.2.3 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.

10.2.4 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 10.1.1 or 10.2.1 (as applicable), otherwise we will not be liable for the defect, breach or non-conformance.

10.2.5 The repair of Goods on site is at our option. The cost of returning any defective Goods to us shall be borne by you.

10.2.6 Except as expressly provided in this clause 10, but subject to clause 11 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

10.2.7 Second hand Goods are not subject to the warranty contained in this clause 10.3 unless specifically stated in the quotation or agreed in writing at the time of acceptance of your Purchase Order.

10.3 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 out of the inaccuracy or incompleteness of such information.

11. Limitation of Liability

11.1 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:

11.1.1 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;

11.1.2 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;

11.1.3 where the Goods are second-hand goods, we will not have an obligation to replace, repair or repay you the purchase price (or part thereof) of the Goods;

11.1.4 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

11.1.5 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 11.1.1, 11.1.2, 11.1.3 and 11.1.4 (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 one dollar.

11.2 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:

11.2.1 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;

11.2.2 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 resupplied;

(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.

11.3 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.

11.4 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.

11.5 Notwithstanding any other provision of this agreement, including this clause 11, to the extent permitted by applicable law, the limitations and exclusions stated in this agreement, including this clause 11, 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.

11.6 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.

12. Payment

12.1 Individual deliveries or deliveries of separate installments may be invoiced separately and shall be paid for accordingly.

12.2 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.

12.3 Payments by cheque are not deemed to have been made until such time as the cheque has been duly honoured.

12.4 No Credit Account

12.4.1 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.

12.5 Credit Account

12.5.1 A credit account will be opened only if you are approved by our Credit Department.

12.5.2 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.

12.5.3 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.

12.5.4 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.

12.6 Default in Payment

12.6.1 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.

12.6.2 Payment will be first credited against interest accrued.

12.6.3 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 which 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.

13. Returns, Credits, and Cancellation

13.1 Other than in respect of our obligations pursuant to clauses 9, 10 and 11, 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:

13.1.1 returned within fourteen (14) days of delivery to our warehouse at your expense; and

13.1.2 accompanied by a delivery docket stating our original invoice number and reason for return; and

13.1.3 returned in original packaging, undamaged and saleable.

13.2 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 9 and 11, 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.

13.3 Goods manufactured to your order or specification can not be returned for credit under any circumstance, other than in accordance with clauses 9, 10 and 11 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.

13.4 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.

14. Intellectual Property

14.1 Ownership of Rights

14.1.1 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.

14.2 Restrictions on Use etc.

14.2.1 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.

14.3 Infringement

14.3.1 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.

14.3.2 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.

15. Bankruptcy, Liquidation and Default

15.1 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:

15.1.1 treat the agreement as repudiated and sue for breach;

15.1.2 suspend manufacture or delivery of the Goods;

15.1.3 claim the return of all Goods where title has not yet transferred to you;

15.1.4 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

15.1.5 make all outstanding amounts immediately due and payable.

16. Service of Notice

16.1 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.

17. Arbitration

17.1 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.

17.2 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.

18. Indemnity

18.1 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 clause 15 or any other obligation under this agreement, you must indemnify us and keep us indemnified in respect of such damage, loss, claim, action or expense.

18.2 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 clause 15 or any other obligation under this agreement, you must indemnify us and keep us indemnified in respect of such damage, loss, claim, action or expense.

18.3 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.

19. Waiver

19.1 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.

20. General

20.1 Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the agreement.

20.2 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.

20.3 This agreement shall be governed by the laws of the jurisdiction relevant to the registered business location of the Donaldson company and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same.

20.4 In the event of any of the Terms of Trade or terms and conditions of the agreement being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance. In such a case, we will substitute for the provisions concerned a provision considered substantially equivalent in economic terms.

20.5 Nothing in this agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties.

20.6 This agreement may be amended or varied only by agreement in writing, signed by the parties.

20.7 The United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect of the supply of any Goods by us.