

Terms and Conditions of Sale

(Subject to the provision of the Trade Practices Act 1974 and any statutory amendment or re-enactment thereof for the time being in force)

Interpretation –

Unless otherwise inconsistent with the context of the word "person" shall include corporation. "Company" shall mean and include Thompson Couplings Limited and or any of its subsidiaries as defined in the Corporations Act 2001 which is named as the party making or accepting the order "goods" shall include services. "Purchaser" shall mean and include the person to whom any quotation is made and shall include any person offering to contract with the Company on these terms and conditions. Words importing the singular number shall be deemed to include the plural and vice versa.

Offer and Acceptance –

Any quotation made by the Company is not an offer to sell and no order given in pursuance of any order shall bind the Company until accepted by it in writing. Unless otherwise agreed in writing all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's order and these terms and conditions shall be deemed to be incorporated in any agreement between the Company and the Purchaser. Any terms and conditions contained in any order offer acceptance or invoice of the Purchaser and all representations statements terms conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.

Delivery –

Any date quoted for delivery is an estimate only and unless guarantee shall have been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date the Company shall not be liable to the Purchaser for any loss or damage howsoever arising for failure to deliver on or before the quoted date. The Purchaser shall accept and pay for goods if and when tendered notwithstanding any failure by the Company to deliver by the quoted date. The Company reserves the right to deliver by instalments if delivery is made by instalments the Purchaser shall not be entitled.

1. To terminate or cancel the contract; or
2. To any loss or damage howsoever arising for failure by the Company to deliver any instalment on or before the quoted date.

Cancellation –

Any order may only be cancelled by mutual agreement and in the event of such cancellation the Purchaser undertakes to reimburse and indemnify the Company for any costs expenses or charges incurred by the Company in preparation for and in the execution of an order which without limiting the generality thereof shall include an amount equal to fifty per centum of the net profit of the order had the order not been cancelled.

Quantities –

No claim for shortages of delivery less than five percent of quantities ordered will be made by the Purchaser and in any event shall not exceed the invoice price of the goods in respect of which the claim is made. Excess delivery of up to five per cent of quantities ordered will be accepted by the Purchaser and payment made for such excess quantities.

Description and Specifications –

Whilst every effort is made to ensure their accuracy the descriptions illustrations and material contained in any catalogue price list brochures leaflets or otherwise descriptive matter provided by or on behalf of the Company represent the general nature of the items described therein and shall not form any part of any order or agreement or amount to any representation or warranty. The Company reserves the right to modify the design of goods without notice. The Purchaser warrants that any goods manufactured constructed or supplied by the Company which are based in whole or in part upon designs drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any letters patent or registered designs. The Purchaser shall indemnify and keep indemnified that Company its servants and agents against any action loss cost claim or damage that may be bought against or suffered by the Company its servants or agents for any breach of this warranty.

The Company does not warrant or guarantee and it shall not be of any agreement between the Company and the Purchaser that any goods manufactured constructed or supplied by the Company which are based in whole or in part upon any designs drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard performance or any capacity whatsoever.

Minimum Charge –

The Company reserves the right to increase the amount charged on any invoice up to the minimum charge as established by the Company at the date of the invoice.

Waiver –

Failure by the Company to insist upon strict performance of any terms of condition hereof shall not be deemed a waiver thereof or of any rights the Company may have and shall not and nor shall any express waiver be deemed to be a waiver of any subsequent breach of any terms or condition.

Guarantee and Warranty –

Except when the Purchaser is a Consumer for the purposes of the Trade Practices Act 1974 and the conditions warranties and rights implied by that Statute cannot be excluded representations promises statements warranties and conditions (whether statutory expressed implied) regarding any goods or services supplied by or on behalf of the Company which without limiting the generality of the foregoing shall include conditions or warranties as to quality or for any particular purposes are expressly excluded. The Company shall not be liable for any loss or damage whatsoever arising whether direct, indirect or consequential or in respect of any claim whenever and however made for any loss damage deterioration deficiency or other harm in the goods manufactured work executed or serves provided by or on behalf of or in any arrangement with the Company occasioned to the Purchaser or any third party or to his or their property or interest and whether or not the negligence of the Company its servants or agents except in the following circumstances and subject to the following limitations:

- a. As soon as any of the facts or matters which form any part of the claim or complaint becomes known to the Purchaser he shall within fourteen days notify the Company in writing of the same.
- b. The Company's liability shall be limited in all circumstances to the repair or replacement (at the opinion of the Company) of any goods manufactured by it which are returned only upon the written authority of the Company being adequately packed for transport and which are returned freight paid to the Company within the Company's guarantee period of 12 months from date of shipment to the customer, covering the goods and which the Company accepts as having been defective in materials or workmanship the rendering again of the services or the current market value of either.

The Company shall not be liable in any circumstances for any

- a. Defects or damage caused in whole or in part by misuse abuse neglect electrical or other overloads unsuitable lubricant improper installation repair alteration or accident.
- b. Any transport installation removal labour or other cost. c. Goods not manufactured by it but the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the manufacturer or such goods under a warranty given by that manufacturer.
- d. Technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the manufacture construction or supply of goods for or to the Purchaser provided always that the Company has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose which they are supplied.

Goods Manufactured To Buyers Specifications -

- a. Buyers shall indemnify and undertake to keep indemnified Seller from and against any and all actions claims and demands damages royalties costs and expenses whatsoever description brought against suffered or incurred by Seller by reason of or in consequence of any infringement of letters patent copyright trade marks or registered designs owned by any third persons arising out of the manufacture or sale of goods manufactured to the design specifications or requirements of Buyer.
- b. Where no tolerances or choice of materials are specified by Buyer's drawing specifications or instructions or the same are inadequate or omit pertinent details Seller may manufacture the goods in its sole discretion to an appropriate Australian or other standard or to usual trade usage.
- c. Seller reserves the right to cancel at any time any contract for the manufacture by Seller of goods to the drawing specifications or requirements of Buyer if in Seller's sole opinion without being bound to assign any reason therefore such manufacture is either practicable uneconomic or not possible without undue disruption to Seller's other manufacturing.
- d. Seller takes no responsibility for the suitability of product so manufactured for any particular purpose or application. Any loss of damage resulting from use of product or its failure in a particular application will be the responsibility of the buyer.

Access –

In respect of any work done on the Purchaser's premises or elsewhere other than at the Company's premises it shall be subject to any written agreement to the contrary be the duty of the Purchasers to ensure that the conditions under which the work has to be performed the layout, means of access, accessibility of the different parts of the subject matter being worked on or handled and other material circumstances shall be suitable to the Company failing which the Company shall be entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.

Insolvency and Default –

If –

- a. The Purchaser makes default in any payment due hereunder.
 - b. A resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser.
 - c. A receiver or receiver and manager is appointed to the property or any part of the property of the Purchaser.
 - d. The Purchaser makes or proposes to make any arrangement with its Creditors.
 - e. The Purchaser is placed under official management.
 - f. Execution is levied upon the assets of the Purchaser for an amount in excess of \$1000.00 and is not within seven days satisfied,
- then and in any such event that Company may at its option withhold further deliveries or cancel the contract without prejudice to its rights hereunder PROVIDED HOWEVER that the Company may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause but without prejudice to its rights thereafter to rely upon the happening thereafter or any of the events hereinbefore referred to upon the continuation after any such waiver of any state of affairs the subject of such waiver.

Title –

Title to the goods to be delivered will pass to the Purchaser when payment in full for the goods has been received by the Company. Until the date of final payment the Purchaser shall store the goods so that they are clearly identified as the property of the Company.

Insurance - In the event that the goods are covered by insurance taken out by the Company the Company will only be liable to the extent of any indemnity provided.

Risk - Unless otherwise agreed in writing all goods shall be at the Purchaser's risk upon delivery to the Purchaser his carrier or agent.

Payment -

- a. Unless otherwise expressly agreed in writing payment terms are net cash 30 days from the end of the month in which the goods are delivered to the Purchaser from his carrier or agent.
- b. If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that they are ready the Purchaser shall be deemed to have taken delivery of the goods and the terms of payment shall apply from such date. The Purchaser shall be liable for storage charges payable monthly on demand storage being at the Purchaser's risk.

Price -

- a. Unless otherwise expressly agreed in writing the price of the goods shall be at the price charged by the Company at the date of delivery plus the amount which the Company is required to pay on account of an excise or sales taxes or charges which may be established or levied by any government authority (domestic or foreign) upon the goods or any part thereof or the manufacture use sales of or delivery thereof.
- b. Unless otherwise specified any prices quoted do not include transportation costs.
- c. The prices quoted are based on present day cost of labour and materials and will be subject to contract price adjustment at the opinion of the Company.

Containers -

Containers (which expression shall include but shall not be limited to stillages formers and pallets) in or of which goods are delivered and for which a deposit charge is made remain the property of the Company. On the containers return in good order and condition the deposit will then be returned to the Purchaser. The deposit for containers which the Purchaser returns otherwise than in good condition shall only be refunded in part having regard to their actual condition. Containers will be deemed to be still in the Purchaser's hands until received into the Company's stores.