

## Terms and Conditions of Sale

### 1. Conditions of Sale

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For the purpose of these conditions;

**Buyer** means the person, persons, company or business so described in the Credit Application or any person nominated as the buyer on any purchase order;

**Credit Application** means the document annexed to these conditions and signed by the Buyer.

**Goods** means all goods supplied by the Seller to the Buyer at any time;

**Insolvency Event** means the happening of any of the following events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed whether or not under an order;
- (c) a receiver, receiver and manager or controller is appointed or takes possession in respect of any part of the property of a body corporate;
- (d) an administrator is appointed to a body corporate under sections 436A, 436B or 436C of the Corporations Act 2001 (Cth);
- (e) a body corporate enters into, or resolves to enter into a deed of company arrangement, a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (f) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so;
- (g) a body corporate is or its directors state that it is unable to pay its debts as and when they become due and payable;
- (h) a body corporate is presumed to be insolvent within the meaning of section 459C(2) of the Corporations Act 2001 (Cth);
- (i) a judgment is entered against a body corporate for a sum in excess of \$20,000 and remains unsatisfied or unappealed for a period of 15 days;
- (j) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth) or action is taken which could result in such an event; or
- (k) anything having a substantially similar effect to any of the events specified above happens under any law or any applicable jurisdiction.

**Order** means an order for Goods placed with the Seller by the Buyer;

**Seller** means Walker Australia Pty Ltd, Monroe Australia Pty Ltd or any other company related to Tenneco which accepts the Buyer's order;

### 2. Entire Contract

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These Conditions cancel and are in substitution for all or any previous conditions and these conditions do not constitute an offer to sell or to supply goods to the Buyer. Subject to clause 3 these Conditions including the terms and conditions in the Credit Application contain the complete and final agreement as to the sale of the Goods by the Buyer.

### **3. Buyer's Statutory Rights**

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These Conditions do not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Buyer or the liabilities imposed upon the Seller, by any condition or warranty implied by a Commonwealth, State or Territory Act or Ordinance, rendering void or prohibiting such exclusion, limitation, restriction or modification.

### **4. Property and Ownership**

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#### **4.1 Payment**

Property in, and ownership of, the Goods does not pass to the Buyer, and remains with the Seller, until payment in full to the Seller by the Buyer of:

- (a) the whole of the purchase price in respect of all Goods supplied to the Buyer by the Seller and
- (b) all other moneys due and owing, or otherwise unpaid, to the Seller by the Buyer.

### **5. Dealings With Goods**

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Until property in, and ownership of, Goods passes to the Buyer:

- (a) The Buyer has no right, title or interest to or in the Goods, except as provided by this clause 5;
- (b) The Buyer holds the Goods as fiduciary, bailee and agent for the Seller;
- (c) The Buyer must keep the Goods separate from all other property, and in a manner which enables the Goods to be identified by the Seller which supplied the Goods and matched to the Seller's individual invoices for such Goods;
- (d) The Buyer is authorised to sell the Goods in the ordinary course of the Buyer's business, until notified in writing to the contrary by the Seller which supplied the Goods;
- (e) Except as permitted by clause 5(d), the Buyer must not enter into any dealing or transaction in relation to the Goods, other than with the prior written consent of the Seller;
- (f) The Buyer must keep all moneys comprising the proceeds of sale of the Goods in a separate bank account, and must not mix such moneys with any other money, including the Buyer's money.

### **6. Order of Sale of Goods**

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Any Goods of a particular type or description which are sold by the Buyer to any person will be deemed to have been sold by the Buyer in the following order:

- (a) First – Goods in respect of which ownership has passed to the Buyer in accordance with the provisions of these Conditions of Sale; and
- (b) Second – Goods which remain the property of the Seller.

### **7. Claims to Partial Ownership of Goods**

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In the event that:

- (a) The Buyer is in possession of Goods of a particular type or description which have been supplied to it by the Seller; and
- (b) The Buyer asserts that ownership of a portion of such Goods has passed from the Seller to the Buyer in accordance with these conditions;

the Buyer will bear the onus of establishing its ownership of such portion as against the Seller and the onus of identifying the same, and all of such Goods will be taken to be owned by the Seller unless and until the Buyer is able to establish such ownership and identify the portion of such Goods that are owned by it.

### **8. Default**

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## 8.1 General Rights

If the Buyer breaches a term of these conditions or an Insolvency Event occurs in relation to the Buyer, the Seller may, without giving prior notice to the Buyer and without any obstruction or interference by the Buyer:

- (a) enter and remain on the Buyer's premises, or any other premises where any Goods are located;
- (b) take possession of any Goods owned by the Seller; and
- (c) remove any Goods from such premises.

## 8.2 Right of Sale

If possession of any Goods is recovered by the Seller under clause 8.1, the Seller may sell or otherwise dispose of the Goods in its absolute discretion and on its own account, but without limiting any of its other rights arising as a consequence of the occurrence of a breach of a term of these conditions.

## 9. Right of Entry

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### 9.1 Grant of Licence

The Buyer grants to the Seller an irrevocable licence, and irrevocably appoints the Seller as the Buyer's agent, to enter and remain on:

- (a) The Buyer's premises;
- (b) Any other premises where any Goods are located; and
- (c) Any other premises where any books and records of the Buyer are located.

### 9.2 Seller's Purpose

The rights conferred on the Seller pursuant to clause 9.1 may be exercised for any of the following purposes:

- (a) inspecting and examining any Goods;
- (b) inspecting, examining and copying any books and records of the Buyer;
- (c) determining whether the Buyer is complying with the Buyer's obligations under these conditions; and
- (d) the Seller exercising any right under these conditions.

### 9.3 Time for exercise of rights

- (a) Subject to clause 9.3(b), the Seller may exercise its respective rights under this clause 9 at any time between 8:00 am and 5:00 pm on any Business Day without prior notice to the Buyer.
- (b) Notwithstanding clause 9.3(a), if the Seller believes, on reasonable grounds, that the Buyer has breached any provision of these conditions and that, as a consequence, the rights of the Seller, in respect of any Goods may be prejudiced as a consequence of such breach, the Seller may exercise its respective rights under this clause 10 at any time without prior notice to the Buyer.

## 10. Mixture of Goods

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If the Buyer mixes any Goods with any product, item or other thing then until property in, and ownership of those Goods passes to the Buyer:

- (a) if the Goods can be separately identified, the Seller is entitled to sever and remove those Goods from the product, item or other thing; or
- (b) if the Goods can no longer be separately identified, the Seller and the Buyer are the joint legal and beneficial owners of the product, item or other thing.

## 11. Delivery

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The Seller will make all reasonable efforts to have the goods delivered to the Buyer on the date agreed between the parties as the delivery date but the Seller shall be under no liability whatsoever should delivery not be made on this date. The Seller reserves the right of supplying any order in full or in part.

**12. Damaged and Defective Goods**

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- 12.1 Damaged or defective Goods, or those that do not conform to the relevant Order may only be returned to the Seller in exchange for a credit for the price of those Goods (and freight and insurance to return them), if written notice of intention to return Goods is given to the Seller within 7 days of delivery and those Goods are returned
- 12.1.1 within 14 days of delivery;
  - 12.1.2 by the carrier making the initial delivery;
  - 12.1.3 without any defect, damage or soiling having occurred since delivery to the Buyer; and
  - 12.1.4 accompanied by the original invoice and stating the reason for return.

**13. Risk**

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- 13.1 The risk in the goods purchased shall unless otherwise agreed in writing pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the buyer.
- 13.2 The Buyer shall fully insure all of the Goods for their full replacement value, noting the interest of the Seller, from the time the risk in the Goods passes to the Buyer, and, in the event of any of the Goods being damaged, destroyed or lost, which loss or damage is reimbursed to the Buyer by the insurer, the proceeds of the insurance shall be paid to the Seller until all monies owing to the Seller in respect of the sale of the Goods are paid to the Seller.

**14. Price**

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The price charged shall be the price ruling at the date of delivery unless otherwise agreed in writing. The Seller is entitled to vary the price for the Goods at any time upon notice being given to the Purchaser. In the absence of any other agreement in writing to the contrary, the price for any Goods supplied by the Seller shall be agreed to be varied in respect of any price variation once the Buyer places a purchase order subsequent to the receipt of notice of the variation of the price.

**15. Cancellation Returns and Credits**

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Save and except as may be required by any applicable State or Federal legislation:

- (a) goods will not be accepted for credit without the prior agreement of the Seller.
- (b) Requests for credits arising from incorrect invoicing must be made before the due date of the invoice in question.
- (c) Unless otherwise agreed in writing orders cannot be cancelled once the order has been placed and the Buyer shall be liable for the purchase price notwithstanding any purported cancellation of an order.

**16. Future Dealing**

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Unless otherwise agreed in writing by the Seller and notwithstanding any terms appearing in documentation provided by or on behalf of the Buyer these Conditions shall be incorporated by implication into all agreements by the Seller to supply the Buyer with goods.

**17. Authority to Vary Conditions**

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No employee, servant, agent or representative of the Seller has any authority to vary these conditions or any part of them, and without limiting the generality of the foregoing, no warranty, representation, promise, agreement, term or condition whether express or implied made by any employee, servant, agent or representative of the Seller shall be deemed to be included in or form part of these conditions, or operate in any way collateral to these conditions other than those warranties, representations, promises, agreements, terms or conditions which expressly appear in these conditions.

**18. Warranty**

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The Buyer warrants both at the time of executing the Credit Application and at the time of placing any order to purchase Goods from the Seller:

- (a) That the information contained in the Credit Application is true, correct and accurate and is intended to be relied upon by the Seller to induce the Seller to grant any credit facilities.
- (b) That there is no other material circumstance or event that if known by the Buyer would be likely to affect any consideration by the Seller as to whether or not to grant credit facilities.

**19. Claims**

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Any claim for non-delivery, shortage in supply or damage occurring during the course of delivery or any claim for rejects by a Buyer must be in writing and given to the Manager of the Seller within 24 hours of delivery.

**20. Severance**

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If any of these terms or conditions is or becomes for any reason wholly or partly invalid that term or condition shall to the extent of the invalidity be severed without prejudice to the continuing force and validity of the remaining conditions.

**21. Jurisdiction**

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Notwithstanding any implication or law to the contrary, all contracts between the Buyer and Seller shall be deemed to be made and construed and to be enforceable in and according to the laws of the State of South Australia and by mutual consent to be subject to the jurisdiction of the Courts of that State.

**22. Trust Companies**

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In case of a purchase by a Trust Company the Buyer warrants and represents that the Trustee has the authority of the Trust to incur a liability to the Seller in respect of the purchase price of the Goods and further agrees that the Trustee shall be liable in its own right to pay any amounts owing for the sale of the Goods.

**23. Change of Ownership**

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Registered Particulars – the Buyer shall no later than 14 days prior to any proposed changes of ownership, change in Registered Particulars, alteration, addition to the shareholding or directorship, notify the Seller of the proposed change and shall provide full details of the proposed change, alteration or addition, to the Seller and the Buyer shall be liable for any goods supplied by the Seller after such change alteration or addition unless the Seller shall have acknowledged by writing acceptance of the intended change, alteration or addition.