



## **TERMS AND CONDITIONS OF SALE**

### **A: CONTROLLING TERMS AND CONDITIONS**

1

The following terms and conditions ("the Terms") shall be incorporated into every contract for the sale and/or delivery of products by Franklin Electric (Australia) Pty Ltd. ("Franklin Electric (Australia)") to a purchaser ("Purchaser") whether in writing or verbal. Any terms or conditions put forward by Purchaser whether in a purchase order or otherwise which purport to amend, annul or augment the Terms shall not be binding on Franklin Electric (Australia) unless agreed to in writing by Franklin Electric (Australia). The Terms together with the confirmation of order, in a form acceptable to Franklin Electric (Australia), and Franklin Electric (Australia's) standard of custom product specifications (if applicable) shall constitute the entire agreement between Franklin Electric (Australia) and Purchaser.

2

The Terms may be amended or altered only if agreed to in writing, signed by the party against which any such amendment or alteration is asserted. Franklin Electric (Australia) may alter the terms by posting revised Terms on its web site. [www.franklin-electric.com.au](http://www.franklin-electric.com.au) Such revised Terms will govern any orders made subsequent to the date that the revised terms are posted on the website.

### **B: THE PRICE**

1

Prices set out or referred to herein are List prices or RRP and are recommended only. There is no obligation to comply with the recommendations. All prices listed are in Australian Dollars and exclude all state and federal taxes including GST.

2

Every effort has been made to ensure accurate pricing, technical data, weights and dimensions. Any errors or omissions are subject to revision. Franklin Electric (Australia) reserves the right to decline an order if Franklin Electric (Australia's) pricing is incorrect.

3

Subject to these Terms the price paid by the Purchaser is the List price minus the applicable discount (or multiplier) rate active at that time. The applicable discount rate is the discount referred to in the applicable discount schedule or as otherwise notified in writing by Franklin Electric (Australia).

All prices and discounts quoted are subject to change by Franklin Electric (Australia) without prior notice effective upon Franklin Electric (Australia's) publication of its revised price list, individual pages or discount schedule applicable thereto, or, in lieu thereof, written notification by Franklin Electric (Australia) to Purchaser. Prices and discounts applicable to undelivered quantities of existing orders, as well as to new orders, shall be those in effect at the date of despatch.



4

A representation by Purchaser of facts upon which Franklin Electric (Australia) relies in basing any applicable discount or terms of sale, shall be taken as a representation that such facts are true, and Franklin Electric (Australia) shall have the right to revise any price or discount, including in relation to products already despatched, invoiced, or paid, should such representations subsequently be shown to be untrue.

5

All prices and products do not include, any federal, state or local income, property, sales, use, excise, value added, or other taxes, freight or delivery charges, insurance costs or other expenses or duties payable in respect of goods sold and/or delivered by Franklin Electric (Australia) which amounts shall be payable by the Purchaser. Purchaser should consult Franklin Electric (Australia's) current multiplier/discount schedule or current Price List for its policy regarding freight.

### **C: TERMS OF PAYMENT**

1

The due date of payment against all invoices must be made within 30 days after the end of month determined by the invoice date unless otherwise agreed to in writing by Franklin Electric (Australia).

### **D: DELIVERY**

1

Delivery shall be arranged by Franklin Electric (Australia) unless otherwise agreed. Special arrangements for delivery must be specifically requested by Purchaser and agreed to in writing by Franklin Electric (Australia). All delivery changes will be at the expenses of the Purchaser.

2

Stated times of delivery of products shall be estimates only, to the extent permitted by law. Franklin Electric (Australia) shall not be liable (including under the law of negligence) for any loss, cost, expense, delay, damage, or inconvenience or failure (however caused) to meet any specific delivery date, or for any delay, loss, or damage in transit, or due to the unavailability of sufficient products to fill any order. Franklin Electric (Australia) reserves the right to allocate available inventories among its customers, including Purchaser, on a pro rata basis, in the event that such inventories are inadequate to meet demand.

3

All risk of damage, loss or delay in relation to the despatched products shall pass to the Purchaser when Franklin Electric (Australia) makes such goods available for collection by the Purchaser or collection by the carrier for delivery to Purchaser.

Should despatched products be offered freight prepaid as per the published discount/multiplier schedule at time of despatch, then Franklin Electric (Australia) accepts all risk or damage, loss or delay in relation to the despatched products.

Franklin Electric (Australia) shall promptly, after despatch notify Purchaser that the products have been delivered to the carrier and shall furnish Purchaser with all documents, if any be required, to enable Purchaser to obtain possession of the products from the carrier.



4

Franklin Electric (Australia) shall retain title to all products despatched until receipt by it of payment in full from Purchaser or any sums due in respect of (a) those despatched products and (b) all other products supplied by Franklin Electric (Australia) to the Purchaser from time to time.

Purchaser shall store products belonging to Franklin Electric (Australia) in such a way as to be identifiable as belonging to Franklin Electric (Australia). Subject to the following, Purchaser shall not, prior to payment in full, deal in any way with such products nor part with possession nor act in any way inconsistent with Franklin Electric (Australia's) ownership of the products. If Purchaser incorporates such products into composite goods, title of the composite goods shall vest in Franklin Electric (Australia) until payment in full is received. If prior to payment in full, Purchaser sells or otherwise disposes of the products or composite goods, the proceeds of the sale or other disposition shall be held in trust by the Purchaser for Franklin Electric (Australia) and the Purchaser must account to Franklin Electric (Australia) in respect of such proceeds. Franklin Electric (Australia's) right to retain title shall not affect its rights as unpaid seller.

The Purchaser acknowledges and agrees that it will not affix, nor will it allow any other person to affix products to land so as to become a fixture that is legally part of the land.

5

Franklin Electric (Australia) will not arrange for delivery to any country to which export is prohibited by any Australian or US government export regulations in place at time of quoting and/or despatch. Franklin Electric (Australia) may further refuse to fulfil an order where it suspects that the products may be exported by the Purchaser to such a country.

6

- (a) The Purchaser acknowledges and agrees that:
- (i) By virtue of clause D.4 Franklin Electric (Australia) has or will have a security interest in the products to which it retains ownership and the proceeds relating to those products for the purposes of the PPS Act and
  - (ii) Franklin Electric (Australia) may do anything reasonably necessary including but not limited to registering that security interest on the personal properties securities register established under the PPS Act in order to perfect the security interest and comply with the requirements of the PPS Act. The Purchaser agrees to do all things reasonably necessary to assist Franklin Electric (Australia) to take such steps and to pay all appropriate registration fees.
- (b) The Purchaser and Franklin Electric (Australia) agree that, pursuant to section 115 of the PPS Act the provisions of the PPS Act referred to in sections 115(1)(c), (d), (e), (f), (h), (k), (l), (m), (n), (q) and (r) of the PPS Act to not apply in relation to the security interest created under clause D.4 to the extent, if any, mentioned in that section.
- (c) The Purchaser and Franklin Electric (Australia) agree that subject to section 275(7) of the PPS Act neither of them will disclose information of the kind mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act.
- (d) The Purchaser irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement of financing change statement relating to these trading terms.



- (e) The Purchaser must not without prior consent in writing of Franklin Electric (Australia) enter into any arrangement with a third party to give that party control over the products to which Franklin Electric (Australia) retains ownership or the proceeds relating to those products.
- (f) The Purchaser agrees that Franklin Electric (Australia) has an absolute discretion to apply any money received as a result of supplying products or which represent the proceeds of enforcement of any security interest it holds, whether created under clause D.4 or otherwise, in reduction of any part or parts of the moneys secured to Franklin Electric (Australia) by any such security interest, whether and on whatever account it becomes secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.
- (g) For the purposes of this clause D.6
  - (i) "PPS Act" means the Personal Property Securities Act 2009 (Commonwealth).
  - (j) "proceeds", "control", "security interest", "verification statement", "financing statement" and "financing change statement", each have the meaning given to those terms in the PPS Act.

7

The Purchaser will insure with a reputable insurer, the products to at least their contract value in both Franklin Electric (Australia) and the purchaser's name against theft, fire, accidental or malicious damage, flood or storm. The Purchaser will pay all premiums therefore when due. Evidence of such insurance must be provided upon request to Franklin Electric (Australia).

## **E: WARRANTIES – FRANKLIN ELECTRIC DEFAULT – LIMITATION OF LIABILITY**

1

Nothing in these terms and conditions is intended to exclude, restrict or modify any rights that a party may have under Commonwealth and/or State consumer protection legislation that cannot be excluded, restricted or modified.

2

The Purchaser acknowledges that they are acquiring the products for the purpose of re-supply.

3

Where the terms of section 274 of the Australian Consumer law apply, the parties liability will be determined in accordance with that section.

4

To the extent permitted by law, where the end users acquires a product from the purchaser as a 'consumer' within the meaning of the Australia Consumer Law, but where the product or is of a type that is not of a kind ordinary acquired for personal, domestic or household use or consumption, Franklin Electric (Australia)'s liability is limited to:

- (a) The cost of replacing the goods or
  - (b) The cost of obtaining equivalent goods or
  - (c) The cost of having the goods repaired
- which-ever is the lowest amount.



5

In all other cases the following provisions apply:

- (a) Franklin Electric (Australia) warrants its products will be free from defects in workmanship and materials, will perform consistently with samples previously supplied and will conform to applicable specifications published or agreed to between Purchaser and Franklin Electric (Australia) for a period of no less than 12 months from date of installation or for 24 months from the date of manufacture, whichever occurs first. Some products have longer periods of warranty cover. Refer to our web site for details "Warranty Periods" at [www.franklin-electric.com.au](http://www.franklin-electric.com.au)
- (b) Any Franklin Electric (Australia) product found to be defective within the Warranty period shall be repaired, replaced or taken back for credit by Franklin Electric (Australia) at Franklin Electric (Australia's) sole election. No allegedly defective products shall be returned to Franklin Electric (Australia) however, without Franklin Electric (Australia's) prior written authorisation and delivery instruction.
- (c) Franklin Electric (Australia) makes no warranty, expressed or implied, with respect to the products sold to Purchaser under this contract except as set forth in this contract. Franklin Electric (Australia) shall not be liable whether as a result of any breach of warranty or of the Terms otherwise for any Purchase's incidental expenses (including costs of inspection, testing, storage or transportation), any other charges, costs, or expenses, or consequential damages incurred by Purchaser or by any third party (including lost profits, liability to third parties' requirements) regardless of whether Franklin Electric (Australia) is shown to be at fault and regardless of whether there is shown to have been a defect in materials or workmanship, negligence in manufacture or design, or failure to warn. Notwithstanding paragraph 5(b) above, in the event that Franklin Electric (Australia) is liable in any way as a result of any breach of warranty or of the terms or otherwise. Franklin Electric (Australia's) liability shall not exceed the amounts paid by the Purchaser for the products under this contract.
- (d) Franklin Electric (Australia) has the right to inspect any product returned under warranty to confirm that the product contains a defect in material or workmanship. If Franklin Electric (Australia) determines that the products is covered by warranty, Franklin Electric (Australia) shall have sole right to choose whether to repair or replace the defective equipment, parts or components.
- (e) The warranty does not apply to products damaged as an act of god, including lightening, normal wear and tear, normal maintenance services and parts used in connection with such services, installation and operation outside of installation, operational and maintenance literature, design limitations, or any other matters beyond the control of Franklin Electric (Australia). Refer to our web site [www.franklin-electric.com.au](http://www.franklin-electric.com.au) for a list of site, installation, operational circumstances that are not covered by warranty.
- (f) The warranty will immediately void if any of the following conditions are found:
  - (i) Product is used for any purpose other than those for which it was designed and manufactured.



(ii) Product was not installed in accordance with any applicable codes, ordinances and industry best practice and/or installation operation and maintenance manuals, instructions or training provided by Franklin Electric (Australia).

(iii) Product was damaged as a result of negligence, abuse, accident, misapplication, tampering, alteration, improper installation, operation, maintenance or storage, unauthorised dismantling, nor to an operation in excess of recommended maximum operational settings or performance limitations as set forth in the product installation, operation and maintenance manuals.

6

All other liability of Franklin Electric (Australia) whether arising from negligence or otherwise, is expressly excluded.

7

For the avoidance of doubt, if after inspection of any product returned to it, Franklin Electric (Australia) form the view that neither section 274 of the Australian Consumer Law applies and is not covered by warranty, but nevertheless decides to offer a commercial or concessional replacement, this is not to be construed as an admission of liability and Franklin Electric (Australia) shall not under any circumstances be liable for any removal, reinstall costs or third party costs associated with our offer.

8

The Purchaser shall not make any representations or give any warranty relating to or in connection with the Products, except as specifically authorised by Franklin Electric (Australia) and as stated in our "Warranty Periods" available from;

[www.franklin-electric.com.au](http://www.franklin-electric.com.au)

## **F: PURCHASER'S DEFAULT**

1

In addition to and notwithstanding any other remedy to which Franklin Electric (Australia) may be entitled by law or right hereunder, in the event of Purchaser's breach of its obligations hereunder including, but not limited to, Purchaser cancelling its order for products in whole or part, or refusing to accept the products despatched hereunder, or wrongfully revoking its acceptance of products that conform to the contract, Franklin Electric (Australia) shall be entitled to damages by reason of any special engineering, design, tooling, manufacturing, storage, or transportation costs incurred in connection with any order.

2

In the event Purchaser breaches its obligations hereunder or if Purchaser becomes insolvent or enters into a scheme of arrangement with its creditors or goes into liquidation or has a receiver or receiver and manager or similar person appointed to the whole or part of its assets, or an office of Franklin Electric (Australia) reasonably believes that any of the foregoing is likely to occur, Franklin Electric (Australia) shall have the right to withhold deliveries or ordered products to Purchaser and to terminate this contract and retain any payments already made by Purchaser. Such terminations shall be without prejudice to Franklin Electric (Australia's) rights to recover payment from Purchaser for products delivered prior to termination and Franklin Electric (Australia) shall have the right to enter



purchaser's premises and to retake possession of products in respect of which title remains with Franklin Electric (Australia).

### **G: RETURN OF PRODUCT**

1 Any product(s) requested to be returned for credit must have prior written approval via a Return material Authorisation (RMA) before return. A copy of the RMA must be returned with the products. All returns are subject to restocking and administration fees, a schedule of current fees is available from the web site: [www.franklin-electric.com.au](http://www.franklin-electric.com.au)

2

Subject to these Terms and any applicable law, products despatched and held by the purchaser over 30 days may only be returned at Franklin Electric (Australia's) discretion and with prior approval. Products that have been used in any way, connected electrically, connected to a pump and tested, submerged, water flowed through, altered or changed ready to installed are considered used and not returnable.

3

All products returned are subject to inspection of product and packaging at Franklin Electric (Australia) prior to being accepted. Damage to returned product and boxes/cartons/crates are subject to rejection and returned to the Purchaser at their expense.

### **H: INFRINGEMENT**

1

With respect to standard designs and specifications of, or speciality products engineered and designed by, Franklin Electric (Australia) or Franklin Electric Co., Inc. or one of its subsidiaries, Franklin Electric (Australia) shall defend, indemnify and hold Purchaser harmless from and against any loss, damage, costs or expenses arising out of any claim by a third party of patent, design, copyright or claim and gives Franklin Electric (Australia) such authority, information and assistance as it may request in connection with the defence thereof.

2

Purchaser shall defend, indemnify and hold Franklin Electric (Australia) and/or Franklin Electric Co., Inc. and its subsidiaries harmless from and against any loss, damage, costs or expenses arising out of any claim of patent, design, copyright or trademark infringement or other intellectual property right infringement relating to products manufactured by Franklin Electric (Australia) or Franklin Electric Co., Inc. or its subsidiaries according to designs or specifications furnished by Purchaser.

### **I: COMMISSIONING**

Unless specified by Franklin Electric (Australia), commissioning is not included in the price. Commissioning can be requested and will be charged at a fee.

Any commissioning is to be done after installation is complete, power and water is available and the specific duty or performance can be achieved. Any commissioning test equipment is to be installed and operating by the customer before commissioning can be undertaken.



Commissioning will be limited to the correct operation of the Franklin Electric (Australia) supplied equipment, and not the whole system that the Franklin Electric (Australia) supplied equipment forms part of. The customer's failure to meet these commissioning terms may incur an extra fee to the customer of labour, travel and associated expenses.

**J: SPECIAL TOOLING**

Any special tools, dies, jigs, moulds or other equipment manufactured or purchased by Franklin Electric (Australia) for any order, regardless of whether included as part of Franklin Electric (Australia's) prices for products, shall remain Franklin Electric (Australia's) exclusive property, unless otherwise provided herein.

**K: APPLICABLE LAW**

This contract shall be governed by the laws of the State of Victoria and the parties hereby submit to the non-exclusive jurisdiction of the courts of Victoria.

**L: FAILURE TO ENFORCE**

The failure of Franklin Electric (Australia) to enforce at any time or for any period of time any of these Terms shall not affect its rights thereafter to enforce the same.

End

Revised November 2011.