

JDM AUST Pty Ltd Terms & Conditions of Trade

1. **Definitions**
- 1.1. "Company" shall mean JDM Aust Pty Ltd and its successors and assigns.
- 1.2. "Consequential Loss" shall mean loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.
- 1.3. "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.4. "Guarantor" means that one person (or persons), or entity who agrees herein to be liable for the debts of the Customer if a Limited Liability Customer on a principal debtor basis.
- 1.5. "Services" shall mean all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as hereinafter defined).
- 1.6. "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as previously defined).
- 1.7. "Price" shall mean the cost of the Goods or Services as agreed between the Company and the Customer subject to clause 4 of this contract.
- 1.8. "PPSA" means the Personal Property Securities Act 2009.
2. **Acceptance**
- 2.1. Where more than one Customer has entered into this agreement the Customers shall be jointly and severally liable for all payments of the Price.
- 2.2. Any instructions received by the Company from the Customer for the supply of Goods and Services and/or the Customer's acceptance of Goods or Services supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.3. Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of a Director of the Company.
- 2.4. None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by a Director of the Company in writing nor is the Company bound by any such unauthorised statements.
3. **Goods and Services**
- 3.1. The Goods and Services are as described on the quotation, invoices, variations or any other work commencement forms as provided by the Company to the Customers.
4. **Price and Payment**
- 4.1. At the Company's sole discretion, subject to clause 4.2; a) the Price shall be as indicated on invoices provided by the Company to the Customer in respect of Goods and Services supplied; or b) the Price shall be the Company's current Price at the date of delivery of the Goods or Services according to the Company's current Price list; or
- 4.2. The Price of the Goods and Services shall, subject to clause 4.3, be the Company's quoted Price which shall be binding upon the Company provided that the Customer shall accept in writing the Company's quotation within seven (7) days of issuance.
- 4.3. The Company may by giving notice to the Customer (verbally or otherwise) at any time before delivery increase the Price of the Goods or Services to reflect any variation from the plan of scheduled works or specifications beyond the reasonable control of the Company which increase the cost of the Goods or Services by more than 10% of the quoted Price.
- 4.4. At the Company's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods or Services and shall become immediately due and payable.
- 4.5. Time for payment for the Goods or Services shall be of the essence and will be stated on the quotation and/or invoice. In the event of any ambiguity between the time stated on the quotation and invoice, the time stated on the invoice will take precedence. In the event of no time stated on either, then the time for payment shall be prior to the despatch of the Goods or Services.
- 4.6. At the Company's sole discretion, payment for approved Customers shall be made by instalments and/or by progress payments in accordance with the Company's delivery/payment schedule.
- 4.7. Payment will be made by cash, bank cheque or electronic funds transfer (also known as E.F.T or direct credit) so that cleared funds are available in the Company's nominated bank account by close of business on or before the date due.
- 4.8. At the Company's sole discretion, payments by other methods, such as credit card or company cheque, may be accepted.
- 4.9. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.
5. **Delivery of Goods**
- 5.1. Delivery of the Goods shall be made at the Company's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2. Should circumstances beyond the control of the Company prevent or hinder delivery, the Company will be free from any obligation to deliver goods while such circumstances continue. For as long as such circumstances exist, the Company may, at its option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond the control of the Company include, but are not limited to: strikes, lockouts, rebellions; fire; acts of God; shortages of raw materials; Government decrees, proclamations or orders; transport difficulties; and failures or malfunctions of computers or other information technology systems.
- 5.3. Risk in each order will pass to the Customer upon despatch of that order to the Customer or upon collection of that order by the Customer's agent or courier as the case may be.
- 5.4. Any property of the Customer's under the Company's custody or control will be entirely at the Customer's risk as regards loss or damage caused to the property or by it.
- 5.5. The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6. The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods or Services (or any of them) promptly or at all.
6. **Disclaimer**
- 6.1. The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant, OEM or agent of the Company and the Customer acknowledges that he buys the Services relying solely upon his own skill and judgment.
7. **Limitation of liability under Australian Consumer Law guarantees**
- 7.1. To the extent that the Goods supplied by the Company are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a customer under section 64A of the Australian Consumer Law, the Customer agrees that the Company's liability for a failure to comply with the Australian Consumer Law (other than under sections 51, 52 or 53, is limited to, at the option of the Company, one or more of the following:
a) 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 costs of having the Goods repaired.
8. **Defaults & Consequences of Default**
- 8.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 8.2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's costs and disbursements including on a solicitor and own Customers basis and in addition all of the Company's nominees cost of collection.
- 8.3. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods or Services to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 8.4. In the event that any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or the terms and conditions of trade Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.
9. **Retention of title**
- 9.1. The Company retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Company. Until payment in full have been received the following terms apply: a) Notwithstanding that title in the Goods remains with the Company until payment has been received in full, the Customer may use the Goods in a commercial process in the ordinary course of the Customer's business. If the Customer sells the Goods, the Customer sells as principal and not as agent of the Company. The proceeds of sale of each item of the Goods must be held by the Customer in a separate fund on trust for the Company and the Customer is under a duty to account to the Company for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Company for Goods supplied. b) Until Goods are sold or used in a commercial process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Company, store them in such a way that they are clearly identified as the property of the Company and keep full and complete records of the location of the Goods and the Company's ownership of the Goods. c) The Company is irrevocably entitled at any time and from time to time to inspect or to recover or to retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute, or in any other way. In order to exercise such entitlement, the Company and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Company and to indemnify the Company and its agents for any liability arising from any entry upon such third parties' premises. The Company and its agents agree to take all reasonable care in removing the Goods from such premises but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods. d) This reservation of title and ownership if effective whether or not the Goods have been altered from their supplied form, or comingled with other goods.

10. **Security And Charge**
- 10.1. Notwithstanding anything to the contrary contained herein or any other rights which the Company may have howsoever where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or this monetary obligations payable under the terms and conditions.
- 10.2. The Customer and/or the Guarantor acknowledge and Agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- 10.3. Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursement including legal costs on a solicitor sand own Customer basis.
- 10.4. To give effect to the provisions of clause 10.1 and 10.2 inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the company or Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and Conditions as the Company and/or the Company's nominee shall think fit in her/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in the land, realty or asset in favour of the Company and in the Customer's and/or Guarantors name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
11. **Cancellation**
- 11.1. The Company may cancel these terms and conditions or cancel delivery of Goods or Services at any time before the Goods or Services are delivered by giving written notice. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
12. **Privacy Act 1988**
- 12.1. The Customer and/or the Guarantors agree for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.
- 12.2. The Customer and/or the Guarantor/s agree that the Company may exchange information in a consumer credit report issued by a reporting agency for the following purposes: a) to assess an application by Customer; b) to notify other credit providers of a default by the Customer; c) to exchange information with other credit providers as to the status of this credit account, d) where the Customer is in default with other credit providers; and e) to assess the credit worthiness of Customer and/or Guarantor/s.
- 12.3. The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (section 18K (1) (h) privacy Act 1988).
- 12.4. The Customer agrees that personal Data provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time: a) provision of Goods and Services; b) marketing of Goods and Services by the Company, its agents or distributors in relation to the Services. c) analysing verifying and/or checking the Customer's credit payment and/or status in relation to provision of Goods and Services. d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods or Services.
13. **General**
- 13.1. If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2. All Goods or Services supplied by the Company are subject to the laws of Queensland and the Company takes no responsibility for changes in the law which effect the Good or Services supplied.
- 13.3. The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 13.4. The Customer shall not set off against the Price amounts due from the Company
- 13.5. The Company may license for sub-contract all or any part of its rights and obligations without the Customer's consent.
- 13.6. The Company reserves the right to review these terms and conditions at any time and from time to time, if following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.
14. **Exclusion of implied terms and limitation of liability**
- 14.1. The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these terms and conditions or in connection with the supply of Goods by the Company are excluded.
- 14.2. To the maximum extent permitted by law, and subject to this clause 14.2 and clause 7, the Company's total liability arising out of or in connection with its performance of its obligations under these terms and conditions or arising out of or in connection with the supply of the Goods is limited as follows: a) the Company shall have no liability to the Customer for any Consequential Loss; b) the Company's total aggregate liability for loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Company for the Goods that gave rise to the loss in question. The limitations and exclusions in this clause 14.2 do not apply to the extent that any loss is directly attributed to: i) the personal injury or death caused by the Company's default, breach of these terms and conditions or negligence; or ii) fraud by the Company. Each party must take reasonable steps to mitigate any loss it suffers or incurs.
15. **Acceptance of Goods**
- 15.1. The Customer will inspect the goods immediately upon delivery to the Customer or upon collection of that order by the Customer's agent or courier as the case may be. All claims against the Company regarding the quality, nature, fitness, suitability, conformance with description or defects of the goods must be made in writing to the Company within 7 days after despatch. The Company does not accept liability for any such claim not made in accordance with these terms.
- 15.3. In the event of justified objection notified by the Customer to the Company in accordance with these terms, the Company may, at its option: a) reduce the purchase Price by agreement with the Customer; b) accept the return of the goods and, subject to the goods being returned in the same condition as when they were delivered to the Customer, refund to the Customer the purchase Price less any costs to restore the Goods to the original saleable condition; or c) replace the goods and no additional claims of any nature whatsoever may be made against the Company.
16. **Return of Goods**
- 16.1. Goods may be returned for credit if they do not correspond with the description under which they were sold.
- 16.2. Subject to sub-clause 16.1 no Goods may be returned for credit unless the company's written approval has been first obtained and the original invoice number and date have been quoted for reference.
- 16.3. Subject to sub-clause 16.1, only Goods of current design in original sealed cartons, will be considered for credit, and a handling charge of ten per cent (10%) of selling Price will be made by the company and paid by Customer to cover necessary inspection, adjustment, repacking and clerical work. Goods invoiced more than three (3) months prior to attempted return, Goods which are special in any nature whatsoever, including but not limited to, software, wirings and tubing cut to length and Goods bought upon special order may not be returned.
17. **Waiver**
- 17.1. No failure to exercise nor any delay in exercising any right, power or remedy by the Company operates as a waiver. A single or partial 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 for a Customer unless made in writing by a Director of the Company.
18. **Force Majeure**
- 18.1. Neither the Company or Customer is liable for any failure to perform or delay in performing its obligations under these Terms & Conditions of Trade for the time and to the extent that such failure or delay is caused by riots, war, civil commotions, hostility between nations, governmental laws, orders or regulations, embargoes, action by the government or any agency thereof, fires, sabotages, explosions or other contingencies beyond the reasonable control of that party. This clause does not apply to financial management difficulties or other like difficulties or delay caused by or in connection with contractual relations between a party and its employees, agents or suppliers, or any risk or event which the party could have prevented or overcome by taking reasonable care (including having in place a reasonable risk management process).
19. **Guarantee**
- 19.1. If the Customer is a corporation other than a public company listed on the Australian Stock Exchange, the Customer must procure each of its directors (and their spouses where property is jointly owned) to properly complete and execute the guarantee and indemnity in the form of the Guarantee annexed to these Terms and Conditions of Trade, which completion and execution must occur contemporaneously with the execution of this agreement by the Customer. If the Customer is a corporation which is a wholly owned subsidiary of a public company that is listed on the Australian Stock Exchange, the Customer must procure that public company to execute the Guarantee.
20. **Security Interest**
- 20.1. The retention of title arrangement under clause 9 constitutes the grant of a purchase money security interest by the Customer in favour of the Company in respect of all present and after-acquired Goods supplied to the Customer by the Company.
- 20.2. The Customer must immediately, if requested by the Company, sign any documents, provide all necessary information and do anything else required by the Company to ensure that the Company's purchase money security interest is a perfected security interest.
- 20.3. The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Company has perfected its purchase money security interest.
- 20.4. For any Goods supplied that are not goods that are used predominantly for personal, domestic or household purposes, the parties agree to contract out of the application of sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 of the PPSA in relation to the Goods.
- 20.5. The Customer waives any rights that the Customer may otherwise have to: a) receive any notices the Customer would otherwise be entitled to receive under sections 95, 118, 130, 132 or 135; b) apply to a court for an order concerning the removal of an accession under section 97 of the PPSA; c) object to a proposal of the Customer to purchase or retain any collateral under sections 130 or 135 of the PPSA; d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Company may have in Goods supplied to the Customer from time to time.
- 20.6. The expressions "accession", "collateral", "financing statement", "financing change statement", "Security agreement", "security interest", "perfected security interest", and "verification statement" have the meaning given to them in the PPSA.