

1. DEFINITIONS

In these Conditions:

- “Terms” means these Terms and Conditions of Trade, “Customer” means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from JDS BUILDING AND MAINTENANCE SERVICES;
- “Goods” means goods or services supplied by JDS BUILDING AND MAINTENANCE SERVICES to the Customer;
- “GST” means any goods or services or value added tax, including GST within the meaning of the Goods and Services Tax Act 1999;
- “Intellectual Property” means all copyright, patents, trademarks, names, formulae, specifications, confidential information and all modifications, improvements and enhancements (whether registerable or not) owned by JDS BUILDING AND MAINTENANCE SERVICES or its parent company in respect of the Goods.
- “JDS BUILDING AND MAINTENANCE SERVICES means JDS BUILDING AND MAINTENANCE SERVICES ABN 95715047807, at 15 Lakeport Way Butler 6036, Western Australia – PH: 0422364483
- “Price” means the price stated in JDS BUILDING AND MAINTENANCE SERVICES tender, quote, price schedule or letter attached to these Terms which is subject to Clause 3.

2. BASIS OF CONTRACT

2.1 The Terms apply exclusively to every contract for the sale of Goods by JDS BUILDING AND MAINTENANCE SERVICES to the Customer and cannot be varied or supplanted by any other terms or conditions, unless agreed by JDS BUILDING AND MAINTENANCE SERVICES in writing.

2.2 Any written quotation, tender, price schedule or letter provided by JDS BUILDING AND MAINTENANCE SERVICES to the Customer concerning the proposed supply of Goods is valid for 30 days and is an invitation only to the Customer to place an order based upon that quotation, tender, price schedule or letter.

2.3 Any order placed by the Customer is an offer. An order will not be accepted until JDS BUILDING AND MAINTENANCE SERVICES communicates acceptance to the Customer in writing or by electronic means or it has provided the Goods.

2.4 Where the particular model of a part or product ordered is no longer available and has been replaced by a new model, JDS BUILDING AND MAINTENANCE SERVICES may substitute with the new model.

3. PRICING

3.1 Prices for the supply of Goods exclude:

- (a) GST;
- (b) Insurance; and
- (c) Freight, unless otherwise agreed by JDS BUILDING AND MAINTENANCE SERVICES in writing.

3.2 In addition to the Price the Customer must pay to JDS BUILDING AND MAINTENANCE SERVICES any amounts specified in clauses 3.1(a) and (b).

3.3 If the Customer requests any variation to the Agreement JDS BUILDING AND MAINTENANCE SERVICES may increase the Price to account for the variation.

3.4 Where there is any change in the costs incurred by JDS BUILDING AND MAINTENANCE SERVICES in relation to the Goods, JDS BUILDING AND MAINTENANCE SERVICES may vary the Price for Goods on order to take account of any such damage.

4. PAYMENT

4.1 Unless otherwise agreed, payment of the Price must be made in full on delivery of the Goods.

4.2 If credit terms are provided by JDS BUILDING AND MAINTENANCE SERVICES, payment must be made within 14 days from the end of the month that the invoice was raised.

4.3 Payment by cheque is not decreed trade until the proceeds of the cheque have cleared.

4.4 Credit terms may be revoked or amended at the sole discretion of JDS BUILDING AND MAINTENANCE SERVICES.

4.5 JDS BUILDING AND MAINTENANCE SERVICES will provide a tax invoice for GST purposes.

4.6 Any other payment terms must be agreed in writing and signed by JDS BUILDING AND MAINTENANCE SERVICES.

5. PAYMENT DEFAULT

5.1 If the Customer defaults in payment by the due date of any amount payable to JDS BUILDING AND MAINTENANCE SERVICES, then all money which would become payable by the Customer to JDS BUILDING AND MAINTENANCE SERVICES at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and JDS BUILDING AND MAINTENANCE SERVICES may, without prejudice to any other remedy available to it:

- (a) charge the Customer interest on any sum due, at the Reserve Bank of Australia Prime Indicator Rate plus 5 per cent, for the period from the due date to the date of payment in full;

- (b) charge the Customer for, and the Customer must indemnify JDS BUILDING AND MAINTENANCE SERVICES from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms;
- (c) cease or suspend for such period as JDS BUILDING AND MAINTENANCE SERVICES thinks fit, supply of any further Goods to the Customer,
- (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by JDS BUILDING AND MAINTENANCE SERVICES; without effect on the accrued rights of JDS BUILDING AND MAINTENANCE SERVICES under any contract.

5.2 Clauses 5,1(c) and (d) may also be relied upon, at the option of JDS BUILDING AND MAINTENANCE SERVICES:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation.

6. RETENTION OF TITLE

6.1 Until full payment in cleared funds is received by JDS BUILDING AND MAINTENANCE SERVICES for all Goods supplied by it to the Customer, as well as all other amounts owing to JDS BUILDING AND MAINTENANCE SERVICES by the Customer.

- (a) title and property in all Goods remain vested in JDS BUILDING AND MAINTENANCE SERVICES and does not pass to the Customer
- (b) the Customer must hold the Goods as fiduciary bailee and agent for JDS BUILDING AND MAINTENANCE SERVICES,
- (c) JDS BUILDING AND MAINTENANCE SERVICES may without notice, enter any premises where it suspects the Goods may be and remove them notwithstanding that they may have been attached to other goods not the property of JDS BUILDING AND MAINTENANCE SERVICES, and for this purpose the Customer irrevocably licences JDS BUILDING AND MAINTENANCE SERVICES to enter such premises and also indemnifies JDS BUILDING AND MAINTENANCE SERVICES from and against all costs, claims, demands or actions by any party arising from such action.
- (d) If the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, JDS BUILDING AND MAINTENANCE SERVICES may in its absolute discretion seize all Goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of JDS BUILDING AND MAINTENANCE SERVICES and the Customer may be ascertained. JDS BUILDING AND MAINTENANCE SERVICES must promptly return to the Customer any Goods the

property of the Customer and JDS BUILDING AND MAINTENANCE SERVICES is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

7. INTELLECTUAL PROPERTY

7.1 The Customer acknowledges JDS BUILDING AND MAINTENANCE SERVICES's title to the Intellectual Property in or related to any of its Goods and shall not claim any right, title or interest in the Intellectual Property nor use any of the intellectual Property other than necessary for the proper use of the Goods.

7.2 Documents pertaining to the Goods provided by JDS BUILDING AND MAINTENANCE SERVICES, such as illustrations, drawings and measurements are only approximate and are not binding.

8. RISK AND INSURANCE

8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods passes to the Customer immediately on the Goods being dispatched from JDS BUILDING AND MAINTENANCE SERVICES's premises or supplier.

8.2 It is the responsibility of the Customer to arrange and pay for insurance for the Goods.

9. PERFORMANCE OF CONTRACT

9.1 Any period or date for delivery of Goods stated by JDS BUILDING AND MAINTENANCE SERVICES is intended as an estimate only and is not a contractual commitment

9.2 JDS BUILDING AND MAINTENANCE SERVICES may, at its discretion, make part delivery of the Goods.

10. WARRANTY & RETURNS

10.1 It is the Customer's responsibility to inspect all Goods delivered and completed for defects or damages.

10.2 The Customer must notify JDS BUILDING AND MAINTENANCE SERVICES in writing within 14 days of any short supply or damaged Goods.

11. LIABILITY

11.1 Except as specifically set out in these Terms, or contained in any warranty statement provided with the Goods, any term, condition or warranty in respect of the quality, merchantability, fitness for

purpose, condition, description, assembly, manufacture, design or performance of the Goods, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.

11.2 Replacement or repair of the Goods or re-supply of the services is the absolute limit of JDS BUILDING AND MAINTENANCE SERVICES's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Customer or any third party.

11.3 Expenses is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

11.4 JDS BUILDING AND MAINTENANCE SERVICES will not be liable for any loss or damage suffered by the Customer or any third party where JDS BUILDING AND MAINTENANCE SERVICES has failed to meet any delivery date or cancels or suspends the delivery or provision of the Goods.

11.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12. CANCELLATION & RETURN

12.1 If, through circumstances beyond its control, JDS BUILDING AND MAINTENANCE SERVICES is unable to affect delivery or provision of Goods or Services, then JDS BUILDING AND MAINTENANCE SERVICES may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

12.2 Orders that have been accepted by JDS BUILDING AND MAINTENANCE SERVICES may not be cancelled by the Customer after the Goods have been dispatched by JDS BUILDING AND MAINTENANCE SERVICES.

13. MISCELLANEOUS

13.1 The laws of the State from time to time govern the Terms and the parties agree to the exclusive jurisdiction of the courts of the State, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

13.2 Should one or more of the above clauses be void, this shall not affect the validity of the remaining provisions.

13.3 Headings are for convenience only and do not affect the interpretation of this agreement.