

CONDITIONS OF SALE – JT GROUP WA

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods, whose details are set out in the invoice.

Goods means the products and, if any, services specified in the invoice.

Seller means the seller of the Goods, being JT Sheetmetal Pty Ltd trading as JT Group WA (ABN 44 141 619 169) or such other party whose details are set out in the invoice.

quotation includes a price set out in the Buyer's website or current pricelist.

1.2 Interpretation

(a) Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010 (Cth)) and which by law cannot be excluded, restricted or modified.

(b) **Subject to clause 1.2(a) above, where the Goods are COLORPRO or COLORPRO PLUS then the specific LIMITED WARRANTY FOR COLORPRO AND COLORPRO PLUS ("Warranty"), which is either attached to these conditions or is separately available from the Seller, shall apply and the Warranty shall take precedence to the extent of any inconsistency over these conditions.**

2 General

These conditions (which will only be waived in writing by the Seller and Buyer) will prevail over all conditions of the Buyer's order, to the extent of any inconsistency.

3 Terms of sale

The Goods and all other products sold by Seller are sold on these terms and conditions.

4 Seller's quotations and acceptance of orders

Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 7 days only after its date. The Seller reserves the right to refuse any order, based on a quotation or otherwise, within 14 days after the receipt of the order.

5 Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense, even if that cost has been omitted from any quotation.

6 Shortage

The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 7 days from the date of receipt of Goods by the Buyer.

7 Drawings, etc

(a) All specifications, drawings, and particulars of weights and dimensions of Goods are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or

form grounds for any claim against the Seller.

(b) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.

(c) Where specifications, drawings or other particulars are supplied by the Buyer for the purposes of the Goods order, the Seller's price will be calculated on the basis of estimates of quantities required to provide the Goods as specified, drawn or otherwise particularised by the Buyer. If there are any adjustments in quantities above or below the quantities estimated by Seller as set out in a quotation, then any such increase or decrease will be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

8 Performance

performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

9 Delivery

(a) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.

(b) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.

(c) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.

(d) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:

- (i) this does not constitute a repudiation of the contract of sale formed by these conditions; and
- (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.

10 Loss or damage in transit

(a) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).

(b) The Seller must provide the Buyer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the Buyer:

- (i) has notified the Seller and the carrier in writing immediately after loss or damage is discovered by the Buyer on receipt of Goods; and
- (ii) serves a claim for compensation on the carrier within 3 days of the date of receipt of the Goods.

11 Guarantee

(a) The Seller's liability for Goods manufactured by it is limited to making good any defects. This must be done by repairing the defects or, at the Seller's option, by replacement, within a period not exceeding 12 calendar months after the Goods have been dispatched. This applies so long as:

- (i) the defects have arisen solely from faulty materials or workmanship;
- (ii) the Goods have not received maltreatment, inattention or interference;
- (iii) accessories of any kind used by the Buyer are manufactured by or approved by Seller;
- (iv) the seals of any kind on the Goods remain unbroken; and
- (v) the defective parts are promptly returned free of cost to the Seller.

(b) If the Goods are not manufactured by the Seller, the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer for the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

(c) The Seller is not liable for, and the Buyer releases the Seller from, any claims in respect of faulty or defective design of any Goods supplied. This is unless the design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing.

(d) The Seller's liability under clause 11(c) is limited strictly to the replacement of defective parts in accordance with clause 11(a) of these conditions.

(e) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way.

12 Consumer guarantees

Seller's liability for a breach of a condition or warranty implied by Part 3-2 Division 1 of the Australian Consumer Law is limited to:

- (a) in the case of Goods, any one or more of:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - (iv) the payment of the cost of having the Goods repaired; or
- (b) in the case of services:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

13 Indemnification of suppliers by manufacturers

The Seller's liability under section 274 of the Australian Consumer Law is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the Goods repaired, whichever is the lowest amount.

14 Prices

- (a) Unless otherwise stated all prices quoted by vendor are exclusive of Goods and Services Tax (**GST**).
- (b) Prices quoted are calculated at the date of issue of a relevant quotation and include rates provided by third parties providers. These third party rates include the cost of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production (**Third Party Rates**). Third Party Rates may vary slightly from the date of the quotation to the time of delivery of the Goods. The Buyer will be liable for any increase in the Third Party Rates.
- (c) If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

15 Payment

- (a) The purchase price for the Goods (plus GST where applicable) is payable at the time of order unless other terms of payment are agreed in writing by the Seller (**Payment Due Date**).
- (b) The Buyer must pay interest on any outstanding amount not paid by the Payment Due Date. Interest will be calculated at a rate of 12% per annum on a pro-rata basis. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.

16 Rights in relation to Goods

- (a) The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:
 - (i) ownership of the Goods;
 - (ii) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (iii) subject to, and in accordance with, the Personal Property Securities Act 2009, to keep or resell any Goods repossessed pursuant to clause 16(a)(ii).
- (b) If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer will hold such part

of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account. This will be held the beneficial property of the Seller and the Buyer will pay such amount to the Seller upon request. Despite the provisions above, the Seller will be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.

17 Buyer's property

property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

18 Storage

Seller reserves the right to charge a reasonable fee for storage if the Goods are not collected or delivery instructions are not provided by the Buyer, as applicable in the circumstances, by the agreed, or if no date is agreed then within 7 days of a request made by the Seller.

19 Returned Goods

- (a) Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept Goods returned by the Buyer. The Seller will do so only on terms to be agreed in writing in each individual case.
- (b) If the Seller agrees to accept returned Goods from the Buyer under clause 19(a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business.

20 Goods sold

Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.

21 Cancellation

- Order may be cancelled by the Buyer except with the written consent of the Seller. If there is a cancellation of the order by the Buyer, the Seller has the right to claim the greater of:
 - (a) indemnity against all losses suffered by the Seller as a result of such cancellation; or
 - (b) 20% of the purchase price of the Goods as a re-stocking fee and condition of consent.

22 Personal Property Securities Act (Cth) 2009 (PPSA)

- (a) This agreement is a security agreement.
- (b) The interest of the Seller in the Goods and all proceeds from the sale of the Goods by the Buyer to a third party is a security interest.
- (c) The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration.

- (d) Until title in the Goods has passed to the Buyer as contemplated by clause 16 of this agreement, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a security interest over, the Goods in favour of the Buyer or any third party, The parties agree that this clause will not prohibit the Buyer from selling the Goods in the ordinary course of business..

- (e) The Buyer waives its rights to receive any notice under PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.

- (f) The Seller and Buyer agree that this agreement and all related information and document(s) are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

- (g) Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Seller's security interest in the Goods or of this agreement:

- (i) any requirement for the seller to give the Buyer a notice of removal of accession;
- (ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the goods;
- (iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- (iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
- (v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and
- (vi) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.

- (h) Expressions defined in the PPSA have the same meaning when used in this agreement.

23 Termination

- (a) The Seller may revise these conditions from time to time and the revised conditions shall apply to any subsequent order for Goods.
- (b) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).

- (c) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of 7 days after receipt of a written notice by the other party requiring rectification of the breach.
- (d) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (e) The obligations of the parties that by their nature could reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

24 Place of contract

This agreement shall be governed by and construed in accordance with Western Australian law. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or Federal Magistrates Court of Australia.