



## GENERAL TERMS AND CONDITIONS OF SALE

These Terms and Conditions shall apply to all contracts for the sale of any goods or services ("Products") by JNG Australia Pty Ltd (ACN 133 306 242) ("JNG") to the original purchaser ("Buyer") to Buyer may purport to apply under any purchase order, confirmation of order or similar document. No Variation or modification or substitution of these terms and conditions shall be binding on JNG unless specifically accepted by JNG in writing.

### 1. Prices

- 1.1 The price for the Products shall be the price ("Price") set out overleaf.
- 1.2 Sales tax and any other taxes or duties imposed by law ("Sales Tax") on or in respect of the Products shall be to the Buyer's account and will be calculated using the rates and methods of assessment in force at the time of delivery. If the Buyer is exempt from Sales Tax, the Buyer must provide to JNG its Sales Tax Exemption Number or a Conditional Exemption Certificate.
- 1.3 The Prices for the Products may be varied to JNG's general prices in effect at the date of delivery of the Products notwithstanding any prior orders or sales order acceptances in respect of the Products.

### 2. Goods & Services Tax

For the purposes of this clause:

"GST" means GST within the meaning of the GST Act;

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.

- (a) Except where express provision is made to the contrary, and subject to this clause, the *consideration* payable by the Buyer for the Products represents the *value of any taxable supply* for which payment is to be made,
- (b) Subject to sub-clause (d), if a party makes a *taxable supply* in connection with the purchase of the Products for a *consideration*, which under sub-clause (a) or sub-clause (c), represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.
- (c) If these General Terms and Condition of Sale require the Buyer to pay, reimburse or contribute to an amount paid or payable by JNG in respect of an *acquisition* from a third party for which JNG is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the Buyer will be the *value of the acquisition* by JNG plus, if JNG's recovery from the Buyer is a *taxable supply*, any GST payable under sub-clause (b).
- (d) A party's right to payment under sub-clause (b) is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.

### 3. Quotations

- 3.1 No quotation given by JNG shall constitute an offer. Any order for the supply of Products shall not be binding upon JNG until accepted by JNG
- 3.2 Prices given in any quotation are applicable to that quotation only and will not necessarily apply in any other instance.
- 3.3 Quotations are valid for a period of thirty (30) days from date of issue.

### 4. Terms of Payment

- 4.1 Unless otherwise agreed, all Products will be supplied on a cash before delivery basis.
- 4.2 The granting or extension of credit to the Buyer is at the absolute discretion of JNG at all times and unless otherwise stated, where granted or extended, payment of the Price and Sales Tax is due within thirty (30) days of the date of the invoice unless other terms of payment are expressly stated herein. Before the Buyer is granted credit by JNG, the Buyer must complete JNG's Application for Commercial Credit.
- 4.3 Interest on overdue invoices shall accrue from the date when the Price is due from day to day until the date of payment at a rate five (5%) per cent higher than the rate fixed from time to time under the Penalty Interest Rates Act 1983 and accrues at such a rate after as well as before any date of judgment.
- 4.4 Time for payment of the Price is of the essence.

### 5. Delivery

- 5.1 Subject to Clause 6, possession of and risk in the Products passes to the Buyer at the time Products are loaded onto the vehicle at JNG's premises ("Delivery").
- 5.2 The Buyer must make all arrangements necessary to take Delivery of the Products whenever they are tendered for Delivery.
- 5.3 Where Delivery is affected by way of party deliveries JNG is entitled to invoice the Buyer for pro rata progress payments.
- 5.4 Where JNG agrees to carry out delivery of the Products on behalf of the Buyer, the cost of such Delivery shall be to the Buyer's account and such delivery charges will be detailed separately on the sales invoice.
- 5.5 In consideration of JNG's delivery charge JNG may, unless otherwise directed by the Buyer, dispatch and deliver the products to the Buyer, or as the Buyer may direct, and insure the Products on the Buyer's behalf while in transit against such risks as JNG considers appropriate. The charge for transportation and insurance is solely to the Buyer's account and is payable by the Buyer to JNG with payment for the Products. The Buyer may arrange for such transportation at its own expense by giving advance written notice to JNG in which event JNG's delivery charge will not apply.
- 5.6 JNG is not liable for any loss or damage (including consequential loss or damage) arising from delay in Delivery or failure to deliver due to circumstances beyond its reasonable control and the Buyer must accept and pay for Products notwithstanding late delivery.

- 5.7 The Buyer is responsible for and indemnifies JNG for loss or damage to the Product from the time of Delivery until paid for in full.
- 5.8 Any claim by the Buyer for short or wrongful Delivery must be notified to JNG in writing within seven (7) days after the Delivery and any such claim which the Buyer does not notify within the aforesaid time shall be deemed to be absolutely waived. Products may not be returned to JNG until an official GRA (Goods Return Advice) number has been obtained from JNG. A Restocking Fee of 15% of the original invoiced amount will be charged on returned items unless defective.
- 5.9 Home deliveries may be arranged at the request of the Buyer subject to acceptance to JNG. The cost of such delivery shall be to the Buyer's account and home delivery charges will be detailed separately on the sales invoice.
- 5.10 For export orders, Deliveries are FOB and are deemed to be effected when the Products are loaded into the delivery ship or aircraft, or made available to a freight forwarder as the case may require.
- 5.11 Where supplied, all Products will be invoiced at JNG's rate of supply. Where an exchange occurs, a full credit will be issued.

### 6. Title and Risk

- 6.1 Whilst the risk in the Products passes on Delivery, legal and equitable title remains within JNG until payment in full for all debts accrued or owed to JNG is made.
- 6.2 The Buyer may sell or deal in the ordinary course of business with the Products and within the interest of JNG in the Products and may for the purpose of such sale or dealing.
- 6.3 Notwithstanding the above, JNG reserves the following rights in relation to the Products until all amounts owed by the Buyer to JNG are fully paid:
  - (a) legal and equitable ownership of the Products;
  - (b) to enter the Buyer's premises (or the premises of any associated company where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and
  - (c) to keep or resell any Products repossessed pursuant to (b) above
- 6.4 The Buyer must so long as JNG is entitled to the property in the Products, store the Products so that they are clearly identifiable as the property of JNG.
- 6.5 In the event that the Products are resold, or products manufactured using the Products are sold, by the Buyer, the Buyer holds on trust such part of the proceeds of any such sale as represents the invoice price of the Products sold or used in the manufacture of the Products sold in a separate identifiable account as the beneficial property of JNG and must pay such amount to JNG upon request. Notwithstanding the provisions above JNG is entitled to maintain an action against the Buyer for the purchase price of the Products.

### 7. Cancellation

No order may be cancelled except with consent in writing of JNG and on terms which will indemnify JNG against all losses.

### 8. Warranty

The Products are warranted by JNG against defective workmanship and materials. JNG's obligations pursuant to this express warranty being limited to the repair or replacement of the defective Products or materials at its option and subject to the terms and conditions stated in the Product Warranty attached to the Products. Warranty on all JNG products is three (3) months.

To the extent permitted by law all implied conditions and warranties are expressly excluded.

### 9. Indemnity

Without prejudice to any other rights JNG may have, the Buyer indemnifies JNG for any loss, damage or expense incurred by JNG should the Buyer cancel any order (or part thereof) or breach any term hereof.

### 10. Default

Should the Buyer fail to make due payment for any Products supplied by JNG or commit an act of bankruptcy or by act or omission enable the appointment of an administrator, scheme manager, trustee, official manager, receiver, controller of property, receiver and manager, liquidator or any other person authorized to enter into possession or assume control of any property of the Buyer pursuant to a mortgage or other security, then:

- (a) The right of the Buyer to sell the Products or the ordinary course of business or otherwise immediately terminated without the need for JNG to provide written confirmation; and
- (b) JNG may, without prejudice to any other rights it may have, do any of the following –
  - (i) forthwith withdraw any credit facilities which may have been extended to the Buyer and require immediate payment of all moneys accrued or owing to JNG;
  - (ii) withhold any further deliveries or performance of Products required under the contract;
  - (iii) in respect of Products already delivered, enter onto the Buyer's premises to recover and resell same for its own benefit;
  - (iv) suspend and/or terminate performance of any other contracts which JNG has with the Buyer.

### 11. Disputes

In the event of any dispute between JNG and the Buyer in relation to these Terms and Conditions of Sale either party may give written notice of the existence of such dispute to the other following which the dispute shall be referred to arbitration pursuant to the laws of Victoria, Australia. In any proceedings before an arbitrator the parties may by agreement, but not otherwise be represented by a lawyer or by counsel.

### 12. Governing Law

These Terms and Conditions shall be governed by and construed in accordance with the law of the State of Victoria and the Buyer submits to the non-exclusive jurisdiction of that State.

**NOTHING IN THESE TERMS AND CONDITIONS SHALL BE READ OR APPLIED SO AS TO 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 TRADE PRACTICES ACT 1974 AND WHICH BY LAW CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED)**