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## Jake's Steel & Welding Pty Limited – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "JSW" means Jake's Steel & Welding Pty Limited, its successors and assigns or any person acting on behalf of and with the authority of Jake's Steel & Welding Pty Limited.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting JSW to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by JSW to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Equipment" means all Equipment including any accessories supplied on hire by JSW to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by JSW to the Customer.
- 1.6 "Intended Use" means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.7 "Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
  - (b) does not, or will not, comply with the relevant regulatory provisions; or
  - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.10 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between JSW and the Customer in accordance with clause 6 below.
- 1.11 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with JSW and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, JSW reserves the right to refuse delivery.
- 2.6 These terms and conditions may be meant to be read in conjunction with JSW's Hire Form, and:
- (a) where the context so permits, the terms 'Services' or 'Goods' shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Northern Territory) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Out of Stock/Substitution

- 3.1 JSW will use its reasonable endeavours to ensure that all Goods ordered by the Customer are supplied to the Customer. If the Goods ordered are not available in stock, JSW shall work with the Customer on a case by case basis where options may include back order of Goods or amendment to the order.

### 4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that JSW shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by JSW in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by JSW in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of JSW; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

**5. Change in Control**

5.1 The Customer shall give JSW not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by JSW as a result of the Customer's failure to comply with this clause.

**6. Price and Payment**

- 6.1 At JSW's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by JSW to the Customer; or
  - (b) the Price as at the date of Delivery of the Goods according to JSW's current price list; or
  - (c) JSW's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 6.2 JSW reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of machinery, safety considerations, prerequisite work by any third party not being completed, changes to designs, fluctuations in raw materials prices, etc.) which are only discovered on commencement of the Services; or
  - (d) if during the course of the Services, the Goods cease to be available from JSW's third party suppliers, then JSW reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties;
  - (e) in the event of increases to JSW in the cost of labour or materials (including but not limited to, overseas transactions that may increase, as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond JSW's control.
- 6.3 Variations will be charged for on the basis of JSW's quotation, and will be detailed in writing, and shown as variations on JSW's invoice. The Customer shall be required to respond to any variation submitted by JSW within ten (10) working days. Failure to do so will entitle JSW to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At JSW's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by JSW, which may be:
- (a) on or before delivery of the Goods;
  - (b) fourteen (14) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by JSW.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and JSW.
- 6.7 JSW may in its discretion allocate any payment received from the Customer towards any invoice that JSW determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer JSW may re-allocate any payments previously received and allocated. In the absence of any payment allocation by JSW, payment will be deemed to be allocated in such manner as preserves the maximum value of JSW's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by JSW nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to JSW an amount equal to any GST JSW must pay for any supply by JSW under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**7. Provision of the Services**

- 7.1 Subject to clause 7.2 it is JSW's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that JSW claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond JSW's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify JSW that the site is ready.
- 7.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at JSW's address; or
  - (b) JSW (or JSW's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.4 At JSW's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 7.5 JSW may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by JSW for Delivery of the Services is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. JSW will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then JSW shall be entitled to charge a reasonable fee for redelivery and/or storage.

**8. Risk**

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, JSW is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by JSW is sufficient evidence of JSW's rights to receive the insurance proceeds without the need for any person dealing with JSW to make further enquiries.
- 8.3 If the Customer requests JSW to leave Goods outside JSW's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 The Customer acknowledges that;
- (a) Goods supplied may:
- (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. JSW will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
- (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (iii) mark or stain if exposed to certain substances; and
- (iv) be damaged or disfigured by impact or scratching.
- (b) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods; and
- (c) that JSW is only responsible for parts that are replaced/supplied by JSW and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify JSW against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising; and
- (d) that they shall remove any tangible items susceptible to damage from the vicinity of the Services (and provide protection where necessary), and agrees that JSW shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.

**9. Accuracy of Customer's Plans and Measurements**

- 9.1 Where the Customer is to supply JSW with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. JSW shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.
- 9.2 JSW shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, JSW accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.3 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless JSW and the Customer agree otherwise in writing.

**10. Underground Locations**

- 10.1 Prior to JSW commencing any work the Customer must advise JSW of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst JSW will take all care to avoid damage to any underground services the Customer agrees to indemnify JSW in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

**11. Access**

- 11.1 The Customer shall ensure that JSW has clear and free access to the work site at all times to enable them to undertake the Services. JSW shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of JSW.
- 11.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify JSW against all costs incurred by JSW in recovering such vehicles in the event they become bogged or otherwise immovable.

**12. Compliance with Laws**

- 12.1 The Customer and JSW shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 12.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12.4 The Customer agrees that all materials supplied by the Customer or the Customer's third party sub-contractors will:
- (a) be supplied in accordance with all legislative requirements;
- (b) be suitable for their inclusion into the Services.
- 12.5 Where the Customer has supplied materials for JSW to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. However, if in JSW's opinion, it is believed that the materials supplied will not conform to industry regulations, then JSW shall be entitled, without prejudice, to halt the Services until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be invoiced in accordance with clause 5.2.

**13. Title**

- 13.1 JSW and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid JSW all amounts owing to JSW; and

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- (b) the Customer has met all of its other obligations to JSW.
- 13.2 Receipt by JSW of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to JSW on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for JSW and must pay to JSW the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for JSW and must pay or deliver the proceeds to JSW on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of JSW and must sell, dispose of or return the resulting product to JSW as it so directs;
  - (e) the Customer irrevocably authorises JSW to enter any premises where JSW believes the Goods are kept and recover possession of the Goods;
  - (f) JSW may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of JSW;
  - (h) JSW may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 14. Personal Property Securities Act 2009 ("PPSA")**
- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to JSW for Services – that have previously been supplied and that will be supplied in the future by JSW to the Customer.
- 14.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which JSW may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, JSW for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of JSW;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of JSW;
  - (e) immediately advise JSW of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.4 JSW and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by JSW, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by JSW under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Security and Charge**
- 15.1 In consideration of JSW agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Customer indemnifies JSW from and against all JSW's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising JSW's rights under this clause.
- 15.3 The Customer irrevocably appoints JSW and each director of JSW as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.
- 16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 16.1 The Customer must inspect the Goods on Delivery and must within two (2) days of delivery notify JSW in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow JSW to inspect the Goods.

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- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.3 JSW acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, JSW makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. JSW's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, JSW's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If JSW is required to replace the Goods under this clause or the CCA, but is unable to do so, JSW may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, JSW's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by JSW at JSW's sole discretion;
  - (b) limited to any warranty to which JSW is entitled, if JSW did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
  - (b) JSW has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, JSW shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by JSW;
  - (e) fair wear and tear, any accident, or act of God.
- 16.10 JSW may in its absolute discretion accept non-defective Goods for return in which case JSW may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 16.11 Notwithstanding anything contained in this clause if JSW is required by a law to accept a return then JSW will only accept a return on the conditions imposed by that law.
- 16.12 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
- 17. Intellectual Property**
- 17.1 Where JSW has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of JSW. Under no circumstances may such designs, drawings and documents be used without the express written approval of JSW.
- 17.2 The Customer warrants that all designs, specifications or instructions given to JSW will not cause JSW to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify JSW against any action taken by a third party against JSW in respect of any such infringement.
- 17.3 The Customer agrees that JSW may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which JSW has created for the Customer.
- 18. Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at JSW's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes JSW any money the Customer shall indemnify JSW from and against all costs and disbursements incurred by JSW in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, JSW's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies JSW may have under this Contract, if a Customer has made payment to JSW, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by JSW under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 18.4 Without prejudice to JSW's other remedies at law JSW shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to JSW shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to JSW becomes overdue, or in JSW's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by JSW;
  - (c) the 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**19. Cancellation**

- 19.1 Without prejudice to any other remedies JSW may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions JSW may suspend or terminate the supply of Goods to the Customer. JSW will not be liable to the Customer for any loss or damage the Customer suffers because JSW has exercised its rights under this clause.
- 19.2 JSW may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice JSW shall repay to the Customer any money paid by the Customer for the Goods. JSW shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by JSW as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**20. Privacy Policy**

- 20.1 All emails, documents, images or other recorded information held or used by JSW is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. JSW acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). JSW acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by JSW that may result in serious harm to the Customer, JSW will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to JSW in respect of Cookies where transactions for purchases/orders transpire directly from JSW's website. JSW agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to JSW when JSW sends an email to the Customer, so JSW may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via JSW's website.
- 20.3 The Customer agrees for JSW to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by JSW.
- 20.4 The Customer agrees that JSW may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 20.5 The Customer consents to JSW being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Customer agrees that personal credit information provided may be used and retained by JSW for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.7 JSW may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
  - (b) name of the credit provider and that JSW is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and JSW has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of JSW, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Customer shall have the right to request (by e-mail) from JSW:

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- (a) a copy of the Personal Information about the Customer retained by JSW and the right to request that JSW correct any incorrect Personal Information; and
  - (b) that JSW does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 20.10 JSW will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Customer can make a privacy complaint by contacting JSW via e-mail. JSW will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 21. Equipment Hire

- 21.1 Equipment shall at all times remain the property of JSW and is returnable on demand by JSW. In the event that Equipment is not returned to JSW in the condition in which it was delivered JSW retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all JSW shall have right to charge the Customer the full cost of replacing the Equipment.
- 21.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by JSW to the Customer.
- 21.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self-insure, JSW's interest in the Equipment and agrees to indemnify JSW against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 21.4 Notwithstanding the above clauses in the section 21, immediately on request by JSW the Customer will pay:
- (a) any lost hire charges JSW would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - (b) any insurance excess payable in relation to a claim made by either the Customer or JSW in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or JSW's.
- 21.5 Return of the Equipment ("Return") will be completed when:
- (a) the Equipment is returned by the Customer to JSW's place of business; or
  - (b) when JSW takes back possession of the Equipment once collection by JSW is affected.

### 22. Dispute Resolution

- 22.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 23. Construction Contracts (Security of Payments) Act

- 23.1 At JSW's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts (Security of Payments) Act may apply.
- 23.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Construction Contracts (Security of Payments) Act of the Northern Territory of Australia, except to the extent permitted by the Act where applicable.

### 24. Service of Notices

- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 25. Trusts

- 25.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not JSW may have notice of the Trust, the Customer covenants with JSW as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

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- (c) the Customer will not without consent in writing of JSW (JSW will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

**26. General**

- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Northern Territory, the state in which JSW has its principal place of business, and are subject to the jurisdiction of the courts in Alice Springs, Northern Territory.
- 26.3 Subject to clause 16, JSW shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by JSW of these terms and conditions (alternatively JSW's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.4 JSW may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 26.5 The Customer cannot licence or assign without the written approval of JSW.
- 26.6 JSW may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of JSW's sub-contractors without the authority of JSW.
- 26.7 The Customer agrees that JSW may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for JSW to provide Goods to the Customer.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.