

## TERMS AND CONDITIONS OF SALE

### **1. GENERAL**

- 1.1 The following terms and conditions shall apply to all goods sold and services provided by Jenmar Australia Pty Ltd ("the Seller"), to the customer ("the Buyer"). Such goods and services are referred to below as "Goods" and "Services".
- 1.2 These terms and conditions are the sole agreement between the Seller and Buyer and supersede any terms and conditions contained in any previous offer made by the Seller or the Buyer, or in any order upon the Seller, whenever such order is given or received, and no other terms and conditions will be binding upon the Seller unless in writing and signed by the Seller's authorized representative.

### **2. QUOTATION AND PRICE**

- 2.1 All quotations, except for price, are valid for acceptance within thirty (30) days, unless otherwise specified. Published prices and quoted prices, unless otherwise specified, are subject to change without notice. All orders are accepted with the understanding that the Seller reserves the right to adjust prices to the Seller's prices prevailing at the time of shipment.
- 2.2 Unless otherwise stated by the Seller, the quotation price does not include and the Buyer shall be responsible for all charges in relation to insurance, packing, crating, storage, demurrage, deliver (whether by road, rail or air) and export of the Goods and any sales tax, excise and similar taxes or duties. Where the Buyer is exempt from duty or tax, the Buyer shall furnish appropriate Exemption Certificate to the Seller.

### **3. ORDERS**

- 3.1 Orders are subject to acceptance by the Seller. No order accepted by the Seller may be altered without the Seller's written consent.
- 3.2 If the Buyer cancels an order it shall pay to the Seller any and all loss, damage and expense incurred by the Seller in relation to the Goods and Services.
- 3.3 The Seller may decline, by written notice to the Buyer, any order, in whole or part, at any time prior to delivery of the Goods or provision of the Services, in which case the Seller shall be under no obligation in respect of the order.

### **4. PAYMENT**

- 4.1 Unless otherwise expressly stated, payment shall be made within thirty (30) days from Statement month-end. If the Buyer fails to comply with any terms of payment the Seller may withhold further deliveries, or at its option terminate the agreement, whereupon any unpaid money shall become immediately due.
- 4.2 If payment is not made when due, the Buyer shall pay interest on daily balances on amounts unpaid from the date due for payment until paid at the rate of two percent (2%) per annum over the current local court judgment rate of interest of NSW.
- 4.3 If by terms of sale credit is extended to the Buyer, the Seller reserves the right to revoke such credit if the Buyer fails to pay for any Goods or Services when due and the Seller shall then have the right to demand payment before any further shipments of Goods or provisions of Services.
- 4.4 The Seller may suspend further deliveries or terminate the Agreement to the Buyer if the Buyer makes default in payment due for the Goods or Services or makes any assignments or trust for the benefit of creditors, becomes insolvent or unable to pay its debts as they mature or if proceedings are commenced by or against the Buyer alleging bankruptcy or insolvent the appointment of a receiver.

### **5. DELIVERY AND TITLE**

- 5.1 The time of delivery is given as a fair estimate of the Seller's expectations only, but it is not guaranteed or of the essence of the contract. Delivery is subject to extension to cover delays caused by strikes, lock-outs, war, breakdowns, accidents, delay in transport, fire, non-delivery of raw materials and/or other items required for manufacture, default of sub-contractors and any other cause whatsoever beyond our control. The Seller will not be liable for any loss or damage whether in contract, tort or otherwise and whether direct or indirect arising out of delay in delivery.
- 5.2 All risk of loss or damage to Goods shall pass to the Buyer upon delivery of the Goods to the first carrier, but the Seller shall retain title to the Goods until payment in full is received. Pending payment, the Buyer shall store the Goods in a way that clearly manifests the Seller's title. In the event of resale before the Goods are paid for in full the Buyer shall account to the Seller for the proceeds of the Sales until its Goods are paid for in full by the Buyer. The Buyer authorizes the Seller and its authorized agents to enter upon the Buyer's premises or any premises in the Buyer's possession or control and to retake possession of products for which payment has not been received by the Seller, whether such products are in the original

or any altered form or admixed with any other products of the Buyer or any other party. The Seller shall not be liable to the Buyer for any loss or damage caused in recovery of its products in accordance with clause 5.2.

5.3 Unless otherwise expressly stated, the Seller shall have the right to deliver the Goods in installments. All installments shall be invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any installment when due shall excuse the Seller from making future deliveries.

5.4 Goods returned are accepted only with prior approval of the Seller and may be subject to a 10% handling/re-stocking fee. Goods specifically manufactured by the Seller to the Buyer's order/specifications are non-refundable.

## **6. LIABILITY**

6.1 The Seller shall not be liable for normal variations in tolerance, dimensions, weight or quality. Weight, size quantities and composition as determined at the Seller's plant or other source of supply shall be conclusive.

6.2 Where Goods are supplied to the Buyer's specifications, the Buyer indemnifies the Seller from any liability, loss or damage suffered by the Seller in respect of any claim the Goods infringe any patent, design or similar rights.

6.3 The Seller shall not be liable for any error, omission or inaccuracy in drawing or specifications provided or approved by the Buyer and shall be under no obligation to check or confirm the conformity, accuracy or adequacy of patents, drawings or specifications provided by the Buyer.

6.4 The Buyer is required to give written notice to the Seller of any patent defect of other claim ascertainable upon reasonable inspection of Goods within fourteen (14) days after receipt of Goods. The Seller shall be given reasonable opportunity to inspect Goods where any such notice is given. Failure to so inform Seller shall be conclusive the Seller has satisfactorily performed.

6.5 The Seller warrants the Goods to conform to specifications and shall be liable only for repair or replacement, at the Seller's option, at the point of manufacture of Goods that do not conform to specifications. Such repair or replacement shall be sole and exclusive remedy of the Buyer.

6.6 The Seller makes no warranties, either express or implied, as to merchantability, fitness for a particular purpose, or otherwise, with respect to the Goods or Service other than is in paragraph 6.5 as implied by law and which may not be excluded, restricted or modified. In no event shall the Seller be liable in contract, tort (including negligence) or otherwise for any loss of prospective profits or production, wasted overheads or expenses or special, indirect or consequential damages, or for machine work labour charges, or for any expenses resulting from use by the Buyer of defective Goods or Services or inability to use same.

Note: Laws for the time being in force in Australia imply certain conditions or warrants or impose obligations on the Seller which conditions, warranties and obligations cannot except to limited extent, be excluded, restricted or modified by the provisions contained in these terms and conditions.

The Seller's liability shall in any event be limited to:

(a) in the case of Goods, the replacement or repair of the Goods;

or

(b) in the case of Services, the re-supply of the services.

## **7. GOVERNING LAW**

7.1 This agreement shall be governed by and construed in accordance with the laws of the State of N.S.W., Australia, and Buyer irrevocably submits to the jurisdiction of the Courts of the State and country.

7.2 All rights and remedies of the Seller under this agreement are in addition to the Seller's other rights and remedies and are cumulative not alternative.