

J G Thomas Pty Ltd ACN 009 358 589 [hereinafter referred to as “the Company”]
Terms & Conditions of Trade for the Supply of Goods and Services to Customers
[hereinafter referred to as “Terms”, “Goods “Services” and “the Customer”]

Application

Unless otherwise agreed in writing these terms apply to all dealings between the Company and the Customer.

Definitions and Interpretation

To avoid doubt the following definitions apply to these Terms:

Company means J G Thomas Pty Ltd and/or its successors and assigns;

Contract means an instruction from the Customer to the Company to supply goods and/or services;

Customer means the person, company, partnership, trust, government body and any other person or organisation that enters into any agreement with the Company;

Goods means physical and intangible property of any description;

Order means an instruction from the Customer to supply goods and/or services;

Quotation means a written submission of price submitted by the Company but does not constitute a binding offer unless stated otherwise in the quotation;

Premises means the place where delivery and/or services will be undertaken.

Services means services, installations, maintenance and all other tasks.

1. Order and Acceptance

- 1.1 Whilst the Company may accept verbal or phone orders at the Company’s sole discretion, orders must normally be in writing and duly authorised by the Customer.
- 1.2 Any terms or conditions of the Customer’s order deviating from or inconsistent with these Terms are expressly excluded and rejected by the Company. This exclusion and rejection includes any statement by the Customer that the Customer’s terms and conditions shall prevail.
- 1.3 A binding contract will be established immediately the Customer instructs the Company to commence supply of Goods and/or order Goods from its suppliers and/or assemble or install components, mechanisms or any other items and the Customer will be liable for all costs in the event of cancellation.
- 1.4 “The Customer” is the person, company or body that instructs the Company to supply the Goods and warrants they have the authorisation needed to do so.
- 1.5 The Customer agrees that in the event of any dispute concerning an order (including any question of identity or authority or validity of any telephone, facsimile or email order) that the internal records of the Company will be prima facie evidence of what was ordered and who placed the order.
- 1.6 The Customer agrees that in the event of any dispute concerning an order including, but not limited to, changes to the order, instructions, variations, question of identity and/or authority, or the contents of telephone, facsimile or email notifications that the internal records of the Company will be prima facie evidence of what was ordered.
- 1.7 Each order placed by the Customer shall and be deemed to be a representation by the Customer that it is solvent and will remain solvent. The Customer shall inform the Company of any facts which could affect the Company’s decision to accept any order, and/or grant credit, such as, but not limited to, insolvency, potential insolvency or bankruptcy or the likelihood thereof. Failure to inform the Company of any such factors shall be deemed to create an inequality of bargaining position and be unconscionable, misleading and deceptive thereby rendering the person placing the order liable to pay all money owed by the Customer to the Company.
- 1.8 The Customer shall give the Company at least fourteen (14) days prior written notice of any change of ownership of the premises/site where the Company is delivering Goods and/or supplying Services.

2. Price and Payment

- 2.1 The Company’s price lists are subject to change without notice and the Company reserves the right to apply revised prices to orders not already invoiced or delivered to the Customer.
- 2.2 Estimates are not quotations and are subject to change. Unless stated otherwise GST and other applicable taxes shall be added to the price.
- 2.3 Quotations are based on costs at the time of the quotation and are subject to change if the Customer does not accept the quotation within the period specified in the quotation or within 30 days if no period is shown.
- 2.4 Unless otherwise specified in the Company’s quotation the Customer is responsible for all delivery costs.
- 2.5 If the Customer requires urgent completion of an order and unless the urgency has been provided for in the quotation, the Company reserves the right to increase the price to cover overtime and other extra costs incurred.
- 2.6 The Company reserves the right to increase prices if the Customer requests changes to quantities, specifications, delivery dates and any other variations or fails to provide the Company with clear or adequate instructions or information.
- 2.7 The Company may require a non-refundable deposit before ordering Goods or supplying Goods to the Customer.
- 2.8 If no specific payment terms have been agreed payment must be made immediately upon request by the Company, time being of the essence as to this obligation.
- 2.9 Payment shall only occur when cleared funds from the Customer have been received by the Company for all amounts outstanding.
- 2.10 Unless agreed otherwise by the Company in advance, Goods shall be invoiced to the Customer in full (or in part for partial delivery) immediately the Goods are collected by or dispatched to the Customer or upon the Company advising the Customer that the Goods are available for collection or dispatch.
- 2.11 The Company may, at its sole discretion and without prejudice to its other rights and remedies, withhold supply and demand immediate payment of all amounts owed if the Customer’s account is overdue or the Company is concerned over the Customer’s ability to pay.
- 2.12 The Customer shall not be entitled to set off against any money owed (or allegedly owed) to the Customer by the Company or withhold payment or deduct money from an invoice because a portion of the invoice is disputed by the Customer.
- 2.13 The Company can demand immediate payment of any or all amounts owed even if they are not currently due if the Customer becomes (or appears to be) insolvent, proposes or enters into an arrangement with creditors or an administrator, receiver, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer.

3. Delivery

- 3.1 Delivery of Goods takes place when the Customer collects the Goods from the Company’s premises.

- 3.2 If the Customer request the Company to deliver the Goods to the Customer's premises or to other premises or sites or to a third party or requests that a carrier collects the Goods delivery shall take place when the Goods leave the Company premises and the third party and/or carrier is deemed to be the Customer's agent.
- 3.3 The Company reserves the right to deliver part orders at its entire discretion.
- 3.4 The Customer shall not be relieved from its obligations to the Company for any delay in delivery and unless previously agreed in writing by the Company delivery shall not be the essence of the contract and the Company accepts no responsibility for any losses or alleged losses occurring as a consequence of any delay in delivery or inability to deliver or otherwise complete the Customer's order. Time for delivery shall not be of the essence of the Contract unless previously agreed in writing by the Company.
- 3.5 Unless agreed otherwise in writing by the Company the Goods shall be transported in a manner deemed appropriate for the nature of the Goods. If the Customer requests a specific mode of transportation the Customer shall be fully responsible for all extra costs incurred as a result of the Customer's instructions and absolves the Company from all liabilities as a result of the Customer's request.
- 3.6 For Goods delivered in instalments each delivery will be a separate contract and shall be invoiced separately.
- 3.7 A certificate purporting to be signed by an officer of the Customer confirming delivery shall be prima facie evidence of delivery as shall any signed delivery docket.
- 3.8 All claims must be notified to the Company within seven working days of delivery (time being of the essence) specifying the alleged defect and no claims shall be accepted by the Company thereafter except those specified by statute.
- 3.9 For Goods delivered by the Company and/or Services undertaken by the Company at the Customer's premises, or in other premises/sites as instructed by the Customer, the Company has a safe working environment policy for its personnel and others in the Company's care. The Customer shall promptly notify the Company in writing of all hazards and obstructions (without limitation) that may be encountered and the Customer shall fully indemnify the Company from all claims for personal injury and all other claims made by the Company's personnel and any other parties.
- 4. Brochures and All Other Literature**
- Because brochures, publications, guides and other literature provided by the Company are compiled by the Company's suppliers and/or makers of the Goods, the Customer acknowledges and agrees that it is unreasonable for the Company to warrant they are free from errors or omissions and the Customer shall indemnify and keep the Company indemnified from all claims, liabilities and costs that may arise from any such errors and omissions.
- 5. Customers Are Not Agents**
- The Customer is not an agent of the Company and shall not enter into agreements or represent themselves as agents, officers or representatives of the Company to any parties whatsoever.
- 6. Conversion, Transformation & Incorporating the Goods**
- If the Customer, or any other parties, converts, transforms or incorporates the Goods in whole or in part into other goods, vehicles, plant, equipment and/or machinery the Company shall not be liable for any losses and claims (alleged or otherwise) as a result of such actions.
- 7. Goods at Call**
- If the Company agrees to hold Goods on a call-up basis (which the Company is not obliged to do) such Goods will be held for a maximum of three (3) months after which they will be invoiced in full and the Customer shall promptly take full delivery with payment being made in accordance with the Company's payment terms then in force.
- 8. Suitability, Mal-operation, Representations and Opinions**
- 8.1 The Customer is totally responsible for ensuring that Goods ordered from the Company are suitable for the purposes they were ordered for and shall indemnify and keep the Company indemnified from all claims made by any parties together with all costs incurred by the Company as a result of the Customer failing to select Goods to the correct specifications.
- 8.2 The Company accepts no liability for any misuse, mal-operation, abuse or neglect by the Customer or any other parties who use the Goods in any manner or in any environment other than those recommended in writing by the Company, the manufacturer and/or the Company's supplier or in contravention of any laws, regulations or guidelines.
- 8.3 The Company's employees or any other parties (except those authorised in writing by a director of the Company) are not authorised to make any representations whatsoever concerning the Company and the Goods. The Customer acknowledges and accepts that it will not rely on any such unauthorised representations whatsoever and totally absolves the Company of all responsibility for such unauthorised representations.
- 8.4 If the Customer requests the Company's help in the selection of Goods all such help shall not be considered as advice or a warranty or an expert opinion or a declaration of fitness for purpose unless the Customer has in advance totally informed the Company of all facts, risks, operating environment and all changes that may occur thereto. Unless the Customer has fully advised the Company of all such facts the Company accepts no liability whatsoever and the Customer fully indemnifies the Company from any and all claims made by the Customer or any other parties.
- 9. Claims & Returns**
- 9.1 All claims must be notified to the Company within seven working days of delivery (time being of the essence) specifying the alleged defect and no claims shall be accepted by the Company thereafter except those specified by statute.
- 9.2 The maximum liability of the Company for any and all claims made by the Customer or any other parties shall not exceed the purchase price received by the Company for the Goods.
- 9.3 No Goods will be accepted for return unless agreed in writing by the Company prior to return and then only upon conditions acceptable to the Company. Returns are at the Customer's entire risk for loss or damage and unless otherwise agreed by the Company beforehand the Customer shall pay the insurance and freight costs.
- 9.4 A 25% restocking fee may be payable by the Customer at Company's discretion for undamaged Goods that the Company has agreed to accept for return.
- 10. Warranties**
- 10.1 All warranties on Goods supplied by the Company shall be the warranty, if any, provided by the manufacturer or importer of those Goods and the Company shall have no further warranty obligations whatsoever apart from those prescribed by law that entitle persons or entities to product replacement, repair, refund and other prescribed or awarded benefits.
- 10.2 All warranty claims must be notified to the Company within manufacturer's warranty period (time being of the essence) specifying the alleged defect and no claims shall be accepted by the Company thereafter except those specified by statute.
- 10.3 All warranties exclude fair wear and tear and damage or loss attributable to events beyond the Company's and/or the manufacturer's control such as, but not limited to, neglect, misuse, fire, accidents, exposure to the elements, power surges and/or failure or interruption of electricity supply, water/flood, vandalism and lack of proper maintenance.

10.4 If the Customer or any other party not appointed by the Company attempts to repair, mal-operate or modify Goods or otherwise interferes in any way with them the Company shall be relieved of its warranty and all other obligations.

10.5 The Company shall have no warranty or any other obligations if the Customer has not fully paid for the Goods by the due date for payment.

11. Force Majeure

The Company shall not be liable for any default or delay due to any act of God, war, power, equipment failure, terrorism, strike, lock-out, industrial action, fire, flood, storm, tempest or any other events, without exception, beyond the Company's control.

12. Risk & Insurance

12.1 All risks pass to the Customer upon delivery as defined in these Terms and it is the Customer's responsibility to arrange insurance.

12.2 If any Goods are damaged, destroyed or stolen during or after delivery and prior to payment being received by the Company the Company is entitled to either payment in full or to the insurance proceeds for the Goods. Presenting these terms to the Customer's insurers is sufficient evidence of the Company's rights to the insurance proceeds.

13. Company's Liability

The Company's maximum liability for any claim will not exceed the price received by the Company in respect of the Goods/Services provided by the Company. The Company shall not be liable for any further payments either to the Customer or to any other parties for any alleged losses, damages, indirect and/or consequential loss and/or expense except where the Customer is defined as a consumer within the meaning of the Commonwealth Competition & Consumer Act 2010 and amendments thereto.

14. Default, Interest, Costs & Penalties

14.1 The Company reserves the right to charge a late payment penalty of 5% on all overdue accounts for the first 30 days that an account is overdue. If the account remains unpaid for longer than 30 days from due date a 10% late payment penalty will be levied for each month that the account remains unpaid which shall be compounded monthly until all outstanding moneys have been paid.

14.2 If an account is more than thirty days overdue, administration costs of twenty five dollars (\$25) or ten percent (10%) (whichever is greater) up to a maximum of two hundred and fifty dollars (\$250.00) shall be charged to the Customer and payable immediately.

14.3 The Customer shall indemnify and reimburse the Company for all costs and disbursements in collecting outstanding debts from the Customer which shall include dishonour fees, full legal costs on a solicitor-own-client basis, collection agency costs, investigators costs, court, judgement enforcement and bailiff fees, search agent costs, time, travel and all other collection costs.

14.4 If the Customer breaches any of its obligations the Company may exercise all its rights plus suspend or terminate the supply of Goods/Services and the Company will not be liable for any alleged loss or damage suffered by the Customer or any other parties as a result of exercising its rights.

15. Security for Payment

15.1 If the Company allows the Customer extra time to pay money or perform obligations for which no guarantees or other securities have been provided, the Company may require security for payment including a guarantee by a director or other persons connected with the Customer.

15.2 Any requirement for security or guarantees is without prejudice to other rights or remedies the Company may have and does not affect the reservation of title to Goods/Services supplied to the Customer.

16. NOTICE: Personal Property Securities Act 2009 ("PPSA") and Personal Property Securities Register ("PPSR")

16.1 If any clauses in these Terms contravene any provisions in the PPSA, or amendments thereto, such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these Terms.

16.2 The Customer and all other parties such as, but not limited to, the owner(s) of the property where the Company's Goods are located, the Customer's bankers, finance companies, receivers, liquidators or other insolvency officials are hereby notified that ownership and possession of the Company's Goods and all other property are subject to "Perfected Security Interests on the PPSR".

16.3 The Company may have and is entitled to have a "Purchase Money Security Interest" ("PMSI") and/or other Security Interests on the PPSR for Goods/Services delivered but not paid for and for other Goods and property of the Company and ownership and possession remains with the Company until all moneys have been paid in full and all other obligations of the Customer to the Company have been satisfied.

16.4 In the event that the Company's Security Interests have not been perfected the Customer acknowledges and agrees that these Terms create a Security Interest in the Secured Property and consents to the Company registering a Security Interest on the PPSR and to provide all assistance required by the Company to register, perfect and retain the integrity of the Company's Security Interests.

16.5 The Customer must not create or permit any other parties to create any form of Security Interest, including but not limited to, a Financing Statement, a Financing Change Statement on the Company's Goods and other Property on the PPSR or in any other Register or charge document.

16.6 With regard to Section 64 of the PPSA the Customer warrants that under no circumstances shall the Customer permit a bank or other financial institution to register a "super priority security interest" or any other priority security interest on the PPSR on the Company's unpaid-for Goods and/or any other property that may be in premises or on sites that are not under the Company's direct control.

17. The Commonwealth Competition & Consumer Act 2010 ("CCCA")

These Terms are not intended to have the effect of contracting out of any provisions of the CCCA and amendments thereto except where permitted by law. If the Customer buys Goods/Services as a consumer these terms shall be subject to protection of consumers' rights legislation and shall not affect the consumer's statutory rights. If any clauses in these Terms contravene any provisions in these Acts such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these Terms.

18. Passing of Title/Reservation of Title in Goods/Services

18.1 Notwithstanding delivery of the Goods and the passing of risk to the Customer title remains with the Company until all money has been paid in full and the Customer has fulfilled all its obligations to the Company.

18.2 Until all events in 18.1 occur title in the Goods and other property of the Company that may be in Customer's possession remains with the Company as unpaid vendor and/or owner of the property and the Customer may only hold the Goods/property as fiduciary agent and bailee for the Company's benefit. Whilst holding the Goods/property of the Company as fiduciary agent/bailee, the Customer shall ensure they remain identifiable as the Company's Goods/property and safely store and insure them for loss or damage for the Company's benefit and keep all proceeds of sale in a separate account that is clearly identified as being the sale proceeds of the Company's Goods/property.

18.3 For Goods on which title has not passed to the Customer, the Company can instruct the Customer to return them (or any part of them) to the Company if the Customer's obligations under these Terms have not been fulfilled.

18.4 The Customer will not charge the Goods in any way or grant or otherwise give any interest in the Goods until clean title passes to the Customer.

18.5 If the Company becomes aware of a breach of these Terms or of an insolvency event (or likelihood of such an event) the Company and/or any representative of the Company may as the invitee of the Customer enter upon or into the site and/or premises where the Company may believe the Goods and other property are stored to inspect and/or remove them and the Company shall not be liable for any alleged loss or damage as a consequence of such inspection and/or removal and without being exposed to any claim by the Customer or any other parties for trespass, detinue, conversion, or for any other reasons.

18.6 The Company can issue proceedings to recover the price of the Goods/Services even if ownership has not passed to the Customer.

19. Consignment Stock

19.1 If the Company agrees to supply the Customer with stock on a deferred payment or Consignment basis [“Consignment Stock”] all such Consignment Stock shall be stored separately from other goods and be readily identified as the Company’s property.

19.2 The Customer shall insure the Consignment Stock for all risks as specified by the Company and provide the Company with proof of insurance immediately upon request.

19.3 The Customer shall ensure that all Consignment Stocks are stored securely and kept in “as new” condition.

19.4 Payment for Consignment Stock sold or released to other parties by the Customer shall be made strictly in accordance with the Company’s instructions, time being of the essence as to this obligation.

19.5 The Customer acknowledges and agrees that all Consignment Stock shall be held solely as bailee for the Company and the Customer shall not charge or otherwise pledge any Consignment Stock as security on any document whatsoever including the Personal Property Securities Register (PPSR) and shall not permit any other parties (other than the Company and/or its nominees) to pledge them as any form of Security Interest on the PPSR or any other mortgage, guarantee, chattel or charge document.

19.6 If the Company requires the Customer to return the Consignment Stock the Customer shall pay the freight and insurance costs.

20. Set Off & Application

20.1 The Company shall be entitled to set off against any money owed to the Customer an amount equal to the total of all money at such time then owed by the Customer or on the Customer’s behalf to the Company.

20.2 The Company shall be entitled to apply any money received from or on behalf of the Customer to any and all amounts owed by the Customer as it sees fit and the Customer waives any rights of notification of any such allocation.

21. No Waiver

No waiver by the Company of any rights or provisions of these Terms shall at any time be deemed or implied to limit or exclude any of the Company’s rights against the Customer under these Terms.

22. Privacy Act 1988 (Cth) and amendments thereto

The Customer and/or the guarantor/s agree and consent to the Company obtaining and exchanging credit information from the Customer’s suppliers and/or other parties nominated by the Customer and for the Company to obtain reports and other information from credit reporting agencies and other sources on credit information about the Customer in relation to credit provided by the Company and the ability of the Customer to pay its bills as and when they fall due.

23. Termination/Cancellation

The Company can cancel the Customer’s orders and discontinue work/delivery without notice if the Customer breaches any conditions of these Terms or becomes or is in jeopardy of becoming insolvent (or dies if the Customer is a natural person) and all outstanding money owing to the Company shall be payable immediately together with money owing to third parties for contracts entered into on the Customer’s behalf.

24. Customer Restructure

24.1 The Customer shall notify the Company in writing of any change in its structure, including any change in ownership or sale of any material part of its business within 7 days of any such change. The Customer will be liable to the Company for any purchases from the Company and for all maintenance and other contracts with the Company until such notice is given.

24.2 The Company reserves the right to review or withdraw any credit facilities granted to the Customer and to review or cancel all contracts upon any change in the Client’s structure, change in ownership or sale of any material part of its business.

25. Notices

Notices from the Company to the Customer are served when delivered by hand, sent by mail, document exchange, facsimile or email and shall be treated as given when: if delivered by hand when delivered; if sent by mail or document exchange, 48 hours after posting; if sent by fax, and/or email when the fax machine confirms transmission or when the email system confirms transmission. A notice given after 5pm and/or on a day which is not a Business Day is treated as given on the next following Business Day.

26. Disputes

If a dispute arises between the Company and the Customer and a solution thereto is contained in these Terms then such solution shall be a binding full and final settlement of the dispute. If no solution to the dispute exists in these Terms and the dispute cannot otherwise be resolved within 30 days from the date of the dispute then either party can refer the matter to a mediator. If neither party can agree on the mediator the dispute shall be referred to a mediator in accordance with the “Governing Law and Changes to Terms of Trade” clause herein. The Customer shall be liable for the full costs of the mediation if in the opinion of an expert/mediator the Customer has been unreasonable, otherwise the parties will equally contribute to the cost of the mediation.

27. Validity

Should any clause or clauses of these Terms be invalid for any reason then such clause or clauses or parts thereof shall be deleted without affecting the validity of the remaining portions of these Terms.

28. Governing Law and Changes to Terms of Trade

28.1 The laws of Australia apply to these Terms and to all contracts or other agreements between the Company and the Customer and are subject to the jurisdiction of the courts and tribunals of Western Australia.

28.2 These Terms can only be amended with the written consent of the Company.

28.3 The Company reserves the right to alter these Terms and such changes will be effective from the date these changes are notified to the Customer. The Customer will be deemed to have accepted these Terms and any changes thereto upon placing further orders with the Company.

28.4 The Company may license or sub-contract all or any part of its rights and obligations without the Customer’s consent.

I/we(name/s) hereby accept and shall be bound by these Terms and Conditions of Trade in all dealings between us (“the Customer”) and J G Thomas Pty Ltd (“the Company”).

Name of signatory Position Signature Date

Witness name Witness signature Date