



# Jacob Spring Worx Pty. Ltd.

## Terms and Conditions of Sale

### 1. General

Orders are accepted subject to the following terms and conditions and the placing of an order with the Company is to be deemed to be acceptance of such terms and conditions by the customer. No variation or modification of, or substitution for, such terms and conditions shall be binding unless expressly accepted by the Company in writing.

### 2. Quotations

a) Quotations do not constitute an offer by the Company to supply the goods or carry out the work referred to therein, and no order placed in response to a quotation will be binding unless accepted by the Company in writing. All such acceptances by the Company are subject to availability of the necessary materials and to the Company being able to obtain qualified labour to provide and goods within reasonable time.

b) The Company reserves the right to charge the Customer an additional sum to cover extra costs and expenses resulting from delay caused by lack of instructions from the Customer or requests by the Customer to suspend work or changes by the Customer to its requirements

### 3. Prices and Terms of Payment

a) All prices given in quotations are provisional only until the order has been accepted by the Company in writing and being based upon the prices and costs of materials, labour, fuel, transport and overhead expenses current at the time of the quotation. Quotations may be varied by the Company at any time before acceptance of the order to correspond with any variation in such prices or costs which may occur at any time.

b) Unless otherwise stated in the companies' quotation or price lists current at the time of the companies' acceptance of an order, prices quoted are strictly Net. The payment shall be made in full in Australian dollars 28 days from end of month of the invoice. Interest will be payable on all overdue payments at the rate prescribed by the Penalty Interest Act

c) Should your account exceed our trading terms and be passed over for collection, all costs incurred including agency commissions, solicitor fees and any out of pocket expenses are the liability of the customer.

d) Where any sum payable by the Customer to the Company remains unpaid in breach of these terms and conditions of sale the Company shall be entitled to suspend delivery of any further goods contracted to be supplied or services to be rendered until such time as the sum unpaid has been paid in full

### 4. Delivery and risk

a) All delivery dates or periods quoted by the Company are the Company's best estimates and time shall not be of the essence in relation to the same.

b) All risk of loss of or damage to the goods shall pass to the Customer upon the Company loading the same onto the vehicle of the carrier whether such carrier is arranged by the Company or by the Customer.

### 5. Title

Notwithstanding that risk in the goods shall pass to the customer as provided herein both the legal and beneficial title to the goods shall remain with the Company until all monies owing by the customer to the Company have been paid in full, whether such monies are in respect of monies payable under a specific contract or on any other account whatsoever and until such time as the customer shall, if required by the Company, store the goods in a manner that clearly indicates that the goods are owned by the Company and the customer shall in any event hold the goods as bailee thereof subject nevertheless to its right to deal with in goods in the ordinary course of its business on the basis that it is dealing with the goods as undisclosed agent of the Company and any moneys received as a result of such dealings shall be held by the customer for the benefit of the Company and the Customer shall at all times maintain a full and correct record of such moneys received and shall account to the Company for the same. In the event that the customer does so deal with the goods but does not obtain payment therefore then the customer shall, at the Company's request, assign to the Company any debt owing to the customer in relation to such dealing and the customer hereby irrevocably appoints the Company as its attorney with all powers permitted by law for the purpose of effecting any such assignment and to effect a recovery of any such debt in the name of the customer for the benefit of the Company. In the event that the customer fails to pay for the goods as provided herein the Company shall be entitled without prior notice to enter upon the customer's premises at any time and retake possession of the goods. The provisions of this clause shall apply notwithstanding any subsequent or other agreement between the parties under which the Company or a related body corporate gives the customer credit.



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## 6. Exclusion of Warranties

- a) The only conditions and warranties that are binding on the Company in respect of the state, quality or condition of the goods supplied by it to the customer are those imposed and required to be binding by statute (including the Trades Practices Act, 1974) and to the extent permitted hereby the liability, if any, of the Company arising from the breach of such conditions and warranties shall, at the company's option be limited to and completely discharged by either the replacement or the repair by the Company of the goods supplied to the customer and otherwise all other conditions and warranties whether expressed or implied by law in respect of the state, quality or condition of the said goods which may part from this clause be binding on the Company are hereby expressly excluded and negated.
- b) Except to the extent provided immediately above the Company shall have no liability (including liability and negligence) to any person for any loss or damage consequential or otherwise howsoever suffered or incurred by any such person in relation to the goods and without limiting the generality thereof in particular any loss or damage consequential or otherwise suffered or incurred by any such person caused by or resulting directly or indirectly by any failure breakdown, defect or deficiency of whatsoever nature or kind of or in the goods.
- c) Where the Company gives any advice or approval concerning the plans or specifications or concerning any other matter in relation thereto such advice or approval is given subject to the condition that the Company shall be under no liability of any kind in connection therewith.
- d) Any drawings, description, weights, or dimensions submitted by the Company are approximate only and intended merely as general guide and Company will not be liable for any error or omission therein or with regard thereto.
- e) The Company's obligation under sub clause a) to repair or replace such goods is subject also to the customers handling and care of goods.
- f) The customer acknowledges that the Company is not in the business of supplying services and that any advice or other information provided by the Company is done so gratuitously.

## 7. Specifications

- a) The Company reserves the right to alter the shape, dimensions, materials, weights and any other particulars of goods which appear or are stated in any brochures catalogues drawings illustrations or advertisements relating to the goods and any description of goods contained in the same are given by way of identification only and it is acknowledged that the use of any such description will not constitute a sale by description. Goods supplied are not supplied by reference to sample.

## 8. Return of Goods

The return of goods supplied against orders will not be accepted except by prior written agreement. All claims must be made within 7 days of receiving goods.

## 9. Resale

If the Customer shall sell any of the goods purchased from the Company he acknowledges and agrees that he does so under the trademarks or trade names registered by the Company.

## 10. Force Majeure

Should the Company be delayed in or prevented from making delivery owing to act of God, War, Civil disturbance, requisitioning, Government or Parliamentary restriction, prohibition or enactment of any kind, import or export restrictions, strikes, lockouts, trade dispute, difficulty in obtaining workmen or materials or breakdown of machinery, fire, accident, or any other cause whatsoever beyond the Company's control, the Company shall be at liberty to cancel or suspend the contract without incurring liability for any loss or damage resulting there from.

## 11. Extent of Conditions

The foregoing terms and conditions supersede and prevail over general or special terms or conditions imposed or sought to be imposed by the customer at any time in relation to any order.

## 12. General

Notwithstanding anything to the contrary set out in these terms and conditions of sale:

- a) The Agreement constituted by these terms and conditions between the Company and the Customer shall be governed by and construed in accordance with the laws of the States, of the Commonwealth of Australia.
- b) The Customer shall not assign transfer or otherwise dispose of its interest under this Agreement without the prior consent of the Company; and
- c) Any notice required or given under these terms and conditions shall be deemed to have been received by the Company or the Customer as the case may be in the case of delivery, upon delivery and in the case of post, 3 days after the date of posting and in the case of a facsimile transmission, upon completion of that transmission and in the case of email, the day following the date of the email.
- d) In these terms and conditions the use of one gender includes the others and the singular includes the plural and vice versa.