

Terms and Conditions of Sale

1. DEFINITIONS

In these Terms and Conditions the following expressions have the following meaning:

“Buyer” means the Company, authorised person and/or person who accepts the quotation from the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller;

“Contract” means the legal relationship created between the Buyer and Seller in agreeing to an exchange of Goods in return for consideration resulting from the Buyer accepting the quotation from the Seller for the sale of Goods or from the Seller accepting an order for the Goods from the Buyer;

“Goods” mean the merchandise or service that the Seller agrees to supply to the Buyer;

“Manufacturer” means the original producer of the Goods which the Seller provides to the Buyer;

“Quotation” means any quotation provided by the Seller to the Buyer that contains the equipment, accessories and work the Seller wishes to offer to the Buyer;

“Seller” means J.T. Day Pty Ltd, ABN 68 122 679 047 with whom the Buyer has contracted for the supply of Goods;

“Sellers Premises” means the premises mentioned in the Seller’s quotation or if not mentioned therein means 36 Mumford Place, Balcatta, Western Australia;

“State” means the state of Western Australia;

“Terms and Conditions” means these terms and conditions of sale which forms part of the Contract.

2. INTERPRETATION

In this Terms and Conditions except to the extent that the context otherwise requires:

2.1 any party named means and includes any or all of the heirs executors administrators and permitted assigns of that party or in the case where the party named is a corporation then the corporation its successors and permitted assigns;

2.2 where two or more persons are named as a party the warranties covenants agreements and deeds of this Terms and Conditions bind them jointly and severally;

2.3 in the event of any inconsistency between this Terms and Conditions and any other document, these Terms and Conditions prevail;

2.4 any terms defined in the statement of the names and descriptions of the parties has the meaning there defined;

2.5 reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation or any legislative provision substituted for and all legislation and statutory instruments and regulations issued under the legislation;

2.6 words denoting individuals or persons include bodies corporate and trusts and vice versa;

2.7 headings are for convenience only and do not affect interpretation;

2.8 any party referred to in this Terms and Conditions includes that party’s officers servants or agents;

2.9 reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule in these Terms and Conditions;

2.10 reference to any document or deed includes reference to such document or deed as amended, novated, supplemented, varied or replaced from time to time;

2.11 words denoting any gender include all genders;

2.12 where any word or phrase is given a definite meaning in these Terms and Conditions any part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;

2.13 unless otherwise stated in the Quotation reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

2.14 reference to a time and date in connection with the performance of an obligation by a party is a reference to the time and date in the State notwithstanding that the obligation is to be performed elsewhere, and

2.15 where by virtue of the provisions of this Terms and Conditions the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in the place in which such act, matter or thing is to be done then that act, matter or thing must be done on the next succeeding day which is not a Saturday, a Sunday or a public holiday.

3. GENERAL

All Contracts are deemed to be governed by these Terms and Conditions unless specifically excluded or varied in writing and signed by a duly authorised employee or director of the Seller.

4. VALIDITY & ACCEPTANCE

Any Quotation given by the Seller is valid for 30 days from the date of Quotation, unless otherwise stated elsewhere on the Quotation or an extension is granted in writing by the Seller. The acceptance of the Seller’s Quotation must be confirmed in writing and followed by a purchase order. Any verbal agreement by the Seller to proceed with the supply of Goods will be deemed to be on the basis that these Terms and Conditions form part of such supply.

5. ORDERS & SPECIFICATIONS

5.1 Any advice or recommendation, verbally or in writing, given by the Seller or its employees or authorised agents to the Buyer or its employees or authorised agents regarding storage, use or application of the Goods is given in good faith and does not constitute a guarantee of suitability or fitness for use. The Buyer shall at all times remain responsible for the application of the Goods and the Seller’s liability in this regard shall be limited absolutely to the providing of Goods in compliance with published specifications.

5.2 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

5.3 Where the Buyer has provided an order for the Goods, the Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of such order as submitted together with supplying any necessary information pertinent to the Goods within a sufficient time to enable the Seller to perform the terms of the order.

5.4 The quantity, quality and description of, and any specification of the Goods shall be those stipulated in the Quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller). Unless otherwise accepted by the Seller, minimum or standard-pack quantities for the Goods, as shown in the Seller’s Price List, are applicable and may only be ordered accordingly.

5.5 The Seller reserves the right to make any changes in the specification of the Goods in order to conform with any applicable safety or other statutory requirements, as directed by the Manufacturer. The Seller further reserves the right to make any changes to the specification of the Goods where the Goods are to be supplied to the Seller’s specification, provided the changes proposed by the Seller do not materially affect the Goods’ quality or performance.

5.6 If the Goods are to be assembled, produced and/or additional processing added by the Seller in accordance with the specification stipulated by the Buyer, then the Buyer shall indemnify the Seller against any loss, damages, costs and expenses awarded against or incurred by the Seller in any infringement of intellectual property rights, which may result from the Buyer’s specification.

Terms and Conditions of Sale

5.7 In the event the Buyer suspends or cancels any part or all of the order to which extent the Seller has placed orders with the Manufacturer and the Seller is then subjected to additional costs as a result of the Buyer's suspension or cancellation of the order, the Seller reserves the right to seek compensation from the Buyer for all costs incurred or committed inclusive of any other expenses and loss of profits as at the date of suspension or cancellation.

6. PRICES & PAYMENT TERMS

6.1 Unless otherwise specified, all prices are quoted nett FOB (Free on Board) or FOT (Free on Truck), Point of Supply in Australian Dollars. Point of Supply shall be the Seller's premises on which the Buyer placed the order for Goods. Unless stipulated on the quotation all prices exclude freight, carriage, insurance, non-standard packaging charges, GST and sales taxes (as applicable).

6.2 Where the Buyer requires freight to be pre-paid, goods dispatched to the metropolitan areas of major Australian cities via the Seller's normal carriers shall incur a standard handling charge of \$10.00 per order. Freight charges for goods dispatched to other areas or by other than the Seller's normal carriers shall be billed to the Buyer's account at cost.

6.3 For orders with a nett value of less than \$100.00 a small order surcharge of \$15.00 will apply.

6.4 Standard payment terms for Buyers who have approved credit accounts with the Seller are 30 days nett from the date of Statement. Payment terms for Buyers without approved credit accounts are full payment by cash or company cheque prior to shipment or collection. For Buyers outside of Australia without approved credit accounts or where the value of the goods exceed AUD\$50,000 full payment is due by telegraphic transfer prior to shipment or collection or may be made by an irrevocable letter of credit payable on presentation of shipping documents with provision for partial and third party shipments.

6.5 Risk in the Goods shall pass to the Buyer as soon as they are delivered or deemed to be delivered. Property in and title to the goods will not pass to the Buyer until those goods and all other amounts owed to the Seller by the Buyer have been paid in full. If the Buyer resells the Goods in a manner such as the Seller's title is extinguished or postponed then any funds received by the Buyer from such resale shall before receipt be set aside and held in trust for the Seller. If the goods are employed in such a manner that they become a constituent part of another manufactured object then the Buyer will be deemed to have sold such goods and the proceeds of such sale will before receipt be set aside and held upon trust for the Seller.

6.6 The Seller reserves the right to charge interest at the published overdraft reference rate by the Sellers bank per month on all overdue accounts.

6.7 Expenses and disbursements incurred in recovering any overdue payment including debt collection agency costs will be charged to the Buyers account.

7. DELIVERY, STORAGE & RETURNS

7.1 All times or dates given for delivery of Goods are given in good faith but without any responsibility on the part of the Seller. Time of delivery shall not be of the essence of the contract unless agreed in writing. The Seller however reserves the right to make partial delivery of the Goods and each partial delivery shall for the purpose of payment be deemed as a separate contract and will be invoiced respectively. The Goods may be delivered by the Seller in advance of the quoted delivery date unless specifically excluded by the Buyer in his written purchase order.

7.2 Where no method of delivery of the Goods has been specified, the Buyer shall give the Seller all necessary instructions and authority for making all necessary arrangements such that the delivery may be effected within 5 business days after the Seller notifies the Buyer of the availability of the Goods. All claims for non-delivery or damage to the Goods must be made in writing to the Seller within 7 days of dispatch date.

7.3 In the event of any delay or failure of delivery due to unforeseen circumstances or beyond the control of the Seller, the Seller shall not be deemed to be in breach of the contract, and the Buyer shall grant the Seller an extension of the delivery time so as to fulfill the obligations of the Contract.

7.4 The Buyer may not return the Goods or any part of the Goods to the Seller after delivery unless an approved returned goods authorisation number is obtained in advance and a copy of same is issued to Seller on return of Goods as evidence of acceptance of return. The Seller will not under any circumstance accept for credit any Goods returned without approval and will not be held responsible for their disposition.

7.5 In the event the Seller agrees to accept Goods for return by issuing a returned goods authorisation number the following conditions will apply to the return of such goods;

a) with the exception that the return is a result of an incorrect supply made by the Seller all freight charges incurred to return Goods to point of supply must be prepaid by the Buyer.

b) reference to the Seller's goods returned authorisation number must accompany all returned Goods.

c) Goods to be returned must be either the original supplied quantities or in full pack quantities and be in "as new" saleable condition.

d) Goods specially ordered on indent or those of a custom nature are not returnable

e) applications for return of Goods must be made within 14 days of the original invoice date.

f) no returns will be accepted for goods with an invoice value less than \$100.00

g) restocking charge of 20% of the invoice value will apply to Goods accepted for return. If the Buyer orders (at the time of return of goods) alternate Goods with a value equivalent to or greater than the invoice value of the returned Goods, this restocking charge will be reduced to 10% of the invoice value.

8. WARRANTIES & LIABILITIES

8.1 The Seller warrants to the extent such warranty or guarantee is given to or extended by the Manufacturer or third party to the Seller, that the Goods conform to their published specifications as at the time of delivery and will be new and free of defects in material and workmanship. The Seller further warrants upon consultation with the Manufacturer and subject to the conditions of warranty set out in this clause 8 that it will repair or replace any defects in material or workmanship which become apparent within 12 months from the date of shipment.

8.2 The Seller's warranty in clause 8.1 to repair or replace any defects in material or workmanship in the Goods is subject to the following conditions:

- i. the Goods must be returned to the Seller with proof of purchase;
- ii. the Goods must not have had their serial number removed, defaced or changed, casing opened, or otherwise have been tampered with in any other way;
- iii. failure of the Goods must not be due to fair wear and tear, willful damage, negligence, abnormal working conditions, failure to comply with the Seller's instructions (whether in writing or oral), misuse, alteration or repair of the Goods without the Seller's and Manufacturer's written consent or use or application of the Goods with incompatible products;
- iv. the Seller will not be responsible for damage or loss caused during shipping;
- v. the Seller shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Buyer;
- vi. any Goods which are found to be faulty due to abuse, misuse or improper installation will be charged to the Buyer at cost.

8.3 The Seller's warranty in clause 8.1 does not cover or extend to parts, materials or equipment not manufactured by the Seller. The guarantee of the Manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the Manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

8.4 Subject to clause 8.5, the Seller shall not be liable and the Buyer releases the Seller from any claims in respect of any injury, loss or damage (whether direct or consequential) arising from any defect in, or in the operation of, any Goods or part thereof or from loss of use thereof caused by any act or omission of the Seller or its servants or agents (including negligent acts or omissions), unless the responsibility for any claim has been specifically accepted by the Seller in writing. In any event the Seller's liability under this clause is limited strictly to the replacement of defective parts in accordance with clause 8.1 of this Terms and Conditions. The Buyer, in purchasing Goods from the Seller agrees in this respect to further fully indemnify the Seller against any claims which may be made against the Seller by any third party in respect of such injury, loss or damage.

8.5 Nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Buyer by the Trade

Terms and Conditions of Sale

Practices Act 1974 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.

9. INTELLECTUAL PROPERTY

9.1 The intellectual property rights in or relating to the Goods shall remain exclusively the property of the Seller and neither the Buyer nor any agent or subcontractor or any other person authorised by the Buyer shall, at any time, make use of same without the prior written authorisation of the Seller.

9.2 All specifications, drawings and other particulars including weights and dimensions are approximate only. Descriptions and illustrations contained in the Seller's catalogues and other illustrated materials are intended only as a conceptual presentation of the equipment or merchandise described therein and none of these shall form part of the Contract.

9.3 All specifications, software, firmware, drawings and technical details submitted with, in support of or in connection with the Seller's Quotation constitute copyright property and material. All such material, information and application knowledge, whenever supplied, shall at all times be treated by the Buyer or its employees or authorised persons, as confidential and shall not be used, without our consent, for purposes other than the following,

- i) evaluation of the Quotation,
- ii) confirmation of order or Contract with the Seller,
- iii) the operation or application of the equipment or merchandise.

9.4 The Buyer will immediately notify the Seller of any unauthorised disclosure or use of any documents supplied to the Buyer or produced by the Seller under the Buyer's instruction or the specifications, software, firmware, drawings and technical details submitted with, in support of, or in connection with the Quotation of which the Buyer becomes aware and will take all steps which the Seller may reasonably require in relation to such unauthorised disclosure or use.

9.5 The designs and features of the Goods offered by the Seller are, in many cases, protected under patents, either existing or pending and unauthorised reproduction of same constitutes an infringement of the Manufacturer's rights.

9.6 The Buyer acknowledges and accepts that the Seller would suffer financial and other loss and damage as a result of any unauthorised disclosure or use of all documents supplied to the Buyer or produced by the Seller under the Buyer's instruction or the specifications, software, firmware, drawings and technical details submitted with, in support of, or in connection with the Quotation and that monetary damages may be insufficient remedy. The Buyer acknowledges and accepts that, in addition to any other remedy which may become available in law or equity, the Seller is entitled to injunctive relief to prevent a breach of these Terms and Conditions and to compel specific performance of these Terms and Conditions. The Buyer will immediately reimburse the Seller for all costs and expenses (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of these Seller under these Terms and Conditions

10. INSPECTION, TEST AND CERTIFICATION

All goods, where deemed appropriate by the Seller, may be subjected to the Seller's internal test, quality and inspection procedures as set out by or in line with the Manufacturer's quality control procedures. Any additional certification or inspection carried out under request from the Buyer, which is additional to those inspections or testing required to maintain any third party product certification that the Manufacturer may hold will be invoiced to the Buyer.

11. DISPUTES AND ARBITRATION

Any and all disputes which cannot be settled between the Buyer and Seller by informal negotiation shall be submitted to an arbitrator for resolution in accordance with the provisions of the Commercial Arbitration Act 1985. In the event the parties cannot agree on an arbitrator within 14 days of the end of any informal negotiation, the arbitrator will be appointed by the President from time to time of the WA Chapter of the Institute of Arbitrators & Mediators Australia. The decision of the arbitrator shall be final and binding on both parties.

12. CUMULATIVE RIGHTS

The rights arising out of these Terms and Conditions do not exclude any other rights of either party.

13. ENFORCEABILITY

Any clause or part of a clause of these Terms and Conditions which is void, voidable, illegal or unenforceable in any jurisdiction is void, voidable, illegal or unenforceable only to that extent in that jurisdiction. Where any clause or part of

a clause is void, voidable, illegal or unenforceable it may be severed without affecting any other part of these Terms and Conditions.

14. WAIVER

14.1 No right under these Terms and Conditions is waived or deemed to be waived except by notice in writing signed by the party waiving the right.

14.2 A waiver by one party under clause 14.1 does not prejudice its rights in respect of any subsequent breach of these Terms and Conditions by the other party.

14.3 A party does not waive its rights under these Terms and Conditions because it grants an extension, indulgence or forbearance to the other party.

15. GOVERNING LAW AND JURISDICTION

These Terms and Conditions are governed by the laws of the State, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State.

16. ASSIGNMENT

Any rights or obligations provided in these Terms and Conditions may not be assigned or transferred by the Buyer without the prior written permission of the Seller.

17. ENTIRE AGREEMENT

These Terms and Conditions form part of the Contract and comprise the entire agreement between the parties and no earlier representation or agreement whether oral or in writing in relation to any matter dealt with in these Terms and Conditions has any effect from the date of the Contract.

18. FURTHER ACTS

Each party must do or cause to be done or refrain from doing all such acts or things necessary to give effect to these Terms and Conditions.

19. MERGER

None of the terms or conditions of these Terms and Conditions or any act, matter or thing done under or by virtue of these Terms and Conditions or any other deed, instrument or document, or judgment, or order of any court, or judicial proceedings operates as a merger of any of the rights and remedies of the parties under these Terms and Conditions and those rights and remedies at all times continue in force.

20. SEVERABILITY

If, notwithstanding the provisions of these Terms and Conditions a provision is still void, voidable, illegal or unenforceable:

- i) if the provision would not be void, voidable, illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- ii) in any other case the whole provision is severed, the remainder of these Terms and Conditions remain in full force and effect.

21. NOTICES

21.1 Any communication to be given by a party under the Contract must be in writing addressed in accordance with the particulars for that party appearing in the Contract as may be notified in writing by that party to the other parties.

21.2 Each communication must be delivered by hand or prepaid post, or sent by facsimile.

21.3 A communication is deemed to be received:

- i) if hand delivered: on the same business day;
- ii) if posted: on the second business day after posting; and
- iii) if sent by facsimile: on the same business day unless the receiving party has requested re-transmission before the end of the business day.