

Jands Pty Ltd – Terms & Conditions of Trade

P6013

1. Definitions

- 1.1 "Seller" shall mean Jands Pty Ltd and its successors and assigns.
1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis.
1.4 "Goods" shall mean goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. Acceptance

- 2.1 The Buyer agrees that the Buyer is bound by these terms and conditions and accepts these terms and conditions without alteration or erasure (including, without limitation, the security agreement contained in these terms and conditions) by doing any of the following:
(a) signing a document containing these terms and conditions;
(b) signing an order form that refers to these terms and conditions; or
(c) by accepting delivery of, or taking possession of, any Goods.
2.2 Where the Buyer comprises more than one person each of those persons shall be jointly and severally liable for all payments of the Price.
2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
2.5 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).
2.6 In the event that the Buyer has entered into a Dealer Agreement with the Seller and there is an inconsistency between the terms and conditions of that Dealer Agreement and these terms and conditions, the terms and conditions contained in the Dealer Agreement shall prevail to the extent of that inconsistency.

3. Goods

- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

4. Price And Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
(a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
(b) the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.
4.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
4.3 A handling fee of \$15.00 applies to each order placed with the Seller. The fee is only charged once per order even if the order is part delivered.
4.4 The Seller may withhold delivery of the Goods until the Buyer has paid for them, in which event payment shall be made before the delivery date.
4.5 At the Seller's sole discretion, for certain approved Buyers payment will be due seven (7) days following the date of the invoice.
4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.
5.2 The Seller will deliver the Goods to Accredited Dealer's Australian business address freight free via the Seller's nominated carrier. Goods made to special order and one-off Goods may attract a freight cost. All other delivery methods are delivered as freight to pay.
5.3 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
5.5 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. Insurance Payments in the Event of Damage

- 6.1 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Buyer's Disclaimer

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

8. Defects / Returns

- 8.1 The Buyer shall inspect the Goods on delivery and shall within forty-eight (48) hours of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
8.2 Subject to clause 10.1, for Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller will (at the Seller's discretion) replace the Goods or repair the Goods (in accordance with clause 9.4) provided that:
(a) the Buyer has complied with the provisions of clause 8.1;
(b) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date by the Seller's approved carrier;
(c) a return authority number (RTA) has been issued by the Seller
(d) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.
8.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 10% of the value of the returned Goods plus any freight.

9. Guarantees and Limitation of Liability

- 9.1 Certain provisions of the Competition and Consumer Act (including, without limitation, the Australian Consumer Law) and other State, Territory or Commonwealth laws in Australia, as amended or replaced from time to time, (collectively ACL) apply to the operation of these terms and conditions and provide consumers (as that expression is used in the ACL) and others with certain rights (referred to collectively as the consumer guarantees) in relation to goods or services purchased by those persons.
9.2 Other than consumer guarantees, which are not excluded, modified or restricted by this provision, the Seller does not give any guarantee or warranty or make any representation of any kind, express or implied, with respect to the supply by the Seller of any goods or services.
9.3 The Seller guarantees that the Goods that are delivered by the Seller to the Buyer are of acceptable quality (as that expression is defined in the ACL) on delivery. The Seller may, at the Seller's expense, repair any defects in Goods that are notified to Seller in writing by the Buyer in accordance with clauses 8.1 and 8.2.
9.4 Other than in respect of goods or services supplied to consumers or goods or services that are of a kind ordinarily acquired for personal, domestic or household use or consumption, the Seller's liability for the breach of any condition or warranty, whether express or implied (other than warranties or conditions in relation to title, encumbrances and quiet possession) is limited, at the Seller's option, to:
(a) in the case of goods; the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods; or
(b) in the case of services; the supplying of the services again or the payment of the cost of having the services supplied again.
9.5 Subject to rights that the Buyer may have under the ACL, which are not excluded, modified or restricted by this provision, the Seller is not liable to the Buyer or any other person, whether in contract, tort or otherwise, for any loss or damages (including without limitation specific, indirect, consequential or economic loss) howsoever caused arising from any event.

10. The Buyer's Rights under the ACL

- 10.1 Notwithstanding anything contained in these terms and conditions, nothing in these terms and conditions:
(a) excludes, restricts or modifies or purports to have the effect of excluding, restricting or modifying any condition or warranty that is implied by, or consumer guarantee specified by, the ACL or the Seller's liability under any such condition, warranty or guarantee; or
(b) gives rise to any liability on the Buyer's part or qualifies the Seller's liability in circumstances where the Seller is in breach of these terms and conditions, including any conditions or warranties implied, or consumer guarantees specified, by the ACL.

11. Lien & Stoppage in Transit

- 11.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:
(a) a lien on the goods;
(b) the right to retain them for the price while the Seller is in possession of them;
(c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
(d) a right of resale,
(e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.

12. Default & Consequences of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due and shall be calculated on a daily basis at a rate equivalent to ten percent (10%) per calendar year until the date payment in full is received by the Seller.
12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.
12.3 If the Buyer's payment is dishonoured by their bank, then the Seller may increase the amount of the Price by any charges for dishonours charged by the Sellers bankers and the Buyer shall pay the Seller that amount.
12.4 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

- 12.5 In the event that:
- any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - the Buyer 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then without prejudice to the Seller's other remedies at law
 - the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - all amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.
- 13. Seller's Security Interest**
- 13.1 The Buyer grants to the Seller a purchase money security interest, in accordance with the meaning given to that expression in the PPSA, in the Goods as security for all amounts owing and unpaid by the Buyer to the Seller in respect of those Goods.
- 13.2 The Seller may (at the Seller's cost), without further notice to the Buyer, apply to register a financing statement, or a financing change statement from time to time, with respect to the purchase money security interest referred to in these terms and conditions.
- 13.3 The Buyer shall ensure that it, and any other person who seeks to identify the Goods, is always able to identify the Goods from any other goods that may be in the Buyer's possession and identify the particular Goods to which any invoice from the Seller relates.
- 13.4 Full ownership of, and title to, those Goods in respect of which the Buyer owes and has not paid to the Seller any amount shall remain with the Seller until the date:
- there are no longer any amounts owing to The Seller for those Goods;
 - the Seller registers a financing statement in respect of those Goods; or
 - the Buyer sells or transforms those Goods in accordance with clause 13.6, whichever date is the earlier.
- 13.5 Until and unless the Buyer has paid the Seller in full for the Goods, the Buyer shall:
- hold those Goods as the Seller's bailee;
 - return those Goods to the Seller on demand; and
 - immediately pay to the Seller the proceeds of any sale of those Goods or hold any proceeds of the sale of those Goods on trust for the Seller in a separate account and not mixed with the Buyer's other money, debts or property and payable immediately without demand.
- 13.6 The Buyer agrees that the Buyer shall only sell Goods in respect of which the Buyer has not made full payment to the Seller on the conditions that any such sale is conducted at arm's length and is for the full market value of those Goods and the Seller has not demanded the return of those Goods.
- 13.7 All risk in the Goods shall, unless otherwise agreed in writing, pass to the Buyer upon delivery (whether by delivery to the Buyer or by delivery to another person on the Buyer's instructions) and the Buyer shall insure and maintain insurance for the Goods for their full replacement value. The Buyer shall provide evidence of such insurance if required by the Seller.
- 13.8 Until payment in full has been received by the Seller from the Buyer in accordance with these terms and conditions the Buyer authorises, and grants an irrevocable licence to, the Seller and the Seller's authorised representatives to enter any premises where Goods for which payment in full has not been received by the Seller are kept to re-take possession of those Goods and to use all reasonable force in doing so without any liability for any resulting damage. The Buyer agrees and acknowledges that, in addition to any other rights under these terms and conditions or otherwise arising, the Seller or its authorised representative may exercise any and all remedies afforded to a secured party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied, or used by the Buyer, to search for and seize, dispose of or retain those Goods in respect of which the Buyer has granted to the Seller a purchase money security interest.
- 13.9 The parties agree that the following provisions of the PPSA, to the extent referred to below, shall not apply and shall not place any obligations on The Seller in the Buyer's favour:
- sections 95 and 130 of the PPSA, to the extent that the Seller is required to give a notice to the Buyer; and
 - sections 96, 125, s129(2), 132(3)(d), 132(4) and 135 of the PPSA.
- 13.10 The Buyer acknowledges receipt of a copy of these terms and conditions and, to the extent permitted under the PPSA, waives any right to receive from the Seller a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these terms and conditions.
- 13.11 In these terms and conditions, PPSA means the Personal Properties Securities Act 2009 as amended or replaced from time to time.
- 14. Security and Charge**
- 14.1 Despite anything to the contrary contained herein and in addition to any other rights which the Seller may have:
- Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Buyer and or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and
- indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 15. Cancellation**
- 15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. Subject to clause 10.1, The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 16. Privacy Act 1988**
- 16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 16.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- To assess an application by Buyer;
 - To notify other credit providers of a default by the Buyer;
 - To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - To assess the credit worthiness of Buyer and/or Guarantor/s.
- 16.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- provision of Services & Goods;
 - marketing of Services and/or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
 - analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 16.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Buyer; and or
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 17. Unpaid Seller's Rights To Dispose Of Goods**
- 17.1 In addition to rights that the Seller may have under clause 13 and to the fullest extent permitted by law, in the event that:
- the Seller retains possession or control of the Goods; and
 - payment of the Price is due to the Seller; and
 - the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
 - the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.
- 18. General**
- 18.1 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.
- 18.2 All Goods supplied by the Seller are subject to the laws of New South Wales.
- 18.3 Subject to clause 10.1, the Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 18.4 Subject to clause 10.1, in the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages and the liability of the Seller shall not exceed the Price of the Goods.
- 18.5 The Buyer shall not set off against the Price amounts due from the Seller.
- 18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 18.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change provided that such changes .
- 18.8 Neither party shall be liable for any default (other than the payment of money) due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.