



JAYBRO – Terms and Conditions of Sale

1. Definitions

“Seller” and “Supplier” means Jaybro Civil & Safety Products ABN 99 948 924 498 except where the context requires otherwise. “Customer” means the Customer whose order for the purchase of goods is accepted by the Seller. “Customer” includes a buyer that has not dealt with the Supplier previously.

2. Responsibility

It is the Customer’s responsibility to ensure the product(s) purchased is suitable and safe for the intended use and that they have the necessary expertise to make this decision.

3. Conditions

These Terms and Conditions shall apply to every sale contract and sale of goods between Seller and Customer. Any terms and conditions of the Customer’s order or any statement by Customer deviating from or inconsistent with these terms and conditions are expressly rejected by the Seller. An accepted order is not cancellable. No agent or distributor of the Seller has authority to add to, vary or contradict these terms and conditions.

4. Not obliged to accept orders

The Seller is not obliged to accept any orders from the Customer. No tender or quotation from the Seller obliges the Seller to accept any order from a Customer. But if the Customer does place an order with the Seller then it becomes binding from the moment the Seller accepts the order even if the Seller does not tell the Customer that it has been accepted.

5. Conditions overrule any other form

These conditions prevail even if they are inconsistent with anything in any earlier or later order form or similar document.

6. Prices and Goods and Services Tax (GST)

All prices are subject to change without notice. As a wholesale company prices shall be shown excluding GST and the current percentage GST shall be added. The Seller may increase any agreed sale price after the Seller accepts an order, to cover the full amount of any increases in GST or other taxes and duties such as customs duty, sales taxes, consumption taxes and stamp duty which the Seller incurs in connection with a transaction after the date of the Customers order.

7. Delivery

The Seller reserves the right to apply a freight charge where, in the Seller’s option, the cost of delivery is not covered by the current price structure. The Seller also reserves the right to apply fuel levy. The Seller is entitled to invoice the Customer for alternative packaging or delivery arrangements. If the Seller agrees to arrange delivery elsewhere the Seller will deliver any goods ordered by the Customer at the Customer’s cost. The Seller may dispatch an order in one or more instalments. In that case the Customer must pay separately for each instalment and each instalment becomes a separate contract. Non-delivery of one instalment does not affect the contracts for the other instalments that are delivered or are to be delivered. If part of an order of any goods is not collected or accepted by the Customer for any reason the Seller may place such goods or services in storage, including at or on the Sellers premises. The Customer must pay the Seller for all expenses incurred in relation to storing any goods not collected or accepted and in any case not less than the commercial value of the storage space occupied by the goods. The Customer takes all of the risk associated with the good in all respects from the time of delivery or, if the Seller stores goods that are ready for delivery then from the time that the Seller notifies the Customer that the goods are held in storage.

8. Passing of Risk

The risk in the goods sold passes to the Customer at the point of delivery at the Supplier’s warehouse unless otherwise agreed or subject to clause 7. Where the goods are transported by the Supplier to the Customer’s premises, delivery shall be deemed to take place at the moment that the goods pass over the side of the vehicle in which they were transported to the Customer’s premises. The Customer shall provide or cause to be provided full and clear access for delivery and will at its own expense provide all necessary assistance in unloading the goods at the nominated place of delivery. Where the Customer has requested special delivery arrangements (i.e. other than Seller delivering to the premises of Customer) risk in respect of goods shall pass to the Customer upon the goods leaving the premises of the Seller. The Seller will not in any circumstances accept liability for damage, shortage or loss during transit.

9. Ownership passes to Customer on payment

Goods remain the property of the Seller until payment is made in full plus any associated charges. Where payment is tendered by cheque, payment shall not be deemed to have been received until such cheque is honoured upon presentation at the drawer’s Bank. If the cheque is dishonoured the Seller reserves the right to charge the Customer for accounting and bank charges and other fees incurred by it in respect

of such dishonour. Upon any default by the Customer in payment of any amount due to the Seller, the Customer irrevocably authorizes the Seller by its servants or agents to enter any premises or vehicle owned, leased or otherwise occupied by the Customer, or by any of the Customer's agents or associates for the purposes of taking possession of the goods if the Seller has reasonable grounds to expect that the Seller may find any part of the goods there and the Customer authorizes the Seller by its servants or agents to use all reasonable force to obtain such possession. That applies even if the Seller holds some negotiated instrument or security for the amount unpaid. If the Customer resells any of the goods before becoming the owner, the Customer is acting as the Seller's selling agent although only to the absolute minimum extent necessary to protect the Seller's ownership. Until title in goods has passed to the Customer, the Customer must (a) hold all such goods as bailee of the Seller (b) store the goods so as to show clearly that they are the property of the Seller and keep the goods fully insured at the Customer's expense and hold the proceeds of any insurance claim in respect of the goods (to the fullest extent of the Customer's debts to the Seller) in trust for the Seller; and (c) in the event that any of the goods are sold by the Customer (even if mixed with other goods), act as the agent of the Seller and hold the proceeds of sale on the Seller's behalf and pay them to the Seller on its request.

10. Delivery time

Delivery times are estimates only and the Seller is not liable for minor delays in delivery.

11. Shortages

All items listed on the Seller's invoice will be deemed to have been received in good order and condition, without shortage, unless the Seller is notified in writing to the contrary within 7 days of the delivery date. When the Customer signs any delivery or consignment note or similar document on receipt of a delivery, that is conclusive evidence that the Customer received the delivery without any shortage or damage that would have been visible on taking delivery without unpacking the goods. The Customer carries all risk of goods in transit where the Customer arranges for carriage.

12. Returns

Returns must be first authorised by the Seller and a Goods Return Authority (GRA) No. obtained. Returns for credit can only be made within 7 days of purchase. To obtain a Goods Returned No. the date of purchase and the original Invoice No. must be quoted. Goods are to be returned freight prepaid and are to include the Goods Returned No. and a copy of the original invoice. Returns are subject to a 20% restocking fee and will only be accepted if the goods and packaging are received in an unused and original condition. Return of incorrectly supplied goods at the Seller's expense will be by the carrier of the Seller's choice. The Seller will not accept freight charges for goods returned by other means. Products specially purchased, manufactured, machined or cut to size to the Customer's specifications are not returnable.

13. Insurance

It is the Customer's responsibility to effect whatever insurance cover he requires at his own expense.

14. Outstanding Interference

The Supplier shall not be liable to the Customer for any defect, loss, damage or delay whatsoever caused by strikes, lockouts, damage to or breakdowns of plant, Government interference, earthquake, civil commotion, Force Majeure or any cause beyond the control of the Supplier.

Sellers Warranty. The Seller must repair or at our option, make a replacement available to the Customer for any new item supplied by the Customer if there is any material manufacturing defect in materials or workmanship. The Seller will only recognize a claim under this warranty if the Customer gives due notice to the Seller in writing within 12 months after supply by the Seller of that item. The notice must state the warranty under which the Customer is claiming and what has happened that put the Seller in breach of the warranty. The Customer must bear the costs of making the claim. The Customer's rights under this are limited to repair or the provision of a replacement and that is the Customer's sole remedy. Any costs incurred by the Customer in substituting the defective product (including investigation and location of the defective product and costs of any kind incurred in carrying out the substitution), are to be borne by the Customer. Also the Seller's obligations are subject to the Seller's other trading conditions including conditions 22-24.

15. Variation by Customer

Should there be any variation in details, sizes and quantity, delivery instruction or any other item or matter on which the quotation or invoice is based, Seller reserves the right to revise and amend the contract price accordingly.

16. Clerical Errors

Clerical errors in computation, typing or otherwise of price list, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of Seller shall be subject to correction. The Seller may complete any blanks on any relevant document, on the Customer's behalf.

17. Modifications

All modifications and amendments to these Terms and Conditions shall be in writing and if otherwise shall not be binding upon the Seller. If any of the provisions of the Contract are unlawful or invalid by reason of any applicable statute or rule of Law, then such provision shall be severed from the rest of this Contract which shall remain valid and binding on the parties.

18. Government Laws

The law governing these Terms and Conditions shall be the law of NSW and the Customer submits to the non-exclusive jurisdiction of the Courts operating in NSW.

19. Unexpected delay.

This clause applies if something happens which is beyond the Seller's reasonable control that makes it impossible, more difficult or more expensive for the Seller to perform its obligations in its usual way. In those cases the Seller may wait until it is again possible for it to perform its obligations in the Seller's usual way without additional difficulty or expense and the Seller is not liable for any delay which results. Without limiting those general words, that applies where the Seller has problems due to accidents, strikes, transport difficulties, default or delay by any supplier to the Seller or stock shortages.

20. No other representations.

The Seller relies on the following warranties from the Customer as essential conditions. The Customer has not relied on any representation made or implied by the Seller or arising out of or implied by its conduct, nor upon any description, illustration or specification contained

in any document produced by the Seller, including any catalogue or publicity material, unless made in writing for the purposes of this transaction and signed by one of the Sellers directors. To the extent that the Seller may have made or implied, or by conduct given rise to or implied, any representation that is not expressly stated in these conditions, the Customer is not proceeding in reliance on the representation because the Customer has had and taken the opportunity to independently check and form its own view about the significance, and the accuracy or otherwise, of the representation. Without limitation, the Customer acknowledges that it is not relying on being able to make any claim against the Seller, for any representation made or conduct occurring before, under or in connection with any order, beyond the claims that can be made, and the limits applying, as provided in these trading conditions.

21. Manufacturer.

The Seller will use its reasonable endeavours to obtain for the Customer the benefit of any warranty from the manufacturer of any goods that the Seller supplies to the Customer. This provision does not require the Seller to commence legal proceedings or incur legal costs.

22. Exclusion of implied conditions.

All conditions, terms and warranties that are or might otherwise be implied by law, practice, trade usage or international convention, are excluded to the fullest extent permitted by law.

23. Trade Practices Act etc. limits.

Provisions of the Trade Practices Act and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any provisions of those types do apply, then to the extent permitted by law our liability under those provisions is limited as follows. The Sellers liability is limited at its option – in the case of goods, to replacement of the goods or the supply of equivalent goods; or repair of the goods; or payment of the cost of replacing the goods or of acquiring equivalent goods; or payment of the cost of having the goods repaired; and in the case of services, to supplying the services again or the payment of the cost of having the services supplied again.

24. Other damages claims excluded.

Except as stated above, the Seller is not liable for, and the Customer does not rely on being able to claim against the Seller for, any loss or damage or Consequential Damage under or in relation to any agreement for the Seller to supply goods, services, firmware or software or anything done or omitted in that regard or for that purpose, or in relation to any representation or conduct before, under or in respect of any order, and whether or not the possibility or potential extent of the loss or damage or Consequential Damage was known or foreseeable whether in contract or for negligence or any other tort or for breach of statutory, fiduciary or other duty (if any) and whether or not the act or conduct was authorised or required.

Consequential Damage in these trading conditions includes loss of use, lost production, lost income or profits, loss of opportunity, lost savings, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against the Customer by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage.

25. Personal Information and privacy arrangements.

The Seller may collect personal information in connection with its dealings with the Customer. The Seller may send the Customer information unless the Customer notifies the Seller that it does not want to be on a distribution list. The Customer acknowledges and consents to the Seller collecting, disclosing and using personal information in the manner and for the purposes of enabling the Seller to better provide and market its facilities, products and services to the Customer, and to otherwise fulfil its legal obligations.