

TERMS OF TRADE

November 2013

1. DEFINITIONS

Unless the context requires otherwise:

'Buyer' means the buyer of Goods, or services;

'Contract' means the contract for the sale of the Goods or Services, including these terms;

'Goods' means the goods or services Seller sells or provides to Buyer;

'PPSA' means the Personal Property Securities Act 2009 (Cth).

'Seller' means James Walker Australia Pty Ltd (A.B.N. 85 000 022 319);

'Default Event' means any of the following:

- (a) Buyer does not make a payment due to Seller under this or any other contract;
- (b) Buyer is unable to pay its debts as they fall due;
- (c) Buyer ceases or suspends conduct of its business, or threatens to;
- (d) a resolution is passed or proposed or a summons is presented to wind up Buyer;
- (e) a receiver and/or manager or other form of insolvency administrator is appointed over all or part of Buyer's assets;
- (f) Buyer makes or proposes to make any arrangement with its creditors;

- (g) Buyer commits an act of bankruptcy; or
- (h) execution is levied on any of Buyer's assets.

2. PAYMENT, CREDIT AND PRICE

- 2.1 Buyer must pay for all Goods on or before the expiration of thirty (30) days from the date of the Sellers' invoice. If the Buyer has a query in relation to an invoice, such query must be raised within 21 (twenty-one) days of the date of the invoice. If the Buyer fails to make the payment before or on the due date the Seller shall be entitled to charge the Buyer interest accruing monthly on the amount unpaid at the Reserve Bank of Australia Wholesale Banking Rate plus 5 (five) percent as amended from time to time from the date 30 days after the relevant invoice date until payment in full is made (a part month being treated as a full month for the purposes of calculating interest).
- 2.2 All sales are subject to such limits as to minimum quantity or cash value of order as Seller fixes from time to time.
- 2.3 Unless agreed in writing or otherwise, the price for Goods will be Seller's list price in effect at the time of despatch or collection.
- 2.4 At its discretion, Seller may withdraw any credit or limit the amount of credit extended to Buyer at any time.
- 2.5 Where applicable, Buyer must bear sales G.S.T on the goods.



Quality
ISO 9001

SAI GLOBAL



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2.6 Where the total mass or length of any item supplied includes a fraction of a kilogram or metre Buyer will be invoiced for and must pay for that fraction as a whole kilogram or metre.

2.7 If a Default Event occurs:

(a) at its option, Seller may withhold further deliveries of Goods and/or withdraw any credit facilities; and

(b) all amounts outstanding to Seller by Buyer, even if not otherwise due for payment, will become immediately payable.

3. DELIVERY

3.1 Unless otherwise agreed, Seller will deliver the Goods to the address Buyer specifies at the cost to Buyer. Where an address is incorrectly provided the Buyer must arrange for transport to take the Goods to the correct address at the Buyer's cost.

3.2 Where the Seller arranges carriage on behalf of the Buyer, such carriage shall be at the Buyer's risk and cost and in accordance with the selected carrier's conditions of carriage, which contain limitations on the carrier's liability in respect of loss or damage to the Goods carried. If the Goods are lost or damaged in transit it is the responsibility of the Buyer to notify the carrier of the same within the time limits for claims specified in the conditions of carriage. The Seller will not be liable for Goods lost or damaged in transit unless such damage results from incorrect packaging by the Seller. Freight charges incurred by the Seller will be recharged to the Buyer even though they may not be specifically noted in quotations or estimates provided by the Seller.

3.3 If specifically agreed that the Goods are sold ex Seller's store, at its cost and risk, Buyer must collect the Goods within the time agreed or, if no time is agreed, within a reasonable time.

3.4 Goods the Seller delivers will be taken to be delivered immediately they are unloaded from the delivery vehicle and will be unloaded at Buyer's cost and risk.

3.5 Buyer's representative must be present at the delivery address at the time Goods are delivered. The representative must sign the delivery advice the driver of the delivery vehicle presents.

3.6 Seller may deliver the Goods even if Buyer's representative is not present. The Buyer remains liable for the Goods.

3.7 The buyer shall be deemed to have accepted all Goods upon the expiry of 48 hours after their delivery by the Seller and/or after completion of any services to be provided by the Seller.

3.8 If delivery is by instalments, each instalment will be treated as a separate contract. If Seller fails to deliver an instalment by the estimated date or to deliver it at all, Buyer is not entitled to terminate the contract as to any further instalments.

3.9 If Seller fails to deliver any Goods to Buyer on time or at all, Seller's only obligation is to refund to Buyer any amount received from Buyer for the goods not delivered. Seller will not be liable for any costs, damage or other loss Buyer or any other party suffers arising directly or indirectly from Seller's failure to deliver the Goods on time or at all, whether or not due to Seller's or its agent's negligence.

4. RETENTION OF TITLE

4.1 Title to all Goods remains with Seller until Buyer pays to Seller all amounts Buyer owes to Seller on any account.

4.2 While Seller retains title to the Goods:

(a) on reasonable notice, Seller may enter premises where the Goods are stored to inspect the Goods; and

(b) Buyer may sell the Goods in the ordinary course at full market value, until a Default Event occurs.

4.3 Until Buyer pays all amounts owed to Seller; Buyer:

(a) must store the Goods in a way that identifies them as Seller's goods and so they can be distinguished from all other goods in Buyer's possession;

(b) acknowledges that it holds the Goods as Seller's bailee and that a fiduciary relationship exists with Seller, and

(c) must hold the proceeds from any sales of Goods on trust for Seller and hold these proceeds in a separate account or

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otherwise clearly identify these amounts in its accounts.

for the avoidance of doubt, any of the provisions specified in paragraph (b)).

4.4 If a Default Event occurs:

- (a) Buyer's right to sell the Goods immediately terminates; and
- (b) without notice to Buyer and without prejudice to any of its other rights, Seller may recover and/or re-sell the Goods or any of them and may enter Buyer's premises by its servants or agents for that purpose. Buyer indemnifies Seller for all claims, actions, suits, demands, orders for costs or damages relating to or arising out of such entry.

- (b) To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.

5. SECURITY INTEREST, CHARGE AND MORTGAGE

- (a) The Buyer grants to the Seller a security interest in the Goods to secure payment of the Amount Payable. The security interest:
 - (i) extends to and continues in all proceeds, Accessions and Processed Goods, and
 - (ii) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable, which comprises the aggregate unpaid purchase price of Goods.
- (b) The Buyer must not do or permit anything to be done that may result in the purchase money security interest granted to the Seller ranking in priority behind any other security interest.

7. TOLERANCES

- 7.1 Unless otherwise stated on the quotation or product drawing, the Goods will be supplied within the tolerances as to quantity, weight, dimensions, gauge, chemical composition, physical properties, finish in Seller's published Product Data current at the date of contract (and if none are specified, those tolerances normally regarded as being commercially acceptable).

8. WARRANTY AND LIABILITY

- 8.1 Seller warrants:
 - (a) that the Goods will be free from defects in material and workmanship except such defects as are normally regarded as being commercially acceptable; and
 - (b) subject to paragraph 5, that the goods will conform to the description shown on Seller's invoice and to Seller's published Product Data current at the date of contract.
- 8.2 Except as set out in Paragraph 8.1 and 8.3, Seller:
 - (a) excludes all conditions and warranties in relation to the Goods whether imposed or implied by statute or otherwise; and
 - (b) will not be liable for any loss, damage or injury including loss of profits and consequential loss, arising from the condition supply or use of the Goods, or out of Seller's breach or performance of the contract, whether or not caused by Seller's negligence.
- 8.3 The Contract includes terms implied by any statute which cannot be lawfully excluded including those implied by Division 2 of the Trade Practices Act and, if applicable, the Fair Trading Act (WA) and the Sale of Goods Act (NSW). However, in relation to the supply of

6. CONTRACTING OUT OF THE PPSA

- (a) The Buyer:
 - (i) waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financial statement or a financing change statement relating to a security interest created under the Contract; and
 - (ii) contracts out if its rights to receive any other notice or statement under any other provision of the PPSA (including

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goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Seller's liability for breach of those terms (other than section 69 of the Trade Practices Act) will be limited, at its option, to any one or more of:

- (a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and
- (b) in the case of services, supplying the services again or payment of the cost of having the services supplied again.

8.4 Buyer acknowledges that it has exercised its independent skill and judgement in acquiring the Goods and has not relied on any advice or representation by Seller or any descriptions, illustrations or specifications contained in any document produced by Seller, which have not been stated expressly in these Terms.

8.5 Buyer will be taken to have waived any claim which they may have against Seller unless:

- (a) Buyer gives Seller written notice of the claim within 7 days after delivery of the Goods: and
- (b) Seller is given a reasonable opportunity to investigate the claim.

8.6 Regardless of anything else in the contract, Seller will not be liable to Buyer for Seller's failure to comply with the contract due to any cause beyond Seller's reasonable control. Seller's obligations affected by this cause are suspended while the cause continues to hinder or prevent Seller's performance.

8.7 Buyer will be liable to Seller if Buyer wrongfully terminates this contract or refuses to accept all or part of the Goods. If the Goods have been made specially for Buyer, or are in the process of being made, Buyer must pay to Seller as liquidated damages the full contract price of the Goods and any costs incurred by Seller less the current scrap value of the Goods as determined by Seller.

8.8 When the Seller has relied upon drawings, figures, specifications or other documents supplied by the Buyer, it is the Buyer's responsibility to ensure all data is accurate, legible and clear. The Buyer accepts that failure to do so will render them liable should Goods

be incorrectly manufactured or purchased by the Seller based on that information

9. STOCKING

9.1 If Buyer does not request delivery of the Goods within 30 days of Goods becoming available for delivery, at its option, Seller may:

- (a) deliver the Goods to Buyer, in which case the delivery will be taken to be a delivery pursuant to the contract: or
- (b) treat Buyer as having cancelled the contract and invoice Buyer for an amount determined in accordance with paragraph 8.7.

9.2 Seller will not be liable for any loss or damage Buyer sustains arising out of anything referred to in this paragraph 9 and will not be required to remove any stains or soiling.

10. VARIATIONS

10.1 Seller will not accept alterations to orders which are in production or completed.

10.2 If Buyer cancels all or part of an order:

- (a) before Seller has started producing the goods and/or tooling, Buyer must pay Seller as liquidated damages an amount equal to 10% of the price of the cancelled goods and/or tooling; or
- (b) after Seller has started producing the goods and/or tooling, Buyer must pay to Seller as liquidated damages the full price of the goods and/or tooling cancelled, less the current scrap value of the goods as determined by Seller.

11. DIES AND OTHER EQUIPMENT

11.1 Buyer must bear the cost of tooling/die development in accordance with Seller's charges in effect at the time of manufacture. Tooling, dies and other equipment remain Seller's property and will not be released to Buyer. Any amount Buyer pays in relation to them will be treated as a charge for their use.

11.2 Any order Buyer places which requires using tools, dies or other equipment which have been scrapped will be treated as a new request. Buyer must pay for any tools, dies or other equipment

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made to supply that order at Seller's then current charges.

12. PATENTS AND DESIGNS

12.1 Buyer must indemnify Seller against all damages, losses and expenses which Seller incurs arising out of any claim made against Buyer or Seller that the Goods, their method of manufacture or their design infringe any industrial or intellectual property rights.

12.2 Paragraph 12.1 does not apply in relation to Goods described as standard products in Seller's published Product Data.

12.3 The Seller shall have the sole rights to seek patents on any invention or idea arising out of the Contract and the Buyer shall, and ensure that its employees shall, execute all documents and instruments and do or refrain from doing all such acts as the Seller may reasonably require for such purpose.

13. THIRD PARTIES SERVICES SELLER PROCURES AT BUYER'S REQUEST

If at Buyer's request Seller arranges for any goods or services to be provided by a third party in relation to a contract:

- (a) Buyer must indemnify Seller and keep it indemnified in respect of any claims, actions, suits, demands, orders for costs or damages relating to or arising out of the arrangement; and
- (b) the Goods and or services the subject of the contract between Buyer and Seller will be taken to be delivered by Seller when Seller delivers them to the third party.

14. CONFIDENTIALITY & PRIVACY

14.1 All Seller and Buyer information is proprietary and confidential to that party and shall be used solely by the other party for the purpose of purchasing the products and/or services from the Seller subject to these conditions. Each party shall keep the other party's information secure and strictly in confidence and will ensure its directors, officers, employees, servants, agents, subcontractors and suppliers are aware of this clause and enforce its application.

14.2 Notwithstanding clause 14.1 the Seller may utilise any relevant information and share that information with a third party in terms of

discharging its obligations to provision and supply the Goods or Services to the Buyer and for the reasons to undertake credit checks on the Buyer as the Seller, at its sole discretions, and from time to time, feels necessary in order to maintain credit facilities to the Buyer, collection of monies owed or recovery of Goods.

14.3 The Buyer may access any personal information retained by the Seller, on request.

15. FORCE MAJEURE

15.1 The Seller shall not be under any liability for any failure to perform any of its obligations under the Contract due to Force Majeure. Following notification by the Seller to the Buyer of such cause the Seller shall be allowed a reasonable extension of time for the performance of its obligations.

15.2 In these conditions, 'Force Majeure' means any cause beyond the reasonable control of the Seller including, without limitation, Act of God, explosion, flood, tempest, fire, war or threat of war, terrorism, sabotage, rebellion, civil disturbances or legislation or measures of any kind by any governmental, parliamentary, local or supranational authority, lock-outs, industrial action or disputes (whether involving employees of the Supplier or third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power or machinery failures or breakdowns, accidents, transport delays or import or export regulations or embargoes.

16. MISCELLANEOUS

16.1 The contract is not a sale by sample, even if a sample was inspected by Buyer or exhibited.

16.2 Seller's waiver of any provision, or breach of any provision, of the contract must not be construed as a waiver of any other provision, or a breach of any other provisions, or subsequent breach of the same or any other provision of the contract.

16.3 Where this contract conflicts with anything set out in Seller's current published Product Data as the date of contract, the product data terms prevail to the extent of the conflict.

16.4 Unless Seller agrees in writing to the contrary, these Terms prevail over the terms of Buyer's order and any Buyer confirmation documents containing terms.

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- 16.5 The contract must be construed accordingly to New South Wales' law. The parties accept the non-exclusive jurisdiction of the Courts of that State.
- 16.6 If Buyer requests a deferment of delivery of the Goods and Seller agrees to defer delivery, Buyer must pay the storage fee Seller specifies.
- 16.7 These terms may only be varied if Seller agrees in writing.
- 16.8 Any notice to be given hereunder shall be in writing or by some secure form of electronic transmission and addressed to the other party at its last known address and such notice shall be deemed to have been served, if sent by post, forty-eight hours after posting or, if sent by electronic transmission, on receipt by the other party.

