

These Terms and Conditions of Trade (“**Terms**”) apply (unless otherwise previously agreed in writing) to the supply of Goods by JOST Australia to a Customer from time to time. Any supply of Goods by JOST Australia to the Customer made after the date of acceptance of these Terms is a supply pursuant to this master supply Agreement and any such supply does not give rise to a new or separate agreement.

## 1. Definitions and Interpretation

1.1. In this Agreement:

**Agreement** means the agreement between the Customer and JOST Australia comprising the following documents:

- (a) the Order, accepted by JOST Australia;
- (b) these Terms; and
- (c) any other document which is incorporated by reference in the Quotation or these Terms

**Australian Consumer Law** has the meaning given to it in the *Competition and Consumer Act 2010 (Cth)*.

**Business Day** means any day other than a Saturday, Sunday or public holiday in the whole State of Victoria.

**Consequential Loss** means loss of revenue, loss of profit or anticipated profit, loss of business, loss of business reputation, loss of opportunities, loss of anticipated savings, loss of goodwill, and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

**Customer** means the party to whom a Quotation is provided by JOST Australia or by whom an Order is placed with JOST Australia for Goods.

**Delivery Time** means the date and time that the Goods are:

- (a) delivered by, or on behalf of, JOST Australia to the Site or any other delivery location nominated by the Customer and agreed to by JOST Australia; or
- (b) collected by, or on behalf of, the Customer or notified as being ready for collection from JOST Australia’s premises or any other location at which the Goods are situated; or
- (c) due to be delivered by JOST Australia, but delivery is delayed at the request of the Customer or due to circumstances beyond the reasonable control of JOST Australia.

**Due Date** means, for Customers with a credit account, 30 days from invoice month end and for Customers without a credit account, the date on which the Goods are delivered.

**Force Majeure Event** means any event outside the reasonable control of JOST Australia including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above.

**Goods** mean any product, item, equipment or materials supplied or to be supplied by JOST Australia to the Customer and includes any services provided by JOST Australia to the Customer.

**GST** means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**JOST Australia** means *JOST Australia Pty Ltd ACN 001 081 778*

**Intellectual Property Rights** includes all patents copyright, moral rights, registered designs, registered and

unregistered trademarks, trade secrets, knowhow and confidential information and all other intellectual property.

**Invoice** means a written invoice issued by JOST Australia to the Customer upon acceptance of an Order setting out the Price and any delivery charges.

**Order** means a written order to purchase Goods placed by the Customer with JOST Australia in such form as required by JOST Australia.

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

**Price** means the price of Goods determined under clause 3.

**Quotation** means a written quotation issued by JOST Australia for the sale of Goods to the Customer.

**Site** means the location where the Goods are to be delivered, as stated in the Quotation or otherwise nominated by the Customer and agreed to by JOST Australia.

**Standard Specifications** means JOST Australia’s standard specification for the Goods current at the time Goods are delivered to the Customer. Copies of the Standard Specifications are available upon request from JOST Australia.

1.2. In this Agreement:

- (a) any reference to a party includes its successors and permitted assigns;
- (b) headings are for convenience only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) “including” and similar words do not imply any limitation;
- (e) a reference to \$ is to the Australian dollar;
- (f) a reference to legislation or a legislative provision includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) if the performance of an obligation under this Agreement falls due on a weekend or public holiday day it must be performed on the next Business Day.

## 2. Quotations and Orders

2.1. Quotations are valid for a period of 30 days from date of issue and may be amended or withdrawn at any time by JOST Australia before an Order is placed by the Customer.

2.2. An order given to JOST Australia is binding on JOST Australia and the Customer, if:

- (a) a written acceptance is signed for or on behalf of JOST Australia; or
- (b) the Goods are supplied by JOST Australia in accordance with the Order.

No order is binding on JOST Australia until accepted by it under this clause.

2.3. Any terms in any document of the Customer including any Order will override any terms and conditions contained in the Customer’s Order.

2.4. Once accepted by JOST Australia, orders cannot be cancelled by the Customer under any circumstances without JOST Australia’s prior written consent which it may

refuse in its absolute discretion (which consent may include a requirement that the Customer indemnify JOST Australia against any loss or expense suffered by it as a result of the cancelled Order).

### **3. Price**

- 3.1. The Price for Goods is either;
  - (a) the price indicated in JOST Australia's Quotation (or any subsequent Quotation if varied); or
  - (b) the price listed in any JOST Australia price list current at the date an Order is placed.
- 3.2. Prices do not include applicable taxes or statutory charges (such as GST) or delivery charges. Delivery charges will be specified in Quotations and Invoices and charged in addition to the Price as will applicable taxes or statutory charges.
- 3.3. All Prices are subject to change at the sole discretion of JOST Australia subject to reasonable notice.

### **4. Payment**

- 4.1. JOST Australia, at its discretion, may require payment of a deposit for Goods on placing of an Order. JOST Australia may also require that the Goods be paid for in instalments by the Customer.
- 4.2. Unless the Customer has a credit account in the Customer's name with JOST Australia, the total amount of an invoice (less any deposit paid if applicable) and the delivery charges are payable by the Customer prior to or at the Delivery Time.
- 4.3. If the Customer has an approved credit account, an Invoice (less any deposit paid) and the delivery charges are payable by the Due Date.
- 4.4. Payment must be made by cash, bank cheque, credit card, direct credit into JOST Australia's bank account or by any other method agreed between the Customer and JOST Australia. Receipt of any form of payment other than cash will not constitute payment until that form of payment has been honoured, cleared or recognised.
- 4.5. If the Customer makes payment by credit card or debit card, JOST may at its sole discretion on charge any applicable surcharges incurred by JOST to the Customer in addition to the Price.
- 4.6. Subject to clause 7, payment will constitute acceptance by the Customer of all Goods.
- 4.7. All amounts payable by the Customer under this Agreement must be paid without set-off, cross demand or counter claim of any kind.

### **5. GST**

- 5.1. If GST is imposed on any taxable supply under this Agreement then the recipient of that taxable supply must pay the supplier an additional amount equal to the GST payable on the taxable supply at the same time as payment for the taxable supply is due.

### **6. Delivery**

- 6.1. JOST Australia will (unless otherwise agreed with the Customer) organise for delivery of the Goods to the Site by a carrier appointed by JOST Australia. Delivery and freight costs will be specified in the Quotation and are payable by the Customer at the same time an Invoice or application for payment is payable. Delivery Times are estimates only.

- 6.2. An estimated timeframe for delivery will be stated in the Quotation. JOST Australia will use reasonable endeavours to meet the delivery timeframe but accepts no responsibility for costs or charges resulting from a delay in delivery due to factors outside its reasonable control. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. JOST Australia may change the estimated delivery time by written notice to the Customer. JOST Australia reserves the right to deliver the Goods in instalments.

- 6.3. The Customer acknowledges that Goods do not need to be signed for when delivered and may be unloaded and left on any part of the Site that JOST Australia or its carrier considers reasonable in the circumstances.

- 6.4. JOST Australia will not be liable for any loss, costs, expenses or any other liability, including but not limited to any Consequential loss arising as a result of any delay in delivery.

### **7. Defects and Returns**

- 7.1. The Customer must inspect the Goods on delivery and notify JOST Australia in writing within 7 days of delivery of any alleged defect, damage or failure of the Goods. If no notice is given within 7 days of delivery, and to the extent permissible at law, the Customer will be deemed to have accepted the Goods.
- 7.2. If a notice of defect or damage is given the Customer must allow JOST Australia access to inspect the Goods and determine whether or not that notice is valid. If JOST Australia accepts that Goods are defective or damaged the parties acknowledge that the Customer has remedies available to it as a consumer under the Australian Consumer Law subject to the limitations under clauses 12.5 and 12.6 of these Terms.
- 7.3. JOST Australia will not be liable for any defects, damage or failure of Goods which have not been stored or used in a proper manner or contrary to the purpose of the Goods or any reasonable directions or instructions of JOST Australia.
- 7.4. JOST Australia may, at its sole discretion, accept the return of non-defective Goods for credit subject to a restocking fee, as detailed in the JOST Australia Stock Return Policy.
- 7.5. Goods will not be accepted for return unless otherwise stated in the JOST Australia Stock Return Policy, this clause 7 or required by law.

### **8. Risk**

- 8.1. Risk in the Goods passes to the Customer at the Delivery Time.
- 8.2. The Customer must, from the date risk in the Goods passes to it until the date that title to the Goods passes to it, insure the Goods against all reasonably insurable risks for their full replacement value and, if required by JOST Australia, store the Goods separately from any other goods and in a way that enables the Goods to be clearly identifiable as the property of JOST Australia.

### **9. Retention of Title**

- 9.1. Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with JOST Australia until payment in full for the Goods and all sums due and owing by the Customer to JOST Australia on any account has been made. Until the date of payment:

- (a) the Customer has the right to sell the Goods in the ordinary course of business;
  - (b) until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for JOST Australia;
  - (c) the Goods are always at the risk of the Customer.
- 9.2. The Customer is deemed to be in default immediately upon the happening of any of the following events:
- (a) if any payment to JOST Australia is not made promptly before the due date for payment;
  - (b) if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to JOST Australia is dishonoured;
- 9.3. In the event of a default by the Customer, then without prejudice to any other rights which JOST Australia may have at law or under this agreement:
- (a) JOST Australia or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
  - (b) JOST Australia may recover and resell the Goods;
  - (c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, JOST Australia may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of JOST Australia and the Customer may be ascertained. JOST Australia must promptly return to the Customer any goods the property of the Customer and JOST Australia is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
  - (d) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for JOST Australia. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the JOST Australia at the time of the receipt of such proceeds. The Customer will pay JOST Australia such funds held in trust upon the demand of JOST Australia.
- 9.4. Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of JOST Australia.

## **10. Personal Property Securities Act 2009 ("PPSA")**

- 10.1. Capitalised terms used in this clause but not defined in clause 1 have the meanings given to them in the PPSA.
- 10.2. JOST Australia and the Customer acknowledge that these Terms constitute a Security Agreement and entitle JOST Australia to claim:
- (a) a Purchase Money Security Interest ("PMSI") in favour of JOST Australia over the Collateral supplied or to be

supplied to the Customer as Grantor pursuant to these Terms; and

- (b) a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral

- 10.3. The Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.
- 10.4. The Proceeds of sale of the Collateral referred to in clause 10.2(a) falls within the PPSA classification of "Account".
- 10.5. JOST Australia and the Customer acknowledge that JOST Australia, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.
- 10.6. To the extent permissible at law, the Customer:
- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to JOST Australia.
  - (b) agrees to indemnify JOST Australia on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
    - i. registration or amendment or discharge of any Financing Statement registered by or on behalf of JOST Australia; and
    - ii. enforcement or attempted enforcement of any Security Interest granted to JOST Australia by the Customer.
  - (c) agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms or the Security under the Terms;
  - (d) agrees to waive its right to do any of the following under the PPSA:
    - i. receive notice of removal of an Accession under section 95;
    - ii. receive notice of an intention to seize Collateral under section 123;
    - iii. object to the purchase of the Collateral by the Secured Party under section 129;
    - iv. receive notice of disposal of Collateral under section 130;
    - v. receive a Statement of Account if there is no disposal under section 132(4);
    - vi. receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - vii. receive notice of retention of Collateral under section 135;
    - viii. redeem the Collateral under section 142; and
    - ix. reinstate the Security Agreement under section 143.
- 10.7. All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

## **11. Default and termination**

- 11.1. In relation to any Invoice that has not been paid by the Due Date:

- (a) default interest will accrue daily at the rate of 2% per calendar month; and
  - (b) the Customer agrees to indemnify JOST Australia from and against all costs and disbursements incurred by JOST Australia in pursuing the debt (including legal costs on a solicitor and own client basis and collection agency costs).
- 11.2. In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by JOST Australia.
- 11.3. If the Customer:
- (a) is in default of any payment obligation;
  - (b) fails to remedy a breach of any non-payment related obligation within 14 days of having been given a written notice to remedy the breach by JOST Australia;
  - (c) becomes unable to pay its debts and when they fall due; or
  - (d) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up;
- then JOST Australia may, without prejudice to any other rights or remedies available to it under this Agreement or otherwise, by notice in writing to the Customer:
- (a) suspend further supply of the Goods and require payment in advance for any future supply;
  - (b) recover possession of any Goods for which payment has not been made;
  - (c) terminate all or any Orders which have been accepted by JOST Australia;
  - (d) claim immediate payment of all moneys due by the Customer in respect of all Goods which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
  - (e) continue to enforce its rights against and recover from the Customer such payments and any other amounts owing as and when they fall due.
- 11.4. JOST Australia can, at its sole discretion and without notice, deactivate a Customer's credit account if the account has been inactive for 2 years or more. Deactivated accounts can only be resumed once a new credit application has been completed by the Customer.

## 12. Warranties and limitation of liability

- 12.1. JOST Australia warrants that the Goods when delivered to the Customer will comply with any description for the Goods contained in the Quotation and with the Standard Specification (if any) for the Goods.
- 12.2. Unless expressly provided in the Quotation or any other written document of JOST Australia's, JOST Australia gives no representations or warranties for the Goods.
- 12.3. The Customer warrants that in placing its Order it has:
- (a) satisfied itself as to the description and condition of the Goods and their fitness for the purpose for which the Customer will use them; and
  - (b) not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided of given by JOST Australia or anyone on JOST Australia's behalf in

respect of the Goods, other than those expressly contained in this Agreement, the Quotation or any other document that JOST Australia has provided to the Customer.

- 12.4. Where the customer buys Goods as a consumer, this Agreement is subject to the Australian Consumer Law which governs the rights of consumers and nothing in this Agreement affects the Customer's statutory rights.
- 12.5. JOST Australia's liability to the Customer is limited, to the extent permissible by law, and at JOST Australia's option:
- (a) in relation to the Goods;
    - i. the replacement of the products or the supply of equivalent products
    - ii. the repair of the products
    - iii. the payment of the cost of replacing the products or of acquiring equivalent products; or
    - iv. The payment of the cost of having the products repaired
  - (b) Where the Goods are services:
    - i. the supply of service again; or
    - ii. the payment of the cost of having the services supplied again.
- 12.6. To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and JOST Australia is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
- (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) any loss or expense resulting from a claim by a third party; or
  - (d) any special, indirect or Consequential loss or damage of any nature whatsoever caused by JOST Australia's failure to complete or delay in completing the order to deliver the Goods.

## 13. Indemnity

- 13.1. The Customer agrees to indemnify and keep indemnified JOST Australia against all costs, claims, demands, expenses and liabilities of whatsoever nature (including claims of death, personal injury, damage to property and Consequential loss (including loss of profit)), suffered or incurred by, or made against JOST Australia as a result of a breach of this Agreement by the Customer, the Customer's use of the Goods, or any other conduct of the Customer, except where those costs, claims, demands, expenses or liabilities are directly and solely attributable to the gross negligence or wilful default of JOST Australia or any of its duly authorised employees or agents.

## 14. Force Majeure

- 14.1. JOST Australia will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 14.2. If a Force Majeure Event arises, JOST Australia will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on JOST Australia's performance under this Agreement. If the Force Majeure Event affects the capacity of JOST Australia to complete its material obligations under this Agreement in a timely

manner, JOST Australia may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

## **15. Confidentiality**

15.1. The Customer shall treat as confidential all information, data, drawings, specifications, samples and documentation supplied by JOST Australia under or in connection with this Agreement, and will not disclose them to any third party without the prior written consent of JOST Australia. This clause survives the termination or completion of this Agreement.

## **16. Dispute Resolution**

16.1. If there is a dispute in relation to any aspect of the supply of the Goods either party may notify the other in writing of the dispute.

16.2. Following any such notification, there will be a period of 30 days during which both parties must participate in good faith in any negotiations or discussions regarding the dispute which JOST Australia requests the Customer to participate in.

16.3. If the dispute has not been resolved by the end of the 30 day period, JOST Australia may require that the dispute be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia and its applicable rules.

16.4. Subject to clause 16.5 neither party is permitted to commence any court proceedings or other similar actions relating to a dispute unless it has complied with the procedure set out in this clause.

16.5. This clause does not prevent a party from commencing legal proceedings for urgent interlocutory relief.

## **17. Intellectual Property Rights**

17.1. Any Intellectual Property Rights in the Goods and any instructions relating to them remain with JOST Australia and do not pass to the Customer.

17.2. Nothing in this agreement affects the ownership of the Intellectual Property Rights owned by JOST Australia or any third party which are used in the supply of the Goods. JOST Australia may at their sole discretion grant or obtain for the Customer, subject to the due observance of all instructions issued by JOST Australia:

- (a) such rights as are necessary for it to use the Goods to fulfil its obligations under these Terms;
- (b) a non-exclusive and non-transferable licence to exercise those rights in order to use, and otherwise deal with the Goods as contemplated by these Terms.

17.3. The Customer acknowledges that it has no right, title or interest in, nor will it acquire or attempt to acquire any Intellectual Property Rights in its own or third parties' name, or for its own or others behalf or act in any such way that may give the impression to third parties that the Customer is proprietor of the Intellectual Property Rights.

17.4. JOST Australia does not give any warranty, whatsoever, whether express or implied, statutory or otherwise, concerning the validity and scope of the Intellectual Property Rights, nor does it give any other warranty, whether express or implied, statutory or otherwise concerning the Intellectual Property Rights.

17.5. The Customer warrants that it shall:

(a) not cause, or permit anything to be done (or not done) which may damage or endanger the Intellectual Property Rights, including without limitation, their validity and/or reputation;

(b) without prejudice to any other right of JOST Australia, indemnify JOST Australia for any damage suffered by the JOST Australia by reason of any use by the Customer of the Intellectual Property Rights otherwise than in accordance with these Terms.

(c) not in any way, alter the packaging or labelling of the Goods, unless such alteration shall first have been approved by JOST Australia.

(d) The Customer shall inform JOST Australia promptly, if it becomes aware of any infringement of any Intellectual Property Rights. JOST Australia shall have the right but no obligation, to take such legal action as they deem necessary to enjoin such infringement. The Customer shall render all such reasonable assistance as JOST Australia requests in connection with such action.

17.6. The Customers rights to use any Intellectual Property Rights under clause 17.1 shall cease immediately upon the expiry or termination of this Agreement or as otherwise directed by JOST Australia.

## **18. General provisions**

18.1. The Customer must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of JOST Australia.

18.2. JOST Australia may assign or deal with any of its rights or obligations under this Agreement at any time and without any requirement to notify the Customer. JOST Australia reserves the right to subcontract the performance of any of its obligations under this Agreement to any other person it so determines.

18.3. The Customer must give JOST Australia no less than 7 days prior written notice of any proposed change of ownership or any change in the Customer's contact details. The Customer will be liable to any loss incurred by JOST Australia as a result of the Customer's failure to comply with this clause.

18.4. JOST Australia may vary this Agreement from time to time and any variation takes effect in relation to subsequent Orders placed after the Customer has received written notice of the variation from JOST Australia.

18.5. No failure to exercise or delay in exercising any right under this Agreement constitutes a waiver and any right may be exercised in the future. A waiver of any right under this Agreement must be in writing and is only effective to the extent set out in that written waiver.

18.6. If any provision of this Agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the relevant sub-clause is to be severed from this Agreement and if this cannot be done, then the entire relevant clause is to be severed from this Agreement, in each case, without affecting the validity or enforceability of the remaining provisions.

18.7. This Agreement (including all Quotations, Orders and Invoices) constitutes the entire Agreement between the

parties in respect of the sale of Goods and supersedes all previous communications, representations understandings or agreements.

18.8. This Agreement is governed by the laws in force in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

18.9. Any notice to be given to a party must be in writing.