

ESSENTIAL TERMS AND CONDITIONS OF SALE

1. PURCHASE ORDERS AND CONTRACT

- 1.1. Purchase Order, including Specifications, Order Acknowledgement, Quote and Contract is accepted by JTMEC when:
 - 1.1.1. JTMEC sends to the Customer an Order Acknowledgement, or
 - 1.1.2. The earlier of either verbal acknowledgement or by delivery of the goods.
- 1.2. When a Purchase Order is accepted, the Contract will be documented and include in order of precedence:
 - 1.2.1. Any specific terms agreed in writing;
 - 1.2.2. The Order Acknowledgement; and
 - 1.2.3. JTMEC Essential Terms and Conditions of Sale.
- 1.3. Terms and conditions submitted by the Customer with a Purchase Order do not form part of the Contract unless expressly agreed in writing by JTMEC. JTMEC Essential Terms and Conditions of Sale will prevail over the Customer's terms and conditions.
- 1.4. Variations of the Contract are only effective if agreed to in writing by JTMEC.
- 1.5. Any previous dealing between JTMEC and the Customer will not have any effect on the Contract.
- 1.6. The Contract contains everything JTMEC has agreed with the Customer in writing in relation to the goods supplied under the Contract. Neither party may rely on an earlier Contract, or upon anything else said or done by the other party before this Contract was entered into.
- 1.7. The Customer must provide written notice to JTMEC of any changes in trading address, legal entity, and structure of management or control with 7 days of the change coming into effect.
- 1.8. JTMEC may at its absolute discretion, as a condition of acceptance of a Purchase Order require the Customer or persons or entities associated with the Customer to do any of the following:
 - 1.8.1. Provide a cash deposit or full payment in advance of delivery of the goods;
 - 1.8.2. Satisfy credit approval requirements;
 - 1.8.3. Provide personal guarantees as to payment;
 - 1.8.4. Provide bank guarantees as to payment.

2. PRICE

- 2.1. The price is the total amount payable on the Order Acknowledgement.
- 2.2. Notwithstanding any provision in the Contract, JTMEC may increase the price of the goods after an Order Acknowledgement is provided and prior to delivery if the price increase results from another increase in either:
 - 2.2.1. The price of inputs which comprise part of the goods; or
 - 2.2.2. The Goods and Services Tax or any transactional Tax.
- 2.3. The price excludes any applicable Goods and Services Tax.
- 2.4. All quotes are subject to copper rise and fall. Any change to the London Metal Exchange (LME) copper index rate may invalidate this quote. JTMEC reserve the right to amend this quote if any movements in the LME copper index occur. This quote is based on the LME copper index rate as of the date of quotation listed above.

3. DELIVERY

- 3.1. Without limiting any other provisions in this document, failure by the Customer to pay for any instalments, or any other amount when due, will entitle JTMEC to cease works and/or withhold or delay delivery of any remaining goods. If delay in delivery is caused by an event of circumstance of force majeure (refer clause 10.1 and 10.2), JTMEC may (at its option and without limiting its other rights and remedies) arrange suitable storage of the goods, whether at its premises or elsewhere and the Customer must pay or reimburse all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage if directed by JTMEC.

4. RETURN OF GOODS AND CREDITS

- 4.1. The Customer is deemed to have accepted the goods unless it makes a claim in accordance with clauses 4.2 and 4.3.
- 4.2. The Customer may claim the right to reject any goods which are wrongly supplied or over supplied, or which are not in accordance with any express representations or the JTMEC Essential Terms and Conditions of Sale, by notifying JTMEC of the claim and providing full particulars of the claim in writing within 7 days of receipt of those goods. JTMEC may at its absolute discretion refuse to carry out the works for any “full particulars” referred to in this paragraph that the customer may advise.
- 4.3. The Customer is liable to pay the cost of returning the goods subject to a claim made under clause 4.2 unless all the following are met:
 - 4.3.1. JTMEC has agreed in writing to their return;
 - 4.3.2. The Customer has complied with clause 4.2;
 - 4.3.3. The Customer has done all things necessary to permit JTMEC to examine the goods to its satisfaction within 7 days of complying with clause 4.2; and
 - 4.3.4. The goods are in the same condition as when they were delivered.

5. PAYMENT

- 5.1. The price must be paid:
 - 5.1.1. In full with the Purchase Order; or
 - 5.1.2. In full within 30 days of invoice.
- 5.2. If paid by cheque, the price is paid on the date the cheque clears.

6. TITLE AND RISK

- 6.1. Legal and equitable title only passes from JTMEC to the Customer when the Customer has paid all monies owing by the Customer to JTMEC. Until then, JTMEC retains title to the goods and the Customer is a bailee of the goods. The Customer must comply with all the following conditions:
 - 6.1.1. Keep the goods in its possession and control.
 - 6.1.2. Keep the goods in good repair and condition, excluding fair wear and tear.
 - 6.1.3. Keep the goods stored separately and marked so that the goods are clearly and easily identifiable as JTMEC’s property and inform JTMEC of the location of the goods, if required.
 - 6.1.4. Not sell, assign or let the goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
 - 6.1.5. Maintain and allow JTMEC to inspect records which do any of the following:
 - 6.1.5.1. Identify any unpaid goods owned by JTMEC.
 - 6.1.5.2. Details of third parties to whom the Customer sells or disposes of unpaid goods.
 - 6.1.5.3. Detail payments made by such parties for the unpaid goods.
- 6.2. If the Customer does not pay for any goods on the due date for payment, the Customer authorises JTMEC, its employees and agents to enter the Customer’s premises (and any premises under the control of the Customer or an agent of the Customer if the goods are located on those premises) and use reasonable force to retake possession of the goods without liability for trespass or damage.
- 6.3. If the Customer sells the goods before payment in full to JTMEC, the Customer holds the proceeds on trust for JTMEC in respect of those goods, and must keep such proceeds in a separate account until the liability to JTMEC is discharged and must immediately pay that amount to JTMEC.
- 6.4. If the Customer uses the goods in a manufacturing or construction process of its own or some third party, the Customer must hold that part of the proceeds of such manufacturing or construction process as relates to the GOODS IN TRUST FOR JTMEC. The Customer must keep such proceeds in a separate account until the liability to JTMEC is discharged. Such part shall be deemed to be equal in dollar terms owing by the Customer to JTMEC in respect of the goods in question at the time of receipt of such proceeds. The Customer must not assign the right to any such proceeds or enter into any other arrangement that would result in the Customer not receiving those proceeds.
- 6.5. Notwithstanding retention of these rights, JTMEC may recover the price of the goods from the Customer.
- 6.6. The risk in goods supplied passes to the Customer on delivery of the goods. The Customer is responsible for any charges or expense incurred in relation to the goods.

7. DEFAULT

- 7.1. If the Customer has not paid the full price by the due date for payment;
 - 7.1.1. JTMEC may take steps to recover all outstanding monies, including engaging a mercantile agency or instituting legal proceedings. The Customer is liable for any cost of taking steps to recover the monies including the cost of a mercantile agency, court costs and legal costs.
 - 7.1.2. Interest is payable on any amount outstanding monies after the due date for payment at the rate of 6.5% per month from the date the costs are incurred.
 - 7.1.3. JTMEC may elect at its discretion to suspend from time to time some or all its obligations under this Contract or any other agreements with the Customer, including offering further credit, until:
 - 7.1.3.1. Payment in full is received by JTMEC; or
 - 7.1.3.2. JTMEC enters the Customer's premises and repossess the goods to which the outstanding payments relate and keep or sell those goods in accordance with clause 6.2.
- 7.2. If the Customer fails to take delivery of the goods and this continues for 60 days or more, JTMEC may resell those goods. Any proceeds of the resale of the goods will be applied as follows:
 - 7.2.1. Of the original sale or Contract price of the goods; or
 - 7.2.2. The Customer is entitled to, or may pay, as relevant, the difference between the original Contract sale price and the resale price after deduction of a restocking fee of 15% of the original sale price of the goods.
- 7.3. JTMEC may exercise all rights resulting from the failure to pay money at any later time despite the supply of goods by JTMEC after it becomes aware of a failure by the Customer to pay money. The right to terminate may be exercised concurrently with the suspension of obligations by JTMEC.
- 7.4. JTMEC may by written notice to the Customer immediately end the agreement formed under this document in any of the following circumstances
 - 7.4.1. The Customer fails to perform any of its obligations under this document including failure to pay by the due date,
 - 7.4.2. The Customer dies or becomes incapacitated, or ceases to carry on business,
 - 7.4.3. Anything happens that in the view of JTMEC reasonably indicates that there is a risk that the Customer is or will become unable to pay debts as they fall due. This includes execution being levied against any income or assets of the Customer; a meeting of the Customer's creditors being called or held; a step being taken to make the Customer bankrupt; and the Customer entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement,
 - 7.4.4. A step is taken to have a receiver, receiver and manager, provisional liquidator or administrator appointed to the Customer or any of its assets or subsidiaries.
- 7.5. If the Contract is ended because of the Customer's default and the Customer owes JTMEC money, the money becomes payable immediately to JTMEC.

8. INTELLECTUAL PROPERTY

- 8.1. If the Customer provides any information to JTMEC, the Customer warrants that it holds any required intellectual property rights to that information.

In the event of legal action against JTMEC for breach of intellectual property rights relating to use of information provided by the Customer, the Customer indemnifies JTMEC for any legal costs or other costs whatsoever it may incur.

9. FORCE MAJEURE

- 9.1. If JTMEC's ability to perform its obligations under this Contract is adversely affected by war, strike, trade dispute, damage to plant or machinery, shortage of any material or labour, any cause beyond JTMEC's control or influence, JTMEC may, if it chooses in its absolute discretion, end the Contract or suspend it for up to three months or any other time it deems necessary in the circumstances by giving the Customer written notice. JTMEC will not be liable for any loss, damage or liability incurred by the Customer.
- 9.2. The Customer accepts it is the Customer's obligation as a condition of this Contract that it must accept delivery of goods notwithstanding any delay in delivery caused by any of the events specified in clause 10.1.

10. LIMITATION OF LIABILITY

- 10.1. To the extent permitted by law, liability is excluded for defective goods manufactured and/or sold by JTMEC where that liability arises from faulty design, materials, workmanship and fair wear and tear.
- 10.2. Except as implied by statute, all other liability, including for actual, physical or financial consequential loss or damage and whether arising from negligence or misuse of product is any other way excluded.
- 10.3. The Customer indemnifies JTMEC against all claims for goods not fit for purpose or otherwise provided for protections and remedies in consumer protection legislation, or similar statutory regime, other than that is expressly provided for by the Customer.

11. WAIVER

- 11.1. The fact that JTMEC fails to do, or delays in doing, something it is entitled to do pursuant to this Contract, does not amount to waiver of its right to do it. Any waiver of JTMEC's rights must be agreed in writing by JTMEC.

12. SEVERANCE

- 12.1. If a clause or part of a clause can be read in a way that makes it unlawful, unenforceable or invalid, but can also be read in a way that makes it lawful, enforceable and valid; it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Contract, but the rest of this document is not affected.

13. ASSIGNMENT

- 13.1. Neither party may assign any right under this document without the other party's written consent.

14. APPLICABLE LAW

- 14.1. This document is governed by and must be interpreted in accordance with the laws of the State or Territory of the Commonwealth in which the goods are supplied. The Customer unconditionally submits to the non-exclusive jurisdiction of that applicable court.

15. GRADES OF MATERIALS

- 15.1. JTMEC will use all reasonable efforts to:
 - 15.1.1. Supply goods having a material grade consistent with any material grade specified in the Order Acknowledgement.
 - 15.1.2. Supply material grades in accordance with nominated Australian and International standards and specifications if the goods are described as complying with those standards or specifications in JTMEC Quotations, Order Acknowledgements, Product Catalogue, data sheets, internet sites or price lists.
- 15.2. Where JTMEC supplies goods which are not manufactured by it, the goods are subject to the chemical, mechanical and physical properties of the original manufacturer. JTMEC does not offer any warranty over such goods, except to the extent that they are subject to the warranty of the original manufacturer.
- 15.3. If the Customer disputes JTMEC's assessment of the grade of material, JTMEC is not liable for any discrepancy unless the Customer complies with clause 4.

16. MEASURES AND SHORTAGES

- 16.1. Any statements by JTMEC about the weight, length, quantity or other characteristics of goods is approximate and JTMEC may, in compliance with the Contract, supply such goods on a nominal, calculated basis, JTMEC will perform any calculation of weight, length, quantity or other characteristics in accordance with, and within nominated tolerances specified in any applicable Australian and International standard and specification.
- 16.2. If the Customer disputes JTMEC's assessment of the weight, length, quantity or other characteristics of the goods or shortages of goods, JTMEC is not liable for any discrepancy unless the Customer complies with clause 4.

17. DEFINITIONS

- 17.1. **"Contract"** means the Contract formed between JTMEC and the Customer by Purchase Order accepted in accordance with clause 1.1.
- 17.2. **"Customer"** means the person or entity placing the order with JTMEC.

17.3. **“Goods and Services Tax”** means tax payable on taxable supplies under A New Tax System (Goods and Services Tax) Act 1999.

The authorised person acknowledges by signing below that he/she/it has read and understood the essential terms and conditions of sale herewith and, prior to its execution, have had the opportunity to obtain legal and/or financial advice:

Signature of authorised person

Office held

Name of authorised person (print)

Address of company

Date signed

Signed in the presence of:

Signature of witness

Name of witness (print)

Address of witness (print)

Date signed

GUARANTEE AND INDEMNITY

1. GUARANTEE

1.1. The Guarantor absolutely guarantees to JTMEC the due payment by the Customer of the Secured Monies.

2. INDEMNITY

2.1. The Guarantor absolutely indemnifies JTMEC against all losses, damages, cost and expenses which JTMEC may incur as a consequence directly or indirectly of any failure by the Customer to pay any of the secured Monies.

3. PAYMENT

3.1. On any default by the Customer to pay any of the Secured Monies, the Guarantor shall forthwith on demand by JTMEC pay such secured monies to JTMEC without the necessity of any prior demand having been made on the Customer or any other steps being taken against the Customer or its assets to enforce payment.

4. CHARGE

4.1. The Guarantor agrees that if requested by JTMEC, the Guarantor will:

4.1.1. Charge in favour of JTMEC all beneficial interest (freehold or leasehold) in real estate held now or in the future by it as security for payment of all and any monies payable by the Guarantor under this Guarantee.

4.1.2. Execute a registrable mortgage or other instrument of security (including consent to caveat to be lodged by JTMEC) in registrable form or as otherwise directed by JTMEC.

4.2. In the event that a mortgage or other instruments of security (including a consent to a caveat to be lodged by JTMEC) is not signed and returned by the Guarantor to JTMEC within 7 ordinary days of JTMEC's request under clause 4.1.2, then by way of security, the Guarantor irrevocably appoints JTMEC, its officers and its solicitors jointly and severally as the Guarantor's attorney to sign the mortgage or other instrument of security (including a consent to a caveat to be lodged by JTMEC) as attorney of the Guarantor and the Guarantor/s forever hold harmless JTMEC for its actions under this clause.

5. LIABILITY UNAFFECTED

5.1. It is agreed by the Customer that the liability of the Guarantor under this Guarantee is not limited in any way whatsoever by:

5.1.1. The granting of time or any other indulgence to the customer;

5.1.2. The release, waiver or variation of any of JTMEC's rights against the Customer or any neglect or omission to enforce such substitute for;

5.1.3. Any other matters which under laws relating to sureties would or might but for this provision release the Guarantor in whole or in part from the obligations under this Guarantee;

5.1.4. The release of any one or more Guarantors by JTMEC.

5.1.5. Amendment to the Terms and Conditions is the absolute discretion of JTMEC.

The Guarantor acknowledges that he/she/it has read and understood this Guarantee and, prior to its execution, have had the opportunity to obtain independent legal and/or financial advice.

5.1.6. The Customer's obligations for payment becoming illegal, void, voidable or unenforceable in whole or in part.

5.1.7. Payment by the Customer to JTMEC to the extent that payment might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations ACT 2001).

5.1.8. Failure to give notice of any matter to the Guarantor (including notice of default by the Customer).

5.1.9. The Guarantor ceasing to be an officer of the Customer.

5.1.10. The termination of any agreement between JTMEC and the Customer.

5.1.11. The withdrawal of or any variation to the credit provided by JTMEC to the Customer.

6. WAIVER OF RIGHTS

6.1. The Guarantor waives any rights as surety or indemnifier (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any provisions of the Guarantee.

7. CONTINUING OBLIGATION

7.1. The Guarantee is a continuing security and remains in force until Secured Monies have been paid in full.

8. COSTS

8.1. The Guarantor must pay JTMEC all costs and expenses incurred by JTMEC in connection with the Guarantee, including legal costs (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to JTMEC or in otherwise enforcing JTMEC's rights against the Customer under the Terms and Conditions or the Guarantor under the Guarantee.

9. SEVERANCE

9.1. If a provision of the Guarantee would but for this clause be unenforceable the provision cannot be read down to that extent necessary to avoid that result.

9.2. If the provision cannot be read down to that extent it must be severed without altering the validity and enforceability of the remainder of this Guarantee and Contract.

10. APPLICABLE LAW

10.1. This document is governed by the law of the State or Territory applicable to the relevant Terms and Conditions and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document.

11. JTMEC MAY ASSIGN

11.1. Without notice to the Guarantor or the Customer, JTMEC may assign to any persons:

11.1.1. The whole or any part of a debt comprised in the secured money and/or

11.1.2. The Guarantee including the benefit of any indemnity in this Guarantee.

12. FINAL DISCHARGE

12.1. A payment made to JTMEC may be void or voidable for any reason under the Bankruptcy Act 1966 or Corporations Act 2001 or any other relevant legislation or regulation.

12.2. If in JTMEC's view, based on the information provided by the Customer, the Customer is unable to pay JTMEC for the work the Customer has requested to be carried out, the Customer is unable to pay in accordance with the terms and conditions of JTMEC, then JTMEC is entitled to treat the Guarantee given by the Guarantor as a continuing Guarantee notwithstanding the terms and conditions.

13. NOTICE

13.1. Any notice required to be given to the Customer/Guarantor under this document can be delivered or posted by ordinary post to the Customer/Guarantor's address disclosed in this Guarantee.

13.2. The notice is deemed to have been given or made when it is left at the relevant address (if it is delivered) or 2 business days after it is posted (if it is sent by post).

13.3. The notice is deemed to be given or made even if JTMEC becomes aware that the notice has not been received by the Customer/Guarantor.

14. DEFINITIONS

14.1. **"JTMEC"** means the related bodies corporate (within the meaning of the Corporations Act 2001) of JTMEC Pty Ltd ABN 21 114 937 245.

The Guarantor acknowledges by signing below that he/she/it has read and understood the guarantee and indemnity conditions herewith and, prior to its execution, have had the opportunity to obtain legal and/or financial advice;

Signature of Guarantor

Name of Guarantor

Address of Guarantor

Date signed

Signed in the presence of:

Signature of witness

Name of witness (print)

Address of witness (print)

Date signed