

JCB INSTRUMENTS PTY LTD

STANDARD TERMS AND CONDITIONS OF QUOTATION AND SUPPLY

1. SUPPLY OF GOODS

JCB Instruments Pty Ltd ABN 60 003 986 034 agrees with the party to whom JCB supplies goods, that unless expressly amended in writing by JCB, the goods are only supplied by JCB on these Terms and Conditions ("Contract") & that this contract shall supersede all other conditions & agreements between the parties notwithstanding anything that may be implied or expressed to the contrary on the Customers inquiries, order form or other document submitted by the Customer. Upon receipt by the Customer of these Terms & Conditions, any conduct by the Customer which confirms this transaction including the giving of any delivery instructions, or acceptance of delivery shall be deemed to constitute acceptance by the Customer of this Contract. The Terms & conditions of this Contract shall without further notice apply to all future transactions between JCB & the customer whether or not this Contract is delivered or executed in the course of such transactions.

2. QUOTATION & SPECIFICATIONS

A) A quotation or estimate by JCB does not constitute an offer & will remain valid for 30 business days of the quotation unless otherwise stated on the quotation, after which, it is subject to alteration or withdrawal without further notice.
B) JCB has a policy of continuous improvement to its products & reserves the right to alter the specifications, design or, to discontinue any items without prior notice. Notwithstanding, all illustrations, descriptions & specifications are by the way of example only & are not necessarily applicable to the goods being offered.

3. PRICES

A) Any price lists or price indications are subject to alteration at any time. Unless otherwise stated on the attached invoice by JCB, all prices are "ex-warehouse"- JCB warehouse, Incoterms 2000, in Australian currency & exclude the cost of delivery, installation & taxes (including sales tax). Notwithstanding, all international sales of goods outside Australia are sold "FCA"- JCB warehouse, Incoterms 2000, unless otherwise stated on the invoice by JCB Instruments.
B) JCB Instruments shall be entitled to charge & to recover from the Customer all Goods & Services Tax ("plus 10% GST") payable in respect of the supply by JCB of goods or services unless the customer first provides in writing all details as any be required by JCB of any valid GST exemption certificate.
C) For any order less than AS100, JCB reserves the right to charge the Customer a handling charge.
D) JCB reserves the right to charge prices ruling as at the date of delivery.

4. PAYMENT

Unless otherwise stated on the invoice by JCB, payment is to be made net thirty (30) days from the date of invoice without deduction except international sales which must be made at JCB option by telegraphic transfer at the time of placing the order to the account nominated by JCB or, by confirmed irrevocable letter of credit against documentation prior to delivery at the bank directed by JCB. No discount is allowed, & interest will be charged on all overdue accounts at the rate of 18% per annum calculated daily. At any time prior to delivery of the goods, JCB reserves the right to require the customer to pay such part or whole of the contract price as JCB considers appropriate

5. CANCELLATION

Orders may not be cancelled by the Customer except with prior written consent of JCB & then only such terms as JCB may require. JCB reserves the right to charge the Customer a cancellation charge of 20% of the contract price or such amount JCB calculates will indemnify it against the damage suffered (including lost profit) as a result of cancellation.

6. DELIVERY

A) the costs of freight, delivery, unloading and installation of the goods on their arrival at the agreed place of destination shall be borne by the Customer & the Customer shall reimburse JCB for all such costs which it incurs on the Customer's behalf. Notwithstanding, any goods which requires special packing will be charged to the Customers account at cost & will not be returnable for credit.
B) While JCB will use the best endeavours to deliver by the delivery date mentioned in any document, such date shall be indicative only & will not give rise to any legal obligation to supply on that date. JCB reserves the right to deliver using any mode of transport and/or by installments. Each installment shall be deemed to be sold under a separate contract, provided always however that JCB may suspend delivery whilst payment is overdue in respect of any previous installment.
C) The Customer is deemed to accept delivery of the goods when the goods are placed at the Customer's disposal at the agreed place of destination, namely, when the goods are available for collection at JCB warehouse if sold "ex-warehouse" or, when JCB has loaded the goods into the charge of the agreed carrier if sold "FCA-JCB warehouse", notwithstanding that delivery of the goods may be staggered or that the Customer may not have signed a receipt for the goods.
D) If the Customer is unable or fails to accept delivery of the goods. JCB may deliver the goods to a place of storage nominated by the Customer and failing such nomination to a place nominated by JCB and the Customer shall be liable for all costs incurred by JCB in transporting the goods to, and storage at, such nominated place, such delivery shall, for the purposes of clause 6C above, be deemed to be delivered.

7. CLAIMS & RETURNS

A) Upon delivery of the goods or any part thereof, the customer will inspect the goods & within seven (7) days of delivery (or in the case of missing or undelivered goods within 14 days) deliver to JCB notice in writing of any claim against JCB. If no such notice is received by JCB within the said period the goods shall be deemed to be in all respects in accordance with the order and the Customer shall be bound to accept & pay for the same accordingly &, subject to Clause 10, the Customer shall have no claims against JCB.
B) The return of goods in accordance with sub-clause 7(a) will not be accepted by JCB unless prior authorisation has been given to the Customer by JCB &, the goods are returned in the manner directed by JCB at the Customer's cost. At JCB option, any goods shown to JCB's satisfaction to be defective may be replaced, repaired or refunded.
C) The failure of any delivery or the rejection by the Customer of any goods delivered or part thereof shall not vitiate or affect this Contract regarding the balance of the goods to be delivered, & payment thereof.
D) Other than as set out in this clause 7, no goods may be returned to JCB without its prior written approval & than only on such terms as JCB may require. Notwithstanding, JCB reserves the right to charge the Customer a cancellation charge of 20% of the contract price or such amount JCB calculates will indemnify it against the damage suffered (including lost profit) as a result of accepting that return.

8. DELAY

JCB is not liable for failure or delay in performance caused wholly or partially by unavailability of freight or shipping space, failure of manufacture/supplier to supply whole or part of the goods to JCB, prohibitions or restrictions under any law or by any government or authority, inability to obtain any necessary export license or import license, or any act of force majeure including, but without limitation, any act of war, fire, explosion, accident, breakdown of machinery, rioting, civil or industrial disturbances, strikes or lockouts, shortage of labour, or due to any other circumstances, whether of a similar nature or beyond the control of JCB. In the event of any such failure or delay, JCB may at its discretion terminate whole or any part of any order or postpone its performance.

9. RISK & TITLE

Until payment in full of all amounts owing by the Customer to JCB on any account whatsoever:-
A) the title in the goods shall not pass to the customer & the customer shall keep the goods as bailee for JCB. The goods shall nevertheless be at risk of the customer from the time of delivery, & the customer shall keep the goods fully insured for their full replacement value. The Customer shall indemnify JCB against all loss or damage to the goods whatsoever occurring after delivery.
B) the customer must store the goods so as to clearly identify them as the property of JCB, and ensure that the customer is not, nor is deemed to be, a reputed owner of the goods;
C) the Customer irrevocably authorises JCB or its servants or agents to enter the Customers premises & recover & dispose of the goods & the Customer will not make any claim against JCB in respect of such entry or disposal. The customer also appoints JCB as its attorney to do all such acts & things as are necessary to enable JCB to recover & dispose of the goods; and
D) the Customer shall hold the goods in a fiduciary capacity & may only sell the goods in the ordinary course of business as agent JCB. Furthermore, the customer must hold the proceeds of any such sale in a fiduciary capacity for, & to the account of, JCB & the Customer must take all steps necessary to keep such proceeds separate from other monies & pay over such proceeds to JCB to the extent necessary to discharge in full the Customers indebtedness to JCB.

10. WARRANTIES

A) All parts manufacture & supplied by JCB carry (unless otherwise stated on the attached) a guarantee against defects in materials & workmanship for a period of 12 months from the date of delivery ("Guarantee Period") subject always to the other provisions of this clause 10, fair wear & tear excepted & provided always that the goods have not been mistreated, unattended, interfered with or used with accessories of any kind not manufactured or approved by JCB. Any goods not manufactured but supplied by JCB shall be subject to the warranty, if any, offered by their manufacturer and such goods shall be excluded from the warranty offered by JCB in this clause 10. Any goods manufactured & supplied by JCB & shown to its satisfaction to be defective by reason of faulty materials or workmanship may, at JCB option, be replaced, repaired or refunded in accordance with this sub-clause. In order to qualify for in accordance with this sub-clause. In order to qualify for this guarantee, a claim must be made in writing to & received by JCB within the Guarantee Period & the goods the subject of the claim, must be returned at the Customer's cost in the manner directed by JCB failing which, this guarantee shall not apply & JCB shall be discharged from all liability under this sub-clause.
B) Any advice recommendations, information assistance or service provided by JCB in relation to the goods or their use will be given in good faith. JCB only undertakes that the goods sold pursuant to this contract will correspond to the description (if any) in the latest issue of the manufacturer's/supplier's applicable label or data sheet relating to the class of goods & that the Customer will be given a good legal title. All warranties, conditions, liabilities (including negligence) or representations in relation to, inter alia, the quality or fitness of the goods, their compliance with description, or their use or application (other than any being or giving rise to non-excludable rights under any laws of Australia or the States or Territories thereof) which might but for this clause be implied herein by law or otherwise are hereby expressly negative and excluded. JCB's liability to the Customer for breach of any such non-excludable rights or pursuant to any express warranty of this contract will be limited, insofar as the same may legally be done, at JCB's option: refunding the price of the goods in respect of which the breach occurred, or the repair or replacement of those goods: or in relation to the provision of advice or services by JCB refunding the price of such advice or service in

respect of which the breach occurred, or the provision of such advice or services again.

C) Notwithstanding any other provision of this contract, JCB will not be liable for any special, indirect, incidental or consequential loss or damages (including any loss profit) whether arising from negligence, breach of contract, stature or otherwise in connection with or arising out of or in any way related to the goods, or the provision by JCB of advice or services as the case may be, pursuant to this contract. In any event, the total liability of JCB under this Contract shall be limited to the total amount paid by the Customer under this contract.

11. INSOLVENCY AND TERMINATION

If the customer fails to comply with any of the terms of this contract or fails to make payment for goods as when they fall due: or if the Customer shall become bankrupt or commit any act of bankruptcy: or if the customer (being a company) goes in liquidation or provisional liquidation, has a receiver appointed: or if in the opinion of JCB the customer is no longer able to meet its debts as when they fall due, JCB may suspend or postpone any delivery without being liable for any loss or damage suffered by the customer in that regard, or terminate this contract by notice in writing to the customer. Upon termination, JCB shall be entitled to recover all costs incurred by it including, without limitation, payment for all deliveries already made & the cost of materials already obtained for the purpose of future deliveries (whether or not such materials have been incorporated into the goods being purchased by customer). Termination pursuant to this clause shall not affect any other rights or remedies which JCB may have.

12. PALLETS/CONTAINERS

A) Any pallets or containers owned by JCB & used for the delivery of goods remain the sole property of JCB & are to be returned in good order & condition to JCB or any of its agents upon request as directed & at the Customer's expense.
B) In the event that pallets or containers in which goods are delivered are not owned by JCB ("Hire Equipment"), the customer will return the hire equipment to JCB in good order & condition at the customer's expense within 1 month of delivery & the customer shall indemnify JCB for all liability, costs & damages however caused relating to that Hire Equipment.
C) Any pallets or containers not returned in accordance with the above sub-clauses, may at the election of JCB be deemed to be purchased by the customer & shall then be promptly paid for in full by the customer at a value determined by JCB.

13. AIRCRAFT AND OTHER USES

A) The customer must notify JCB if the goods are for use in aircraft as special conditions then notified by JCB will apply to the sale of such goods.
B) Notwithstanding, Customers are responsible for obtaining at their expense, any licenses, permits or authorisations required under any regulations in force within the country of export & destination of the goods. JCB reserves the right to refuse to supply or cancel this contract at any time in whole or in part if it considers that the customer has not provided satisfactory evidence of any such applicable licenses, permits or authorisations.

14. SERVICES

Any services provided to the customer are subject to a charge by JCB & may at JCB's option be subject to a separate agreement. JCB reserves the right at any time to refuse to perform any services requested by the customer.

15. INTELLECTUAL PROPERTY

Goods offered for sale by JCB may be subject of patents, registered designs, trademarks, copyright or other proprietary & legal protection & the customer will immediately notify JCB of any suspected infringement of such rights. To the best of JCB knowledge, goods sold do not infringe any patent, trademark, registered design or copyright of any third party.

16. FURTHER PROVISIONS

A) The Customer must not without JCB's prior written approval, assign or transfer or purport to assign or transfer this Contract or the benefit thereof to any other person whatsoever.
B) No indulgence or forbearance extended to the Customer shall limit or prejudice any other right of claim to JCB.
C) The supply of goods by JCB shall not confer any right upon the Customer to use any JCB trademark or tradename without JCB's prior written consent, and at all times such marks or names remain the property of JCB.
D) If any provision or part of a provision of the contract should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be read down to the minimum extent necessary to render it enforceable & valid, & if incapable of being read down it shall be severed from the remainder of the Contract which shall not be affected by such severance.
E) This Contract shall be governed by the laws of the State of New South Wales, Australia and the parties hereby submit to the non-exclusive jurisdiction of the Courts and tribunals of the said State.
F) The rights and obligations of the parties under this Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (1980).