



TERMS OF SUPPLY J3SEVEN PTY LTD (ABN 85 159 462 423) ("J3Seven")

J3Seven and the Consumer hereby agree to these Terms of Supply (**Terms**):

1. The Consumer warrants: (a) that it has had the opportunity to read these Terms and to seek its own independent advice (including legal advice) about these Terms; and (b) that it accepts these Terms with full understanding of them and after undertaking such negotiations about them as it desired. Without limiting any other method of acceptance, the placing of an order with J3Seven (including the acceptance of a Quotation) constitutes the Consumer's acceptance of these Terms. These Terms prevail over any other terms stipulated or referred to by the Consumer or of any order placed by Consumer. These Terms and the terms of any Quotation constitute the entire agreement between J3Seven and the Consumer and all previous negotiations, warranties, undertakings and understandings are hereby superseded. In the event of any inconsistency the terms of a Quotation prevail over these Terms to the extent of the inconsistency. These Terms will apply to any future dealings between J3Seven and the Consumer unless superseded in writing. Clerical errors in a Quotation (or otherwise) are subject to correction and do not bind J3Seven.
2. A Quotation does not give rise to a binding contract between the Consumer and J3Seven. Unless otherwise stated in writing or withdrawn, a Quotation is valid for a period of 30 days from the date of the Quotation (the **Validity Period**). Quotations are given based on information provided by the Consumer and the Consumer is solely responsible for the accuracy of any information so provided. J3Seven may withdraw and/or replace a Quotation if after the date of the Quotation the Consumer notifies J3Seven of any change to the information provided or to the goods or services required by the Consumer. J3Seven is only bound to perform Quotations if it receives unconditional written acceptance from the Consumer within the Validity Period, however J3Seven may (in its discretion) permit other forms of acceptance or acceptance after the Validity Period.
3. Unless J3Seven specifies otherwise in writing, all figures and amounts are exclusive of GST and any other taxes and duties (except income tax) and the consideration for a taxable supply must be increased by the amount of the GST or such other tax and duty. J3Seven may increase the consideration (either before or after acceptance of a Quotation) on account of the imposition or increase in any tariff or import levy applying to the goods, any increase in shipping, marine insurance, freight or landing charges, any increase in storage charges or any fluctuations in the value of the Australian dollar. The Consumer must pay additional transport costs for goods that are controlled items, whether or not specified in the Quotation.
4. The Consumer must pay the total consideration for any supply by J3Seven in accordance with the terms of the Accepted Quotation, or if no payment term is specified, within 30 days of acceptance of the Quotation. Payments must be made in clear funds to J3Seven (or as J3Seven directs) by the method that J3Seven reasonably requires and without any set off or deduction on any account whatsoever. The Consumer acknowledges that its obligation to pay may arise before the delivery of goods or provision of services. J3Seven may require the Consumer to pay a deposit (whether specified in a Quotation or not) before J3Seven is bound to perform a Quotation or accept an order.
5. The Consumer may not cancel an Accepted Quotation or an order unless J3Seven fails to dispatch the goods ordered or supply the services within a reasonable time and the Consumer pays the Cancellation Fee (being the lesser of the agreed invoice price for the goods and 125% of the amount payable by J3Seven to its supplier for cancellation of the order (including J3Seven's administration and handling)). The internal records of J3Seven are conclusive proof of the placement and terms of any order (except in case of demonstrated manifest error). J3Seven is entitled to substitute the ordered goods for goods that have at least the same functionality and quality as the ordered goods.
6. Goods are at the Consumer's risk from the time the goods are collected by or on behalf of the Consumer, or from the time they are delivered to the Consumer (if the goods are to be delivered to the Consumer).
7. Even though the Consumer has possession or control over goods, title in those goods does not pass to the Consumer but remains with J3Seven until payment for those goods has been received in full. If the Consumer defaults in any of these Terms then J3Seven has the right (without giving notice) to retake possession of those goods and the Consumer hereby authorises J3Seven or its representatives to enter into any of the Consumer's premises upon which those goods are housed or stored for the purpose of retaking possession and J3Seven will not be liable for any costs, loss, damages incurred or lost by the Consumer as a result directly or indirectly of J3Seven retaking possession of those goods. This clause constitutes the grant of a security interest by the Consumer in favour of J3Seven in relation to all goods supplied to the Consumer by J3Seven and the sale proceeds thereof and:
 - (a) J3Seven may at any time register in respect of all or any of those goods its security interest on the Personal Property Securities Register (**PPSR**);
 - (b) The Consumer must promptly do all things (including signing documents) as may be required to ensure registration of the security interest on the PPSR and must not object to the registration of the security interest on the PPSR;
 - (c) For the purposes of registration, the parties agree that the security interest constitutes a financial statement where the duration is seven years or less and that these Terms provide for an ongoing supply arrangement whereby it is anticipated that J3Seven will make repeated supplies to the Consumer;
 - (d) The Consumer waives the right to receive notice of a verification statement in relation to any registration of security interest on the PPSR;
 - (e) If chapter 4 of the *Personal Property Securities Act 2009 (Cth)* (**PPSA**) would otherwise apply to the enforcement of the security interest, the Consumer agrees the following provisions of the PPSA will not apply to the enforcement of these Terms: Section 95, to the extent that it requires J3Seven to give notice to the Consumer, Section 96, Section 121(4), Section 125, Section 130, to the extent that it requires J3Seven to give a notice to the Consumer, Section 132(3)(d), Section 132(4), Section 135, Section 142 and Section 143.



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8. The Consumer will be in default of these Terms if: (a) it fails to make payments when due; (b) it otherwise fails to comply with these Terms, (c) (in J3Seven's reasonable opinion) there is an adverse change in the Consumer's financial position, (d) it becomes bankrupt or commits an act of bankruptcy or enters into a scheme or arrangement or composition with its creditors or, being a Corporation if an administrator, liquidator, receiver or receiver and manager is appointed to it or (e) if it becomes incapable of managing its own affairs. Upon default, J3Seven may in its discretion do any one or more of the following:
 - (a) Terminate any agreement with the Consumer;
 - (b) declare that all amounts owing to J3Seven are immediately due and payable, whereupon such amount must be paid by the Consumer on demand;
 - (c) if the default includes failure to pay money owed to J3Seven on the due date, J3Seven may charge interest on the amount of the invoice from the due date for payment until the date payment is made at the rate calculated as the aggregate of the rate charged by J3Seven's principal bankers on unsecured overdrafts of \$50,000.00 or less plus 2% per annum compounded annually;
 - (d) withhold or suspend delivery of any further goods or provision of further services to the Consumer.
9. The Consumer must pay J3Seven's legal costs (on an indemnity basis) of enforcing any of J3Seven's rights under these Terms. The Consumer must also pay fees and expenses payable to any mercantile or commercial agent including any debt collection agency engaged by J3Seven to obtain or attempt to obtain payment of amounts due by the Consumer. The Consumer acknowledges that those expenses may be calculated on a commission basis. Amounts received by J3Seven may be applied first against legal costs and agent costs, then to interest and then to payment of the overdue invoices. The Consumer agrees to indemnify and keep indemnified J3Seven against any loss, claim or expense (including legal costs on indemnity basis) relating to any breach of these Terms by the Consumer.
10. J3Seven will notify the Consumer when goods ordered are ready for collection. The Consumer must pay J3Seven's holding costs if the goods are not collected within seven days of such notification.
11. If J3Seven agrees to deliver the ordered goods to the Consumer, J3Seven will arrange delivery of the goods to the address nominated by the Consumer. J3Seven will provide an anticipated delivery date however makes no warranty as to time or delivery day and is not responsible for delays in delivery nor for failure to deliver due to causes beyond J3Seven's control. J3Seven may make part deliveries of an order. The Consumer must be present at the time of delivery (failing which the goods may be left at the delivery address, without responsibility for any claims, damages, expenses or costs resulting or arising therefrom).
12. The Consumer is deemed to have inspected and accepted the goods as being in satisfactory condition and in conformity with the description of the goods upon collection of the goods, or in the case of delivery or installation, upon the earlier of signing of acceptance by the Consumer or the expiration of 48 hours from the time of delivery or installation as the case may be, unless during that period J3Seven receives written notice from the Consumer of any damage or claim.
13. Where J3Seven's services include the installation, commission and/or training of the Consumer in the operation of the goods then the following provisions apply:
 - (a) the Consumer is responsible for all work health and safety obligations during the installation, commissioning and training process. A reasonable time before delivery of the goods the Consumer must notify J3Seven in writing if the Consumer requires completion of an induction program by J3Seven and provide details of the time and place for the conduct of the induction program. If the induction program exceeds one (1) hour then J3Seven reserves the right to charge the Consumer an additional fee at J3Seven's then hourly rates for all persons attending the induction on behalf of J3Seven;
 - (b) the Consumer must allow access to the Consumer's premises at all reasonable times for the purposes of installing and commissioning the goods and training the Consumer's staff. The Consumer accepts full responsibility for J3Seven's employees, agents and contractors while at the Consumer's premises and indemnifies and agrees to keep indemnified J3Seven against any claims, loss, damage, costs, expenses (including legal expenses on a full indemnification basis) arising directly or indirectly out of J3Seven's employees, agents or contractors attending at the Consumer's premises for those purposes;
 - (c) any training provided by J3Seven in relation to the goods will be provided once by J3Seven. It is the Consumer's responsibility to ensure that the Consumer's attendees attend J3Seven's training.
14. If the Australian Consumer Law applies to these Terms then the goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. If it is lawful to do so J3Seven limits its liability for failure to comply with a consumer guarantee to one or more of the following:
 - (a) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired;
 - (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.



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15. If the Australian Consumer Law does not apply to these Terms then except for any terms, conditions or warranties implied by law which are not capable of exclusion, or as otherwise expressly provided in these Terms, all conditions, warranties, terms, undertakings, duties and obligations expressed or implied by law in any way relating to goods or services (including as to merchantability, fitness or otherwise) are hereby excluded and J3Seven shall not be liable in contract, tort, negligence, breach of statutory duty or otherwise in respect of any loss or damage claimed for demands of any nature arising directly or indirectly out of provision of goods or the supply of services by J3Seven.
16. These Terms are governed by and constructed under the laws of Queensland, Australia. Any legal action in relation to these Terms must be commenced in Cairns, Queensland, Australia.
17. If any term or condition is or becomes illegal or unenforceable it will be severed and none of the remaining terms or conditions will be affected.
18. If J3Seven is prevented from or restricted in carrying out its obligations on any matter beyond J3Seven's reasonable control, then J3Seven is excused from carrying out its obligations to the extent of the cause of the non-performance but J3Seven must use its best endeavours to avoid or remove the cause of the non-performance as quickly as reasonably possible.
19. Any failure by J3Seven to exercise any right under this agreement does not operate as a waiver and the single or partial exercise of any right by J3Seven does not preclude any other or further exercise of that or any other right by J3Seven.
20. J3Seven's rights under this agreement are cumulative and not exclusive of any rights provided by law.
21. J3Seven retains information in relation to the Consumer and uses it only for the purpose for which it was collected or where the Consumer would reasonably expect J3Seven to use or disclose information as part of normal business activities, or when required by law. The Consumer may access its information and correct and update that information at any time by contacting J3Seven.
22. The Consumer warrants the authority of all persons who sign documents (including order forms, Quotation acceptance and delivery acceptance) on behalf of the Consumer.
23. The Consumer acknowledges that photographs, drawings, illustrations, weights, dimensions and other particulars accompanying, associated with or given in a Quotation, brochure, catalogue or any other descriptive literature are approximate of the goods offered but may be subject to alteration by the manufacturer or J3Seven without notice. To the extent permitted by statute, any performance data is an estimate only.
24. The Consumer acknowledges that it has the benefit of any warranty for good supplied as provided by the manufacturer of those goods.
25. The Consumer warrants that it may lawfully purchase, use and operate the goods supplied by J3Seven and without limiting the generality of the foregoing, the Consumer is not prohibited by the International Trade Arms Agreement from purchasing and using the goods.
26. The Consumer warrants that it acquires the goods for its own use and benefit and not for purposes of resale.
27. Unless the context requires otherwise: (a) the Consumer means the addressee of a quotation, or in the absence of a quotation, the purchaser of goods and/or services from J3Seven; (b) Quotation means a quotation issued by J3Seven; (c) Accepted Quotation means a Quotation that J3Seven is bound to or has elected to perform.