

A.J. STOCK STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "A.J. Stock" means M. James Nominees Pty Ltd ACN 118 106 157 trading as A.J. Stock
- 1.2 "Customer" means the entity that has contracted with A.J. Stock to buy Goods and/or Services.
- 1.3 "Goods" means any goods supplied by A.J. Stock to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, trucks, truck parts, steel parts, trailers, trailer parts, water tanker parts and galvanised parts.
- 1.4 "Services" means any services supplied by A.J. Stock to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, painting, steel fabrication, truck repairs, towbar repairs, towbar modifications, tipper repairs and tanker repairs.
- 1.5 "Price" means the cost of the Goods and/or Services as agreed between A.J. Stock and the Customer and includes all out of pocket expenses A.J. Stock incurs on the Customer's behalf subject to clause 5 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by A.J. Stock from the Customer for the supply of Goods and/or Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.
- 2.2 A.J. Stock reserves the right to accept or decline any order for Goods and/or services placed by the Customer.

3. PRECEDENCE

- 3.1 The Customer acknowledges that these Terms and Conditions of Trade take precedence over any terms and conditions contained in any document provided by the Customer.

4. PRIVACY ACT 1988 (AS AMENDED)

- 4.1 A.J. Stock collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy. This policy may be located at www.ajstock.com.au. A hardcopy of this policy can also be provided to the Customer free of charge, upon request.
- 4.2 The Privacy Policy sets out: the personal information A.J. Stock collects; how A.J. Stock collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of A.J. Stock's management of the information;
- 4.3 By the Customer providing instructions to A.J. Stock for the supply of Goods and/or Services, the Customer is consenting to A.J. Stock collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information in accordance with the terms of A.J. Stock's Privacy Policy, and in accordance with Australia's privacy laws.

5. PRICE

- 5.1 The Price shall, at A.J. Stock's sole discretion, be:
 - 5.1.1 as stated on any invoice provided by A.J. Stock to the Customer; or
 - 5.1.2 A.J. Stock's quoted price (subject to clause 7).

6. CREDIT FACILITY & PAYMENT

- 6.1 A.J. Stock may at any time without notice, terminate or suspend any credit facility granted to the Customer.
- 6.2 Subject to clause 6.3, payment of the Price shall be due on date/s determined by A.J. Stock, which may be:
 - 6.2.1 by way of instalments/progress payments in accordance with A.J. Stock's payment schedule;
 - 6.2.2 a date specified on A.J. Stock's invoice;
 - 6.2.3 in the absence of any notification of the due date by A.J. Stock, it shall be due 7 days from the date of invoice.
- 6.3 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
 - 6.3.1 there is non payment of any sum by the due date;
 - 6.3.2 A.J. Stock forms the view that the Customer will not pay any sum by its due date;
 - 6.3.3 any Goods in the possession of the Customer are materially damaged;
 - 6.3.4 the Customer is bankrupted or enters administration, liquidation or receivership;
 - 6.3.5 a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
 - 6.3.6 Any material adverse change in the financial position of the Customer.
- 6.4 Interest accrues on any amount owing after the due date at the rate equivalent to A.J. Stock's current overdraft rate plus 3.0%, calculated daily from the first day overdue until payment.
- 6.5 All expenses, disbursements, collection and legal costs incurred by A.J. Stock in connection with the enforcement of any rights and/or preservation of any rights contained in this contract shall be paid by the Customer on a full indemnity basis.
- 6.6 For the purposes of clause 6.5, the Customer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 20% of the amount due and expressly

agrees to pay for those expenses, irrespective of the amount of work actually performed by the collection agent.

- 6.7 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in A.J. Stock receiving cleared funds for the entire amount of the negotiable instrument.

7. QUOTATION

- 7.1 Where a quotation is given by A.J. Stock for Goods and/or Services:
 - 7.1.1 unless otherwise agreed the quotation shall be valid for 30 days from date of issue;
 - 7.1.2 the quotation shall be exclusive of goods and services tax, and freight and insurance unless specifically stated to the contrary;
 - 7.1.3 A.J. Stock reserves the right to alter the quotation because of variations requested by the Customer to the Goods or Services (or both) and circumstances beyond its control including and, in no way limited to, increases in the price charged by its suppliers for products and/or services.
- 7.2 Where Goods and/or Services are required in addition to the stated works in the quotation, the Customer agrees to pay for the additional cost of such Goods and/or Services.

8. DESCRIPTION OF PRODUCTS AND SAMPLES

- 8.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, Price lists or other advertising matter of A.J. Stock are approximate only and are only intended by A.J. Stock to be a general description. A.J. Stock reserves the right to produce goods with such minor drawings and specification as it sees fit. A.J. Stock provides the Customer with access to samples solely to enable the Customer to assess the quality of the goods.
- 8.2 A.J. Stock will not be liable to the Customer for any loss or damage suffered by the Customer as a result of the Customer relying upon any such specifications, illustrations, drawings, data, dimensions, weights or the characteristics of any samples.

9. TOOLS, EQUIPMENT, PATTERNS, DESIGNS AND SYSTEMS OF MANUFACTURE

- 9.1 Any tools, equipment, patterns, designs and systems of manufacture acquired and used by A.J. Stock in producing goods remain the property of A.J. Stock and are not to be used without A.J. Stock's authority.
- 9.2 A.J. Stock may charge a Customer for the use of any tool, equipment, pattern, design or system of manufacture used to fulfil a Customer's order. If A.J. Stock does so, such a charge is deemed to be a charge for the use of the tool, equipment, pattern, design or system of manufacture only.

10. CUSTOMER'S SPECIFICATIONS OR MATERIALS AND SPECIAL BUILDING PRODUCTS

- 10.1 If the Customer requests A.J. Stock to produce Goods (*special building product*) in accordance with the Customer's own designs, specifications or drawings (plans), then provided the special building products are produced in accordance with those plans, A.J. Stock will not be responsible for any failure of, unfitness of or damage caused by the special building product.
- 10.2 A.J. Stock is not responsible for any discrepancies between a special building product and the Customer's plans if those plans are incomplete, inaccurate or lacking in detail.
- 10.3 The Customer acknowledges that A.J. Stock is not qualified to provide structural or engineering or similar advice for any Goods or special building products or Services and the Customer further acknowledges it is responsible for seeking suitable advice from an engineer or other qualified person and that any advice provided by A.J. Stock is of a general nature.
- 10.4 On completion of a special building product, the Customer must, unless A.J. Stock determines otherwise, inspect the special building product and certify in writing to A.J. Stock that it is satisfied with the special building product.
- 10.5 If the Customer requests A.J. Stock to process the Customer's materials then A.J. Stock does not give any warranty that the materials supplied by the Customer are suitable for such processing.
- 10.6 A.J. Stock will not be liable for any failure of or unfitness of or damage caused by the Customer's materials at any time during or after processing by A.J. Stock.
- 10.7 The Customer must bear any additional expense or the cost of any delay in relation to the processing which is caused by any defect in the Customer's materials.

11. RISK TO GOODS AND DELIVERY

- 11.1 The method of delivery used in delivery of Goods will at all times remain the option of A.J. Stock.
- 11.2 The usual delivery details are set out in A.J. Stock's price lists that it circulates from time to time. However, A.J. Stock reserves the right at all times to vary the delivery method described in any price list.
- 11.3 A.J. Stock may either:
 - 11.3.1 make the Goods available for collection at its premises;
 - 11.3.2 deliver the Goods to the Customer premises or a site nominated by the Customer;

A.J. STOCK STANDARD TERMS AND CONDITIONS

- 11.3.3 arrange for a freight forwarder or agent to deliver the Goods to the Customer or a site nominated by the Customer.
- 11.4 Any and all costs associated with delivery of the Goods to the Customer, including, without limitation, freight and insurance, shall be at the Customer expense.
- 11.5 Where the Goods are to be made available for collection from A.J. Stock's premises:
- 11.5.1 A.J. Stock may notify the Customer of the collection date at or around the time it places an order;
- 11.5.2 the Customer must collect the Goods on, or within 5 business days, after the collection date;
- 11.5.3 the Goods will not be held by A.J. Stock after 5 business days after the collection date; and
- 11.5.4 in the absence of collection by the collection date, A.J. Stock reserves the right to transport the Goods to the Customer's premises or a site nominated by the Customer and any and all costs associated with delivery of the Goods to the Customer, including, without limitation, freight and insurance, shall be at the Customer expense and shall form part of the Price.
- 11.6 A.J. Stock's nominated collection or delivery dates are estimates only and A.J. Stock reserves the right to extend the collection or delivery date for such period as it considers reasonably necessary. The Buyer must pay the Price of the Goods notwithstanding the extension of a delivery or collection date.
- 11.7 A.J. Stock reserves the right to supply by instalments and each instalment shall be deemed to have been sold under a separate agreement.
- 11.8 Risk in any Goods shall pass to the Customer when any of the following occur:
- 11.8.1 the Customer collects the Goods;
- 11.8.2 the Goods are delivered to the Customer's premises; or
- 11.8.3 the Goods are delivered to a site nominated by the Customer.
- 12. TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)
Goods**
- 12.1 Whilst risk in the Goods passes to the Customer upon any of the events listed in paragraphs 11.8.1 – 11.8.3 occurring, legal and equitable title in the Goods shall remain with A.J. Stock until it has received payment in full for all monies owed by the Customer.
- 12.2 Until A.J. Stock has received payment in full for all monies owed by the Customer, A.J. Stock reserves the following rights:
- 12.2.1 legal and equitable ownership of the Goods;
- 12.2.2 the right to enter the Customer's premises and retake possession of the Goods;
- 12.2.3 the right to keep or resell any Goods repossessed under sub-clause 12.2.2; and
- 12.2.4 any other rights it may have at law or under the PPSA.
- 12.3 Where, pursuant to sub-clause 12.2.3:
- 12.3.1 A.J. Stock resells the Goods repossessed, it is agreed that A.J. Stock may credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
- 12.3.2 A.J. Stock retains possession of the repossessed Goods, it is agreed that A.J. Stock may credit the Customer's account with the invoice value less such sum as A.J. Stock reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 12.4 A.J. Stock shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.
- 12.5 If the Goods are attached, fixed, or incorporated into any property of the Customer, title in the Goods shall remain with A.J. Stock until the Customer has made payment for all monies owed to A.J. Stock and where those Goods are mixed with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to A.J. Stock as security for the full satisfaction by the Customer of the full amount owing between A.J. Stock and the Customer.
- 12.6 Until A.J. Stock receives payment for Goods in full, the Customer acknowledges that A.J. Stock has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to A.J. Stock.
- General**
- 12.7 Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA.
- 12.8 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which A.J. Stock asks and considers reasonably necessary for the purposes of:
- 12.8.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
- 12.8.2 enabling A.J. Stock to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by A.J. Stock.
- 12.9 To the extent permitted by law, the Customer irrevocably waives its right to:
- 12.9.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- 12.9.2 redeem the Goods under section 142 of the PPSA;
- 12.9.3 reinstate an agreement under section 143 of the PPSA;
- 12.9.4 receive a Verification Statement.
- 12.10 Nothing in clause 12 prevents A.J. Stock from taking collection or legal action against the Customer to recover any monies owed from time to time.
- 13. LIABILITY & INDEMNITY**
- 13.1 All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) are expressly excluded to the extent permitted by law. This clause does not operate to exclude any warranties expressly given in writing by A.J. Stock to the Customer.
- 13.2 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then A.J. Stock's liability is limited, at its option, to anyone or more of the following:
- 13.2.1 the replacement or supply of the equivalent of the Goods;
- 13.2.2 the repair of the Goods;
- 13.2.3 the payment of the costs of replacing the Goods or acquiring their equivalent; or
- 13.2.4 the payment of the costs of having the Goods repaired.
- 13.3 Where the Services are of a kind other than services ordinarily acquired for personal, domestic or household use, then A.J. Stock liability is limited at its option to:
- 13.3.1 supplying the Services again; or
- 13.3.2 the payment of the costs of supplying the Services again.
- 13.4 Except as otherwise provided by clauses 13.1 – 13.3 and subject to the Customer's rights under Schedule 2 of the *Competition and Consumer Act 2010* ("CCA"), A.J. Stock shall not be liable for any loss or damage of any kind whatsoever, arising from the Goods and/or Services, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods and/or Services.
- 13.5 the Customer, shall indemnify A.J. Stock against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of A.J. Stock or otherwise, brought by any person in connection with any matter, act, omission, or error by A.J. Stock, its agents or employees in connection with the Goods and/or Services.
- 14. CANCELLATION**
- 14.1 Orders placed with A.J. Stock cannot be cancelled without the written approval of A.J. Stock. In the event that A.J. Stock accepts the cancellation of any order placed, it shall be entitled to charge a reasonable fee for any work done to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.
- 15. CHARGE**
- 15.1 The Customer hereby charges in favour of A.J. Stock all of the Customer's estate and interest in any land, freehold or leasehold, in which the Customer now has or which it may later acquire any such interest in, with payment of all monies owed by the Customer to A.J. Stock from time to time and hereby consents to A.J. Stock lodging a caveat or caveats which note A.J. Stock's interest.
- 16. JURISDICTION**
- 16.1 These terms and conditions and all matters concerning the business relationship between A.J. Stock and the Customer shall be governed by the law of the State of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia for the conduct of any litigation.
- 17. MISCELLANEOUS**
- 17.1 A.J. Stock shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by A.J. Stock to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this contract.
- 17.3 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 17.4 Any variation of the terms and conditions contained in this contract must be agreed to in writing by A.J. Stock for it to have any legal effect.