

Terms and Conditions of Sale for Josco Australia Pty. Ltd.

Josco Australia Pty. Ltd. Will hereafter be referred to as Josco.

1. Application

These conditions shall prevail over all conditions of the purchaser's order to the extent of any inconsistency.

2. Delivery

A delivery charge is applicable to all orders. Freight to all destinations outside the metropolitan areas, will be at the customer's expense. Delivery times are estimates only and Josco shall not be liable for late or non-delivery.

3. Shortages

The purchaser waives any claim for shortage if a claim is not lodged with Josco within fourteen (14) days from receipt of goods.

4. Goods Returned for Credit

(a) Josco will replace or give credit only if the following conditions apply:

- I) Any claims must be made within fourteen (14) days of receipt of goods by the purchaser.
- II) The claim must specify the Josco invoice number that accompanied the goods.
- III) Upon receipt of claim, Josco will issue an Authority Number for return of goods. No goods will be accepted by Josco unless a Josco Authority Number has been issued.
- IV) Under no circumstances will Josco pay for the cost of any freight or other charges in returning the goods, which has not been authorised by Josco.
- V) Goods returned for credit will be subject to a restocking fee of 10%. Goods must be in good condition and in original packaging, otherwise no credit will be given.

(b) Josco cannot accept the return of the following goods for credit under any circumstances:

- I) Any goods specifically made or ordered for the purchaser.
- II) Any goods damaged or altered in any way by the purchaser.

5. Warranty

- a) Josco agrees to assign to the purchaser any assignable manufacturer's warranties given to Josco by the manufacturers of the goods (if applicable) but Josco does not guarantee those warranties or in any way represent or warrant that any such manufacturer's warranties are enforceable or effective to remedy any defect in such goods. Any claims under such manufacturer's warranties shall be made by the purchaser in accordance with the manufacturer's requirements.
- b) Unless expressly agreed to the contrary, the provisions and tolerances contained in the standard specifications to which the goods are manufactured by Josco or its supplier will apply to all orders made by the purchaser. The purchaser is deemed to have knowledge of the standard specifications at the date on which each order is accepted by Josco.
- c) No goods furnished by Josco shall be deemed defective by reason of normal wear and tear. Also excluded from this warranty are the failure of any goods as a result of unreasonable environmental conditions, accident, misuse, improper installation, modification or repair not authorised by Josco, and the failure to operate and maintain the goods within the manufacturer's or Josco's guidelines, electrical or wiring faults (if applicable) or neglect.
- d) Except as provided in these conditions and to the maximum extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the installation, materials, workmanship or otherwise are expressly excluded and Josco shall not be liable for physical and financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, lay out, assembly, installation or operation of the goods, or arising out of Josco's negligence in any way whatsoever. Josco's liability for a breach of a condition or warranty under the Competition and Consumer Act 2010 or any similar legislation is limited, subject to (i) to (iv) below, to the invoiced price of the goods. Josco shall, at its sole discretion, decide whether the goods are capable of repair and Josco's liability (if any) in respect of any claims under these Conditions shall be limited as follows:
 - I) The replacement of any goods or the supply of equivalent goods;
 - II) The repair of the goods;
 - III) The cost of replacing the goods or of acquiring equivalent goods; or
 - IV) The cost of having the goods repaired.
- e) Any description of goods supplied by Josco is given by way of identification only and use of such description shall not constitute a sale by description. If any sample is provided to the purchaser, the purchaser shall be deemed to have accepted that the goods correspond with the sample provided.

6. Price

- a) The prices of most goods shall be shown as Retail List Price, exclusive of GST. These are recommended prices only and Josco is not under any obligation to comply with the Retail List Prices. GST is applicable to all these prices.
- b) Where applicable, some prices are quoted as Wholesale Nett, exclusive of GST. GST is applicable to these prices. Wholesale Nett Prices are subject to change without notice. The prices charged to the purchaser will be those applicable at the date of delivery and as set out in the Josco invoice.

7. Payment

- a) To approved purchasers who have applied for a 30 day credit account; payment is strictly thirty (30) days nett from the end of the month in which the invoice is dated. Credit may be withdrawn if the terms of credit are not adhered to by the purchaser. If any sums are unpaid for more than 30 days, Josco reserves the right to withhold any further deliveries to the purchaser until all outstanding amounts are paid.
- b) If any sums are not paid by the due date, the purchaser will pay on demand any expenses incurred by Josco in collection of overdue amounts. In the event of default of payment, the matter will be placed with Josco's solicitors and all legal costs, incidental expenses and collections charges are payable by the purchaser on demand.
- c) Should a purchaser's cheque be dishonoured by the purchaser's bank, then any re-presentation fee charged to Josco shall be payable by the purchaser to Josco on demand.
- d) Time shall be of the essence in respect of payment of the goods.

8. GST

GST is not included in the Josco Retail Price List or the Wholesale Nett Price List. GST is applicable to all Josco products, and all Josco products are therefore subject to a GST surcharge.

9. Back Orders

If a product is not in stock when ordered by a purchaser, Josco will automatically send this product to the purchaser when stock becomes available, unless otherwise requested by the purchaser.

10. Replacements

To reduce freight and handling charges, Josco will automatically include any replacements with the purchaser's next order, unless otherwise requested by the purchaser.

11. Invoice

All goods despatched to the purchaser will be accompanied with a Josco invoice. Please check your invoice carefully against any orders received, as Josco will not recognise any claims after fourteen (14) days of receipt of goods.

12. Risk

Goods supplied by Josco to the purchaser shall be at the purchaser's risk upon the goods leaving Josco's premises on the purchaser's freight or the goods being in the purchaser's custody (whichever is the sooner), and the purchaser should ensure that the goods are adequately insured against such risks as the purchaser thinks appropriate.

13. Third Party Advertising

- a) The purchaser must not re-supply the goods purchased from Josco without Josco's prior written approval.
 - I) Subject to Clause 19b, via any third party online website or digital media platform; or
 - II) To any person in the business of re-supplying the goods via any third party online website or digital media platform.
- b) The purchaser is only authorised to re-supply such goods via its normal distribution channels including the purchaser's own dedicated website. For the purposes of this agreement, "dedicated website" means the dedicated website which should be specified on the purchaser's credit application form or otherwise approved in writing by Josco.
- c) The purchaser may only use and display the intellectual property (IP) including logos, images and trademarks owned or controlled under licence by Josco on dedicated websites as specified and approved in Clause b above, when authorised in writing in all instances by Josco, prior to insertion. Where such authorisation is given by Josco, the purchaser must: only use or display the relevant Josco IP in the manner and to the extent approved in writing by Josco; not make any amendments or alterations to such Josco IP without Josco's prior written approval; and cease using or modify the Josco IP when requested to do so by Josco. Subject to the above, the purchaser acknowledges and agrees that nothing in this document or the contract gives the purchaser any rights (including usage rights), title, or ownership interest in the Josco IP and all such rights, title and interest remain the property of or are controlled under licence by Josco. The purchaser must not register or seek to register any of the Josco IP.

14. Security Interest

- a) The purchaser acknowledges and agrees that:
- I) By accepting these Conditions, the purchaser acknowledges and agrees that these Conditions constitute a security agreement for the purposes of the Personal Property Securities Act 2009 (PPSA);
 - II) The PPSA applies to any supply of goods by Josco to the purchaser and that Josco's interest in the goods may be registered on the PPSA register;
 - III) By accepting these Conditions, the purchaser grants a personal money security interest (as defined under the PPSA) in all present and after acquired goods supplied by Josco to secure Josco's interest in the goods and all money owing or payable by the purchaser from time to time on any account whatsoever;
 - IV) Josco's security interest in the goods extends to any proceeds, book debts and accounts receivable arising from the supply of the goods;
 - V) It has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Josco under these Conditions.
- b) The purchaser and Josco agree that the following sections of the PPSA do not apply to these Conditions: s92, s93, s94, s97, s130, s137, s142 and s143.
- c) The purchaser agrees to waive its right under the PPSA to receive those notices required by sections 95, 121, 130, 132, 135 of the PPSA.
- d) The purchaser and Josco agree not disclose any information of the kind described in section 275(1) of the PPSA, including
- I) A copy of these Conditions; or
 - II) The amount of the obligation secured by any security interest created by these Conditions, and the terms of such payment or performance; or
 - III) Any list of personal property in relation to which any security interest created by these Conditions is granted, except that it is not a breach of this subclause (d) for either party to disclose such information to its officers, employees, legal and other advisers and auditors, or with the consent of the non-disclosing party or if the disclosure is necessary to comply with any applicable law (other than section 275(1) of the PPSA), or an order of a court or tribunal and the other party is given prior notice of the disclosure.
- e) The purchaser will, at the request of Josco, do all things necessary to assist Josco in the registration, perfection and enforcement of its security interest in the goods as a first priority security interest. Until title in the goods passes to the purchaser, the purchaser waives its right under the PPSA to:
- I) receive a copy of any verification statement, financing change statement or any notice that Josco intends to sell the goods or return the goods on enforcement of the security interest granted to Josco under these Conditions;
 - II) To object to a proposal by Josco to dispose of or purchase or retain the goods in satisfaction of any obligations owed by the purchaser to Josco;
 - III) To receive a statement of account following the sale of the goods;
 - IV) To redeem the goods; and
 - V) Will not give (or allow any person to give) to Josco a written demand requiring Josco to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the PPSA register a financing change statement.
- f) The purchaser further agrees that where Josco has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- g) The purchaser unconditionally and irrevocably nominates constitutes and appoints Josco and/or its officers and/or its nominees severally to be the true and lawful attorneys of the purchaser on behalf of and in the name of the purchaser to do all things necessary and sign all such documents as may be necessary to deal with the goods in accordance with these Conditions, the PPSA or otherwise, if the purchaser fails, declines or delays to execute such documents or do such acts as are required by this clause 13.

15. Title

- a) Title and property in the goods supplied by Josco to the purchaser will not pass to the purchaser until the money owing for those goods, and any other money owing by the purchaser to Josco, has been paid in full, notwithstanding that the goods may become attached, fitted or affixed to any chattels or land. The purchaser in the meantime takes custody of the goods and retains them as the fiduciary agent and bailee of Josco. The foregoing applies whether or not the goods are delivered at different times, are the subject of separate invoices or, after delivery can be determined by Josco to be the subject of a specific invoice. Until the goods have been paid for in full, the purchaser:
- I) Must properly store, protect and insure the goods;
 - II) Must keep the goods in good condition and in its possession and control (subject to clause 16);
 - III) Must store the goods in such a manner to show clearly that they are the property of Josco;
 - IV) Must separately identify the goods, and Josco's ownership interest in them, in the purchaser's records;
 - V) Subject to clause 16, must not sell the goods or any interest in them, or permit any charge, pledge, lien or other encumbrances to be created in relation to them;
 - VI) Gives Josco or its agents and authorised representatives the right to enter any premises occupied by the purchaser or any premises where it believes the goods may be stored (without liability for trespass or any resulting damage), and to use the name of the purchaser and to act on its behalf, if necessary, to recover possession of the goods. Josco may recover as a debt due and immediately payable by the purchaser for the price of the goods and all amounts owing by the purchaser to Josco in any respect even though title has not passed.
- b) If the purchaser uses any of the goods in a manufacture or construction process of its own or a third party and sells the product of the manufacturing or construction process, then the purchaser holds the proceeds of the sale of this product as it relates to any goods sold by Josco to the purchaser and used in the manufacturing or construction process on trust for Josco. That part must be treated, for the purpose of quantifying how much the purchaser holds in trust for Josco but for no other purpose, as being equal in dollar terms to the amount owing by the purchaser for all goods sold by Josco to the purchaser.

16. Repossession

Josco is entitled to retake possession of any goods unpaid, including removing any unpaid goods which are attached, fitted or affixed to any chattels or land, if the purchaser defaults on payment of the goods or commits an act of bankruptcy, or a receiver is appointed, or the purchaser goes into liquidation, or official management, or some other form of insolvency administration whether formal or informal, or the purchaser ceases to carry on business, or the purchaser proposes or enters into a scheme or compromise with the purchaser's creditors, without prejudice to any other rights of Josco. The purchaser gives Josco or its agents and authorised representatives the right to enter into any premises occupied by the purchaser or any premises where it believes the goods may be stored (without liability for trespass or any resulting damage), and to use the name of the purchaser and to act on its behalf, if necessary, to recover possession of the goods.

17. Proceeds of Sale

- a) The purchaser is entitled to sell goods for which Josco has not been paid in the ordinary course of the purchaser's business but if it does so then:
 - I) As between Josco and the purchaser, the purchaser sells the goods on behalf of and as fiduciary agent and trustee of Josco, but as between the purchaser and any third party, the purchaser sells as principal, and the purchaser has no authority to bind Josco to any liability by contract or otherwise and must not purport to do so;
 - II) Subject to sub-clause (iv) below, Josco shall be entitled to the whole of the proceeds of such re-sale of the goods;
 - III) The purchaser shall hold and account for the whole of the proceeds of such re-sales separately and upon trust for Josco;
 - V) The purchaser shall be entitled to deduct amounts from the re-sale proceeds held on trust, but only to the extent that the remaining sum held on trust is not less than the amount of the goods owed to Josco.
- b) The purchaser and Josco agree that the provisions of this clause apply notwithstanding any arrangement between parties under which Josco grants the purchaser credit.

18. Default

- a) An event of default will occur if:
 - I) Any sums due are not paid by the due date for payment;
 - II) The purchaser fails to observe and perform any other of the terms of these Conditions;
 - III) Any order is made or a petition presented for the sequestration of the purchaser;
 - IV) The purchaser commits an act of bankruptcy or enters into composition or arrangement with its creditors;
 - V) The purchaser, being a company, goes into compulsory liquidation or official management or if a meeting of the purchaser is called to consider a resolution for the liquidation of the purchaser (not being a liquidation for the purposes only of amalgamation or reconstruction) or if the purchaser goes into voluntary liquidation other than for the purposes aforesaid; or
 - VI) A petition for the liquidation of the purchaser is presented or if a receiver or receiver and manager of the purchaser is appointed.
- b) If an event of default occurs:
 - I) All sums owing by the purchaser to Josco shall immediately become payable; and
 - II) Josco may by written notice to the purchaser terminate these Conditions.
- c) The termination of these Conditions shall not in any way prejudice or affect the rights of Josco to sue for and recover the unpaid balance of any sums payable by the purchaser to Josco or to retake possession of any goods unpaid.

19. General

- a) If any part of these Conditions is or becomes void or unenforceable, that part is or will be severed from these Conditions to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- b) The purchaser shall not assign any right or interest it may have in these Conditions without the prior written consent of Josco (which Josco may give or withhold in its discretion). Josco may assign these Conditions without obtaining the prior consent of the purchaser.
- c) No failure or delay by Josco in exercising any right, power or authority conferred on Josco under these Conditions shall constitute a waiver of or otherwise prejudice Josco's right to exercise that right, power or authority.
- d) If Josco becomes unable, wholly or in part, by force majeure, to carry out any of its obligations under these Conditions, Josco will give the purchaser written notice of the force majeure and the probable extent to which it will be unable to perform, or will be delayed in performing that obligation and, upon giving such notice, Josco will not be required to carry out such obligation so far as it is affected by the force majeure.
- e) These Conditions may be amended from time to time by Josco. Any amendments will take effect upon written notice to the purchaser.

20. Place of Contract

These Conditions shall be governed by and construed in accordance with the law of the State of Victoria and, where applicable, the Commonwealth of Australia, and the parties submit to the jurisdiction of the Courts of Victoria and the Commonwealth.