

Juverna International Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Supplier" means Juverna International Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Juverna International Pty Ltd.</p> <p>1.2 "Customer" means the person buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.4 "Services" shall mean all Services supplied by the Supplier to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.5 "Price" means the Price payable for the Goods as agreed between the Supplier and the Customer in accordance with clause 5 below.</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.</p> <p>2.3 Goods are supplied by the Supplier only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.</p> <p>2.4 The Customer acknowledges and accepts that all international sales contracts are subject to the current Incoterms as established and published by the International Chamber of Commerce (ICC).</p> <p>2.5 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.</p> <p>3. Online Ordering</p> <p>3.1 The Customer acknowledges and agrees that:</p> <p>(a) the Supplier does not guarantee the websites performance or availability of any of its Goods; and</p> <p>(b) online ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and</p> <p>(c) there are inherent hazards in electronic distribution and as such the Supplier cannot warrant against delays or errors in transmitting data between the customer and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.</p> <p>3.2 The Supplier reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Supplier's Services, or violated these terms and conditions.</p> <p>4. Change in Control</p> <p>4.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At the Supplier's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Supplier to the Customer; or</p> <p>(b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or</p> <p>(c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of twenty-four (24) hours.</p> <p>5.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as delays in delivery, or as a result of any increase to the Supplier in the cost of materials including overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges and labour) which are beyond the Supplier's control will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.</p> <p>5.3 At the Supplier's sole discretion a non-refundable deposit may be required.</p> <p>5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) before delivery of the Goods;</p> <p>(c) by way of instalments/progress payments in accordance with the Supplier's payment schedule;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.</p> <p>5.5 At the Supplier's sole discretion, international sales contracts may be paid in accordance with the Uniform Customs and Practice for Documentary Credits (UCPDC).</p> <p>5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Customer and the Supplier.</p> <p>5.7 The Customer understands and accepts that when payment is made via an overseas transfer, any bank fees, charges and disbursements associated with the overseas transaction are to be paid in full by the Customer. Any costs incurred by the Supplier as the recipient of the overseas transfer shall be on-charged to the Customer.</p> <p>5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>6. Delivery of Goods</p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>6.2 The type of delivery contract applicable to international sales shall be specified in writing on the Supplier's quotation as defined in accordance with the Incoterms.</p> <p>6.3 At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>6.4 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>6.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.</p> <p>6.6 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>6.7 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:</p> <p>(a) such discrepancy in quantity shall not exceed five percent (5%); and</p> <p>(b) the Price shall be adjusted pro rata to the discrepancy.</p> <p>6.8 Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.</p> <p>7. Risk</p> <p>7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.</p> <p>7.3 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.</p>	<p>8. Title</p> <p>8.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid the Supplier all amounts owing to the Supplier; and</p> <p>(b) the Customer has met all of its other obligations to the Supplier.</p> <p>Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until the form of payment has been honoured, cleared or recognised.</p> <p>It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.</p> <p>(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.</p> <p>(e) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.</p> <p>(f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.</p> <p>(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>9. Personal Property Securities Act 2009 ("PPSA")</p> <p>9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.</p> <p>9.2 The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;</p> <p>(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>9.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(c) and 132(4) of the PPSA.</p> <p>9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>9.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>9.8 The Customer must unconditionally ratify any actions taken by the Supplier under clauses 9.3 to 9.5.</p> <p>9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>10. Security and Charge</p> <p>10.1 In consideration of the Supplier agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>10.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.</p> <p>10.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.</p> <p>11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>11.1 The Customer must inspect the Goods on delivery and must within one (1) hour of delivery for perishable Goods or within twenty four (24) hours of delivery for non-perishable Goods (time being of the essence) notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Goods.</p> <p>11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>11.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>11.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>11.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.</p> <p>11.7 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;</p> <p>(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>11.8 Subject to this clause 11, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 11.1; and</p> <p>(b) the Supplier has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods;</p> <p>(b) the Customer using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by the Supplier;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>11.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.</p>	<p>12. Intellectual Property</p> <p>12.1 Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.</p> <p>12.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.</p> <p>12.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Customer.</p> <p>13. Default and Consequences of Default</p> <p>13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>13.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank disbursement fees).</p> <p>13.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.</p> <p>13.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>14. Cancellation</p> <p>14.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>15. Privacy Act 1988</p> <p>15.1 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.</p> <p>15.2 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p> <p>15.3 The Supplier consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>15.4 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>15.5 The Supplier may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.</p> <p>15.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 15.1 above;</p> <p>(b) name of the credit provider and that the Supplier is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>15.7 The Customer shall have the right to request (by e-mail) from the Supplier:</p> <p>(a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and</p> <p>(b) that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.</p> <p>15.8 The Supplier will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>15.9 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>16. General</p> <p>16.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.</p> <p>16.3 Subject to clause 11, the Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>16.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>16.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>16.6 The Customer agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide Goods to the Customer.</p> <p>16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>16.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
---	---	--