

These Terms of Trade are available on the website:

<https://www.jbspecialisedengineering.com.au/>

Definitions

Unless defined by this part, all words should be given their plain, ordinary, and natural meaning.

JBS means: JB Specialised Engineering Pty Limited, ABN: 66 613 465 339.

Additional Charge means: fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with JBS's then current prices; and, expenses incurred by JBS, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means: a day that is not a Saturday, Sunday, or public holiday in the place where the Services are principally being carried out or the Works, Goods or Services provided.

Completion means: the date and time Works or Services have been completed by JBS.

Customer means: the person/s acting for, or any person acting on behalf of, the Customer identified on a Quote or Purchase Order, including its agents and permitted assigns, requesting Goods or Services from JBS via any order, proposal, quotation, invoice or other document, and, identified on a Quote or Purchase Order as the customer and includes the Customer's agents and permitted assigns. If there is more than one, Customer is a reference to each Customer jointly and severally; Customer includes any Trust, Corporation or other entity including natural persons.

Delivery means: the transport of the goods from JBS, by JBS or its agents, to the address supplied on the Quotation of the Customer.

Goods means: any Goods supplied by JBS including those supplied in the course of providing Services and or Works such as fabrication, manufacturing, research and development, design, and the supply of associated consumables and spare parts.

GST means: Goods and Services Tax as defined by the relevant Commonwealth legislation.

Intellectual Property Rights means: intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to: costs (including party to party legal costs and JBS's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Manufacturer means: the manufacturer of Other Goods supplied by JBS in its performance of Works, supply of Goods, or Services.

Other Goods means: goods that are not manufactured by JBS.

Purchase Order means: a Purchase Order for Works, Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties and in lieu of a written purchase order, an email, SMS, or verbal confirmation with a Director of JBS or its agents.

PPS Law means: the *Personal Property Security Act 2009* (Cth) (PPS Act) and any regulation made at any time under the *PPS Act* (each as amended from time to time); and, any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quotation and Quote means: a written description of the Works, Goods, or Services to be provided, an estimate of JBS's charges for the performance of the required work, and an estimate of the time frame for the performance of the work, including verbal quotations.

Services means: the services to be provided by JBS to the Customer either in accordance with a Quote, or without a quote, and these terms of trade, including the supply of Goods.

Supplier means: JBS and includes JBS's agents and permitted assigns.

Works means: all works to be carried out by JBS in its delivery of Goods and or Services to the Customer in accordance with a Quotation, Purchase Order or other request and these Terms of Trade including but not limited to consultation, manufacturing and/or installation of Services or Goods.

1 Interpretation

1.1 In these terms of trade, unless the context otherwise requires:

- 1.1.1 a reference to writing includes email, letter, Purchase Order and other communication established through the JBS's website (if any);
- 1.1.2 the singular includes the plural and vice versa;
- 1.1.3 a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
- 1.1.4 a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- 1.1.5 A reference to Works, Goods and/or Services is a reference to the collective, Works and Goods and Services inclusive or each classification individually for the purpose of giving effect to the clause;
- 1.1.6 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 1.1.7 headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and,

- 1.1.8** if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
- 1.1.8.1** if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and,
 - 1.1.8.2** in all other cases, must be done on the next Business Day.

2 General

- 2.1** These terms of trade apply to all transactions between the Customer and JBS relating to the provision of all Works, Goods and Services including all quoted contracts and variations.
- 2.2** These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.
- 2.3** The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing and signed by the parties.
- 2.4** JBS may amend any details in a Quote by notice in writing to the Customer and such amended details supersede any relevant prior detail in dealings between the parties.

3 Quotations

- 3.1** JBS may provide the Customer with a Quote for Works, Goods and/or Services.
- 3.2** Any Quote issued by JBS is valid for 30 days from the date of issue.
- 3.3** Unless otherwise expressly agreed in writing, a Quote includes delivery and, or, installation of the Goods.
- 3.4** Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material, plans, or instructions, to JBS.
- 3.5** Following provision of a Quote to the Customer, JBS is not obliged to commence work until the Quote has been accepted by the Customer. Acceptance occurs by the Customer completing a Purchase Order and returning it to JBS, or as otherwise agreed between the parties.
- 3.6** JBS reserves the right to amend any Quote before the Purchase Order has been completed to take into account any rise or fall in the cost of completing the Purchase Order.
 - 3.6.1** JBS will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms of trade.

3.7 An indication in a Quote of the time frame for the provision of any Works, Goods and/or Services is an estimate only and is not a fixed time frame.

3.7.1 Subject to any obligations in respect of consumer guarantees under the *Australian Consumer Law*, this estimate is not binding upon JBS.

4 Purchase Orders

4.1 Every Purchase Order by the Customer for the provision of Works, Goods and/or Services must be submitted by email, SMS or verbal confirmation with JBS's Directors or its agents unless otherwise agreed between the parties.

4.2 A Purchase Order will only be deemed to be placed by the Customer if the Purchase Order clearly identifies the Works, Goods and/or Services ordered and JBS's Quote. Any costs incurred by JBS in reliance on incorrect or inadequate information provided by the Customer in a Purchase Order may result in the imposition of an Additional Charge.

4.3 Purchase Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.

4.4 Placement of a Purchase Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by JBS relating to that Purchase Order.

4.5 JBS may in its absolute discretion refuse to provide Works, Goods and/or Services where:

4.5.1 Goods are unavailable for any reason whatsoever;

4.5.2 credit limits cannot be agreed upon or have been exceeded;
or,

4.5.3 payment for Goods or Services previously provided to the Customer, or any related corporation of the Customer, or to any other party who is in the reasonable opinion of JBS, associated with the Customer under the same or another supply contract, has not been received by JBS.

4.6 A Purchase Order cannot be cancelled without the prior written consent of JBS. Where a Purchase Order is cancelled, the Customer indemnifies JBS against any Losses it incurred as a result of the cancellation including, but not limited to, loss of profit from other orders foregone as a result of the scheduling of the Purchase Order which is subsequently cancelled, and losses for the purchase of Goods.

4.7 JBS reserves the right to request a payment in part or in full of any invoice price prior to its procurement of Goods for the undertaking of Works or Services.

5 Variations

- 5.1** The Customer may request that its Purchase Order be varied by providing a request in writing to JBS or by another means as agreed between the parties. Any request for a variation must be agreed to in writing by JBS in order to have effect.
- 5.2** If the Customer wishes to vary its requirements after a Quote has been prepared by JBS or after the placement of a Purchase Order, JBS reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by JBS in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Works, Goods, and/or Services.
- 5.3** JBS has an automatic extension of time for the provision of the Works, Goods and/or Services equal to the delay caused by the variation.

6 Invoicing and Payment

- 6.1** JBS may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
- 6.1.1** prior to commencing the provision of the Works, Goods or Services, for an amount equal to the Quote and Additional Charges where JBS has not previously carried out work for the Customer or where JBS chooses to do so;
 - 6.1.2** at the end of each week before the Purchase Order is completed, JBS may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at JBS's discretion either for work done to that point, work in the future, or both) and require that proportion of the Quote be paid in advance of any further Works, Goods or Services being provided; or,
 - 6.1.3** upon completion of the provision of the Works, Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing JBS's charge for the work performed in completing the Purchase Order and for any Additional Charges.
 - 6.1.4** JBS reserves its right to invoice and request payment from Customers for Works, Goods or Services on the basis of cash

on delivery, progress payments at a percentage and time as agreed by the parties, or in default, at its absolute discretion.

- 6.2** The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
- 6.2.1** the amount for the Works, Goods and/or Services as set out in the Quote and any Additional Charges, or,
 - 6.2.2** where no Quote has been provided by JBS, JBS's usual charges for the Works, Goods and/or Services as described in the Purchase Order.
- 6.3** The Customer must pay an invoice issued by JBS to JBS as stipulated by it on the Quote within 30 days of a valid tax invoice being issued to the Customer.
- 6.4** If any invoice is due but unpaid, JBS may withhold the provision of any further Works, Goods and/or Services until overdue amounts are paid in full.
- 6.5** JBS may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to JBS.
- 6.6** The Customer is not entitled to retain any money owing to JBS notwithstanding any default or alleged default by JBS of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Works, Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the *Australian Consumer Law*.
- 6.7** The Customer is to pay JBS on demand interest at the rate of **10%** per year on all overdue amounts owed by the Customer to JBS, calculated daily.
- 6.8** All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of JBS, are to be paid by the Customer as a debt due and payable under these terms of trade.
- 6.9** The Customer and JBS agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.
- 6.10** Unless otherwise agreed, invoice balances are payable using the following methods:
- 6.10.1** Electronic Funds Transfer;
 - 6.10.2** Bank Cheque; or,
 - 6.10.3** Cash.
- 6.11** Electronic Funds Transfers (EFTs) from the Customer to JBS in payment or reduction of an invoice are made at the Customer's own risk..
- 6.12** JBS' banking details will be supplied via email in a PDF attachment to the Customer's nominated email address upon confirmation of the Customer's acceptance of the Quotation.

- 6.13** The Customer must verbally confirm the banking details supplied to it by JBS via JBS' business landline telephone, with its Director or Agent, prior to making any Electronic Funds Transfer.
- 6.14** If at any time, a Customer receives a request to change JBS' bank account or payment details, the Customer must verbally confirm the payment method details of that request, by contacting the Director of JBS via its landline as supplied on the JBS website.
- 6.15** All Purchase Orders valued at more than AUD\$30,000.00 shall, at the complete discretion of JBS, be subject to progress payments as per the following:
- 6.15.1** 10% payment of the total invoice price upon submission of drawings;
 - 6.15.2** 40% payment of the total invoice price upon receipt of major material items, and in particular, goods or items purchased by JBS from its suppliers to complete the Works.
 - 6.15.3** 50% payment of the total invoice price upon dispatch or installation;
 - 6.15.4** 10% payment of the total invoice price within 30 days of Delivery.
- 6.16** Cancellation charges apply if in the process of manufacturing Goods following the receipt of a Purchase Order, the Customer wishes to cancel or suspend the Purchase Order.
- 6.16.1** The Customer will be liable to pay for any material purchased or work completed plus 15% of the total invoice price.

7 Additional Charges

- 7.1** JBS may require the Customer to pay Additional Charges in respect of costs incurred by JBS as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by JBS in order for it to provide the Works, Goods or Services within the specified time frame (if any).
- 7.2** The imposition of Additional Charges may also occur as a result of:
- 7.2.1** cancellation by the Customer of a Purchase Order where cancellation results in Loss to JBS;
 - 7.2.2** photocopying, courier, packing or handling charges not included in the Quotation;
 - 7.2.3** Government or council taxes or charges not included in the Quotation; or,
 - 7.2.4** additional work required by the Customer or any other occurrence which causes JBS to incur costs in respect of the Customer's Purchase Order additional to the quoted cost.

8 Limited manufacturer's warranty

8.1 During the period of 365 days from the date of installation of the Goods or completion of the Works by JBS, or, 18 months from the date of dispatch of Goods, by JBS or its agents, to the Customer, JBS will replace or repair any defective Goods without charge. This applies so long as the damage does not arise from:

- 8.1.1** improper installation, adjustment, calibration or operation by the Customer;
- 8.1.2** the use of accessories including consumables, hardware, or software which were not manufactured by or approved in writing by JBS;
- 8.1.3** any contamination or leakages caused or induced by the Customer;
- 8.1.4** any modifications of the Goods which were not authorised in writing by JBS;
- 8.1.5** any misuse of the Goods by the Customer or anyone for whom the Customer has legal responsibility (including a minor);
- 8.1.6** any use or operation of the Goods outside of the physical, electrical or environmental specifications of the Goods;
- 8.1.7** inadequate or incorrect site preparation; and
- 8.1.8** inadequate or improper maintenance of the Goods.

8.2 All transportation charges incurred in returning defective products, or any of their component parts, for repair, together with the cost of returning them to Customer must be paid by the Customer.

8.3 The warranty in this clause does not extend to cover any damage to consumable parts, wear parts or sacrificial parts, nor to corrosion due to any cause nor due to any damage to painted or anodized surfaces caused by the Customer.

8.4 The consumable parts, wear parts or sacrificial parts included in the Works carries a limited warranty from JBS and subject to clauses 8.1 to 8.1.8 inclusive, that warranty is the only warranty given to the Customer in respect of that part of the Goods.

9 Repair or Replace Warranty

9.1 The Seller warrants that the Works are free from defects in workmanship for a period of 365 days from the date of Completion.

9.2 The Seller warrants that new Goods supplied are free from defects for a period of 365 days from the date of sale.

9.3 The Seller warrants second-hand Goods only by further written agreement between the parties.

9.4 Subject to clause 19, JBS is not responsible for any loss caused by an error or defect in the Goods, or errors or faults caused by the Goods.

10 Limitation of Liability – Consumer Sale

10.1 Subject to clause 8 and 9, and to the extent permitted by the *Australian Consumer Law* and relevant New South Wales legislation, the sole obligation of JBS under this agreement is to use its best endeavours to provide the Goods, Works or Services, or to repair the Goods or Works, or repair or replace (at JBS's discretion) any part of the Goods or Works which is found to be defective during the 365 day period of warranty. JBS will not be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the Goods or Works, and any indirect, special or consequential damages or injury to any person, corporation or other entity.

10.2 If any Goods supplied under this agreement are supplied to the customer as a “consumer” of goods or services within the meaning of that term in the *Australian Consumer Law* (as amended) or relevant New South Wales legislation, the consumer will have the benefit of certain non-excludable rights and remedies in respect of the goods or services. Nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the *Australian Consumer Law* or similar legislation is so conferred. If the product is a product not ordinarily acquired for personal, domestic or household use or consumption, under section 64A of the *Australian Consumer Law* and similar provisions of relevant New South Wales legislation, the Seller limits its liability to payment of an amount equal to the lowest of:

10.2.1 the cost of replacing the Goods or supplying equivalent Goods;

10.2.2 the cost of repair of the Goods;

10.2.3 the cost of having the Goods repaired or replaced.

10.3 JBS is not liable for default or failure in performance of its obligations pursuant to this agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of the Seller.

10.4 Subject to clause 10.2, JBS is not responsible for any loss caused by an error or defect in the Goods.

11 Exclusions and Limitations of Liability

- 11.1** The Customer expressly agrees that use of the Works, Goods and/or Services is at the Customer's risk. To the full extent allowed by law, JBS's liability for breach of any term implied into these terms of trade by any law is excluded.
- 11.2** All information, specifications and samples provided by JBS in relation to the Goods, Works or Services are approximations only and, subject to any guarantees under the *Australian Consumer Law*, small deviations or slight variations from them which do not substantially affect the Customer's use of the Works, Goods or Services will not entitle the Customer to reject the Goods upon delivery, or Works or Services upon completion or to make any claim in respect of them.
- 11.3** Under no circumstances is JBS or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Works, Goods or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- 11.3.1** any Goods, Works or Services supplied to the Customer;
 - 11.3.2** any delay in supply of the Goods, Works or Services; or
 - 11.3.3** any failure to supply the Goods, Works or Services.
 - 11.3.4** Any advice, recommendation, information, assistance or service given by JBS in relation to Works, Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. JBS does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- 11.4** To the fullest extent permissible at law, JBS is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Works, Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if JBS has been advised of the possibility of damages.

- 11.5** The Customer acknowledges that the Works, Goods or Services are not for personal, domestic or household purposes unless otherwise indicated on the Quote.
- 11.6** The *Australian Consumer Law* may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, JBS's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods and Works, to the replacement or repair of the Goods and Works or the costs of resupply or replacement of the Goods and Works or with respect to Works and Services to the supply of Works and Services again or cost of re-supplying the Works and Services again.

12 Delivery

- 12.1** The delivery times made known to the Customer are estimates only and JBS is not liable for late delivery or non-delivery.
- 12.2** JBS will not be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery or late installation of the Goods.
- 12.3** JBS may at its option deliver the Goods to the Customer in any number of instalments unless there is an endorsement overleaf to the effect that the Customer will not take delivery by instalments.
- 12.4** If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
- 12.5** this does not constitute a repudiation of the contract of sale formed by these conditions; and
- 12.6** the defective instalment is a severable breach that gives rise only to a claim for compensation.

13 Loss or damage in transit

- 13.1** JBS is not responsible to the Customer or any person claiming through JBS for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not JBS is legally responsible for the actions of that person).
- 13.2** JBS must provide the Customer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the Customer:
- 13.3** has notified JBS and the carrier in writing immediately after loss or damage is discovered by the Customer on receipt of Goods; and
- 13.4** serves a claim for compensation on the carrier within 3 days of the date of receipt of the Goods.

14 Acceptance of Goods

- 14.1** If the Customer fails to advise JBS in writing of any fault in Work, Goods and/or Service or failure of Goods to accord with the Customer's Order within 24 hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Purchase Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the *Australian Consumer Law*.

15 Title and Risk

- 15.1** Risk in Goods passes to the Customer immediately upon delivery.
- 15.2** Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between JBS and the Customer) due and payable to JBS by the Customer have been fully paid.
- 15.3** Where Goods are supplied by JBS to the Customer without payment in full, the Customer:
- 15.3.1** is a bailee of the Goods until property in them passes to the Customer;
 - 15.3.2** irrevocably appoints JBS to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of JBS with respect to the Goods under applicable law;
 - 15.3.3** must be able upon demand by JBS to separate and identify as belonging to JBS Goods supplied by JBS from other goods which are held by the Customer;
 - 15.3.4** must not allow any person to have or acquire any security interest in the Goods;
 - 15.3.5** agrees that JBS may repossess the Goods if payment is not made within 90 days (or such longer time as JBS may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - 15.3.6** the Customer grants an irrevocable licence to JBS or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies JBS for any damage to property or personal injury which occurs as a result of JBS entering the Customer's premises.
- 15.4** Where Goods are supplied by JBS to the Customer without payment in full of all moneys payable in respect of the Goods and any Works and or

Services provided by JBS in respect of those Goods, the Customer acknowledges that JBS has a right to register and perfect a personal property security interest if:

15.4.1 a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or JBS determines (based on legal advice) that this is the case; and

15.4.2 in JBS's opinion, if the PPS Law:

15.4.2.1 does or will adversely affect JBS's security position or obligations; or

15.4.2.2 enables or would enable JBS's security position to be improved without adversely affecting the Customer:

15.4.3 JBS may give notice to the Customer requiring the Customer to do anything (including amending these terms of trade or execute any new Terms and Conditions) that in JBS's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 15.4.2.1 or improve the security position as contemplated in paragraph 15.4.2.2. The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in JBS's opinion JBS's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, JBS may by further notice to the Customer cancel these terms of trade. If this occurs, the Customer must pay to JBS any money owed to JBS by the Customer immediately.

16 Credit Arrangements

16.1 Credit applications to JBS for its Goods and or Services, may be made by a customer and are granted at the exclusive discretion of JBS.

16.2 At its complete discretion, JBS may amend, modify, or alter the terms of any credit, or credit account, it grants to its Customers.

16.3 At the exclusive discretion of JBS, the terms of any credit account it grants may include, but are not limited to the following:

16.3.1 The granting of a 30 day, 45 day or 60 day credit account due and payable at 30, 45 or 60 days from the date of the invoice;

16.3.2 The customer agrees to provide JBS with a minimum of 3 business credit references and authorises JBS or its Agents to

contact those references and request information regarding the Customer's credit history;

16.3.3 The Customer agrees to complete and answer JBS' requests for information as required by its credit application form, as amended from time to time;

16.3.4 The Customer acknowledges that JBS may complete ASIC and PPSR searches of the Customer to assist in determining if a credit application should be granted by JBS to the Customer.

17 Default by Customer

17.1 Each of the following occurrences constitutes an event of default:

17.1.1 the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 30 days of being given notice by JBS to do so;

17.1.2 the Customer, being a natural person, commits an JBS of bankruptcy;

17.1.3 the Customer, being a corporation, is subject to:

17.1.3.1 a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;

17.1.3.2 a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* being appointed to all or any part of the Customer's property and undertaking;

17.1.3.3 the entering of a scheme of arrangement (other than for the purpose of restructuring); and

17.1.3.4 any assignment for the benefit of creditors;

17.1.3.5 the Customer purports to assign its rights under these terms of trade without JBS's prior written consent; or

17.1.3.6 the Customer ceases or threatens to cease conduct of its business in the normal manner.

17.2 Where an event of default occurs, except where payment in full has been received by JBS, it may:

17.2.1 terminate these terms of trade;

17.2.2 terminate any or all Purchase Orders and credit arrangements (if any) with the Customer;

17.2.3 refuse to deliver Works, Goods or provide further Services;

17.2.4 pursuant to clause 15.3, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or

17.2.5 retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.

17.3 In addition to any action permitted to be taken by JBS under paragraph 17.2, on the occurrence of an event of default all invoices will become immediately due and payable.

18 Termination

18.1 In addition to the express rights of termination provided in these terms of trade, a party may terminate these terms of trade by giving 30 days written notice to the other party.

19 Intellectual Property Rights

19.1 The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise JBS to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the JBS for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified JBS against all Losses incurred by JBS in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.

19.2 Unless specifically agreed in writing between JBS and the Customer, all Intellectual Property Rights in any works created by JBS on behalf of the Customer vest in and remain the property of JBS.

19.3 Subject to payment of all invoices due in respect of the Works, Goods and/or Services, JBS grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by JBS in connection with the provision of Works, Goods and or Services under these terms of trade for the purposes contemplated by the Purchase Order.

20 Agency and Assignment

20.1 The Customer agrees that JBS may at any time appoint or engage an agent to perform an obligation of JBS arising out of or pursuant to these terms of trade.

20.2 JBS has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations of JBS owed to the Customer under these terms of trade.

- 20.3** The Customer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of JBS.

21 Indemnity

21.1 The Customer indemnifies and keeps indemnified JBS, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against JBS or, for which JBS is liable, in connection with any Loss arising from or incidental to the provision of Works, Goods or Services, any Purchase Order or the subject matter of these terms of trade including, but is not limited to:

21.1.1 any legal costs incurred by JBS in relation to meeting any claim or demand or any party/party legal casts for which JBS is liable in connection with any such claim or demand.

21.2 This provision remains in force after the termination of these terms of trade.

FORCE MAJEURE

21.3 If circumstances beyond JBS's control prevent or hinder its provision of the Works, Goods and or Services, JBS is free from any obligation to provide the Works, Goods and or Services while those circumstances continue. JBS may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

21.4 Circumstances beyond JBS's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, epidemics, pandemics, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

DISPUTE RESOLUTION

21.5 If a dispute arises between the Customer and JBS, the following procedure applies:

21.5.1 A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.

21.5.2 A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.

21.5.3 A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute

pending the completion or termination of the procedure set out in this paragraph.

- 21.5.4** If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 10 Business Days (or other period as agreed).
- 21.5.5** Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.
- 21.5.6** Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- 21.5.7** The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

22 Miscellaneous

- 22.1** These terms of trade are governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.

- 22.2** These terms of trade and any Quotes and written variations agreed to in writing by JBS represent the whole agreement between the parties relating to the subject matter of these terms.
- 22.3** These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- 22.4** In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by JBS or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- 22.5** If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- 22.6** A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 22.7** A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- 22.8** A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 22.9** A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.