

CONDITIONS OF SALE & CONTRACT WITH JUST US 4 PTY. LTD.

1. Definitions

In these Conditions the following words shall have the following meanings:

“**Ancillary Charges**” means all costs of packaging, taxes, duties or other imposts and all other costs associated with the manufacture and delivery of the Goods.

“**Company**” means JUST US 4 Pty Ltd and any trading name thereof, with ABN 207 299 02531;

“**Conditions**” means the terms and conditions hereof;

“**Contract**” means the agreement between the Company and the Purchaser created by acceptance of the Goods by the Purchaser upon delivery of the Goods by the Company;

“**Goods**” means the item or items specified in the Invoice;

“**Invoice**” means this document;

“**Payment Period**” means, (unless the Company requires cash on delivery of the Goods), seven days or such further time as the Company may extend to the Purchaser pursuant to any application for credit made by the Purchaser, from the date of the Invoice.

“**Price**” means the price stated in the Invoice;

“**Purchaser**” means the person, firm or company who or which accepts the Goods to whom the Invoice is addressed;

“**TPA**” means the Trade Practices Act 1974 (as amended).

2. Acceptance

The Invoice constitutes an offer subject to the Conditions which may be accepted by the Purchaser in writing, orally or by accepting delivery of the Goods.

3. Payment

3.1 The Purchaser shall pay to the Company the Price and all Ancillary Charges within the Payment Period but payment by the Purchaser shall not prejudice any claim for shortages in quantity or supply of goods not contracted for provided that written notice of the claim is received by the Company within seven (7) days after receipt of the Goods by the Purchaser.

3.2 If, at the expiration of the Payment Period, the Purchaser has failed to pay in full the Price and all Ancillary Charges, the Purchaser shall pay to the Company interest at the rate of EIGHTEEN PERCENT (18%) per annum on any outstanding unpaid balance of the Price and Ancillary Charges, such interest to be computed from the expiration of the Payment Period until payment of the outstanding unpaid balance in full in cleared funds.

4. Delivery of Goods

4.1 The Goods will be, at the option of the Purchaser:

(a) collected by the Purchaser from the Company's premises;

or

(b) delivered by the Company to the Purchaser to a point of delivery notified in writing by the Purchaser to the Company (“the Delivery Point”).

4.2 The Purchaser will attend and will be entitled to examine the Goods at their collection or at the Delivery Point provided that any signature by the Purchaser on the Company's delivery or receipt form shall constitute unqualified acceptance of the Goods by the Purchaser.

4.3 If the Purchaser is not present at the Delivery Point at the time of delivery of the Goods, the Company is entitled to refuse to deliver the Goods, in which case the Purchaser shall be liable for all transport costs incurred by the Company, provided that if the Company elects to deliver the Goods to the unattended Delivery Point, delivery shall be deemed to constitute unqualified acceptance of the Goods by the Purchaser.

5. Passing of Risk

The Goods are at the Purchaser's risk as and from the time when the Goods leave the Company's store.

6. Passing of Property

6.1 The Goods shall remain in the ownership of the Company until the Purchaser has paid in full the Price, the Ancillary Charges, and all other monies owing to the Company by the Purchaser howsoever arising (collectively referred to as “the Monies Owing”).

6.2 If the Company delivers the Goods or any part thereof prior to the Purchaser paying in full the Monies Owing to the Company, the Purchaser agrees with the Company:

(a) to keep the Goods as fiduciary owner for the Company, and shall store the Goods separately from property belonging to the Purchaser; and

(b) if the Purchaser:

(i) makes produces or manufactures a new object from the Goods, whether finished or not;

(ii) incorporates or mixes the Goods with other goods, or

(iii) the Goods become part of other goods,

(“the New Goods”) the ownership of the New Goods immediately passes to the Company at the moment of the event or single operation by which the Goods are converted into, are incorporated or mixed, or become part of the New Goods and the Purchaser shall keep the New Goods as fiduciary owner for the Company and shall store the New Goods separately from property belonging to the Purchaser.

6.4 For the purpose of giving effect to and perfecting the assignment referred to in sub-clause 6.3(b) above, the Purchaser hereby irrevocably appoints the Company and each and every one of the directors and other officers of the Company jointly and severally the attorney of the Purchaser.

6.5 The Purchaser and the Company agree that the provisions of this clause 6 apply notwithstanding any agreement between the Company and the Purchaser pursuant to which the Company provides credit to the Purchaser.

6.6 For the purposes of this clause 6, where any cheque, note or other negotiable instrument is forwarded by the Purchaser to the Company on account of any Monies Owing, those Monies Owing shall not be deemed to have been paid until such cheque note or other negotiable instrument is cleared through the Company's bank account.

7. Insurance of Goods

The Company shall not be under any obligation to insure the Goods.

8. Default

8.1 The following events shall be "Events of Default":

- (a) if the Purchaser fails to pay the Price and all Ancillary Charges (or any part thereof) by the expiration of the Payment Period referred to in clause 3.1;
- (b) where the Purchaser is a company, a receiver and manager is appointed to all or any of the Purchaser's assets, or a winding up petition is presented or a resolution is passed for the winding up of the Purchaser or an official manager or provisional liquidator is appointed;
- (c) if the Purchaser ceases to carry on its business or is unable to pay its' debts as and when they fall due, or
- (d) where the Purchaser is an individual, the Purchaser commits an act of bankruptcy or becomes a bankrupt or enters into any deed of assignment, deed of arrangement or composition with his creditors.

8.2 If an Event of Default occurs, the Company is entitled to:

- (a) if the Company has delivered the Goods or any part thereof to the Purchaser,
 - (i) enter upon any property owned or occupied by the Purchaser, with or without vehicles or equipment, retake possession of the Goods, and re-sell the Goods; and
 - (ii) cancel the Contract and sue for damages; or
- (b) if the Company has not delivered the Goods or any part thereof to the Purchaser cancel the Contract and sue for damages.

9. Non>Returns

Subject to clauses 3.1, 11.2 and 11.4 any Goods which do not ordinarily form part of the Company's stock, and which are acquired, obtained or manufactured by the Company in order to fulfil its obligation pursuant to this Contract, are non returnable to the Company.

10. Returns

Subject to clauses 3.1, 11.2, and 11.4 any Goods which ordinarily form part of the Company's stock and in respect of which the Purchaser makes a claim against the Company will not be accepted by the Company for return to it unless the Purchaser states its claim in writing within such period as shall be specified in the Company's current price list after receipt of the Goods by the Purchaser, and the Company approves in writing the return of the Goods, and provided that the Goods being returned:

- (a) specify the Company's authority by which they are returned;
- (b) are properly packaged and labelled, and if any such Goods are mixed with other goods or are not properly packaged or labelled, any credit which may be given will be reduced by the cost of putting the Goods into saleable condition;
- (c) remain at the Purchaser's risk until they are delivered to the Company's store;
- (d) are returned by prepaid transport; and
- (e) will be subject to a handling charge determined by the Company.

11. Liability of Company

11.1 Subject to clause 11.2, all rights, duties, liabilities, terms, covenants and warranties implied at law or pursuant to any State or Federal legislation in respect of the Company and the Goods are hereby excluded, to the extent that such exclusion is lawful.

11.2 Any liability of the Company arising from breach of a condition or warranty implied by Part V Division 2 TPA (not being a condition or warranty implied by Section 69 TPA) shall be limited to:

- (a) replacements of the Goods or the supply of equivalent goods;
- (b) repair of the Goods;
- (c) payment of the cost of replacing the Goods or acquiring equivalent goods; or
- (d) payment of the cost of having the Goods repaired; wholly at the discretion of the Company.

11.3 The Purchaser undertakes that the Goods are not being acquired for personal domestic or household use or consumption by the Purchaser (or any other party) with the result that the provisions of Part V Division 2A TPA shall not apply to the Company.

11.4 Notwithstanding sub-clause 11.2 in the event that any defect in the manufacture of or the materials in the Goods becomes apparent within six (6) months of the date of delivery of the Goods or such other period agreed by the Company in writing, the Company shall repair or replace or cause to be repaired or replaced, at a location specified in writing by the Company, the faulty Goods provided that:

- (a) notice in writing specifying the defect is received by the Company within six (6) months of the date of delivery of the Goods or such other period agreed by the Company in writing at the time of sale; and
- (b) the Purchaser proves to the satisfaction of the Company that:
 - (i) the defect specified became apparent while the defective Goods remain the property of either the Company or the Purchaser and are in the possession of the Purchaser;
 - (ii) the Goods were properly stored, maintained and otherwise protected from all risks of exposure;
 - (iii) the operation and maintenance of the Goods and of any plant or machinery in or with which the Goods may operate has been observed and performed in a proper workmanlike and technically proficient manner;
 - (iv) all instructions for the use and maintenance of the Goods have been complied with;
 - (v) the Goods have not been subject to repair by the Purchaser or by any other person excepting the Company its servants or agents; and
 - (vi) the defect in the Goods is not caused by any act or omission outside the Company's control.
- (c) the Purchaser shall arrange for the delivery of the Goods to the location nominated by the Company at the Purchaser's risk;
- (d) the Company shall be liable for the cost of repairing or replacing the defective Goods only and the Purchaser shall be liable for all other costs and expenses incurred, including transport and insurance costs;



(e) if the defective Goods are unable to be transported by the Purchaser to the location nominated by the Company the Purchaser shall be liable for all costs and expenses incurred by the Company in attending at the site at which the defective Goods are located (including but without limiting the generality of the foregoing, all travelling expenses, meals, accommodation and man hour rates for attendance at the site by the Company's employees) until the Company notifies the Purchaser in writing, that in its sole and absolute discretion it accepts responsibility for any or all of such costs and expenses as being part of the cost of repairing or replacing the defective Goods.

11.5 All warranties and representations made by the Company its servants or agents whether expenses or implied and whether collateral or antecedent to this Contract are expressly excluded.

12. Failure to Deliver

The Company shall not be under any liability whatsoever to the Purchaser for loss, injury or damage of any kind whatsoever arising out of delay in or failure to make delivery of the Goods or any part thereof including (but without limiting the generality of the foregoing) consequential loss of any kind, whether the same be due to any act, omission, negligence or wilful default of the Company or its servants or agents, any breach by the Company its servants or agents of any term hereof, or any cause beyond the Company's control.

13. Force Majeure

13.1 Notwithstanding the provisions of clause 12 and in addition thereto, if there shall be delay in or failure to make delivery of the Goods or any part thereof which is caused by any cause beyond the Company's control, the Company is entitled to:

(a) terminate the Contract by seven (7) days notice in writing to the Purchaser; or

(b) extend the time for its performance by notice in writing to the Purchaser.

13.2 Upon expiration of the seven (7) days notice referred to in sub-clause 1(a) above the Contract shall terminate and the Purchaser shall not have any claim against the Company in respect of such termination, but the Purchaser shall remain liable for and pay to the Company a portion of the Price proportionate to the price of the Goods delivered pursuant to the Contract, and any Ancillary Charges actually incurred by the Company up to the date of such termination.

14. Lien

In addition to any right of lien to which the Company may be entitled by law, it shall be entitled to a general lien on all property of the Purchaser in the Company's possession for the unpaid price of any Goods sold and delivered to the Purchaser by the Company under this or any other Contract.

15. Patents

15.1 The Purchaser hereby indemnifies the Company in respect of all liability claims and demands arising from any infringement by the Purchaser of any patent belonging to any person in any item or process forming part or whole of the Goods, or in which the Goods are placed.

15.2 Unless agreed otherwise, the Company shall be entitled to use for its own purposes any schemes, circuits or other items of equipment produced by the Company for the Purchaser pursuant to this Contract in respect of which the Purchaser has obtained a patent, notwithstanding such patent.

16. Conditions to Prevail

The Conditions shall prevail over all other written or oral terms and conditions except to the extent that the Company, by one of its duly authorised officers, has agreed in writing to the amendment of the Conditions.

17. Disputes

In the event of a dispute between the Company and the Purchaser arising out of or in connection with this Contract, the Company shall be entitled to elect to refer the dispute to either an expert or arbitrator or the appropriate court, for resolution.

18. Time of Essence

Time is of the essence in respect of the payment of the Price and the Ancillary Charges.

19. Proper Law

This Contract shall be construed in accordance with the Law of the State of Queensland.

