

# L J SERVICES PTY LTD Standard Terms & Conditions of Sale – 02/2016

## 1. AGREEMENT

- 1.1 This document sets out L J Services Pty Ltd terms for providing the goods (including software) and or/ services (Goods and Services) to you (Client). This agreement applied to any provision of Goods and/or Services by L J Services Pty Ltd to Client.
- 1.2 This agreement will commence upon the date the first purchase order is submitted by you and accepted by L J Services or upon the date the first Goods or Services are shipped or provided by L J Services Pty Ltd to you whichever is the earlier date.
- 1.3 This agreement applied to the provision of the Goods and services to the exclusion of any other terms.
- 1.4 L J Services Pty Ltd may, in its sole discretion, assign or novate any or all of its rights and obligations under this contract to a related body corporate and client irrevocably consent to such assignment or novation.
- 1.5 This Agreement may be updated from time to time. The most up to date versions is available from [www.ljservices.com.au](http://www.ljservices.com.au)

## 2. PROVISIONS OF GOODS AND/OR SERVICES

- 2.1 Client acknowledges that times or dates identified by L J Services for the provision of the Services and the delivery of the Goods are estimates only and L J Services Pty Ltd will not be liable for any delays.
- 2.2 Any drawings, specifications and plans identified by L J Services Pty Ltd as requiring Client's approval will be approved or commented on in writing by Client within five (5) working days after the receipt of such drawings, specifications or plans. If Client does not respond within that period (or such other period identified by L J Services Pty Ltd), it will be deemed to have approved the drawings, specifications or plans, as the case may be
- 2.3 Unless otherwise agreed in writing, client must satisfy itself that Goods are suitable for any purpose other than those described in the documentation provided by L J Services Pty Ltd for those Goods.
- 2.4 Subject to clause 2.5 all Goods provided by L J Services Pty Ltd will be dispatched and made available for collection at L J Services Pty Ltd manufacturing facility or warehouse (i.e., EXW, Ex Works).
- 2.5 L J Services Pty Ltd may, if requested by Client in its purchase order and at Client's expense, deliver the Goods to a specified delivery location (Site). Such expense referred to herein shall be included in the Price as defined in clause 4.

## 3. SITE PREPARATION

- 3.1 If Goods are to be delivered to Site pursuant to clause 2.5, Client must at its cost prepare the Site to which Goods or Services are to be provided and provide L J Services Pty Ltd with reasonable access to the Site and other facilities (including adequate power, telephone, facsimile, email and office space, if requested by L J Services Pty Ltd) to allow L J Services Pty Ltd to perform under this agreement.
- 3.2 If L J Services Pty Ltd is delayed in providing any Goods or Services due to failure of Client to prepared the Site or provide information (i) Client will be liable to L J Services Pty Ltd for all costs and expenses incurred by L J Services Pty Ltd or indirectly as a result of such delay; and (ii) the time for performance of L J Service's Pty Ltd obligations under this agreement will be extended by the amount of any such delay

## 4. PRICE AND PAYMENT

- 4.1 Client must pay the price identified by L J Services Pty Ltd for the Goods and/or Services (Price) in accordance with the timetable for payment of the Price identified by L J Services Pty Ltd (Payment Schedule). If there is no payment schedule or other terms of payment identified by L J Services Pty Ltd, Client must pay the Price as invoiced by L J Services Pty Ltd within 30 days from EOM. If client fails to pay any sum due under this agreement by the due date, Client must pay interest of 2% per month on that such from the

due date until the date of payment. Interest is to be calculated on a daily basis.

- 4.2 If L J Services Pty Ltd provides any additional goods or services, L J Services Pty Ltd may charge Client for: (i) the time of L J Services Pty Ltd employees, agents or subcontractors at L J Services Pty Ltd then current professional rates for services; and (ii) the goods provided.

- 4.3 L J Services Pty Ltd reserves the right to charge Client any costs related to delivering the Goods to Client's premises or Client's customer's premises.

## 5. RISK AND TITLE

- 5.1 Risk of any loss or damage to Goods passes to Client at the time of dispatch or, if delivered by L J Services Pty Ltd, on arrival to site and title in each item of Goods remains with L J Services Pty Ltd until the amount owed by client to L J Services Pty Ltd for that item of Goods has been paid in full.

- 5.2 Title to and property in the Goods will not pass until Client has paid all money owned to L J Services Pty Ltd on any account whatsoever. Payment shall not be taken to occur until all cheques tendered in discharge of sums owing to L J Services Pty Ltd have been presented and cleared in full.

- 5.3 If client does not pay for any Goods on the due date for payment, Client authorises L J Service's Pty Ltd, its employees and agents to enter any location here the Goods are located, to retake possession of the Goods without liability for trespass or damage. Without limiting its rights under this clause, L J Services Pty Ltd may also repossess the Goods supplied if : (i) Client fails to perform any obligation it has under this (or any other) agreement between it and L J Services Pty Ltd; (ii) any representation or statement made or taken to be made by Client in this agreement or any other document delivered by or on behalf of client under or in connection with this agreement is or proves to have been incorrect or misleading in any material respect when made or taken to be made; (iii) any person enforces or seeks to enforce any security interest in respect of any of the assets of Client; or (iv) anything else happens which, in L J Services Pty Ltd opinion, has a material adverse effect on either business or financial condition of client, Client's ability to comply with its obligations under this agreement or the validity or enforceability of L J Services Pty Ltd rights related to this agreement.

- 5.4 This Agreement creates a purchase money security interest in the Goods and Client must do all things reasonably required by L J Service's to register and perfect that interest. If L J Services Pty Ltd repossesses the Goods; (i) L J Services Pty Ltd will credit an amount equal to the invoiced purchase price of the Goods to Client, less L J Services Pty Ltd costs and expenses related to enforcement of its interest in the Goods and any other amount owed by Client to L J Services Pty Ltd; (ii) Client must not redeem the Goods; and (iii) L J Services Pty Ltd does not need to provide Client with any notice under sections 130 or 135 of the Personal Property Securities Act 2009. Until Client has paid all monies owed to L J Services Pty Ltd on any account whatsoever, the relationship of Client to L J Services Pty Ltd will be as a fiduciary in respect of the Goods and accordingly; (i) Client must store the Goods in such a way that they can be recognised as the property of L J Services Pty Ltd; (ii) upon resale of the Goods by Client, L J Services Pty Ltd shall have the right to trace the full proceeds of sale; and (iii) Client shall account immediately to L J Services Pty Ltd for such proceeds of sale and L J Services Pty Ltd may recover from such proceeds of sale any money then owing to L J Services Pty Ltd on any account whatsoever.

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- 6. INTELLECTUAL PROPERTY**
- 6.1 L J Services Pty Ltd remains the owner of any intellectual property rights created in connection with the provision of the Goods and Services.
- 6.2 L J Services Pty Ltd granted to Client a permanent, irrevocable, non-transferable licence to use any intellectual property rights created in connection with the provision of the Goods and Services strictly for the purposes L J Services Pty Ltd together with and for such Goods Services. This licence is subject to any other purpose identified by L J Services Pty Ltd and payment of the Price, and all other monies owned by Client to L J Services Pty Ltd, in full.
- 6.3 If L J Services provides Client with any proprietary software, Client acknowledges that separate terms provided by L J Services Pty Ltd will apply to the licensing and support of that software. The terms provided with any third party software or otherwise by L J Services Pty Ltd, will apply to the licensing and support of any third party software.
- 7. WARRANTIES**
- 7.1 L J Services Pty Ltd warrants that ;
- 7.1.1 All L J Services Pty Ltd Goods (excluding software and third party Product) will operate in accordance with their published specifications for the duration of the Warranty Period; and
- 7.1.2 All services will be performed in a professional manner with due skill and care, using appropriately skilled and qualified personnel and in accordance with all applicable laws and regulations; and
- 7.1.3 All L J Services Pty Ltd software supplied will perform in accordance with their published specifications during the Warranty Period; and
- 7.2 If the Customer makes a claim during the Warranty Period it will be handled as follows:
- 7.2.1 In the case of L J Services Pty Ltd Goods, where there is a defect in such Goods, L J Services Pty Ltd will replace or repair (at its discretion and cost) the Goods and will warrant the replaced or repaired Product for one further period of ninety (90) days from the date of the replacement or repair. L J Services Pty Ltd will not be responsible for the cost of retrieving, removing, reinstalling, retesting or transporting the Goods to and from the location where the Goods are located.
- 7.2.2 In the case of Services, where there is a defect in the Services, L J Services Pty Ltd will re-perform the Services. In the event the deficient Services have caused a defect in the L J Services Pty Ltd Goods, L J Services will replace or repair (at its discretion and cost) the L J Services Pty Ltd Goods and the costs for doing so will be limited to: (i) the cost of repair or replacement of the L J Services Pty Ltd Goods (including transport to and from the location where the Goods are located); (ii) on-site servicing labour cost in the case of having to re-perform installation Services; and (iii) L J Services Pty Ltd travel costs (transport and accommodation). The provision of this clause 7.2.2 will not apply where the original Services were provided on a time and material basis.
- 7.3 Customer agrees that, unless otherwise agreed in writing by L J Services Pty Ltd , any warranty on any third party 'Goods is limited to the warranty given by the manufacturer of those Goods and, to the maximum extent permitted by law, L J Services Pty Ltd gives no additional warranties in relation to any third party Goods.
- 7.4 L J Services Pty Ltd will not be responsible for any defect arising out of or in connection to;
- 7.4.1 misuse, abuse, neglect, errors or any other act or omission of or by the Customer or third party not contract by L J Services Pty Ltd;
- 7.4.2 alteration (improper or otherwise) or installation of the Goods by the Customer or any person other than L J Services Pty Ltd; or
- 7.4.3 power failure, power surge, lightning, flood, fire, accidental breakage or other events outside of L J Services Pty Ltd reasonable control; or
- 7.4.4 the Goods not being maintained, installed or energised in accordance with L J Services Pty Ltd instructions or in the absence of such instructions, in according to generally accepted practice for maintenance of such Goods; or
- 7.4.5 improper environmental or storage conditions where the Goods are used or installed;
- 7.5 If an order involves the supply of Goods which are consumer goods (as defined in the Australian Consumer Law), the warranties in this clause are provided in addition to any other rights or remedies the Customer is entitled to under the Australian Consumer Law. For the purposes of this clause Australian Consumer Law means the Consumer and Competition Act Cth 2010.
- 7.6 For the purposes of this clause "Warranty Period" shall mean;
- 7.6.1 the period identified for a particular Good in the product overview for that Good commencing upon the date of delivery of the Goods to the Customer; and
- 7.6.2 for all other Goods which don't have a warranty period identified in the Product and Services Catalogue then, the earlier of; (i) eighteen (18) months from the delivery date; and (ii) the date that is twelve (12) months from commercial or operational use of the Goods by the Customer.
- 7.6.3 For all services, a period of ninety (90) days from the date of delivery of the Services.
- 7.6.4 For all L j Services Pty Ltd software, a period of ninety (90) days from the date of delivery of the Software.
- 8. GOODS RETURNED FOR CREDIT AND CANCELLATION**
- 8.1 Return of Goods and cancellation of Goods and Services is only permitted by L J Services Pty Ltd in accordance with its policies from time to time (available on request) for returns and cancellations.
- 8.2 If the Client cancels or suspends any order of undelivered Goods without L J Services Pty Ltd prior written consent, L J Services Pty Ltd is entitled to charge the following cancellation fees:
- 8.3 Where the Goods are listed in L J Services Pty Ltd current Australian catalogue or price list for the time being as stock items, a cancellation fee of 15% of the Price; or
- 8.4 Where the Goods are listed in L J Services Pty Ltd current Australian catalogue or price list for the time being as non-stock items, a cancellation fee of 100% of the Price; or
- 8.5 Where the Goods are not listed in L J Services Pty Ltd current Australian catalogue or price list for the time being a cancellation fee of 100% of the Price.
- 8.6 Where the Good are manufactured by L J Services Pty Ltd, L J Services Pty Ltd is entitled to liquidated damages assessed as follows – (i) all cancellation costs associated with the return of Goods to suppliers; and (ii) where manufacture of the equipment has commenced, all direct labour costs associated with work performed to date and the associated labour cost to dismantle components which are to be returned to suppliers; and (iii) a charge of 25% of contract value for recovery of administration and design costs, overhead recovery and loss of profit.
- 9. CONFIDENTIAL INFORMATION AND PUBLICITY**
- 9.1 Each party agrees that all non-public or proprietary information relating to the business, technology or affairs of the other provided or disclosed under this agreement or during the preceding negotiations is confidential.
- 9.2 Except as required by law, neither party will use or disclose such confidential information to any third party without the prior written consent of the other.
- 9.3 Unless required by any legislation rules of a stock exchange or other government regulation, no public announcement concerning this will be made without the prior consent of both parties.
- 10. DRAWING AND DOCUMENTATION**

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- 10.1 Client acknowledges that any drawings, specifications and plans provided to Client by L J Services Pty Ltd and any statement, description, illustration or other information in L J Services Pty Ltd catalogues, websites, price lists and other advertising matter are intended merely to give a general idea of the Goods and/or Services and will not, unless otherwise agreed in writing, form any part of this agreement.
- 10.2 L J Services Pty Ltd may, if required by Client and at Client's expense, provide Client with certified drawings.
- 10.3 Client acknowledges that any drawings, specifications and plans provided to client by L J Services Pty Ltd and constitute the confidential information of L J Services Pty Ltd and that Client must not use them for any purpose other than in accordance with these terms nor disclose them to third parties.
- 10.4 If a tender, proposal or quotation is not completed, Client must return to L J Services Pty Ltd any studies, drawings or other documents submitted with L J Services Pty Ltd offer within 14 days of expiry of the tender, proposal or quotation.
- 10.5 Any performance figures stated in a tender, proposal or quotation are subject to the recognised tolerance and rejection limits applicable to those figures.
- 11. INSURANCE**
- 11.1 L J Services Pty Ltd is and is covered by the insurance policies of L J Services Pty Ltd, which include public liability and professional indemnity insurances.
- 12. LIMITATION OF LIABILITY AND INDEMNITY**
- 12.1 Subject to clauses 7.5 and clause 12.2, L J Services Pty Ltd total liability under this agreement whether in contract, tort (including negligence) or otherwise, is limited to an amount equal to the Price.
- 12.2 To the extent that terms implied by law apply to the Goods or Services, L J Services Pty Ltd liability for any breach of those terms is limited to (i) re-supplying the Goods or Services; (ii) repairing or replacing the Goods; or (iii) paying for the costs of re-supplying of the Services or the costs of re-supply or repair of the Goods.
- 12.3 Client may be required, at L J Services Pty Ltd absolute discretion, to pay any, all or part of L J Services Pty Ltd costs and expenses, on an indemnity basis, related to registration and enforcement of any security interest related to this agreement or related to ensuring the payment of clients overdue debt, including but not limited to commission and fees payable to a mercantile collection agency, solicitor or the like.
- 12.4 Notwithstanding any other term of the agreement, L J Services Pty Ltd is not liable whether in contract, tort (including negligence) or otherwise for any loss of profit, consequential damage or loss of market, data, opportunity or contracts whether to people or property arising directly or indirectly pursuant to this agreement or the performance of the Services or supplying of Goods under this agreement.
- 12.5 L J Services Pty Ltd liability for any loss or damage arising as a consequence of a breach of this agreement is reduced proportionally to the extent the act or omission (deliberate or negligent) of Client or any person (other than L J Services Pty Ltd, its employees, agents or subcontractors) contributed to the loss or damage incurred.
- 12.6 L J Services Pty Ltd will not be liable for damage or loss that is the consequence of (i) incorrect or incomplete information supplied by client; (ii) operational cessation, (iii) loss of data (Client must ensure that back-ups are made of programs and files and copies of other data that are made available by Client to L J Services Pty Ltd); (iv) any short coming of Clients in the performance of its obligations including the granting of full assistance in implementing this agreement; or (v) any use by Client of Goods other than in accordance with the documentation provided by L J Services together with an for such Goods, except to the extent that L J Services Pty Ltd expressly approves in writing such use.
- 12.7 Where damage or loss occurs as a contemplated in clause 12.5 and such damage or loss leads to any claim by a third-party, Client indemnifies L J Services against any such claim.
- 12.8 NO claim may be brought against L J Services Pty Ltd where Client has the possibility in respect of the cause of the damage to claim directly against a third-party (a supplier of L J Services Pty Ltd) or its insurer.
- 13. FORCE MAJEURE**
- 13.1 A party will not be liable to the other if performance of its obligations to the other party is delayed, impeded or prevented by any act or event beyond the control of a party, whether foreseen or not, which delays, interrupts or presents such party from performing its obligations under this agreement (**Force Majeure**).
- 13.2 If delay in the performance of this agreement due to Force Majeure continues for more than 1 month, a party may terminate this agreement by notice to the other.
- 14. SUSPENSION AND TERMINATION**
- 14.1 If client fails to pay any sum due under this agreement by the due date, L J Services Pty Ltd may by notice, in addition to its other rights under this agreement, suspend providing the Goods and Services, until all overdue amounts are paid.
- 14.2 A party may terminate this agreement by providing notice to the other party in any of following events or circumstances (i) if the other party is in breach of any of the terms of this agreement which is capable of remedy and fails to rectify the breach within thirty (30) days of the receipt of a notice from the first party requesting such rectification; (ii) if the other party is in breach of.
- 15. MISCELLANEOUS**
- 15.1 Client may request variations to this agreement in writing.
- 15.2 L J Services Pty Ltd will have no obligation to accept such variations. If the parties agree to a variation they will both execute a document that specifies the agree variations to L J Services Pty Ltd obligations and any changes to the Price, the Goods and services and the Payment Schedule.
- 15.3 Client must not, during the term of and for 6 months after termination of this agreement, solicit or engage L J Services Pty Ltd employees, agents or contractors that have been employed or engaged in relation to the Goods and Services.
- 15.4 Nothing contained or implied in this agreement will create a relationship or partnership or agency between the parties.
- 15.5 Neither party has any authority to bind the other party to any obligation.
- 15.6 Each and every obligation contained in this agreement will be treated as a separate obligation and will be severally enforceable notwithstanding the non-enforceability of any other such obligation.
- 15.7 In this agreement, a reference a thing is a reference to the whole thing and to part of the thing.
- 15.8 This agreement and all aspects of L J Services Pty Ltd engagement and performance of these Services are governed by, and construed in accordance with the laws applicable in the State of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria.
- 15.9 "L J Services Pty Ltd" means the applicable L J Services legal entity notified to the Client in writing being L J Services Pty Ltd ABN 74 805 917 671.