



GENERAL TERMS AND CONDITIONS OF SALE (effective as at 1st October 2020)

All sales of goods by Spear & Jackson (Australia) Pty Ltd ("Spear & Jackson") are made on the following general terms and conditions of sale which follow or are referred to on the face here of (the "Contract Conditions"):

1. LAW/ INTERPRETATION

- 1.1. In these Contract Conditions, headings are for convenience only and do not affect their interpretation.
- 1.2. Singular includes the plural and vice versa and reference to gender includes any other gender.
- 1.3. These Contract Conditions shall be governed by and construed in accordance with the laws in force in Victoria and the purchaser submits to the jurisdiction of the courts of that state.
- 1.4. If any provision of these Contract Conditions is invalid, illegal or unenforceable it must, to the extent that it is invalid or unenforceable, be treated as severed and any severance of a provision will not affect the validity and enforceability of the remaining provisions.

2. GENERAL

- 2.1. The Contract Conditions include all those statutory rights conferred on the purchaser which Spear & Jackson is not capable of excluding, restricting or modifying ("the purchaser's statutory rights"). All warranties and statutory rights which are capable of exclusion by agreement are hereby excluded.
- 2.2. Unless other terms are expressly accepted by Spear & Jackson by a written amendment to the Contract Conditions signed by a director or the secretary of Spear & Jackson, the Contract Conditions shall apply to the exclusion of:
 - (a) all prior discussions, representations, understandings and arrangements;
 - (b) all conditions and warranties (written or oral, express or implied) and other representations (contractual or otherwise) whether or not:
 - (i) arising under statute, by implication of law or by custom or usage, and
 - (ii) endorsed or delivered with or referred to any order of other document delivered by the purchaser to Spear & Jackson.
- 2.3. None of the purchaser's conditions will apply unless agreed to in writing by Spear & Jackson.

3. PRICES

- 3.1. The prices charged will be those ruling at the date of despatch of the goods or supply of the services, Price lists are not an offer. ALL prices are subject to change without notice.
- 3.2. All prices are quoted net of GST (as defined in the "A New Tax System (Goods and Services Tax) Act 1999" (Cth). GST will be charged on all taxable supplies (as defined) unless exemption is claimed and an approved tax or exemption certificate number is quoted and confirmed in writing.
- 3.3. Free into store. Spear & Jackson provides free into store delivery for orders exceeding a minimum invoice value (MIV), MIV is currently \$300.00 dollars. Orders below the MIV shall incur a packaging & handling (P&H) fee of \$35.00

4. PAYMENT

- 4.1. Payment shall be made in full 30 days from Statement Date for the goods or services supplied.
- 4.2. Payments in respect of export orders shall be made against documents by cash or confirmed irrevocable letter of credit.
- 4.3. All payments are to be made on or before the due date as a condition precedent to future deliveries under this or any other contract.
- 4.4. The time for payment shall be of essence of the Contract Conditions.
- 4.5. Without prejudice to any other remedy of Spear & Jackson, Spear & Jackson may charge the purchaser on any overdue accounts interest at a rate of 5% per annum above the then credit card interest rate as charged by HSBC.

5. DELIVERY OF GOODS

- 5.1. Spear & Jackson will endeavour to deliver the goods or otherwise complete the delivery within the time agreed (if any) or within a reasonable time (in the absence of agreement), but shall not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in delivery supply or completion or failure to deliver supply or complete.
- 5.2. Delivery is to be effected either by delivery of the goods to the purchasers premises or nominated delivery site.
- 5.3. Any mistake on any quotation, order, invoice, delivery docket or other document issued by Spear & Jackson shall not be binding on Spear & Jackson and Spear & Jackson may in its discretion issue such amended document as is required to rectify such mistake. The purchaser shall comply with Spear & Jackson's amended document.





- 5.4. If delay or failure is caused by "Force Majeure" or labour dispute Spear & Jackson may suspend delivery supply or completion and/or terminate the contract. "Force Majeure" means an act of God, war, lightning, fire, earthquake, storm, flood, explosion, unavailability or delay in availability of equipment materials or transport, and any other cause whether of the kind specifically enumerated or otherwise which is not within the control of Spear & Jackson.

6. RISK

- 6.1. All risk in the goods shall pass to the purchaser upon delivery.
- 6.2. The purchaser's assumption of risk in the goods as delivered shall not be interpreted as inconsistent with the retention of Spear & Jackson's title in the goods pursuant to clause 7.

7. RETENTION OF TITLE

- 7.1. Subject to clause 7.2, and unless otherwise notified in writing, the purchaser is authorised to sell the goods if it is in the ordinary course of its business to do so.
- 7.2. Until payment in full in cleared funds is received by Spear & Jackson for all goods sold and delivered by it to the purchaser, in addition to any other amounts owing to Spear & Jackson by the purchaser;
- i. title and property in the goods as delivered shall remain vested in Spear & Jackson and shall not pass to the purchaser;
 - ii. the purchaser shall hold the goods as fiduciary bailee and agent for Spear & Jackson; and
 - iii. the purchaser shall keep all goods supplied and delivered to it by Spear & Jackson separate from other property, and in a manner to enable them to be properly identified;
- 7.3. If the purchaser sells, disposes of or uses the goods before full payment in cleared funds is made to Spear & Jackson, until such time full payment is made, all monies resulting from such sale, disposal or use shall be held on trust for Spear & Jackson and specifically earmarked in the accounts of the purchaser as the property of Spear & Jackson.
- 7.4. The goods remain Spear & Jackson's goods notwithstanding that they may have been machined, cut or attached to other goods which is not the property of Spear & Jackson.
- 7.5. If the purchaser combines or incorporates the goods with other goods (not being the property of Spear & Jackson) before full payment in cleared funds is made to Spear & Jackson, so that Spear & Jackson's goods become mixed with goods of others, the purchaser hereby authorises Spear & Jackson to dismantle and remove its goods from the other goods.
- 7.6. Subject to this clause title to all goods supplied by Spear & Jackson to the purchaser shall remain vested in Spear & Jackson until all outstanding invoices have been paid in full.

8. EXPORT

- 8.1. All export sales shall be subject to the additional terms set out on the face hereof or otherwise stated by Spear & Jackson in writing. Terms used shall have the meaning assigned to them by the relevant provision of terms current at the date of the sale, to the extent they are not inconsistent with these conditions, in which case these provisions shall prevail.

9. CLAIMS AND RETURNS

- 9.1. The purchaser shall inspect all goods immediately upon receipt of delivery and within seven (7) business days of receipt of the goods, must give notice in writing to Spear & Jackson of any proposed claim stating;
- i. the relevant packaging slip/ consignment note and invoice number in respect of the goods ;
 - ii. the date and place of delivery in respect of the goods; and
 - iii. the grounds upon which the purchaser alleges that the goods do not comply with the Contract Conditions.
- 9.2. In the event the purchaser does not give written notice of a proposed claim within seven days of receipt of delivery, the goods shall be deemed to comply with the specifications of the Contract Conditions and the purchaser shall be bound to accept and pay for the goods in accordance with the Contract Conditions.
- 9.3. Disposal or use of any part of the goods in an order, which is the subject of the claim, shall be considered as acceptance by the purchaser of the complete order.
- 9.4. The purchaser acknowledges and agrees that it cannot and will not make a claim against Spear & Jackson unless at the time of the claim all of





the goods the subject of the claim remain intact.

- 9.5. Upon giving written notice pursuant to clause 9.1, the purchaser hereby agrees to allow Spear & Jackson full access to the premises of the purchaser to enable Spear & Jackson to conduct a full and proper investigation of any claim by the purchaser. Such subsequent investigation will not in any way be seen as any admission of liability by Spear & Jackson.
- 9.6. Following receipt of the claim and after investigation by Spear & Jackson, Spear & Jackson may accept the return of the goods, which is the subject of the claim.
- 9.7. No goods may be returned to Spear & Jackson without the prior written approval of Spear & Jackson and then only upon such terms as Spear & Jackson may require.

10. WARRANTY AND LIMITATION OF LIABILITY

- 10.1. Any warranties given by Spear & Jackson with respect to goods or services are set out on, or on the packaging of, or enclosures with, the particular goods to which they relate. If not, Spear & Jackson warrants the goods against faulty workmanship or parts for a period of twelve (12) months from due date of purchase (of which written evidence will be required before any repair or replacement is carried out) No warranty is given where Spear & Jackson is unable to exclude liability in relation to any goods supplied, Spear & Jackson's liability is limited (at Spear & Jackson's opinion) to;
- i. the goods have been mis-used, abused, neglected or have been involved in accident; or
 - ii. the goods have been subjected to abnormal conditions, weather or temperature, humidity, pressure, stress
- 10.2. Those warranties are in addition to the purchasers statutory rights, but it is a term of the contract that to the full extent permitted by law the liability of Spear & Jackson for breach of these conditions is limited solely to any one or more of the following as determined by Spear & Jackson namely:
- i. repairing or replacing the goods; or
 - ii. supplying equivalent goods: or
 - iii. the cost of repairing or replacing the goods.
- 10.3. The purchaser undertakes that it will not at any time seek to rely as against Spear & Jackson or any servant contractor or agent of Spear & Jackson on any term, condition warranty or representation other than these Contract Conditions.
- 10.4. No person acting without the express written authority of a director or the secretary of Spear & Jackson is authorised or permitted to give or make on behalf of Spear & Jackson any undertaking, assertion, statement, warranty, admission or other representation in respect of the goods or the service or their supply at variance with the Contract Conditions.
- 10.5. Spear & Jackson does not make any promise other than that contained in its warranties that any parts or repair facilities in respect of the goods will be available.

11. RESALE OF GOODS

- 11.1. Goods purchased may only be resold without alteration of their state, condition, get-up, packaging, or alteration or obliteration of any of the trade marks, numbers, codes or other written matter used on or in relation to the goods or their packaging, and may only be resold or used;
- ii. before any expiry date specified on or in relation to the goods and their original sealed packaging (if any) has remained intact; and
 - ii. any recommended or suggested price for the resale of the goods is a recommended price only and there is no obligation to comply with the recommendation.

12. WAIVER

- 12.1. Failure by Spear & Jackson to enforce any of the Contract Conditions shall not be construed as a waiver of any of Spear & Jackson's rights here under or a waiver of continuing breach.