

Standard Terms and Conditions of Sale			
1. Definitions and Interpretations		12.10	JMA is not liable for any labour costs or other expenditures incurred by the Customer.
1.1 In this Conditions:		13. Invoices and Payments	
Conditions means these standard terms and conditions of sale, as may be amended by JMA from time to time;		13.1 Subject to clause 24, JMA will issue an invoice for the Goods to the Customer on delivery of the Goods as determined in accordance with clause 9.	
Contract means a contract on the Conditions for the supply of Goods by JMA to the Customer pursuant to an Order;		13.2 Subject to clause 24 and unless otherwise stipulated, the Customer must pay the entire amount of an invoice in immediately available funds prior to delivery of the Goods as determined in accordance with clause 9.	
Customer means a person to whom JMA supplies Goods;		13.3 If any sum remains unpaid after the due date for payment, JMA may charge the Customer interest on the overdue amount at the rate per annum which is the aggregate of 2.0% and the prime lending rate published by Westpac Banking Corporation (or any rate that replaces that rate), from the due date for payment until the overdue amount including any accumulated interest is paid. Interest shall be calculated on daily balances.	
Goods means all goods and/or services supplied by JMA to the Customer;		13.4 The charging or payment of interest shall be without prejudice to any other rights or remedies JMA may have to recover any amount due for Goods sold or agreed to be sold by JMA.	
JMA means Johnson Matthey (Aust) Ltd (ACN 004 146 838); (ABN 62 004 146 838)		14. Lien	
Order means an order for Goods placed by the Customer to JMA;		14.1 Notwithstanding any other remedies JMA may have in respect of unpaid debts due to it from the Customer, JMA is entitled to a general lien on all goods or property of the Customer in JMA's possession to cover any unpaid debts due to it from the Customer.	
2. Conditions of Sale		14.2 JMA may, on fourteen (14) days written notice to the Customer, dispose of such goods or property of the Customer as JMA thinks fit and to apply any processed received towards such debts.	
2.1 The Conditions are deemed to be incorporated into all Contracts and supersede all terms and conditions previously issued by JMA.		14.3 Right of Set Off	
2.2 The Conditions will prevail to the extent of any inconsistency between the Conditions and an Order.		15.1 JMA may, at any time without notice to the Customer, set off any liability of the Customer to JMA against any liability of JMA to the Customer whether the liability of the Customer or JMA is actual or contingent, primary, collateral or joint and several and whether expressed as a liability to pay money or a liability to delivery or transfer precious metal or goods.	
2.3 JMA may accept or reject an Order in its sole discretion.		16. Retention of Title	
2.4 Where the Customer places an Order which contains terms and conditions different from the Conditions, subsequent delivery of the Goods to the Customer shall be deemed to be a counter-offer to supply the Goods on the Conditions and such counter-offer shall be deemed to be accepted by the Customer on acceptance of the Goods.		16.1 JMA and the Customer agree that property in and title to Goods delivered by JMA to the Customer is only transferred to the Customer when the Customer has paid all sums owing to JMA in relation to the relevant Goods whether under this or another contract.	
3. Variation		16.2 Until the Customer makes payment in full for Goods and title to the Goods passes to the Customer in accordance with clause 16.1:	
3.1 No variation of these Conditions shall have any effect unless in writing and signed by or on behalf of JMA.		(a) the relationship between the Customer and JMA shall be fiduciary and the Customer shall hold the Goods and any products into which the Goods have been incorporated as bailee and, at its own expense, store them separately in a manner that clearly identifies such Goods as the property of JMA;	
4. Prices & Quotations		(b) the Customer must at all time and at its own cost maintain such insurance in respect of such Goods and any products into which the Goods have been incorporated as JMA in its absolute discretion deems necessary. Where there is loss or damage to Goods or any products into which the Goods have been incorporated, the Customer shall take all reasonable steps to claim for the loss and/or damage under the insurance described in this clause 16.2(b), and the Customer shall hold all monies paid under such insurance in trust for the Company in a separate account;	
4.1 A quotation for Goods is open for acceptance by the Customer up to 3:30 pm EST on the day the quotation is provided, however, that JMA reserves the right to withdraw a quotation at any time before acceptance.		(c) notwithstanding any other provision of this clause 16, the Customer may sell Goods and any products into which the Goods have been incorporated in the ordinary course of the Customer's business and deliver them to any third party provided that:	
4.2 JMA reserves the right to vary any prices specified in a quotation to reflect metal market prices prevailing at the time of acceptance of order by JMA.		(i) the Customer shall not represent to any third party that it is acting on behalf of JMA;	
4.3 Unless otherwise stated in a quotation, freight and insurance will be charged at rates prevailing on the date of dispatch for delivery.		(ii) the Customer shall not be entitled to bind JMA to any liability to any third party whether in contract or otherwise;	
4.4 All prices quoted and invoiced by JMA are strictly net.		(iii) subject to clause 16.2(c)(v) below, the Customer shall enforce and be responsible for the enforcement of any contract for the sale of the Goods to the third party	
5. Taxes and Customs Duty		(iv) where the Customer is paid by the third party, the proceeds of the sale shall be held in trust by the Customer for JMA in a separate account; and	
5.1 JMA reserves the right to adjust prices by an amount equal to any applicable sales tax, consumption, retail or value added or like tax, duty or charge payable by JMA which may be levied on the sale of the Goods. JMA is not liable for any customs duties or other charges, fines or assessments whatsoever levied on the Goods.		(v) where the Customer is not paid by the third party, the Customer agrees at the option of JMA to assign its claim against the third party to JMA upon JMA giving notice to the Customer in writing;	
6. Quantities		(d) JMA shall be entitled to possession of the Goods and any products into which the Goods have been incorporated and may recover and sell the same and retain so much of the proceeds of sale as is equal to the amount owing by the Customer to JMA;	
6.1		(e) in addition to any other rights which JMA may have under the Conditions or at law, the Customer gives JMA, its agents and employees leave and licence, without the necessity of giving notice, to enter the premises of the Customer (or the premises of any associated company or agent of the Customer where the Goods are located) at any time to inspect, search for or retake possession of such Goods without liability for trespass or any resulting damage; and	
7. Sub-Contracting		(f) the Customer shall not mortgage, charge, encumber or create any other security interest over the Goods without JMA's prior written consent.	
7.1 JMA may, in its absolute discretion, sub-contract the manufacture, supply and/or delivery of the Goods.		17. Risk	
8. Dispatch Dates		17.1 Notwithstanding Clause 16, Goods supplied by JMA shall be at the sole risk of the Customer from the time at which they are delivered in accordance with clause 9.	
8.1 Although JMA will use its best endeavours to meet dispatch forecasts, dispatch dates given are estimates only and JMA is not liable in any circumstances for loss or damage, whether direct or indirect, from delays in dispatch however arising.		17.2 JMA shall not in any circumstances be liable for loss of or damage to Goods in transit to the Customer unless:	
9. Delivery		(a) JMA has agreed to deliver the Goods to a certain location and the loss of or damage occurs before the Goods arrive at the agreed location;	
9.1 Delivery to the Customer, and acceptance of the Goods for the purposes of clause 2.4 will be deemed to have been made when the Goods are delivered to either:		(b) any damage or shortage is reported in writing to JMA and the carrier within seven (7) days after delivery; and	
(a) the premises of the Customer or the premises nominated by the Customer; or		(c) in the case of a total loss, the Customer gives written notice to JMA of the non-arrival of the goods within a reasonable period (not exceeding two (2) weeks) after receipt of JMA's invoice.	
(b) a carrier commissioned by either the Customer or JMA.		Goods returned by the Customer to JMA shall be at the sole risk of the Customer until such Goods have come into custody of JMA at the premises of JMA where (having regard to the nature of the Goods and the reason for their return) the Goods will be unpacked and/or inspected. This clause 17.3 shall apply notwithstanding that the Goods may come into the possession or custody of JMA at some earlier time, whether by collections or otherwise.	
10. Separate Deliveries		18. Cancellation	
10.1 JMA reserves the right to deliver Goods in instalments and, if delivery is made by instalments, the Customer shall not be entitled to terminate or cancel the Order or to compensation for any loss or damage, whether direct or indirect, by reason only of the delivery by instalments.		18.1 If an Order is cancelled by the Customer, the Customer must pay for metal price movements and the costs incurred by JMA up to and including the date of cancellation for all items ordered, supplied, or manufactured in execution of the Order.	
11. Recovery of costs		18.2 JMA may cancel an Order by a written notice to the Customer, and without prejudice to the recovery of any cost expenses incurred by it, if:	
11.1 If the preparation of an Order or the delivery of Goods is delayed or suspended by the Customer's instructions or failure to instruct, JMA reserves the right to adjust the price payable for the Goods to cover any extra expenses incurred by JMA directly or indirectly as a consequence of the Customer's instructions or failure to instruct as the case may be.		(a) the Customer instructs JMA to suspend manufacture of the Goods in fulfilment of the Order and does not instruct JMA to recommence manufacture of the Goods in fulfilment of the Order within [14] days;	
11.2 If the Customer is unable to take delivery of the Goods when they are ready for despatch, JMA reserves the right to recover any costs incurred by it for the storage of such Goods.		(b) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of JMA:	
12. Warranty			
12.1 Subject to clauses 12.4 and 12.5, JMA warrants that the Goods shall:			
(a) be free from defective materials and workmanship;			
(b) conform to such written specifications that have been expressly accepted by JMA;			
(c) if containing precious metals, conform to standard levels of purity			
12.2 The Warranty shall not apply:			
(a) if the Goods are subject to misuse, abuse, accident or improper treatment;			
(b) if the Goods are installed, used, maintained or operated otherwise than in accordance with instructions provided by JMA;			
(c) if the Goods are damaged by foreign objects;			
(d) in respect of any damage arising from abrasion, erosion, corrosion, deterioration, or the like contributed to by abnormal temperatures, the influence of foreign matter or energy or the physical or chemical properties of water, steam or chemical compounds unless the Goods were supplied for a duty which contemplated the above contributing elements and in respect of which elements there is specific and detailed prior disclosure by the Customer.			
12.3 JMA's liability under the Warranty is limited, at JMA's option, to:			
(a) the repair or replacement of such Goods or the supply of equivalent Goods; or			
(b) the payment of the cost of repairing or replacing such Goods or supplying equivalent Goods.			
12.4 Goods not manufactured by JMA are sold only with such warranty as the manufacturer thereof has given to JMA and as JMA may be able to enforce.			
12.5 Where Goods are sold for use in combination with other equipment or materials the Warranty is limited to the Goods sold and not to any combination with other equipment or materials.			
12.6 The Warranty is the sole warranty in relation to the Goods and, to the extent permitted by law, all warranties and conditions in relation to the Goods whether expressed or implied by statute, common law, trade custom or usage are expressly excluded.			
12.7 If any law (including the <i>Trade Practices Act 1974</i> (Cth)) implies any condition or warranty into the Conditions, and that law avoids or prohibits provisions excluding or modifying the operation of such condition or warranty, then to the extent permitted by law, JMA's liability for any breach of such a condition or warranty is limited to, at JMA's option:			
(a) the repair or replacement of such Goods or the supply of equivalent Goods; or			
(b) the payment of the cost of repairing or replacing such Goods or supplying equivalent Goods.			
12.8 The Customer must notify JMA of any claim that the Goods are defective within seven (7) days of receipt of Goods. JMA reserves the right to require the Customer to return, at JMA's cost, the defective Goods for examination by JMA.			
12.9 Once JMA has complied with its obligations under clause 12.3, any Goods returned to JMA pursuant to clause 12.8 will become the property of JMA.			

- (i) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
- (ii) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
- (iii) a resolution that it be wound up is passed or proposed;
- (c) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (d) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (e) the Customer enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (f) the Customer ceases or threatens to cease carrying on his business or pay its debts as and when they fall due.

19. No Assignment

19.1 The Customer must not assign, transfer, create any charge or otherwise deal in any other way with any of its rights under a Contract without the prior written consent of JMA which JMA may give or withhold in its absolute discretion.

20. Tools

20.1 Unless otherwise agreed by JMA in writing, all tools, dies, patterns and other items made by or for JMA for the execution of an Order, shall remain the property of JMA notwithstanding any charge payable by Customer in respect thereof.

21. Intellectual Property

21.1 JMA accepts no liability for any claims against the Customer for any infringement of any patent or other intellectual property rights in the use, resale or offering for resale of the Goods.

22. Limitation of Liability

22.1 Subject to clauses 12.3, 12.7 and 22.2, JMA's liability to the Customer whether in contract, tort (including negligence) or otherwise in connection with or arising out of the supply of Goods shall not exceed the value of the relevant Goods supplied pursuant to the Contract.

22.2 In no circumstances shall JMA be liable for any loss of profits, loss of opportunity, loss of revenue, loss of actual or anticipated savings, loss of goodwill, exemplary, punitive or special damages or any other indirect or consequential loss.

23. Force Majeure

23.1 If the manufacture or supply of the Goods, or JMA's ability to comply with its obligations under a Contract, is prevented, interrupted, hindered or delayed by any cause whatsoever beyond the control of JMA including, but not limited to, strikes, lock-outs, raw material shortages, accidents or breakdown of plant machinery (*Force Majeure*) JMA is excused from its obligations under the Contract for the duration and to the extent of the Force Majeure. If a Force Majeure continues for a period of [1] month, JMA may terminate the Contract on written notice to the Customer.

24. Application and extension of credit

24.1 The Customer may apply for trade credit by completing the attached trade credit application.

24.2 The extension of trade credit to the Customer shall be at the absolute discretion of JMA at all times.

24.3 JMA reserves the right to require a guarantee and indemnity to be given by any person in relation to an application for trade credit approval on such terms as may be determined by JMA from time to time.

24.4 JMA reserves the right, without prior notice, to refuse to extend any further trade credit to a Customer. JMA's approval of this application does not require JMA to extend trade credit to the Customer in any particular amount.

24.5 To allow JMA to assess the Customer's application for trade credit, the Customer authorises JMA to do each of the following, in accordance with the provisions of the *Privacy Act 1988* (Cth):

- (a) obtain from a credit rating agency, a credit report containing personal information about the Customer and any guarantor (if applicable);
- (b) obtain from a credit reporting agency any other information in relation to the Customer's commercial credit activities; and
- (c) give to and obtain from any credit provider named in the Customer's credit application and any credit provider named in a credit report issued by a credit reporting agency, information about the Customer's credit arrangements.

24.6 Where trade credit is approved in accordance with this clause 24:

- (a) JMA will periodically issue an invoice to the Customer for the Goods;
- (b) the Customer must pay the amount of the invoice, up to the approved trade credit limit, in immediately available funds on the last Business Day of the month following the month in which the invoice was issued or such other date as indicated on the invoice; and
- (c) the Customer must pay the amount of the invoice in excess of the approved trade credit limit, in immediately available funds promptly prior to despatch of goods.

25. Governing Law

25.1 The Conditions and any Contracts are governed by the laws of the State of Victoria and JMA and the Customer submit to the non-exclusive jurisdiction of the courts of Victoria.

26. Severance

26.1 If one or more provisions of the Conditions is or becomes void, voidable or unenforceable for any reason, the Conditions shall be read and enforced as if the void, voidable or unenforceable provisions had been deleted and all other provisions remain in full force and effect.