

TERMS OF TRADE

1. DEFINITIONS

Buyer means the party issuing the request for supply of Goods and / or Services to JPL.

Custom made fixture means Any light fixture which requires specific material, colour, size, shape or design, which is made up of different components and put together as a finished product. such as, but not limited to this are as follows: Circa, Conic, Rubic, Cubic, Fractal, Hive, Vector, and Oval pendants. Other fittings which have non standard colours or colour combinations are also classified as custom fixtures.

Goods means all light fittings and related equipment.

JFL means Jan Flook Lighting Pty Ltd A.C.N. 132 675 748 and its agents, servants and employees; 'Goods' means all products and services agreed to be supplied by JFL to the Buyer under any Contract; 'Buyer' means any person who acquires Goods from JFL under a Contract; 'Contract' means any contract for the supply of Goods entered into between JFL and the buyer; 'Quoted Date' means the date of delivery as agreed between the Buyer and JFL; 'Statutory Provisions' means the Competition and Consumer Act 2020 and any statutory amendments thereof for the time being in force and any other relevant and applicable State and/or Commonwealth Legislation;

Services means all services provided by JFP including installation and repair and maintenance services, and professional advice.

Stock fixture means a pre-existing item which is not subject to any changes in its shape, size, colour, design or can be customised for specific project requirements. In the event that a 'Stock fixture' is required to be altered for any reason, it becomes classified as a 'Custom made fixture' and is subject to the terms and conditions of these types of fixtures.

2. WHOLE OF CONTRACT

- (a) Unless JFL otherwise agrees in writing, these are the only terms and conditions for the supply of Goods by JFL to the Buyer to which JFL will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any); and
- (b) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited, to those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

3. PURCHASE ORDERS

When ordering Goods an official order is to be submitted showing order number, Australian Business Number and a full description of Goods to ensure the order is correctly filled.

4. WARRANTIES

- (a) JFL warrants that the Goods supplied are of merchantable quality;
- (b) Any liability for breach of sub clause 4(a) or a condition or warranty implied into the Contract by law including without limitation the Statutory Provisions (other than a condition implied by sections 51 -53 of the Competition Consumer Act) is limited to any one of the following as determined by JFL.
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the replacement of the Goods or payment of the costs of having the Goods repaired by JFL
 - (iii) any modification, unauthorized opening or changes made to the fixture without the agreement of JFL will deem the warranty to be void immediately.
 - (iv) The Buyer will examine the Goods for defects and shall notify JFL of any defects in writing within 24 hours of delivery. If the Buyer does not notify the JFL within 24 hours of delivery the Buyer shall be deemed to have accepted the Goods.
- (c) To the extent the law permits, JFL excludes all other liability to the Buyer arising out of or in any way connected with a Contract including any liability for consequential or indirect losses of any kind what so ever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not be limited to:
 - (i) any loss of income, profit or business;
 - (ii) any loss in the nature of overhead costs; and
 - (iii) any loss of goodwill or reputation.
- (d) Costs incurred by JFL are limited to the shipment and replacement of Goods damaged and does not in any way, shape or form cover the removal or installation of replacement Goods, hire of installation equipment, hire of labor to undertake works or disposal of packaging materials or defective goods, unless otherwise agreed to by JFL in writing. JFL must be given the opportunity to select any contractors to undertake any agreed repairs or replacements. Under no circumstances will JFL pay for the hire of any at height working equipment, including but not limited to ladders, scaffolding, scissor lifts or the

like. Ceiling fixings of fittings which are not accessible by a maximum legal height ladder of 3 metres or located in difficult to reach locations such as stairwells, double height voids or the like will not be considered in any such agreed costs. If agreed by JFL to repair or replace fittings, it will only be undertaken from Monday to Friday from 9am to 5pm.

- (e) The warranty period is for Twelve (12) Months. The date of the warranty period starts from the date the fittings are received, by the nominated receiver. It is assumed that the fittings are received, installed and operational on the date received. Dependent on the type of item selected the warranty period may vary from the standard 12 Month period. All variations to the warranty period must be confirmed in writing.

5. ADVICES

The Buyer hereby acknowledges that it has not relied on any service involving skill or judgment, or any advice, recommendation, information or assistance provided by JFL in relation to the Goods or their use or application.

6. SAMPLES

When a Contract is conditional on the Buyer's approval of a sample provided by JFL there is no undertaking, and it shall not be a term of the Contract, that the Goods will be exactly the same as the sample, although JFL will use its best endeavor's to ensure the Goods supplied are identical with the sample.

7. CANCELLATION OF ORDERS

Orders cannot be cancelled without JFL's written consent and then only under terms that will indemnify Jan Flook Lighting Pty Ltd against any loss. Please read definitions for 'Custom made fixture' and 'Stock fixtures'. Please confirm with your project manager what each item on a quote is classified as prior to ordering.

- (a) Should you wish to cancel a purchase order placed via email or fax please call the project manager within 24 hours of submitting order on +61 3 9399 5805 and email to Jan@janflooklighting.com.au
- (b) If an order is cancelled after a deposit has been paid and production has commenced, you are liable for the full payment for the order for any 'Custom made fixtures'. Payment for cancelled orders must be received within 2 weeks from the date of the cancellation notice being received. If no cancellation notice is received, 'JFL' will seek to retrieve any outstanding invoices as a matter of priority.

- (c) For 'Stock fixtures' a restocking and packaging fee of 20% applies based on the cost of the fixture as long as Goods are merchantable quality. For Goods which have been returned and not deemed to be of merchantable quality, JFL requires that 100% of costs are paid.

- (d) All terms and conditions issued by JFL are final and by agreeing to the quote with either a signature, purchase order or the receipt of a deposit by the purchaser, the purchaser acknowledges and agrees to the terms and conditions set out by JFL as final and overriding all other terms and conditions set out by the purchaser.

8. DELIVERY

JFL will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the Quoted Date, but JFL shall not be liable for any failure to deliver or delay delivery for any reason. JFL does not warrant the service provided by any of its freight carriers and in no way guarantees the delivery of a third party service. It is the buyers responsibility to ensure that they have a authorized receiver for goods, delivery details are correct prior to goods being dispatched, ensure that the necessary personnel and equipment is present to remove goods from delivery vehicle . Any additional charges incurred by JFL for the delivery of Goods to site, will be at the buyers cost.

9. RISK

- (a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the Buyer.
- (b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to JFL that, in the storage and handling of the Goods, the Buyer and his agents or carriers shall comply with all relevant laws and regulations, and shall comply with all necessary and/or relevant permits or licenses pertaining thereto.
- (c) If JFL does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date.

10. PROPERTY

Property in the Goods shall not pass to the Buyer until all amounts owing to JFL by the Buyer under the order relating to those goods are paid in full. Until that time:

- (a) the relationship between the parties shall be fiduciary and the Buyer shall hold the Goods solely as bailee of JFL.
- (b) the Buyer shall store the Goods separately from other Goods and in a manner which clearly identifies them as the property of JFL and shall keep separate stock records for all such Goods. However, the customer may:
 - (i) convert the Goods or incorporate the Goods into a new product or new products (the "new products") provided, however, that if the customer does so then, to the extent of the amount remaining unpaid on the Goods so converted or incorporated, the customer shall hold his interest in the new products on trust for JFL;
 - (ii) sell the Goods or the new products in the ordinary course of the Buyer's business provided, however, that the Buyer does not hold himself out as agent of JFL and further provided that the Buyer holds separately and on trust for JFL such part or the proceeds of sale of Goods or new products as equals the amount remaining unpaid on the Goods so sold. And/or the Buyer shall account to JFL for such part of the proceeds.
- (c) JFL may cancel the Buyer's right under sub clause (b) above and may enter upon premises at which its Goods or the new products are stored without liability for trespass or any resulting damage and retake possession of the Goods or take possession of the new products if:
 - (i) being a corporation the Buyer commences to be wound up or is placed under official management or a receiver and manager is appointed over its undertaking or property, or any part thereof;
 - (ii) being a natural person the Buyer becomes insolvent or bankrupt or commits an act of bankruptcy;
 - (iii) the Buyer enters into an arrangement or assignment for the benefit of creditors
 - (iv) the Buyer parts with possession of the Goods other than in the ordinary course of business; or
 - (v) in the reasonable opinion of JFL, the Buyer breaches any of these terms of trade.
 - (vi) Any debt collection charges incurred whilst collecting unpaid invoices will be paid by the buyer.

11. HOLDING/STORAGE FEE

In the event that a consignment is completed and not able to be dispatched due to late payment, site delays or other reasons. 'JFL' will provide a 1 week holding period when agreed in writing. After 1 week, 'JFL' reserves the right to charge a holding/storage fee of \$50+GST per pallet/skid per week and \$25+GST per carton per week. Invoices for holding/storage fees will be sent a week in advance and must be paid prior to orders being dispatched.

12. PRICE

Unless otherwise agreed in writing, the price charged for the Goods shall be the ruling price as determined by JFL at the date of delivery. Any price lists are subjected to alteration in accordance with the ruling price at that date.

13. FORCE MAJUERE

Deliveries may be totally or partially suspended by JFL during any period in which JFL may be prevented or hindered from manufacture, delivery or supply through any circumstances outside JFL's reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication, JFL shall not incur any liability to the Buyer in respect of such suspension.

14. WAIVER

The failure of JFL at any time to insist on performance of any provision of these terms and conditions is not a waiver of JFL's rights at any later time to insist on performance of that or any other provisions.

15. GOVERNING LAW

The supply of Goods under these terms and conditions is governed by the law of the State of Victoria and JFL and the Buyer submit to the exclusive jurisdiction of the courts of the State of Victoria.

16. INTELLECTUAL PROPERTY

The Buyer acknowledges that the Goods are manufactured under design and copyrights which are the exclusive intellectual property of JFL and that all names and marks are also exclusive intellectual property of JFL and the Buyer shall not copy or permit any third party to copy any of the Goods or in any other infringe such intellectual property rights of JFL.

17. REFUND AND EXCHANGE POLICY

JFL endeavors to manufacture and supply high quality fixtures. In the event that you are dissatisfied with your purchase, JFL will assist you with the relevant options for the type of fittings.

For items which are pre-boxed and not customised or altered in any way shape or form, and returned within 7 days of receipt of goods in their original packaging and in good merchantable order, JFL will offer a refund. A 20% charge will be applied to restocking fee for the goods only. The original freight and packaging charges and return of goods to JFL and cost of reshipping is at the buyers expense.

For customised fixtures, which include specific colour combinations, materials, sizes, shapes, bespoke designs to Buyers specifications or to JFL design. JFL does not offer a refund, exchange or credit. In the event that an order is cancelled and no design documentation has commenced or production has commenced then a refund may be applied in full or in part.

In the event that an item is found to be faulty and no longer constitutes part of JFL's product offering, JFL may elect to either swap the faulty item for a similar item at a similar price or refund the cost of the item to the purchaser.

From time to time, a product may be altered and JFL reserves the right to make any such changes it deems fit, without prior warning. JFL cannot guarantee consistency of fabrics, LED's or the like from different batches. We endeavor to do our best to match these where possible.

18. INSURANCE POLICY

JFL holds Public Liability Insurance and any claim cannot exceed \$10 Million dollars.

19. PERSONAL PROPERTY SECURITIES ACT 2009 ('PPSA')

(a) In this clause financing statement, financing change statement, security agreement and security interest has the meaning given to it by the PPSA.

(b) Upon assenting to these terms and conditions, the Buyer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Services that have previously been supplied and that will be supplied in the future by JFL to the Buyer.

(c) The Buyer undertakes to:

(i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which JFL may reasonably require to:

(a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ('PPSR');

(b) register any other document required to be registered by the PPSA; or

(c) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);

(ii) indemnify, and upon demand reimburse, JFL for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Services charged thereby;

(iii) not register a financing change statement in respect of a security interest without the prior written consent of JFL;

(iv) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of JFL.

(d) JFL and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

(e) The Buyer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

(f) The Buyer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

(g) Unless otherwise agreed to in writing by JFL, the Buyer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

(h) The Buyer must unconditionally ratify any actions taken by JFL under clauses 10.3 to 10.5.

(i) Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

20. DEFAULT AND CONSEQUENCES OF DEFAULT

(a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at JFL's sole discretion such interest shall compound monthly at such a rate) after, as well as before any judgment.

(b) If the Buyer owes JFL any money, the Buyer shall indemnify JFL from and against all costs and disbursements incurred by JFL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor/Buyer basis, JFL's contract default fees, and bank dishonour fees).

- (c) Without prejudice to any other remedies JFL may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions, JFL may suspend or terminate the supply of Services to the Buyer. JFL will not be liable to the Buyer for any loss or damage the Buyer suffers because JFL has exercised its rights under this clause.
- (d) Without prejudice to JFL's other remedies at law, JFL shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to JFL shall, whether or not due for payment, become immediately payable if any money payable to JFL becomes overdue, or in JFL's opinion the Buyer will be unable to make a payment when it falls due.

21. DISPUTES

- (a) If JFL or the Buyer believes a dispute has arisen in relation to any matter under these terms and conditions, then that party must promptly give the other party written notice setting out the matter in dispute.
- (b) Both parties shall meet within seven (7) days of the giving of such notice to attempt to resolve the dispute.
- (c) In the event that the dispute cannot be resolved then the matter shall be referred to a mutually agreed third party or, failing agreement on a third party, to the Resolution Institute (www.resolution.institute) for assistance in the resolution of the dispute.

22. TERMINATION

- (a) JFL may cancel any contract or order to which these terms and conditions apply or cancel delivery of Goods / Services at any time before the Goods / Services are delivered by giving seven (7) days' email notice to the Buyer. On giving such notice and provided that the Goods / Services have not yet been delivered, JFL shall repay to the Buyer any money paid by the Buyer for the Goods / Services. JFL shall not be liable for any loss or damage whatsoever arising from such termination.
- (b) In the event that the Buyer cancels delivery of Goods / Services, the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by JFL as a direct result of the cancellation.