

**JAYBEN AUSTRALIA PTY LTD
JAYBEN-RUSSELL PTY LTD T/A SEWELL SWEEPERS AND T/A SUPERIOR BROOM AUSTRALASIA**

STANDARD TERMS AND CONDITIONS

1. Definitions

- a) "Customer" means the buyer of the Goods or Services as set out in the Quote.
- b) "Goods" means the goods to be provided by the Supplier to the Customer as set out in the Quote.
- c) "Services" means the services to be provided by the Supplier to the Customer as set out in the Quote.
- d) "Supplier" means Jayben Australia Pty Ltd or Jayben-Russell Pty Ltd (trading as Sewell Sweepers and/or trading as Superior Broom Australasia), as specified in the Quote.
- e) "Quote" means the quotation issued by the Supplier for the supply of Goods or Services which attaches or refer to these Terms.
- f) "Terms" means these terms and conditions.

2. General

- a) These Terms apply to the sale and supply of Goods and Services as set out the Quote. By accepting the Quote (whether in writing or by conduct), the Customer agrees to acquire the Goods and Services subject to these Terms. Unless otherwise agreed and signed in writing by the Customer and the Supplier, to the extent permitted by law, these Terms are the only terms that apply to the supply of Goods and Services by the Supplier to the Customer.
- b) Without limiting clause 2.a), these Terms and the relevant Quote constitute the entire terms of the agreement for the supply of the Goods and Services to the exclusion of all other terms and conditions (whether written or verbal), including any terms and conditions set out in any printed document issued by the Customer.
- c) Any additions to or variations of these Terms are only effective if they are signed in writing by the Supplier.
- d) This contract is governed by and is constructed in accordance with the laws of the State of Victoria, Australia. The parties hereby submit to the non-exclusive jurisdiction of the courts of Victoria.

3. Prices stated in Quotes

- a) Unless otherwise stated, all prices quoted by the Supplier are based on customs duty, freight and foreign exchange rates applicable at the date of the Quote. The Supplier reserves the right to increase the price included in a Quote because of any change between the date of the Quote and the date when the Customer accepts the Quote, in any of the following: (a) customs duty; (b) foreign exchange rates; (c) freight, marine, all risks and other insurances; (d) freight costs and expenses; (e) costs of sub-contracted items of work and goods; (f) salaries, wages or other employee entitlements; (g) costs of component parts purchased from other suppliers; (h) any charge or new tax imposed in relation to the goods unless it is specified in the Quote; (i) the Consumer Price Index; and (j) government taxes or other levies.

4. Delivery

- a) The Supplier will deliver the Goods to the delivery place nominated in the Quote ("the Place of Delivery"). The Customer will pay the Supplier delivery charges in accordance with the Supplier's current rates, or otherwise as set out in the Quote.
- b) The Customer authorises the Supplier to deliver Goods to the Place of Delivery and to effect delivery by leaving the Goods at the Place of Delivery whether or not any person is present to accept delivery. The Supplier is not liable on any basis whatsoever for any loss or damage to the Goods occurring after delivery to the Place of Delivery.
- c) The Supplier is not obliged to obtain a signed receipt or other acknowledgement at the Place of Delivery. However, if a signed receipt or other acknowledgment of delivery is obtained from a person at the Place of Delivery who appears to be authorised by the Customer to sign or otherwise take delivery, then, to the extent

permitted by law, such signed receipt or other acknowledgement is deemed to be conclusive evidence of the delivery.

- d) All quoted delivery dates are estimates only. The Supplier is not obliged to meet such dates and will not be liable to the Customer by reason of delays caused by any reason whatsoever.
- e) Unless otherwise stated in the Quote, the Supplier may deliver the Goods by instalments (where in the Supplier's opinion this is reasonable to do so) and issue interim invoices to the Customer.
- f) Without limiting any other provision in these Terms, failure by the Customer to pay any instalment, or any other amount when due, will entitle the Supplier to withhold or delay delivery of any remaining Goods ordered.

5. Services

- a) The Supplier will perform the Services in accordance with the scope and description of the Services as set out in the Quote, using reasonable care and skill.
- b) The Customer must comply with such requirements as set out or referred to in the Quote so as to allow the Supplier to perform the Services.
- c) All intellectual property created in the course of performing the Services is and remains the exclusive property of the Supplier. The Customer is granted a limited, non-exclusive, personal licence to use the Supplier's intellectual property to the extent required to receive the benefit of the Services.
- d) Unless otherwise specified in the Quote, all design control for any design created by the Supplier as part of the Services resides with the Customer. To the extent that the Supplier provides any input to the Customer in connection with any design, it is provided on an "as is" basis and Customer must independently review and accept the input. The Customer remains solely responsible for any designs created by the Supplier and releases and indemnifies the Supplier from and against any claims arising from or in connection with any design produced as part of the Services.

6. Title and Risk

- a) Until all monies owing by the Customer to the Supplier are paid in full, title to the Goods supplied under these Terms are retained by the Supplier. Until then, the Customer is a bailee of the Goods and must: (a) keep them in its possession and control; (b) keep them in good repair and condition, excluding fair wear and tear; (c) keep them stored separately and marked so that the Goods are clearly and easily identifiable as the Supplier's property; (d) inform the Supplier of the location of the Goods, if requested; (e) not sell the Goods or use the Goods in a manufacturing or construction process other than in the ordinary course of its business; (f) not otherwise sell, assign or let them or any interest in them, or permit any charge, pledge, lien, encumbrance or other security interest to be created in relation to them; (g) maintain and allow the Supplier to inspect records which: (i) identify any unpaid Goods owned by the Supplier; (ii) detail third parties to whom the Customer sells or otherwise disposes of the unpaid Goods; and (iii) detail payments made by such parties for the unpaid Goods.
- b) Unless otherwise specified in the Quote, risk in the Goods passes to the Customer immediately upon dispatch of the Goods from the Supplier's premises.
- c) If the Customer does not pay for any Goods on the due date for payment, the Customer authorises the Supplier, its employees and agents to enter the Customer's premises (and any premises under the control of the Customer or an agent of the Customer if the Goods are located on those premises) and use reasonable force to retake possession of the Goods without liability for trespass or damage. The

Supplier may at its option keep or resell Goods retaken from the Customer.

d) If the Customer sells the Goods, or uses the Goods in a manufacturing or construction process of its own or some third party, before payment in full to the Supplier, the Customer holds the proceeds on trust for the Supplier in respect of those Goods, grants the Supplier a security interest in the payments received by the Customer for the Goods or process, and must keep such proceeds in a separate account until the liability to the Supplier is discharged and must immediately pay that amount to the Supplier.

e) The Customer acknowledges and agrees that this clause 6 creates a security interest in all present and after acquired goods and any proceeds as security for the Customer's obligations to the Supplier, that the Supplier is a secured party in relation to the Goods and any proceeds of the Goods, and is entitled to register its interest on the register as a security interest; and if applicable, a purchase money security interest; and the Supplier is not obliged to give any notice, document or information under the *Personal Property Securities Act 2009* (Cth), unless the provision of the notice, document or information is required by the Act and cannot be excluded.

f) Terms that are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in this clause 6.

7. Payment / Account Term

a) All Goods and Services supplied by the Supplier to the Customer must be paid for in full by the Customer no later than 30 days from the date of each invoice issued by the Supplier ("the Due Date").

b) The Supplier reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery for any reason, including where the credit worthiness of the Customer at the time is, in the Supplier's opinion, unsatisfactory.

c) If any amount owing to the Supplier is outstanding on the Due Date, without prejudice to any other right or remedy, all outstanding money will bear interest on daily balances until paid at a rate of interest per annum equal to 5% per annum above the rate set out in the *Penalty Interest Rates Act 1983* (Vic), until the entire amount is paid.

d) The Supplier is entitled to add to any invoice, the amount of any stamp duty and sales, excise, goods and services tax, consumption or any other tax or imposts applicable to the supply of the Goods or Services.

8. Warranties

a) To the maximum extent permitted by law, the Supplier disclaims all warranties and terms including, without limitation, in relation to the fitness for purpose of the Goods and Services. The Customer must carry out all proper inspection, testing and commissioning of the Goods and deliverables from the Services before taking possession, and releases the Supplier from all liability and claims arising from any issues or defects that could have been detected by such inspection, testing and commissioning.

9. Liability

a) To the maximum extent permitted by law, the Supplier is not liable for any claim any basis and in any circumstances where:

(i) the claim is not made in writing and notified to the Supplier within the earlier of: (A) fourteen (14) days of the date of delivery of the Goods; and (B) seven (7) days after the Customer learns of the facts giving rise to the claim; or

(ii) the claim is in respect of Goods which, at the date of the claim or at any time prior to settlement of the claim, have been incorporated into any other goods or products.

b) To the maximum extent permitted by law, the Supplier's liability to the Customer on any basis and in any circumstances (including liability for negligence) will not exceed the amount paid by the Customer to the Supplier for the Goods and Services.

c) To the maximum extent permitted by law, the Supplier disclaims and excludes, all terms, representations, warranties, conditions, statutory guarantees and obligations (whether express, statutory or implied).

d) In relation to any condition, warranty, representation or statutory guarantee implied or provided by law that cannot be lawfully excluded, to the maximum extent permitted by law, the liability of the Supplier is limited, where permitted by law at the Supplier's discretion, to:

(i) the replacement of the Goods or the supply of equivalent goods; or
(ii) the repair of the Goods; or

(iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods or of repairing the Goods; or

(iv) the re-delivery of the Services; or

(v) the payment of the cost of replacing the Services or of acquiring equivalent Services or of replacing the Services.

e) To the maximum extent permitted by law, the Supplier is not liable to the Customer in any circumstances for any indirect, economic, special or consequential loss or damage, or in any event for any loss of revenue, loss of production or loss of profit.

10. Sub-Contracting

The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the Goods or any of the materials or Services supplied to the Customer.

11. Notices

Any notice to be given by the Customer to the Supplier must be delivered personally to the Supplier. Notice to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known address and, unless the contrary is proved, shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the third business day after posting by priority prepaid post.