



## **TERMS & CONDITIONS**

**J. GOLDSTEIN & CO. PTY LIMITED and ESWOOD AUSTRALIA PTY. LIMITED**  
A.B.N. 74 000 100 845 A.B.N. 87 002 481 521  
211 – 213 Woodpark Rd. Smithfield, N.S.W. 2164 Australia

### **1. GENERAL**

Any order placed by a purchaser is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in the purchaser's order unless otherwise expressly agreed to by J Goldstein & Co Pty Ltd or Eswood Australia Pty. Limited trading as "Goldstein Eswood" (The "Seller") in writing.

### **2. DELIVERY and FREIGHT CHARGES**

All goods prices, except spare parts, unless specified otherwise include scheduled delivery within Sydney, Melbourne, Brisbane, Adelaide and Perth metropolitan areas. Deliveries to Hobart carry a surcharge. Individual deliveries of equipment or attachments are subject to local carriage charges. Deliveries outside metropolitan areas will be charged from state capital cities and subject to carriage charges. Deliveries into Darwin and elsewhere in the Northern Territory will be charged from Sydney or Brisbane at the company's discretion. Goods deliveries are to ground floor level, kerbside or loading dock area only, where a crane is required it is to be supplied by the purchaser, where a rear tailgate hoist is required the cost will be charged to the purchaser. Failure to receive goods will subject the goods to charges on re-delivery.

### **3. RISE AND FALL**

Prices listed are subject to alteration without notice to the purchaser between the date of listing and the date or dates of delivery. All goods will be charged for at the prices ruling at the date or dates of delivery.

### **4. GOODS AND SERVICES TAX**

All prices listed are exclusive of Goods and Services Tax which, if applicable, shall be for the purchaser's account.

**5. CLAIMS**

Any claim by the purchaser for short or wrongful delivery of the goods must be notified to the Seller in writing within fourteen days after delivery of the relevant goods to the purchaser. Any claim which the purchaser does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.

**6. PROPERTY AND RISK**

The risk of loss or damage to or in connection with, or loss of, the goods shall be borne by the purchaser from the despatch of the goods from the Sellers store. The purchaser shall, at his expense, insure the goods in its name and the name of the Seller against any such loss or damage to, or loss of, the goods for their full replacement value and keep them so insured until the goods are paid for in full.

**7. CANCELLATIONS AND RETURNS**

- a. Subject to clause 10 and so far as permitted by law no goods will be accepted for return by the Seller unless a prior request (which may be accepted or refused by the Seller in its sole and absolute discretion) is made and approval given by the Seller.
- b. In the case of goods.
  - (i) Listed in the Seller's price list, a fee of 15% of the price of the relevant goods will be charged upon the cancellation of any order or the return of any goods.
  - (ii) Not listed in the Seller's price list, a fee equal to the cost incurred by the Seller in relation to the goods to the date of the cancellation, plus 50% will be charged for the cancellation of any order. Requests for the return of such goods will not be accepted.

**8. MINIMUM INVOICE VALUE**

Individual purchases of goods for an amount less than \$50 will be subject to a surcharge equal to the aggregate of the difference between the price of goods (excluding any applicable G.S.T. and freight) and \$50 plus GOODS AND SERVICES TAX and freight.

**9. TIMES**

- . Any times given for delivery are an estimate and for guidance only. The purchaser shall not be relieved of any obligation to accept or pay for the good by reason of any delay in delivery
- a. The purchaser shall not be entitled to terminate the contract in the event of delay of any kind whatsoever and, to the maximum extent permitted by law, the Seller shall not be liable in any way whatsoever for or in respect of any loss or damage howsoever arising out or in connection with or in relation to any failure to deliver or delay in delivery arising from any circumstances of whatsoever nature including, without

limitation delay by alterations to the contract or specifications of the goods or any other act or default on the part of the purchaser or by fire, flood, earthquake, storm, tempest or other natural phenomenon, acts of god, strikes, lockouts, availability or shortage of raw materials or labour or shipping or transport facilities, war, insurrection, riot, civil commotion or any accident or failure or inability to obtain licences or any order or direction of any local, state or federal government or governmental authority or instrumentality

- b. If the Seller determines that it is or may be unable to complete its obligations within a reasonable time or at all, the contract may be terminated by the Seller. In the event of termination, the purchaser shall have no claim against the Seller for any damage, loss, cost or expense whatsoever.

#### 10. WARRANTY

Subject to paragraphs 10(b) & 10(d) the Seller undertakes to repair, replace or supply (at the Seller's option) all goods and components thereof supplied by it which the Seller in its sole and absolute discretion deems to be defective in materials or workmanship under proper, normal and recommended conditions of use and maintenance. This undertaking covers the provision of labour for 12 months and parts for 12 months from the date of delivery to the purchaser. This undertaking applies to state capitals only. Other areas are not covered by this commitment. Special inquiries should be made. Defective replacement spare parts will be repaired or re-supplied for a period of three (3) months from delivery. This undertaking applies only to state capitals. Remote areas are not covered by this commitment and special enquiries should be made.

- a. The Seller's undertaking in paragraph 10(a) does not extend to goods and components thereof manufactured either entirely or substantially of glass or similar substances, light globes infrared or quartz tubes.
- b. The liability of the Seller under this warranty is limited to the repair or replacement of defective goods or components. All other costs including, without limitation, cartage, carriage and installation shall be borne by the purchaser.
- c. While the goods are in the custody of the Seller for investigation or repair, they shall be at the risk of the purchaser and no liability shall attach to the Seller, its servants or agents for any damage occasioned to, or loaned, the goods howsoever arising.
- d. To obtain the benefit of this warranty, the purchaser must give notice to the Seller immediately upon it becoming aware of the alleged defect and in any event before the expiration of the said twelve month period.
- e. Labour under warranty is supplied free of charge during normal working hours, Monday to Friday. Should warranty work be requested outside of our normal working hours a labour charge will be applied equivalent to the difference between the normal hour rate and the penalty rates

## 11. RETENTION OF TITLE

- . The purchaser acknowledges that property in the goods shall not pass to the purchaser until the purchaser has paid all money due for the goods and for all other goods supplied by the Seller. If such goods are sold by the purchaser prior to payment, then the proceeds of sale of those goods shall be the property of the Seller. Until property passes in the goods to the purchaser, the purchaser acknowledges that it is in possession of the goods solely as bailee for the Seller and in that capacity shall store the goods (if any) of those of any other person in a manner which renders the goods clearly identifiable as goods of the Seller.
- a. In the event of the purchaser's default in the due observance or performance of these trading terms or any of them all money paid by the purchaser by way of deposit shall be absolutely forfeited to the Seller at the Seller's option.
- b. The Seller shall be entitled to enter at all times upon the premises occupied by the purchaser and upon which the goods may be for the time being in order to take possession of the goods and it shall be lawful for the Seller in addition to and without prejudice to its other rights and remedies for the purpose of that repossession to enter into and upon those premises and for that purpose to break open or remove any outer or inner gate or fastening or other obstruction without liability for any action or trespass or other proceeding for so doing and with liberty to plead that leave and licence hereby given in bar in any such action or proceeding brought or instituted.

## 12. SPECIFICATION

The Seller may alter the specifications of the goods without notice.

## 13. TERMS OF TRADING

- . The terms of payment shall be net cash 30 days from date of invoice, but the Seller reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the credit worthiness of the purchaser at any time become in the Seller's opinion unsatisfactory.
- a. Without prejudice to any other rights or remedies of the Seller, where any payment is not made on the due date interest at the rate of 3% above the Seller's overdraft rate (as certified by an officer of the Seller) from time to time shall be payable upon the amount outstanding, calculated from the due date of payment until payment is made in full.

#### **14. INSTALMENTS**

The Seller reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Seller to deliver any instalment shall not entitle the purchaser to cancel the balance of the order. If the purchaser makes default in respect of any instalments, the Seller may elect to treat the default as a breach of contract relating to each other instalment.

#### **15. IDENTIFICATION OF GOODS**

Any description of the goods is given by way of identification only and the use of such description shall not constitute the contract a sale by description.

#### **16. IMPLIED TERMS**

All conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise howsoever are hereby excluded to the maximum extent permitted by law. The United Nations Convention on Contracts for the International Sale of Goods, a copy of which is set out in Schedule 1 of the Sale of Goods (Vienna Convention) Act 1987 shall not apply to the purchaser. Where permitted the liability of the Seller for breach of a condition or warranty that cannot be excluded is limited at the option of the Seller to replacement or repair of the relevant goods of supply or equivalent goods or the cost of replacing or repairing the relevant goods or of acquiring such equivalent goods.

#### **17. INDIRECT LOSS**

- . So far as the law permits, the Seller shall be under no liability to the purchaser for any loss or damage to persons or property, or loss of property, or for death or injury caused by or arising out of or in connection with any act, matter or thing (including negligent acts or omissions) done, omitted or permitted to be done by the Seller, its servants or agents.
- a. So far as the law permits, the Seller shall not be liable to the purchaser in any way whatsoever for any indirect or consequential loss, loss of profit or any other economic loss including, without limitation any loss by reason of delay, defective or faulty materials or workmanship, negligence or any act, matter or thing done, permitted or omitted to be done by the Seller.

#### **18. NO REPRESENTATIONS**

The purchaser acknowledges that neither the Seller nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the goods for any particular purpose or any other matter.

**19. THE PURPOSE**

The purchaser acknowledges that it has the responsibility for ensuring that the goods are not used for any purpose for which they are not suitable.

**20. LIABILITY**

To the maximum extent permitted by law, the Seller's liability to the purchaser in connection with the goods is strictly limited to the provisions of these conditions of sale and any liability on the Seller's part or on the part of its servants or agents for damages for or in respect of any claim arising out of or in connection with the relationship established by the contract or any conduct under it, other than liability which is totally excluded by any other provision or provisions of the contract shall not in any event (and whether or not such liability results from or involves negligence) exceed \$100.

**21. WAIVER**

Failure by the Seller to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed a waiver thereof or of any rights the Seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

**22. GOVERNING LAW**

The contract shall be governed by and construed in accordance with the laws of New South Wales.

**23. NOTICES**

Any notice to be given by the purchaser to the Seller shall be sent by prepaid mail to the Seller's address (above). No notice shall be deemed to have been given until it is actually received at such address.

**24. STORAGE CHARGES**

Goods ordered shall be held for up to 14 days after the due date shown on the order acknowledgement, or an alternative date agreed in writing with the purchaser. Beyond this time, goods may be released for resale to another purchaser, or storage charges shall apply at a rate of \$50 per item per month or part hereof.