



## TERMS & CONDITIONS

### 1. HOW THESE TERMS APPLY

1. These Terms of Sale of Goods (**Terms**) apply to the sale of Goods by James Richardson Furniture (ABN 42 640 050 166) (**JRF**) to the **Customer** named in a quote, order form or other sales document provided by JRF. Where the Customer has lodged, and JRF has accepted, an Application for Credit Account (**Application**), these Terms (together with the Application) apply to the Applicant, and the Guarantor and any other person named in the Application. These Terms constitute a binding agreement (**Agreement**).
2. The Agreement is binding on the parties from the time that Customer accepts a binding quote from JRF, or JRF accepts an Application, or an order or other offer by the Customer to purchase Goods. By so doing, the Customer agrees to these Terms, without requirement of signature unless so indicated on the document. JRF will provide a copy of these Terms on its website, and where practical during the course of the quoting and/or ordering process.
3. The Terms shall prevail over all inconsistent terms in any document provided by the Customer such as a purchase order, request for quote or approval form, except to the extent JRF expressly agrees in writing.
4. JRF may vary, add to or substitute these Terms from time to time. The updated Terms apply to any orders submitted or purchases otherwise made after the updated Terms are provided to the Customer or published on JRF's website.
5. Other than as set out in this Agreement, no promise, description, representation or undertaking by JRF forms part of the Agreement.

### 2. ORDERS

1. Upon placing an order, the Customer shall pay a deposit equivalent to 50% of the price of the ordered goods (**Deposit**) which must be paid prior to JRF ordering the Goods from its supplier.
2. The Deposit shall only be refundable in circumstances whereby JRF advises the Customer that JRF will not be able to dispatch the goods. In which case, JRF shall release the Deposit to the Customer.
3. In all other circumstances the deposit is non-refundable and the Deposit shall be released to JRF upon the dispatch of the Goods without reference to the Customer.

### 3. PRICING AND PAYMENT

1. The price of Goods in a quote issued by JRF is current at the date of a quote and is valid for acceptance for the time period specified on the quote, or as otherwise agreed in writing by JRF.
2. For credit account Customers, the Customer must pay for Goods 30 days from invoice date.
3. Goods purchased which are not subject to credit account payment terms require a minimum deposit of 50% of order value upon placement of the order, with the balance being payable prior to delivery.
4. JRF is under no obligation to continue to supply goods to the Customer on credit account payment terms and may discontinue or vary credit account arrangements at any time. Credit account facilities will automatically lapse after 6 months of continuous non-use.
5. Unless otherwise specified, references to amounts owing to JRF for Goods, and payment in respect thereof, include all taxes and imposts authorised, charged or chargeable by any statute, federal, state or local government or regulatory authority in respect of such Goods levied from time to time, including but not limited to Goods and Services Tax (as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)), and includes any

additional tax, penalty, fine, interest or other charge relating to GST) and must be paid by the Customer to JRF.

6. Without limiting JRF's rights, any monies owing under these Terms which are not paid when due will bear interest at the rate of 3%, calculated daily and compounded monthly on and from the date such monies first become due to JRF.
7. Returnable packaging materials (e.g. crates, pallets, and ottobins) remain the property of JRF unless paid for, returned or replaced in kind and may be invoiced separately by JRF to the Customer if such products have not been returned or replaced.
8. All prices quoted in JRF's price lists are subject to change without notice. We will endeavour to notify our customers of pricing changes. Notification may occur after prices have changed.

#### **4. CANCELLATION OF ORDERS**

1. If the Customer makes default in any payment, commits any act of bankruptcy or enters into liquidation whether voluntary or involuntary, JRF may at its discretion suspend deliveries or cancel any order so far as it remains unperformed. The occurrence of such default shall in no way prejudice the rights of JRF to recover any amounts due for Goods previously supplied.
2. No order may be cancelled by the Customer except with the consent in writing of JRF. JRF is not obliged to agree to any cancellation request and any such request will only be considered when requested a minimum of 30 days prior to the requested delivery date. JRF may seek compensation from the Customer for any losses resulting from such cancellation.
3. A restocking fee 20% of the charges for the Goods will be charged to the Customer for any goods specifically manufactured or modified to the Customer's order.

#### **5. DELIVERY OF GOODS**

1. JRF will endeavour to complete all orders in accordance with the description and quantity of Goods ordered, and delivery date as requested by the Customer, but JRF will not be liable for any incomplete orders, late delivery or non-delivery. If JRF is unable to deliver Goods ordered or equivalent Goods, in whole or in part, the Customer is not required to pay the charges for the Goods not delivered, unless such non fulfilment, delay or non-delivery is due to Customer default or error.
2. No delay in delivery shall relieve the Customer of its obligations to accept and pay for the Goods.
3. JRF reserves the right to deliver by portion and delivery by portion shall not entitle the Customer to repudiate the Contract. If a portion of the Goods is delivered but the delivery is not completed for any reason, the Customer must pay for the portion delivered.
4. Delivery will be taken to have occurred when the Goods are off-loaded at the Customer's nominated address for delivery or (where Goods are collected from JRF) upon collection by the Customer or its delivery agent.
5. JRF's obligation to deliver Goods to the Customer is suspended to the extent that it is unable to fulfil that obligation due to events beyond its reasonable control, including the failure of a third party to supply the Goods, transportation problems, industrial disputes and the acts of any government or authority. If such suspension lasts for at least 30 days, the Customer may choose to end or suspend these Terms. JRF will not be liable for any loss, damage or liability the Customer incurs in connection with such termination or suspension.

#### **6. TITLE AND RISK**

1. Risk in the Goods shall pass at the time of delivery by JRF to the Customer's nominated address for delivery, or collection by the Customer or its delivery agent, unless otherwise agreed between the parties.
2. Title to all Goods supplied by JRF shall remain with JRF until payment in full of all monies owing by the Customer to JRF on any account. Prior to such payment in full, the Customer shall hold all Goods supplied by JRF as bailee for JRF. If the Goods are sold or disposed of by the Customer prior to such a payment in full, any amount received by the Customer shall be set aside and held in trust by the Customer for JRF pending payment in full.

3. To secure the Customer's obligations to JRF under these Terms, the Customer grants to JRF a purchase money security interest (**Security Interest**) in all Goods supplied by JRF to the Customer as that term is used in the *Personal Property and Securities Act 2009* (Cth) (**PPSA**) and the Customer acknowledges and agrees that until title passes in full to the Customer under clause 6.2:
  - (a) JRF's interest in the Goods is a Security Interest for the purposes of the PPSA;
  - (b) JRF has given value for the Security Interest and JRF's Security Interest in the Goods is effective and attaches to the Goods immediately upon the customer taking delivery of the Goods;
  - (c) JRF may take all steps as JRF considers necessary to perfect, record, register, amend or remove the registration of JRF's Security Interest on the Personal Property Securities Register (**PPSR**);
  - (d) the Customer must, at its own cost, do anything which JRF considers reasonably necessary to:
    - (i) ensure that JRF's Security Interest attaches to the Goods, is enforceable, perfected and otherwise effective and has the priority required by JRF;
    - (ii) enable JRF to exercise or enforce any of its rights in relation to its Security Interest in the Goods, and the proceeds of those Goods, or to perform any of its obligations under the PPSA; and
    - (iii) enable JRF to prepare, register or renew a financing statement on the PPSR;
  - (e) the Customer must not claim or create, or allow any third party to do so, any Security Interest in the Goods, or any property which constitutes "personal property" under the PPSA and becomes an accession to the Goods, without the prior written consent of JRF.
  - (f) to the extent permitted under the Act, JRF need not give any notice, including without limitation a notice of the receipt of a verification statement, to the customer under the PPSA; and
  - (g) Neither JRF nor the customer shall disclose not authorise disclosure of information of the kind mentioned in section 275 (1) of the PPSA.
4. If any payment by the Customer to JRF is overdue, in whole or in part, or the Customer is otherwise in default under any contract with JRF, or the Customer shall become insolvent or suffer some form of external administration appointment, all sums then owing by the Customer to JRF shall become immediately due and payable and JRF may (without prejudice to any of its other rights) recover and resell the Goods and may, for the purpose, enter upon the Customer's premises by its servants or agents. JRF is irrevocably authorised to effect such entry, and to use the name of the Customer and to act on behalf of the Customer, if necessary, to recover possession of the Goods.
5. JRF shall insure the Goods until delivery. The Customer shall effect and maintain adequate insurance against loss or damage to the Goods between the time of delivery and passing of title in a full and proper amount. If the proceeds of such insurance are received prior to payment in full for the Goods, such proceeds shall be held by the Customer as trustee for JRF and shall at the option of JRF, be applied in or towards such payment, but otherwise JRF shall be entitled to make claim under that insurance for the loss of its Goods (as the case may be).
- 7. RETURN OF GOODS SOLD**
  1. JRF shall not be bound to accept Goods returned by the Customer.
  2. Goods may be accepted for credit in JRF's sole discretion when returned unused, in prime condition in their original packaging and within 7 days from the date of delivery. Goods will only be issued credit upon inspection by JRF.
  3. Goods specifically manufactured or modified to the Customer's order will not be accepted for credit.

4. A restocking fee of 10% of the charges for the Goods will be charged to the Customer for any Goods which are accepted for credit.

## 8. WARRANTY AND LIABILITY

1. To the fullest extent permitted by law:
  - (a) except as expressly agreed in writing by JRF or set out in these terms, JRF excludes all conditions, warranties, representations, statutory guarantees and liability for defective Products manufactured and/or sold by JRF that arises from faulty design, materials, workmanship or from fair wear and tear except to the extent JRF has acted with gross negligence or wilful misconduct; and
  - (b) JRF makes no representation as to the fitness of Goods supplied by it for any purpose, other than a purpose which has been notified to JRF in writing, prior to the date of any agreement, by the Customer, and confirmed in writing by JRF to be applicable.
2. Nothing in these Terms excludes any implied warranty or statutory guarantee that cannot be excluded at law, nor any remedies that the Customer has in relation to a "major failure", as that term is defined in the *Competition and Consumer Act 2010* (Cth).
3. 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 JRF is limited, at JRF's option:
  - (a) to the repair of the Goods; or
  - (b) to the supply of replacement Goods; or
  - (c) to the payment of the cost of replacing the Goods or of acquiring an equivalent good or payment of the cost of having the Goods repaired.
4. JRF's total liability arising out of or in connection with the Goods or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by the Customer for the purchase of Goods.

## 9. REPRESENTATIONS

The Customer agrees that other than what JRF has told them in writing about the Goods, or what is contained in any other agreement which JRF has entered into with the Customer, it cannot make any further representations or statements about the Products to any third party. The Customer must indemnify JRF against any third party claims in respect of any other representations or statements the Customer makes.

## 10. GUARANTEE

1. Where JRF has accepted an Application from (amongst others) a Guarantor, the Guarantor unconditionally and irrevocably guarantees to JRF the punctual performance by the Customer of its obligations under these Terms (including, without limitation, the payment of any amounts due and payable to JRF).
2. The Guarantor indemnifies and must keep indemnified JRF against all and any liabilities, losses, claims, damages, demands, costs and expenses whatsoever which JRF may suffer or incur by reason of any breach or non-payment of the Customer under these Terms.
3. If the Customer defaults in the payment of any amounts due and payable to JRF under these Terms, or does not comply with any other obligation, the Guarantor must immediately on demand pay that outstanding amount to JRF, or meet that obligation, whether or not JRF has issued breach notice or proceedings against the Customer.
4. The guarantee and indemnity is a continuing obligation which will not be discharged by any matter or thing (including without limitation, part payment or part performance by the Customer).
5. If a liquidator or trustee in bankruptcy disclaims these Terms, the guarantor indemnifies JRF against any resulting loss.
6. Until all money payable to JRF under these Terms is paid, the Guarantor must not do any of the following, without the consent of JRF:
  - (a) exercise a right of contribution or indemnity against the Customer;

- (b) prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors; or
  - (c) claim any dividend it receives in trust for JRF.
7. If JRF assigns its rights under these Terms, the benefit of the guarantee and indemnity in this clause extends to the assignment and continues concurrently for JRF's benefit regardless of the assignment unless JRF releases the Guarantor in writing.

## **11. GENERAL**

1. No right or licence is granted to the Customer under any patent, copyright, registered design, know-how or other intellectual property rights (including confidential information) except the right to use or resell the Goods. If the Goods incorporate any design or specification of the Customer, JRF shall not be liable for any infringement of any intellectual property rights caused by the goods or their use or sale by the Customer.
2. The Customer must not assign any rights and obligations under these Terms whether in whole or in part without JRF's prior written consent.
3. Any notice in connection with these Terms will be deemed to have been duly given when made in writing and delivered or sent by email, facsimile or post to the Customer.
4. Time shall be of the essence of the arrangements specified in these Terms.
5. If any provision of these Terms is invalid, illegal or unenforceable, these Terms take effect (where possible) as if they did not include that provision.
6. Any failure by a party to insist upon strict performance by the other of any provision in these Terms will not be taken to be a waiver of any existing or future rights in relation to the provision.
7. These Terms are governed by the laws of Victoria, Australia. The parties each agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.