

Terms of Sale

(with effect from 18 March 2024)

1 Supply of Goods and/or Services

1.1 JCA shall provide Goods and/or Services in accordance with the provisions of these terms of sale.

2 Price List

2.1 Unless given a quotation as below, the Buyer's price is the list price in effect at the time of the purchase, less the applicable discount. Discounts to list prices will be extended only to authorised Buyers. Price lists are subject to change without notice.

2.2 Prices are ex-works and in Australian Dollars unless otherwise specifically stated.

2.3 It is the Buyers obligation to confirm with JCA the applicable price at the time of purchase.

2.4 Fees and charges may be adjusted by JCA from time to time as follows:

- (a) For each invoice with net billing below \$200.00 a service charge of \$30.00 is applied;
- (b) For each priority AM Next Day delivery bag a fee of \$20.00 is applied;
- (c) For each Guaranteed Emergency Delivery a service charge of freight cost plus \$75.00 is applied; and
- (d) For a Buyer error or excess return request authorization a Restocking Fee of 15% of net billing is applied.

2.5 Fees and charges are not considered when calculating net billing.

3 Quotation

3.1 Any quotation given by JCA to the Buyer is valid for a period of 30 days from date of issue by JCA unless otherwise specifically stated.

3.2 Verbal quotations will not be recognised by JCA. Prices given in any quotation are applicable to that quotation only and will not apply in any other instance.

3.3 Prices of imported Goods are based upon rates of exchange existing at the date of the quotation unless otherwise specifically stated.

3.4 Prices are based upon Goods and/or Services to be supplied during regular working days and hours and labour rates do not include any site allowances, special conditions; or after hours or weekend labour, unless otherwise specifically stated.

3.5 JCA reserves the right to cancel all trade discounts, special prices, or rebates in the event that the Buyer fails to comply with these terms and conditions of sale as to payment.

3.6 The Buyer agrees to pay JCA the price specified in the quotation.

4 Price variation

4.1 Unless otherwise specifically stated, should the cost to JCA of supplying the any Goods and/or Services be increased by any circumstances of any kind whatsoever beyond the control of JCA, including without limitation, to increased production cost of manufacturers or suppliers/subcontractor, variations in rates of exchange, devaluation of any relevant currency or increase in relevant rates of freight or insurance, JCA shall notify the Buyer of such increase and the Buyer shall bear such increase, in addition to the Contract Sum.

4.2 Unless otherwise specifically stated, the price of Services will be subject to cost adjustment based on the percentage increase from the date of the quotation to the date of delivery in the hourly rate (including fringe benefits and allowances) based on the weekly Metal Industry Award Rate for a fitter in the state where the Services are performed. JCA shall notify the Buyer of such increase and the Buyer shall bear such increase, in addition to the Contract Sum.

5 Goods and Services Tax

5.1 If any supply made is subject to GST, the Buyer must pay to JCA an additional amount equal to the GST payable.

5.2 The Buyer must pay the GST amount at the same time as the Buyer must pay the price, or if partial payment invoices are issued, at the same time as the Buyer must make the partial payment.

6 Delivery date

6.1 Any quoted delivery dates are estimates only. JCA is not obliged to meet such dates and will not be liable to the Buyer by reason of delays caused by any reason whatsoever.

6.2 JCA shall be under no liability for direct or consequential loss or damage to the Buyer arising from delay or postponement in delivery.

7 Order

7.1 A written order is to be submitted by the Buyer to JCA quoting at least; an order number, full description of the Goods and/or Services to be purchased the requested delivery time and address and reference to JCA's quotation (where applicable) ("Order").

7.2 Orders referencing a price list are accepted by JCA on the condition that they will be invoiced at the prices applicable at the date of despatch.

8 Order Acceptance

8.1 Any order from the Buyer to JCA for the supply of Goods and/or Services shall not be binding upon JCA until either accepted or fulfilled by JCA.

8.2 These terms of sale apply to the Buyer and to JCA in respect of Goods and/or Services ordered by the Buyer and any terms of sale set out in the Buyer's order deviating from or inconsistent with these terms of sale will not bind JCA despite any statement by the Buyer in its order that its terms and conditions shall prevail over these terms of sale.

8.3 JCA may at its discretion, as a condition of acceptance of such order for Goods and/or Services require the Buyer to:

- (a) provide personal guarantees as to payment;
- (b) provide a bank guarantee; and/or
- (c) enter into an assignment of progress payments due to the Buyer.

8.4 JCA may require full or partial payment or payment guarantee in advance of shipment if it is necessary in JCA's reasonable opinion.

9 Order Cancellation

9.1 Orders may not be altered, cancelled or terminated by the Buyer for any reason whatsoever without the written consent of JCA (including suspension, prolongation and acceleration) unless it does so pursuant to, and in accordance with, a right it has under applicable law or an express term of the Contract that authorizes the Buyer to cancel or terminate for cause or JCA's insolvency.

9.2 Except where the Buyer cancels or terminates the Contract pursuant to, and in accordance with, a right it has under applicable law or an express term of the Contract that authorizes the Buyer to cancel or terminate for cause or JCA's insolvency, if the Buyer alters, cancels or terminates the Contract for any reason whatsoever, Buyer shall forfeit any deposit paid by the Buyer to JCA pursuant to the Contract (if any) and the Buyer shall indemnify JCA against any loss, damage and expense incurred by JCA in relation to the cancellation or termination or alteration of that Contract including but not limited to the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labor and engineering costs incurred by JCA in the execution or part execution of the Goods and including compensation payable to any supplier of JCA and loss of profit.

10 Order Variation

10.1 If JCA is asked to carry out additions or modifications to the Goods and/or perform additional or more frequent Services than those set out in JCA's quotation, they will be deemed a variation and the price will be adjusted accordingly. Any variation will take into consideration the nature and extent of such additions or modifications and the cost JCA incurs in performing them, but all other conditions of the quotation and these terms of sale will continue to apply.

10.2 If for any reason the Buyer requests JCA to furnish Goods and/or Services outside regular working hours, any overtime or additional expenses occasioned thereby these will be deemed a variation and the price will be adjusted accordingly.

11 Delivery Freight and insurance

11.1 Delivery of the Goods will occur when the Goods are placed at the disposal of the Buyer (including its nominee or agent) at JCA's premises or in the case of Services, are supplied to the Buyer. Where JCA agrees to deliver the Goods to the site nominated by the Buyer, the Buyer agrees that all charges for freight and insurance arranged by the JCA on behalf of the Buyer will be at JCA's election, payable directly by the Buyer to the carrier and/or insurer or added to prices payable by the Buyer to JCA.

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11.2 Goods delivered are expected to be examined by the Buyer promptly upon delivery. No claim will be recognised by JCA unless such claim is reported to JCA in writing within fourteen (14) days after the supply of the Goods to which the claim relates.

11.3 Risk in the Goods passes to the Buyer at the time of delivery and the Buyer shall keep the Goods insured.

12 Buyer delayed delivery

12.1 Should delivery of the Goods or the performance of any Services be delayed for any reason other than the fault of JCA, JCA reserves the right to store the Goods and to obtain payment for the Goods and/or Services as though the Goods had been delivered and the Services performed. JCA shall be entitled to recover additional costs and expenses arising from the delay including but not limited to storage, insurance and handling costs. JCA shall be entitled to make claims for progress payments when the Goods and/or Services are required ahead of scheduled delivery dates and recover any additional costs and expenses arising from it attempting to meet the revised delivery dates.

12.2 Extra costs incurred by JCA due to cessation of work occasioned by the Buyer's instructions or lack of instructions, by interruptions, by mistakes or work for which JCA is not responsible shall be reimbursed by the Buyer to JCA upon demand.

13 Payment Terms

13.1 Unless otherwise expressly stated in a Contract, the Buyer must pay all invoices rendered by JCA within 30 days of the date of such invoices without set-off or discount. Invoices not paid by the due date for payment as determined by the Contract are considered overdue.

13.2 Unless otherwise expressly stated in a Contract payment will be made by electronic transfer to JCA's nominated bank account and will have occurred upon confirmation by JCA's bank that the money has been received into JCA's account and are cleared funds.

13.3 Unless otherwise expressly stated in a Contract, JCA may invoice for Goods and Services under the Contract pursuant to the progress-based billing schedule of values set forth in the table below and Buyer agrees to pay such invoices in accordance with these terms and conditions. Where the Contract is only for Services JCA may invoice upon the performance of the Services.

Contract Type	Billing Events
Sale of Goods	- Deposit: 20% on the formation of the Contract - Pre-Shipment: 50% on confirmation of the date of shipment - Delivery: 30% on delivery.
Projects (including supply, install, test and/or commission of Goods)	- Deposit/Advance: 20% on the formation of the Contract - Pre-Shipment: 20% on confirmation of the date of shipment - Progress Claims: 60% progress billed monthly through completion of the work under the Contract.

13.4 If JCA is entitled to invoice for progress claims, JCA may invoice for materials, Goods, and equipment (ordered, delivered, or stored), and for any predesign, engineering, installation work or Services performed including any services performed on-site or off-site with the amount calculated:

(a) in accordance with the rates, charges or fees stated in the Contract, or

(b) if the Contract makes no express provision with respect to the matter, on the basis of the value of work carried out or undertaken to be carried out (or of related goods and services supplied or undertaken to be supplied) under the Contract.

13.5 Without limiting any of JCA's other rights, JCA may issue partial payment invoices as Goods are either stored and protected off-site or supplied and certain Services are completed and will issue a final invoice on delivery of the Goods and/or completion of the Services (less progress claims). Such progress claims will show Goods made available and/or Services provided.

13.6 Where fees are stated to be payable upon receipt of any approval, sign off, certificate, document or anything similar or analogous to the foregoing ("Sign-off"), Sign off is deemed to have occurred within 14 days of a request from JCA if Buyer fails to:

(a) provide Sign off without a bona fide reason; and

(b) clearly identify in writing the requirements in the Contract JCA must satisfy in order to achieve Sign-off.

14 Credit Policy

14.1 Without prejudice to any other rights JCA may have, if JCA is entitled to issue an invoice for:

(a) a deposit, JCA reserves the right without prior notice to immediately suspend the performance of any works under the Contract, including taking any action to supply or prepare to supply, any Goods or perform any Services, until such deposit has been received; and

(b) a pre-shipment amount, JCA reserves the right without prior notice not to ship, or to immediately stop the shipment of the Goods, until such amount has been received.

14.2 Without prejudice to any other rights JCA may have, JCA reserves the right to refuse to deliver any further Goods or Services to the Buyer if the Buyer has monies outstanding in excess of its approved credit limit or has any monies outstanding beyond the date due for payment on any JCA account. Where JCA has not approved continuing credit, all charges are due and payable upon despatch. If any overdue invoice requires collection and/or legal action to procure payment, the Buyer agrees to pay all fees associated with such action. All payments shall be in the legal currency of Australia.

14.3 JCA will set and review the credit limit and terms at its discretion from time to time.

14.4 If any invoice becomes overdue, interest may be charged at Westpac Banking Corporation's Indicative Lending Rate plus four per cent on the sum outstanding for the period from the due date until the date payment is received. Payment will be credited first against interest accrued.

14.5 The Buyer's credit facility shall remain in the name stated by the Buyer on JCA's Credit Application until JCA is notified in writing and consent to any change is given in writing by JCA. The Buyer must notify JCA as soon as there is a change in the legal entity, structure or management control of the Buyer's business.

14.6 If the Buyer commits an Insolvency Event, then JCA may terminate the Contract without prejudice to any other rights JCA may have except where such action is prohibited by applicable law.

15 Retention of monies

15.1 Retention of monies owing to JCA is not acceptable unless otherwise specifically stated in the Contract. If retentions are agreed JCA shall have the option to provide a Guarantee in lieu of the retention. Such Guarantee shall be held for a period not in any event to exceed a maximum of the period of warranty provided in respect of the Goods and/or Services. Notwithstanding any other provision to the contrary, the amount of the Guarantee may not exceed 5% of the Contract Sum and JCA does not agree to provide a Guarantee for a Contract that is solely for Services. For the purposes of this clause, "Guarantee" means a guarantee issued by any bank, insurance company or licensed finance company under which the issuer as primary obligor promises to pay the Buyer a sum or sums in connection with the Contract.

16 Title

16.1 Property and ownership in the Goods will not pass to the Buyer but will remain in JCA until payment in full of the price of Goods and/or Services and all other amounts owing to JCA by the Buyer. The Goods are to be clearly identified by the Buyer as remaining the property of JCA until they are paid for in full. The Buyer must so long as JCA is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of JCA.

16.2 The Buyer may sell or deal in the ordinary course of business with the Goods and with the interest of JCA in the Goods and may for the purpose of such sale or dealing part with possession thereof but the proceeds of any sale or dealing will be held by the Buyer on trust for JCA. The Buyer agrees to accept this appointment as bailee and fiduciary.

17 Personal Property Securities Act 2009

17.1 The Buyer agrees and acknowledges that these terms of sale:

(a) constitute a security agreement for the purposes of the PPSA; and

(b) create a security interest in all goods and services previously supplied to the Buyer by JCA (if any) and all goods and services that will be supplied to the Buyer in the future by JCA.

17.2 The Buyer undertakes to:

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- (a) promptly sign any further documents and/or provide any further information which JCA may reasonably require to:
- register a financing statement or financing change statement in relation to a security interest or the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - in this clause 17.
- (b) indemnify and upon demand reimburse, JCA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of JCA;
- (d) 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 JCA;
- (e) immediately advise JCA of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales: and,
- (f) immediately advise JCA of any proposed change in its name and/or any other changes in its details.
- 17.3 The Buyer agrees that sections 96, 115 & 125 of the PPSA do not apply to the security agreement created by these terms of sale.
- 17.4 The Buyer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) & 132(4) of the PPSA.
- 17.5 The Buyer waives its rights as a grantor and/or a debtor under sections 142 & 143 of the PPSA.
- 17.6 Unless otherwise agreed to in writing by JCA, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.7 The Buyer must unconditionally ratify any actions taken by JCA under this clause 17.
- 17.8 The Buyer must advise JCA 15 days in advance if the collateral and or goods is to become a fixture.
- 17.9 The Buyer must pay for collateral and or goods in full before it becomes a fixture
- 18 Default of the Buyer**
- 18.1 The Buyer agrees to pay any recovery costs to mercantile agents, payable by JCA as a result of overdue payments, made 30 days past due date.
- 18.2 The Buyer agrees to pay any bank charges or merchant fees or like charges levied on JCA by any banker or other credit provider whose banking or credit card facilities are utilised by the Buyer for paying JCA any amounts on any accounts.
- 18.3 The Buyer agrees to pay any legal costs (on a full indemnity basis), costs incurred in the use of solicitors, commercial agents, stamp duties and any other expenses payable of and incidental to the performance or enforcement of any litigation on these terms and conditions, or any credit application or security documents signed by the Buyer, or any guarantor, together with any other collection costs and dishonoured cheque fees.
- 18.4 Should the Buyer fail to make due payment for any Goods and/or Services supplied by JCA or commit a breach of any term of the sale, or commit an Insolvency Event JCA may, without prejudice to any other rights it may have, do any or all of the following:
- (a) Withdraw any credit facilities which may have been extended to the Buyer and require immediate payment of all moneys owing or accrued;
- (b) Withhold any further deliveries of Goods or performance of Services required under the accepted order;
- (c) Suspend and/or terminate performance of any other contracts which JCA has with the Buyer.
- 18.5 Despite the above, JCA reserves the following rights in relation to the Goods until all amounts owed by the Buyer to JCA are fully paid:
- (a) Legal and equitable ownership of the Goods;
- (b) To enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (c) To keep or resell any of the Goods repossessed pursuant to 18.5.2 above.
- 18.6 In the event that the Goods are resold, or Goods manufactured using the Goods are sold, by the Buyer, the Buyer holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of JCA and must pay such amount to the JCA upon request. Despite the provisions above JCA is entitled to maintain an action against the Buyer for the purchase price of the Goods and/or Services.
- 18.7 Where the Buyer incorporates the Goods in or with any other product before property has passed to the Buyer, the new product shall be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of JCA.
- 18.8 If payment for the Goods is not made by the Buyer by the due date specified by JCA to the Buyer then the Buyer shall return the Goods to JCA upon demand. If the Buyer does not return the Goods to the JCA within 48 hours of receipt of the demand, JCA shall be entitled to enter upon the Buyer's premises at any time to do all things necessary to recover the Goods.
- 18.9 The Buyer shall be liable for all costs of whatsoever nature of and associated with the exercise of JCA's rights under this clause, which costs shall be payable on demand.
- 18.10 Should the Buyer sell the Goods to any sub-purchaser, the Buyer must obtain a specific acknowledgement from the sub-purchaser that property and ownership in the Goods will not pass to the sub-purchaser but will remain with JCA until payment in full of the purchase price of the Goods by the sub-purchaser to the Buyer.
- 19 Access**
- 19.1 It is the Buyer's responsibility to provide adequate access for entry and installation of Goods and/or Services covered by the contract, together with adequate access and rigging facilities for future Services. The Buyer will maintain the area in which the Goods are (or are to be) located free of extraneous materials and move any contents, fixtures, fittings or moveable partitions as required to facilitate the performance of Services by JCA.
- 19.2 The Buyer will grant JCA entry to the premises and access to the Goods at any time when required for the performance of the Services and allow JCA to make use of all existing building Services and maintenance facilities at the premises in the performance of the Services, and to remove any item of the Goods from the premises (if in JCA's opinion necessary) for the purpose of undertaking any repair or replacement thereof. The Buyer will only permit persons duly qualified to undertake service and repair work on the Goods other than in connection with its normal daily operation.
- 19.3 The Buyer warrants to JCA that the Buyer of the Services is the beneficial owner of the Goods or has obtained from the beneficial owner consent for JCA to carry out such Services and will indemnify and hold harmless JCA in respect of any claim made against JCA based on, or in any way arising from, a lack of such consent. Unless otherwise stated it is the Buyer's responsibility to obtain and provide access, Services, facilities, permits, approvals or licences as may be required for the performance of the Services.
- 20 Network Responsibilities**
- 20.1 The Buyer is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("**Network**") and shall supply JCA secure Network access for providing its Services. Goods networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by the Buyer and/or end user against unauthorized access.
- 20.2 The Buyer is responsible to take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "**Data**") prior to receiving the Goods and/or Services.
- 21 Warranty**
- 21.1 Subject to clause 21.2, JCA warrants the following to be free from defects in material and workmanship:
- (a) Goods manufactured by it or sold under its name for a period of one year from the date of sale;
- (b) installed systems and/or associated Services for a period of one year from the date of commencement of use or eighteen months from date of shipment, which ever occurs first;
- (c) engineered systems and applied products for a period of one year from date of installation or eighteen months from date of shipment, which ever occurs first;
- (d) labour Services for a period 30 days from the date of performance of the service; and
- (e) parts for a period of 90 days,
- as the case may be, unless otherwise specifically stated in the Order or agreed in writing.

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- 21.2 The warranty period shall expire on the earlier of the date determined in accordance with clause 21.1 and the earlier to occur of the following:
- (a) 36 months from delivery of all of the Goods and/or Services under the Contract; or
- (b) 30 months from the completion of the whole project by the project owner where the Goods and/or Services form part of a larger project.
- 21.3 The date of sale must be established by a receipt showing the purchase date, name of seller and product sold. If the date of sale cannot be determined, the warranty shall be determined by the date of manufacture code.
- 21.4 JCA's warranties do not extend to Goods subjected to misuse, neglect, accident or improper installation, or to products which have been altered or repaired by anyone except JCA. The Buyer, or any person receiving such a product during the duration of the warranty, shall contact JCA, as soon as any defect becomes known.
- 21.5 Where a warranty on JCA's labour is offered and is purchased separately, the cost of removal and replacement of faulty components by JCA is included.
- 21.6 If the location of the premises where the Goods are situated and/or Services are to be provided is more than 50km from JCA's place of business which issued the quotation, travel time and accommodation expenses will be invoiced separately to the Buyer.
- 21.7 Where the Goods are manufactured by a third Party or the Goods include products manufactured by a third Party, any warranty which may be given by JCA only applies to the extent JCA receives the benefit of that third Party manufacturer's warranty, except otherwise agreed in writing by JCA. If JCA provides equipment or repair materials that is covered by warranty from a third Party manufacturer JCA will transfer the benefits of that warranty to Buyer.
- 21.8 The Buyer may exercise its rights under this clause 21 by notifying JCA in writing at Unit 38, 38-46 South Street, Rydalmere, NSW 2116, Ph.(02 9805 8300).
- 21.9 The benefits provided to the Buyer by the warranties contained in this clause 21 are in addition to other rights and remedies available to the Buyer under the law.
- 21.10 JCA's Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. To the extent that any Goods or Services supplied by JCA are supplies to a 'consumer' as defined in the Australian Consumer Law, JCA will comply with any applicable consumer guarantees and the following statement will apply:
- "Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- to cancel your service contract with us; and
 - to a refund for the unused portion, or to compensation for its reduced value.
- You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service."
- 22 Limitation of liability**
- 22.1 The Buyer acknowledges and agrees that JCA has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, business interruptions, corruption or destruction of data or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems, or for any incidental, indirect, special or consequential loss or damage whatsoever.
- 22.2 Despite any other provision to the contrary, JCA will not be responsible or liable for any claim where such claim arises as a result of:
- (a) damage after delivery, incorrect installation or incorrect operational procedures caused or contributed by the Buyer or a third Party;
- (b) noise and/or vibration
- (c) refrigerant lost or
- (d) mechanical or electrical overload, abrasion, erosion, corrosion, chemicals, energy supply, foreign materials, deterioration due to extremes of environment, normal wear and tear or any other event or cause beyond the control of JCA.
- 22.3 JCA makes no and specifically disclaims all representations or warranties that the Goods, Services or software will be secure from cyber threats, hacking or other similar malicious activity.
- 22.4 This clause does not exclude or modify any condition or warranty implied into the contract or these terms of sale by any law (including the Competition and Consumer Act, 2010 (Cth)) where to do so would contravene that law or cause any part of this clause to be void.
- 22.5 To the maximum extent permitted by law, JCA excludes all conditions and warranties implied into these terms of sale and limit its liability for breach of any non-excludable condition and warranty, at JCA's option, to:
- (a) in respect of Goods:
- repairing the relevant Goods;
 - paying the cost of having the relevant Goods repaired;
 - request the return of the Goods and tender to the Buyer the purchase price paid by the Buyer; or
 - resupplying the relevant Goods or equivalent Goods;
- (b) in respect of Services, resupplying the relevant Services.
- 22.6 JCA's total liability under any contract and these terms of sale shall not exceed the total dollar amount of the Goods and/or Services purchased by the Buyer under the contract.
- 22.7 The Parties agree that if any limitation or exclusion of liability under these terms of sale is held to be invalid under any applicable statute or rule of law, it will to that extent be omitted.
- 23 Return of Goods and adjustments**
- 23.1 Goods may not be returned unless JCA approval has first been obtained in writing and the original invoice number and date have been quoted for reference.
- 23.2 Before returning any Goods whether under warranty or not the Buyer must contact JCA and give the required information (e.g. model number, date code, detailed problem description, etc.) needed to expedite the return. Note: "Bad" or "doesn't work" are not adequate problem descriptions for warranty issues. If the return is authorised the Buyer will be given a Return Authorization (RA) number. RA's are valid for ninety (90) days.
- 23.3 A Return Authorization (RA) form must be returned with any Goods return and sent to the address indicated on the RA. All returns must be shipped prepaid. Returned Goods must be clearly identified and the RA number must appear on the outside of the shipping container.
- 23.4 Return due to error by JCA: Goods incorrectly received by the Buyer due to a JCA error (e.g duplicate shipment, picked / shipped wrong catalogue number) may be returned, freight prepaid, after receiving authorization. No claim will be recognised by JCA unless such claim is reported to JCA in writing within 14 days after the supply of the Goods to which the claim relates.
- 23.5 Return due to failure under warranty: The remedy is a no charge replacement product or a returned product credit note based on the current Buyer's price. The product will be replaced on receipt of the returned Goods; or the credit will be issued within 40 days from receipt of the returned Goods. No product replacement or credit will be issued for Goods that test good. The Buyer may request the Goods be returned (at the Buyers expense) within 30 days of issue of credit note.
- 23.6 Return due to Buyer error / excess stock / incorrect part selection: JCA is not obliged to issue an authorization to return excess Goods. If the return is authorised the Buyer will be given a Return Authorization (RA) number. RA's are valid for 10 days. The remedy is a returned product credit note, based on the current Buyer's price less restocking fees. The credit will be issued within 40 days from receipt of the returned Goods. Returns not will be accepted for Goods that; were invoiced more than 3 months prior, or are special in any nature whatsoever or have a date code older than 18 months or are not stocked items, or are not of current design or are not in original sealed cartons or in original condition in the case of JCA products not supplied in sealed cartons, are not in new and unused condition upon receipt. Selected Goods may be accepted as excess return product and may also have a different re-stocking charge. Return must be shipped prepaid. Credits will not be issued prior to receipt and inspection of the product.
- 23.7 Return due to failure out of Warranty: Return of out of warranty defective Goods must be approved by JCA before return.
- 23.8 Change to Invoice amount without return of product: JCA will issue a partial credit note for incorrect invoice amount upon written request from the Buyer and acceptance by JCA.

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24 Digital Enabled Services.

If JCA provides Digital Enabled Services under these terms, these Digital Enabled Services require the collection, transfer and ingestion of building, equipment, system time series, and other data to JCA's cloud-hosted software applications. Buyer consents to the collection, transfer and ingestion and use of such data by JCA to enable JCA to provide, maintain, protect and improve the Digital Enabled Services and its products and services. Buyer acknowledges that, while Digital Enabled Services generally improve equipment performance and services, Digital Enabled Services do not prevent all potential malfunction, insure against all loss, or guarantee a certain level of performance. As used herein, "**Digital Enabled Services**" mean services provided hereunder that employ JCA software and cloud-hosted software offerings and tools to improve and enable such services. Digital Enabled Service may include, but are not limited to, (a) remote inspection, (b) advanced equipment fault detection and diagnostics, and (c) data dashboarding and health reporting.

25 Software

- 25.1 Use, implementation, and deployment of the JCA software and hosted software products ("**JCI Software**") offered under these terms shall be subject to, and governed by, JCA's standard terms for such JCI Software and Software related professional services in effect from time to time at <https://www.johnsoncontrols.com/techterms> (collectively, the "**Software Terms**"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the JCI Software as set forth in the Software Terms, JCA and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the JCI Software and improvements to the JCI Software. The JCI Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the JCI Software, its implementation and deployment and any improvements thereto.
- 25.2 Notwithstanding any other provisions of this Contract, unless otherwise set forth in the applicable order, the following terms apply to JCI Software that is provided to Buyer on a subscription basis (i.e., a time limited license or use right), (each a "**Software Subscription**"): (a) Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "**Subscription Start Date**") and will continue in effect until the expiration of the subscription term noted in the applicable order. (b) At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "**Renewal Subscription Term**"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. (c) To the extent permitted by applicable law, Software Subscriptions purchases are non-cancelable and the sums paid nonrefundable. (d) Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. (e) Buyer shall pay all invoiced amounts within thirty calendar days after the date of invoice. Payments not made within such time period shall be subject to late charges as set forth in the Software Terms. (f) Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at Johnson Controls' then-applicable list price for that Software offering. (g) Any use of Software that exceeds the scope, metrics or volume set forth in this Contract and applicable order will be subject to additional fees based on the date such excess use began.
- 25.3 To the extent any third party software is offered by JCA under these terms of sale ("**Third Party Software**"), Buyer agrees that such software may only be used in accordance with the terms and conditions of the software license that accompanies such software.
- 25.4 The Buyer must not and must not permit any person reasonably within its control nor procure any person to copy, decompile, disassemble, reverse engineer or otherwise derive the source code for any JCI Software or Third Party Software.

26 Intellectual property

- 26.1 The Parties agree that: (a) the Intellectual Property of Party existing prior to the date of these terms of sale remains the sole and exclusive property of that Party; and (b) the right, title and interest in any Intellectual Property created by the provision of the Goods or the Services by JCA is vested in JCA.
- 26.2 The Buyer must: (a) assign all right, title and interest in any Intellectual Property referred to in clause 26.1(b) to JCA or as JCA directs; (b) provide to JCA all reasonable assistance requested by JCA to protect that Intellectual Property; and (c) not permit any person reasonably within its controls nor procure any person to modify, copy, clone, or reverse engineer the Goods or the Services, or copy, modify, decompile any of JCA's documentation relating to the Goods or the Services.

27 Hazardous materials

- 27.1 The Services exclude any works associated with asbestos or hazardous materials. JCA shall not be required to perform any identifications, abatement, cleanup, control, or removal of asbestos or hazardous materials. The Buyer represents that, to the best of the Buyer's knowledge, there is no asbestos or hazardous material that will in any way affect the Services. Should JCA become aware of or suspect the presence of asbestos or hazardous materials, JCA shall have the right to stop work in the affected area immediately and notify the Buyer. The Buyer will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Buyer agrees to assume responsibility for any claims arising out of or relating to the presence of asbestos or hazardous materials.
- 27.2 Hazardous wastes remain the property and the responsibility of the Buyer even when removed from equipment or replaced by JCA.
- 27.3 The Buyer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.

28 Privacy

- 28.1 JCA as Controller: JCA will collect, process and transfer certain Personal Data of Buyer and its personnel related to the business relationship between it and Buyer, (for example names, email addresses, telephone numbers) as Controller and in accordance with the Johnson Controls Privacy Notice at <https://www.johnsoncontrols.com/privacy>. Buyer acknowledges the Johnson Controls Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Buyer consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by Johnson Controls is mandatorily required from Buyer's personnel under applicable law, Buyer warrants and represents that it has obtained such consent.
- 28.2 JCA as Processor: Where JCA will factually act as Processor of Personal Data (as defined therein) on behalf of Buyer, the terms at www.johnsoncontrols.com/dpa shall apply.

29 Governing law

- 29.1 The laws of the state or territory of Australia where JCA's written acceptance of the order is issued shall govern this contract.

30 Entire agreement

- 30.1 The Contract shall be constituted in its entirety by these terms of sale together with JCA's quotation and any credit approval and/or guarantee required to be provided by the Buyer to JCA, together with any other items, conditions or licences referred to in these terms which are issued by any Johnson Controls' company being a holding company or affiliated company to JCA.
- 30.2 All previous courses of dealing, trade usage, negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of the Contract are merged in and superseded by the Contract and shall be of no force or effect whatever and neither Party shall be liable to the other Party in respect of those matters.
- 30.3 Where there is more than one Buyer then the liability of each shall be joint and several.
- 30.4 The Contract shall be binding on the heirs, successors and assigns of the Parties.
- 30.5 No variation, waiver or cancellation of the Contract will be effective unless such variation, waiver or cancellation is expressly accepted and is in writing.

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31 Indemnity

- 31.1 JCA and the Buyer ("Indemnifying Party") agree to indemnify and to hold each other, including their officers, agents, directors, and employees, ("Indemnified Party") harmless from all damages, losses and expenses with respect to any third-party claims for personal injury (including death) or tangible property damage, but only to the extent such damages, losses and expenses are caused by the negligence or misconduct of the Indemnifying Party in fulfilling its obligations under this Contract. Neither Party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other Party. If the Parties are both at fault, the obligation to indemnify shall be proportional to their relative fault.

32 Assignment

- 32.1 This Contract cannot be transferred or assigned by either Party without the prior written consent of the other Party

33 Notices

- 33.1 A notice given under this Contract must be signed by or on behalf of the Party giving it, addressed to the Party to whom it is to be given and:
- (a) delivered to that Party's address;
 - (b) sent by pre-paid mail to that Party's address; or
 - (c) transmitted by facsimile to that Party's address.
- 33.2 A notice given to a Party under this clause is treated as having been given and received:
- (a) if delivered to a Party's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; or
 - (c) if transmitted by email to a Party's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.

34 Validity

- 34.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these terms, but the rest of these terms of sale are not affected.

35 No alterations

- 35.1 No employee, servant or agent of JCA is authorised to alter, vary, or waive these terms and conditions other than an employee in the role of State Manager or senior to that role.

36 Confidentiality

- 36.1 The Buyer undertakes that it will not (except in the proper course of its duties under this Contract or as required by law or by JCA) disclose to any person any confidential information relating to JCA or this Contract of which it has become possessed as a result of this Contract or in the negotiations preceding this Contract including the terms of this Contract.
- 36.2 The obligations under this clause survive termination of this Contract.

37 Force Majeure

- 37.1 If a Party becomes unable, wholly or partly, by Force Majeure, to carry out any duty or obligation under this Contract, that Party:
- (a) must give the other Party prompt written notice of the Force Majeure with reasonably full particulars of it and the probable extent to which that Party will be unable to perform, or be delayed in performing, that duty or obligation;
 - (b) cannot be required to carry out that duty or obligation so far as it is affected by the Force Majeure during, but no longer than, the continuation of the Force Majeure; and
 - (c) must use reasonable commercial endeavours to remove, overcome or remedy the Force Majeure as quickly as possible.
- 37.2 The requirement to use reasonable commercial endeavours to remove, overcome or remedy any Force Majeure does not require a Party to settle any strike, or other labour dispute on terms contrary to that Parties' wishes or to contest the validity or enforcement of any law, regulation or order by way of legal proceedings.
- 37.3 JCA does not offer any guarantee of supply of its Goods or Services. Furthermore, it does not accept responsibility for delays including those caused by Force Majeure. In the event of any delay, the date or dates for performance of the contract by JCA shall be extended for a period at least equal to the time lost by reason of the delay or the delays subsequently caused therefrom.

38 No liens

- 38.1 The Parties agree that:
- (a) a Party has no right or claim to any interest in any moneys, goods or property of the other Party; and
 - (b) a Party cannot claim any lien or other security over those moneys, goods or property.

39 Errors & omissions

- 39.1 Clerical errors and misprints in computations, typing, or otherwise in JCA documents including catalogues, price lists, delivery docket, invoice or statement, and credit note shall be subject to correction by JCA by means of reissue of the documents or by adjusting dockets with reference to the original transaction.

40 Dispute resolution

- 40.1 If a dispute arises out of or relates to this Contract, including any dispute as to breach or termination of this Contract or as to any claim in tort, in equity or under any statute, a Party cannot commence any court or arbitration proceedings relating to the dispute unless that Party has complied with this clause except where that Party seeks urgent interlocutory relief.
- 40.2 A Party claiming that a dispute has arisen must give notice to the other Party specifying the nature of the dispute.
- 40.3 On receipt of that notice by that other Party, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- 40.4 If the Parties do not agree within 30 days of receipt of the notice, or any further period agreed in writing by them, as to:
- (a) the dispute resolution technique and procedures to be adopted;
 - (b) the timetable for all steps in those procedures; and
 - (c) the selection and compensation of the independent person required for that technique,
- the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

41 Interpretation

- 41.1 The following rules of interpretation apply unless the context requires otherwise.
- (a) The singular includes the plural and conversely.
 - (b) A gender includes all genders.
 - (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (d) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
 - (e) A reference to a clause or schedule or attachment is to a clause of or schedule or attachment to this deed.
 - (f) A reference to a Party or any other agreement or documents includes the Party's successors and permitted assigns.
 - (g) A reference to any agreement or document is to that agreement or document as amended, novated, or replaced from time to time, except to the extent prohibited by this deed or that other agreement or document.
 - (h) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
 - (i) A reference to dollars or \$ is to Australian currency.
 - (j) A reference to a right or obligation of any 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and separately.

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- (k) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.
(l) Mentioning anything after include, includes or including does not limit what else might be included.

41.2 Headings are for convenience only and do not affect interpretation.

42 Definitions:

In these terms of sale, unless otherwise indicated, these terms mean:

Business Day	any day except a bank or public holiday throughout Australia or a Saturday or Sunday;
Buyer	the person with whom JCA has entered into a contract for the supply of any Goods and/or Service;
Collateral	(a) Personal property to which a security interest is attached; (b) In relation to a registration with respect to a security interest--includes personal property described by the registration (whether or not a security interest is attached to the property)
Controller	the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;
Fixture	goods or collateral that are affixed to land,
Force Majeure	an exception, event or circumstance which, in respect of the Party claiming Force Majeure: (a) is beyond its control; (b) could not reasonably have been insured or provided against before entering this Contract; (c) having arisen, could not reasonably have been avoided or overcome; and (d) is not substantially attributable to that Party, such events or circumstances being limited to the following: (a) war, hostilities (whether the war be declared or not), invasion, act of foreign enemies; (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war; (c) riot, commotion, disorder, strike or lockout by persons other than either JCA or the Buyer; (d) the effect of any munition of war, explosive materials, ionising radiation or contamination; (e) epidemics, pandemics, or quarantine restrictions; (f) earthquake or tsunami; (g) acts of governmental agencies, national or international incidents; (h) material shortages; and (i) cyber attacks, viruses, ransomware, failures or interruptions to network systems, or data breaches.
Goods	heating, ventilation, refrigeration and air-conditioning equipment and all other products or other property which are supplied by JCA to the Buyer;
GST	the same meaning as in the GST Act;
GST Act	A New Tax System (Goods and Services Tax) Act 1999) (Cth);
Insolvency Event	(a) a Party informs the other Party in writing, that the Party is insolvent; (b) execution is levied against Party by a creditor; (c) in relation to an individual person: the Party commits an act of bankruptcy, has a bankruptcy petition presented against him or her, is made bankrupt, makes a proposal for a scheme of arrangement or a composition; or has a deed of assignment or deed of arrangement made, or has a sequestration order made, under Part X of the Bankruptcy Act 1966; (d) in relation to a corporation: notice is given of a meeting of creditors with a view to the corporation entry into a deed of company arrangement, entering a deed of company arrangement, a controller administrator receiver or receiver and manager provisional liquidator or liquidator is appointed, an application is made to a court for the winding up of the Corporation, a winding up order is made, resolves by special resolution that it be wound up voluntarily or a mortgagee of any property of the Corporation takes possession of that property;
Intellectual Property	all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;
JCA	Johnson Controls Australia Pty Ltd ACN 002 968 103 or other affiliate of JCA named in the Order;
Party	JCA or the Buyer as the case may be and Parties means both of them;
Personal Data	any information which is related to an identified or identifiable natural person;
Personal Property	Property in including a licence
PPSA	Personal Property Securities Act 2009 (Cth)
Services	Design, documentation, software coding and assembly, project management, manufacture, delivery, installation, start-up/commissioning, service, maintenance and/or repair works supplied by JCA to the Buyer.