

Connolly Key Joint Pty Ltd Standard Terms & Condition of Sale

1. DEFINITION

- 1.1 CONNOLLY KEY JOINT PTY LTD, ABN 36 003 175 979 herein and after referred to as “CKJ”;
- 1.2 Customer means any person or entity that has placed an Order with “CKJ” or requests a Quotation from “CKJ”;
- 1.3 Products mean all products (including accessories and spare parts), services and equipment supplied or to be supplied by “CKJ” to the Customer; and
- 1.4 Terms and Conditions mean these terms and conditions of supply, as may be amended from time to time by “CKJ”.

2. QUOTATIONS AND ORDERS

- 2.1 Any quotation made by “CKJ” is an invitation to treat and not an offer to sell Products. Prices quoted by “CKJ” are subject to changes necessary to correct errors and are otherwise valid for a period of 14 days only.
- 2.2 The Customer offers to enter into an agreement with “CKJ” for the supply of Products in accordance with these Terms and Conditions by placing an order for Products with “CKJ”. No order for Products is binding on “CKJ” until “CKJ” accepts by providing confirmation of the order in writing. “CKJ’s” written acceptance of an order, any relevant terms on the quotation made by “CKJ” and these Terms and Conditions alone will constitute the entire agreement of the parties (Contract) in relation to the supply of Products and may only be varied in writing, signed by the parties or as otherwise permitted by these Terms and Conditions.
- 2.3 The Contract sets out the entire agreement and understanding between “CKJ” and Customer in respect of the relevant Products and supersedes all prior agreements, understandings, representations and warranties (whether express or implied).
- 2.4 “CKJ” is not bound by any supply agreement, terms or conditions, purchase order or other document issued by a Customer (Customer Document). The Contract prevails over any terms of a Customer Document, which terms will have no contractual effect.
- 2.5 No order may be cancelled after acceptance by “CKJ” without “CKJ’s” consent. The Customer indemnifies “CKJ” in respect of all direct and indirect costs, expenses and losses incurred as a result of the cancellation of an order.

3. PRICES

3.1 Unless otherwise agreed by "CKJ" in writing, the price to be paid by the Customer for Products will be:

- (a) "CKJ's" then prevailing price for the supply of such Products to the Customer; and
- (b) Any applicable taxes or charges (including any goods and services or similar taxes) levied by any governmental authority upon the supply or use of the Products.

3.2 Unless otherwise specified, prices do not include transportation costs and are exclusive of goods and services tax. Products are supplied ex-works.

3.3 If:

- (a) A raw material, component, or service provider raises its prices, or imposes a surcharge on "CKJ"; or
- (b) Any tax is imposed or increased in connection with the supply of any Products by "CKJ" (including any carbon or emissions related tax); or
- (c) "CKJ" otherwise incurs an increase in costs in supplying Products to the Customer, "CKJ" reserves the right to increase applicable prices and the Customer agrees to accept such price increase.

3.4 A surcharge may apply to any order that does not meet or exceed your FIS requirements.

3.5 Deliveries will incur a delivery charge unless otherwise agreed by "CKJ".

4. PAYMENT

4.1 Payment for Products must be made by the Customer to "CKJ" within 30 days from the last day of the month in which the invoice for those products was issued, or as per agreed credit terms.

4.2 Payment must be in a form acceptable to "CKJ" and without any deduction, withholding, set-off or counter-claim of any nature.

4.3 "CKJ" reserves the right to charge the Customer for reimbursement of all credit card charges, bank charges, merchant fees etc.

5. DELIVERY

5.1 "CKJ" will make all reasonable efforts to deliver the Products to the Customer on the date(s) applicable to a Contract, but shall be under no obligation or liability to the Customer for failing to do so.

5.2 Delivery shall be effected upon:

- (a) Delivery of the goods into the custody of the Carrier; or
- (b) Pick up by Customer; or
- (c) Physical delivery to the Customer's nominated carrier; or
- (d) If there are subsequent carriers, to the first Carrier.

- 5.3 Notation by “CKJ’s” carrier on the delivery docket shall be conclusive evidence of delivery. The Customer shall be responsible for any loss or damage occurring during unloading of the Products at the Customer’s premises.
- 5.4 If the Customer refuses to accept delivery of Products then the risk in the Products shall pass to the Customer from the time of such refusal. In such event, “CKJ” may (without limiting any of its other rights) arrange to store the Products at the Customer’s expense.

6. TITLE AND RISK

- 6.1 Title in and to all Products delivered to the Customer will remain with “CKJ” and will not pass to the Customer until such time as the Products have been paid for in full.
- 6.2 Risk in and to Products will pass to the Customer upon delivery of the Products to the Carrier.
- 6.3 Until “CKJ” has received payment in full for Products: the Customer holds the Products as bailee for “CKJ”
- (a) The Customer shall safely and securely store the Products separately from the other goods on the premises of the Customer in such a manner as to show clearly that the Products are the property of “CKJ”;
 - (b) “CKJ” has a security interest in the Products;
 - (c) The Customer shall, upon request from “CKJ”, deliver up such Products to “CKJ” (or as directed by “CKJ”);
 - (d) Representatives of “CKJ” will be entitled and permitted at any time to enter any place where the Products are situated to repossess the Products, and to remove the Products from any vessel or vehicle and for this purpose “CKJ” is hereby appointed as the Customer’s agent. The Customer agrees to indemnify “CKJ” and keep “CKJ” indemnified against all costs incurred by “CKJ” in removing the Products and against losses, and liabilities incurred by, and any claims against, “CKJ” in removing the Products and arising from such removal; and
 - (e) If the Products in part or in full are mixed with the Products that have been paid for, the Customer bears the onus of proving that the Products in its possession (whether mixed with other goods or not) have been paid for in full by the Customer. If the Customer is unable to prove, to the satisfaction of “CKJ” that the goods identified as “CKJ” goods have been paid for in full, then those goods shall be deemed to relate to unpaid invoices outstanding from time to time and are deemed to be the property of “CKJ”. “CKJ” reserves the right to repossess those goods without having to prove that the goods relate to specific unpaid invoices outstanding at the time of repossession.

7. SECURITY INTEREST

- 7.1** A term contained in these Terms and Conditions that is defined in the Personal Property Securities Act 2009 (Cth) (PPSA) (but not otherwise defined in these Terms and Conditions) has the meaning given to it in the PPSA.
- 7.2** In consideration for “CKJ” supplying Products to the Customer under these Terms and Conditions, the Customer:
- (a)** Agrees to treat the security interest created under these Terms and Conditions as a continuing and subsisting security interest in the relevant Products with priority over any registered or unregistered general (or other) security and any unsecured creditor (even if the Products become fixtures before paid for in full);
 - (b)** Grants to “CKJ” a purchase money security interest (PMSI);
 - (c)** Agrees that the PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of Products or goods coming into existence;
 - (d)** Agrees that the PMSI has attached to all Products now or in the future supplied to the Customer by “CKJ”; and
 - (e)** Agrees, until title in the Products pass to it, to keep all Products free and ensure all Products are kept free of any charge, lien or security interest except as created under these Terms and Conditions, and not otherwise deal with Products in a way that will or may prejudice any rights of “CKJ” under these Terms and Conditions or the PPSA.
- 7.3** “CKJ” reserves the right to register a financing statement under the PPSA in respect of the Products. Costs of registering a financing statement (or a financing change statement) will be paid by the Customer.
- 7.4** The Customer waives its right to receive a copy of any financing statement, financing change statement or verification statement that is or may be registered, issued or received at any time.
- 7.5** The Customer irrevocably grants “CKJ” the right to enter any premises or property (without notice) and without being in any way liable to the Customer or any other person if “CKJ” has cause to exercise any of its rights under the PPSA (and the Customer will indemnify “CKJ” against any such liability).
- 7.6** It is agreed that the Customer hereby waives its rights under such sections of the PPSA as are able to be waived or excluded by agreement, including the following sections of the PPSA: section 95 (notice of removal of an accession) to the extent that it requires the secured party to give a notice to the grantor; section 96 (when a grantor may retain an accession); section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); section 130 (notice of disposal) to the extent that it requires the secured party to give notice to the grantor; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

8. BREACH AND INSOLVENCY

If:

- (a) The Customer fails to comply strictly with the terms of a Contract;
- (b) An application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Customer (other than a voluntary liquidation for the purpose of amalgamation or reconstruction); or
- (c) The Customer enters into any arrangement, compromise or composition or assignment for the benefits of its creditors or any class of them;
- (d) A receiver, a receiver and manager, administrator or other officer is appointed to the Customer or any part of its property, or a third party attempts to levy execution against the Customer's property or the goods;
- (e) The Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;
- (f) The Customer is or is deemed (including under any applicable law) unable to pay its debts as and when they fall due, or stops or suspends the payments of its debts;
- (g) The case of the Customer being a natural person, the Customer commits an act of bankruptcy; or
- (h) "CKJ" is of the view, acting reasonably, that any of the above will or are likely to occur, "CKJ" may (without limiting or otherwise prejudicing any other rights it may have) at any time terminate any and all Contracts between "CKJ" and the Customer and refuse to supply any and all Products to the Customer. The Customer agrees to indemnify "CKJ" (and keep "CKJ" indemnified) against loss, cost or expense and other liability (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or incurred by "CKJ" in connection with any breach of a Contract by the Customer.

9. CUSTOMER WARRANTIES

9.1 The Customer:

- (a) Warrants to “CKJ” that it has read and understood these Terms and Conditions;
- (b) Warrants to “CKJ” that all information supplied by or on behalf of it to “CKJ” in connection with the supply of Products is true and accurate and not misleading;
- (c) Warrants that it has not relied on any representation or statement made by or on behalf of “CKJ” in connection with the supply of Products that has not been clearly and expressly stated in the Contract;
- (d) Acknowledges that “CKJ” has relied on the information supplied by or on behalf of the Customer to it in supplying the Products; and
- (e) Warrants that the supply of the Products by “CKJ” to the Customer, and the use of Products by the Customer, will not make “CKJ” liable to any prosecution, claim or other action under any applicable law.

9.2 The Customer indemnifies “CKJ” and holds “CKJ” harmless against all fines, penalties, damages, loss, costs or expenses (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or incurred by “CKJ” in connection with any breach of the warranties of the Customer set out in these Terms and Conditions.

9.3 Without limiting the liability of the Customer under the indemnity above, “CKJ” may at its sole discretion by itself or in conjunction with the Customer defend, settle or compound any action, suit, proceeding, claim or demand brought or made against it by any person in connection with any breach of the warranties given by the Customer under these Terms and Conditions and the Customer agrees that the indemnity extends to any cost or expense incurred by “CKJ” in conducting that defence or in settling or compounding the action, suit, proceeding, claim or demand.

9.4 “CKJ” reserves the right to refuse to do or to omit to do anything, or to refuse to comply with any request or direction of the Customer, which in the reasonable opinion of “CKJ” would constitute or result in a breach of any warranty given by the Customer under these Terms and Conditions or a breach by the Customer of a Contract.

10. INTELLECTUAL PROPERTY

- 10.1** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or industrial or intellectual property disclosed or otherwise provided to the Customer by “CKJ” or otherwise subsisting in the Products and all rights therein (collectively Intellectual Property) will remain the property of “CKJ” and will be kept confidential by the Customer. The Customer shall have no claim to, nor ownership interest in, any Intellectual Property. The customer acknowledges that no license or rights of any sort are granted to the Customer in respect of any Intellectual Property, other than the limited right to use Products purchased from “CKJ” for the purpose they are supplied by “CKJ”.
- 10.2** The Customer warrants that any Products manufactured, constructed or supplied by “CKJ” which are based in whole or in part upon designs, drawings, specifications or information supplied to “CKJ” by or on behalf of the Customer shall not infringe any letters, patents or registered designs or any other industrial or intellectual property rights of any person.

11. CONFIDENTIAL INFORMATION

- 11.1** All information furnished or made available by “CKJ” to the Customer in connection with the subject matter of these Terms and Conditions or the supply of Products shall be held in the strictest confidence by the Customer. The Customer agrees not to use such information or disclose such information to others without “CKJ’s” prior written consent. The obligations in this paragraph will not apply to any information which:
- (a)** At the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Customer of any obligation herein;
 - (b)** The Customer can show by written records was in the Customer’s possession prior to disclosure by “CKJ”; or
 - (c)** Is legally made available to the Customer by or through a third party having no direct or indirect confidentiality obligation to “CKJ” with respect to such information.

12. CLAIMS AND RETURNS

- (a) Examination of the Products shall be made by or on behalf of the Customer, and unless within 5 business days of delivery of the Products, the Customer gives written notice that the Products do not comply with the applicable Contract, the Products shall be deemed to have been in all respects supplied in accordance with the relevant Contract, and the Customer shall be bound to accept and pay for the Products accordingly. Custom made products (non-standard products) will not be accepted for return.
- (b) Claims by the Customer in respect of Products which have not been supplied in accordance with the relevant Contract will only be considered by "CKJ" if:
 - (i) The claim is made within 5 business days of the date of delivery of the Products;
 - (ii) Representatives of "CKJ" have been afforded a reasonable opportunity to inspect the Products; and
 - (iii) The Products are subsequently returned to "CKJ" as directed by "CKJ".
- (c) "CKJ" is not obliged to accept any return of Products that have been supplied (or are deemed to have been supplied) in accordance with the relevant Contract. Even if "CKJ" determines that it will accept a return of Products in those circumstances:
 - (i) "CKJ" is not obliged to accept any Products which have been used, damaged or altered in any way;
 - (ii) All Products must be returned in their original packaging;
 - (iii) Products returned will be subject to 10 %handling and restocking charge or as determined by "CKJ"; and
 - (iv) Products are to be returned at the Customer's expense.
- (d) Acceptance of Products returned does not imply agreement to issue a credit note.
- (e) A credit note will be issued by "CKJ" only after Goods returned are either collected by "CKJ" authorised representative or agent or returned to it by the Customer as set out above.
- (f) The Customer shall not deduct the amount of any anticipated credit from any payment due to "CKJ" but must await receipt of a credit note.
- (g) Delivery charge and small order surcharge will not be credited.
- (h) If the Customer is a Consumer for the purposes of the Australian Consumer Law (as contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth)), nothing in the Contract (including this clause 12 and clause 13) will be construed as being contrary to the provisions of the Australian Consumer Law and "CKJ" acknowledges that: "CKJ's" Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

13. LIMITATION OF LIABILITY

- 13.1** “CKJ” will not be responsible for any failure to supply Products on the date agreed between the parties and the Customer is not entitled to cancel any order as a result of that failure.
- 13.2** Except as expressly provided to the contrary in writing by “CKJ” in a Contract:
- (a)** “CKJ” gives and makes no warranty or indemnity in respect of the Products; and
 - (b)** All conditions and warranties implied by law (whether by statute, common law, equity or otherwise) are (to the extent permitted by law) expressly excluded from the Contract.
- 13.3** If any statute implies any term, condition or warranty into a Contract, and that statute prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability under, such a term, condition or warranty, then that term, condition or warranty will be taken to be included in the Contract. However, the liability of “CKJ” for any breach of such a term, condition or warranty will be limited, if permitted by the statute, at the option of “CKJ”, to any one or more of the following:
- (a)** If the breach relates to goods:
 - (i)** The replacement of the goods, the supply of equivalent goods or the repair of the goods; or
 - (ii)** To the extent required by the relevant statute, the payment of the cost of replacing the goods or of acquiring equivalent goods or the cost of having the goods repaired; and
 - (b)** If the breach relates to services:
 - (i)** The supplying of the services again; or
 - (ii)** To the extent required by the relevant statute, the payment of the cost of having the services supplied again.
- 13.4** To the extent permitted by law, and except as otherwise expressly agreed in writing by “CKJ” as part of a Contract, “CKJ” will not be liable for any personal injury, incidental damages, consequential losses, loss of profit, costs of business interruption, loss of opportunities or any other loss, damage, cost, expense or liability whatsoever arising from any use of, or incidental to, the Products or their use, or arising out of “CKJ’s” negligence or breach of a Contract.
- 13.5** The Customer agrees that any legal costs incurred by “CKJ” (on a solicitor and own client basis) in the recovery of any monies due by the Customer shall be recoverable in full from the Customer.

14. EXCUSABLE DELAYS

- (a) “CKJ” shall not be liable for any failure to comply with a Contract when such failure is caused by or arises out of any of the following:
- (i) Fire, storm, tempest, earthquake, inevitable accident or other act of God;
 - (ii) Any act of public enemy;
 - (iii) Any act of any government or any government authority or instrumentality;
 - (iv) Any act of any person engaged in subversive activity or sabotage;
 - (v) Epidemics or quarantine restrictions;
 - (vi) Strikes, slowdowns, lockouts or labour stoppages or disputes of any kind or freight embargoes;
 - (vii) Any shortfall, delay or failure to supply by any of “CKJ’s” suppliers; or
 - (viii) Any other cause or event whatsoever which is beyond the control and without the fault or negligence of “CKJ”.
- (b) In the event of a failure by “CKJ” to comply with a Contract, unless “CKJ” advises the Customer that it is able to make alternative arrangements, the Customer shall be entitled to obtain the Products contracted for supply elsewhere for the duration of such failure.

15. CUSTOMER’S TRUST

If the Customer enters into this Agreement as trustee of a trust (“Trust”), the Customer:

- (a) Confirms that it enters into this Agreement as trustee of the Trust both for its beneficiaries and for itself and in this Agreement, each reference to the Customer is a reference to it in each capacity; and
- (b) Warrants to the Supplier that:
 - (i) It is the only trustee of the Trust;
 - (ii) No action has been taken or proposed to remove it as trustee of the Trust;
 - (iii) It has power under the trust deed relating to the Trust to enter into and observe the Customer’s Covenants;
 - (iv) It has a right to be fully indemnified out of the trust fund of the Trust in respect of its obligations to perform and observe the Customer’s Covenants;
 - (v) The assets of the Trust are sufficient to satisfy the Supplier’s right of indemnity out of the Trust Fund;
 - (vi) It is not in default under the terms of the Trust; and
 - (vii) The Supplier’s Rights rank in priority to the interest of the beneficiaries of the Trust.



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16. GOVERNING LAW

These Terms and Conditions are governed by and construed in accordance with the laws of the State of New South Wales, Australia (regardless of the place in which the Products are to be delivered). The Customer submits to the jurisdiction of the courts of the State of New South Wales and of the courts competent to hear appeals from the courts of that State.

17. VARIATION

- (a) The Customer acknowledges that these Terms and Conditions are available via the “CKJ” website www.connollykeyjoint.com and may change without notice.
- (b) The Customer’s continued purchase of Products will evidence consent to the new terms and conditions as amended in accordance with clause 17(a).