



# Steve Jenkins & Associates

## Terms & Conditions

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### 1. Definitions

The Seller is Steve Jenkins & Associates of Factory 2, 21-29 Railway Ave, Huntingdale, Vic, 3166, a public testing laboratory, consultancy service and supplier of testing and measurement products. The Buyer is any company, organisation or individual who procures the products or services of the Seller. The Order is the agreement of procurement of the product or service by the Buyer from the Seller, whether by issuance of a purchase order or by email or by verbal agreement. The Transaction is the product or service supplied by the Seller to the Buyer.

### 2. Scope

The terms and conditions of sale contained herein apply to all quotations made and Orders entered into by the Seller. These terms and conditions supersede and replace any terms and conditions attached to the Buyer's Order and the Seller's acceptance is expressly conditional upon the Buyer's acceptance of these terms and conditions. No waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing, signed by a duly authorised representative of the Seller. The terms and conditions published on the website of the Seller are at all times the terms and conditions which govern the transaction, unless superseded by written instruction from the Seller, and these may be subject to change without notice.

### 3. Acceptance of Order

All orders must be approved and accepted in writing by the Seller at its office in Huntingdale. The validity of this Order, as well as its interpretation, operation and effect shall be determined exclusively by the principles of law in the State of Victoria.

### 4. Prices

The Seller's prices do not include GST unless explicitly stated. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise, personal property or other similar tax applicable to the sale or use of the equipment hereunder shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide the Seller with a tax-exemption certificate acceptable to the taxing authorities. The validity of a quotation provided by the Seller will be for a period of thirty (30) days from the date of the quotation or for such other period of time as may be specified in the quotation; provided, however, that in the event to cost of material increases prior to acceptance of a purchase order by the Seller, the amount of such increase will be added to the quoted prices.

### 5. Terms of Payment

Invoices are due and payable net thirty (30) days from the date of invoice unless otherwise agreed in writing by the Seller. Failure to make any payment due under the terms of this agreement shall constitute a material breach. If, in the judgement of the Seller, the financial condition of the Buyer at any time does not justify continuation of the Transaction on the terms of payment originally specified, the Seller may require full or partial payment in advance and, in the event of the bankruptcy or insolvency of the Buyer or in the event any proceeding is brought by or against the Buyer under the bankruptcy or insolvency laws, the Seller shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges which include, but are not limited to, all costs, direct and indirect for labour, materials, tools, overhead and a profit equal to that which the Seller would be entitled had the order not been cancelled.

The Buyer shall have no right to delay the Transaction without prior written consent of the Seller. In the event that such delay is agreed to in writing by the Seller at the request of the Buyer, payments shall then be made by the Buyer for (1) labour costs and/or materials purchased to complete this order plus (2) the percentage of completion multiplied by the full purchase price of the order

less the cost of (1). In the event that the delay extends beyond ninety (90) days from the date of the order, and there is a price increase, the Buyer agrees to pay such increased price for completion of the Transaction thereafter.

Each partially completed Transaction shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. If Transactions are delayed at the request of the Buyer, payments shall become due on the date when the Seller is prepared to complete the Transaction. Products held for the Buyer shall be at the risk and expense of the Buyer. The Buyer grants the Seller a purchase money security interest in all articles under this agreement until such time as full purchase price is paid.

The Seller reserves the right to charge and the Buyer agrees to pay, interest on all overdue amounts at the rate of 1.5 % per month or part thereof during which any balance due to the Seller remains unpaid. All costs of collection of unpaid amounts due to the Seller, including, but not limited to, court costs and attorneys' fees shall be borne by the Buyer.

## **6. Delivery**

Turn-around times to complete the Transaction are approximate only and subject to change. Unless otherwise specified in the Order, the delivery of any products supplied by the Seller shall be EXW (INCOTERMS 2010) from the Seller's plant, Huntingdale, Victoria, and the method of shipment and carrier shall be selected by the Seller unless the Buyer shall have specified in writing a method of shipment and carrier then (10) days prior to scheduled shipment. Unless otherwise specified in the Order, the costs of returning any product supplied by the Buyer for testing or calibration services is not covered by the Seller.

In all cases, the Buyer assumes risk of loss or of damage to goods in transit and it shall be the Buyer's responsibility to file any claims with the carrier. If the Buyer desires insurance or valuation greater than the minimum cost on the shipment, he shall so notify the Seller in writing ten (10) days prior to the scheduled shipment and the cost thereof shall be an additional charge to the Buyer. If no such notice is received, shipment shall be made without insurance and at minimum valuation.

## **7. Excusable Delay**

The Seller shall not be liable for delays in delivery or failure to execute the Transaction due to causes beyond the Seller's reasonable control, including, but not limited to, acts of God, acts of the Buyer, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation or car shortages, obtaining necessary labour, materials, components or manufacturing facilities.

## **8. Acceptance of Goods and Services**

The Buyer shall inspect the report(s) and/or product(s) delivered under the Transaction immediately upon receiving them and shall within five (5) days of their arrival give written notice to the Seller of any claim that the report(s) and/or product(s) do not conform with the terms of the contract. If the Buyer fails to give notice, the Transaction shall be deemed to be accepted, and the Buyer shall be bound to accept and pay for the cost of the Order in accordance with the terms specified in the Order. The Buyer expressly waives any rights he may have to revoke acceptance after such five (5) day period. Products or services supplied by the Seller will be rendered with due care and skill; and will be reasonably fit for the purpose desired or will be of such a nature and quality as may reasonably be expected to achieve the result.

## **9. Patents**

If the Transaction which is the subject hereof is to be produced according to the Buyer's specifications, the Buyer agrees to indemnify the Seller against, and hold harmless from all judgments, decrees, costs and expenses including fees resulting from any alleged infringements on any Australian or foreign letters patent.

## **10. Packaging**

Wherever possible, the Seller will use the same packaging provided by the Buyer when sending a product to the Seller for testing or calibration when sending the product back to the Buyer. Should the same packaging not be usable or appropriate the Seller will provide commercial packaging adequate, under normal conditions, to protect the goods in shipment and to identify the contents. Any special packaging agreed to by the Seller will be done at the Buyer's expense.

## **11. Appropriateness and Performance of Products Furnished by the Buyer**

The Seller assumes no responsibility for the performance of products supplied by the Buyer for testing or calibration nor their appropriateness for a given test or calibration or use.

## 12. Warranty

The Seller warrants that all products sold to the Buyer will be delivered free from defects in material and workmanship and in conformance with contractual requirements. The Seller makes no other warranties, express or implied and specifically NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 13. Limitation of Liability

The Seller's exclusive liability for breach of warranty for all products sold to the Buyer shall be limited to repairing or replacing at the Seller's option items returned to the Seller's plant at the Buyer's expense within one year of the date of delivery. The Seller's liability on any claim of any kind, including negligence, for loss or damage arising out of, connected with or resulting from the Order, or from the performance or breach thereof or from the manufacture, sale, delivery, resale, repair or use of any item or from the provision of services covered by or furnished under the Order shall in no case exceed the price allocable to the item or service or part thereof which gives rise to the claim and in the event the Seller fails to manufacture or deliver items other than standard products that appear in the Seller's catalogue or to fulfil the contracted testing or calibration service specified in the quotation referenced in the Order. The Seller's exclusive liability and the Buyer's exclusive remedy shall be the release of the Buyer from the obligation to pay the purchase price. IN NO EVENT SHALL THE SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.

## 14. User Advisories

The Buyer will take all appropriate measures to advise users and operators of any products delivered hereunder of all potential dangers to persons or property, which may be occasioned by such use or in the environment in which the product is used. The Buyer will indemnify and hold the Seller harmless from all claims of any kind for injuries to persons and property arising from use of any products delivered hereunder. The Buyer will, at its sole cost, carry liability insurance adequate to protect the Buyer and the Seller against such claims.

## 15. Assignment

Except as herein expressly provided to the contrary, the provisions of this agreement are for the benefit of the parties to the agreement and not for the benefit of any other party. Any assignment of this order or any rights hereunder by the Buyer without written consent of the Seller shall be void.

## 16. Jurisdiction

Legal enforcement of all contracts between the Seller and the Buyer shall be governed by the law of the State of Victoria and the parties agree to submit to the jurisdiction of the courts in that state.

## 17. Return Policy

All Standard Catalogue Products offered by the Seller can be returned within 90 days of purchase for partial credit. A 30 % restocking charge, or 70 % credit against future purchases, may be issued after meeting the following criterion and inspection by the Seller.

- 1) The product is not damaged or missing components.
- 2) The product is unused and is in its original package.
- 3) The product has no design modifications.

The Seller reserves the right to determine what is considered "Standard Catalogue Product" and apply an appropriate restocking charge.

## 18. Confidentiality

In keeping with its NATA Accreditation, the requirements of ISO 17025, and in order to provide a high standard of service to its clients, SJA has a strong commitment to the confidentiality of information provided to and by its clients. The SJA Confidentiality Policy can be found at the SJA website.