

JLG AUSTRALIA & NEW ZEALAND SUPPLIER TERMS AND CONDITIONS

Contract Details

JLG	Name:	
	ABN/NZBN	
	Address:	
	Contact:	
	Phone:	
	Email:	
Supplier	Name:	
	ABN/NZBN	
	Address:	
	Contact:	
	Phone:	
	Email:	
Start Date		
Term		
Premises		
Goods		
Insurance	Public Liability Insurance of at least \$10,000,000 per claim; Professional Indemnity Insurance of at least \$10,000,000 per claim; Product Liability Insurance of at least \$5,000,000 per claim	

By signing below, the Supplier and JLG agree to be bound by the terms of these Contract Details, the attached Standard Terms and Conditions and any Schedules or Annexures.

Executed by JLG by its authorised officer in the presence of:

Signature of witness

Signature

Name of witness

Name

Position

Date

Executed by the Supplier by its authorised officers in the presence of:

Signature of witness

Signature

Name of witness

Name

Position

Date

Executed by the Supplier in accordance with s127 of the *Corporations Act 2001* (Cth) or s 180 of the *Companies Act 1993* (NZ) (as applicable) by its authorised officers:

Signature of director

Signature of director/ secretary

Name

Name

Date

Standard Terms and Conditions

1. DEFINITIONS

Agreement is defined in accordance with clause 2.1.

Background IP means all intellectual property which exists and is owned by a party on or before the Start Date or are brought into existence, developed or created by a party after the Start Date but independently of, or unconnected with, this Agreement.

Claims means any present or future, actual or contingent, claim, liability, right, remedy, entitlement, demand, proof of debt, cause of action, suit or proceeding for damages, debt, costs (including legal costs and expenses), restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy, whether by originating claim, cross claim or otherwise, whether arising at common law, in equity, under statute or otherwise, and whether or not known at the date of this Agreement, arising out of or relating to this Agreement.

Confidential Information means all information about the business or affairs of the disclosing party, information which passes directly or indirectly from the disclosing party to the recipient party in connection with this Agreement, information which is designated as confidential by the disclosing party, or information which the recipient party knows or ought to know is confidential and information about the terms of this Agreement.

Companies Act means the *Companies Act 1993* (NZ).

Corporations Act means the *Corporations Act 2001* (Cth).

Goods means the goods to be supplied as set out in the Contract Details.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not either demonstrably frivolous or vexatious, or withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator or a receiver, receiver and manager, judicial manager, liquidator, administrator, controller or like official is appointed to the person or to the whole or a substantial part of the undertaking or property of the person, including any of its assets;
- (d) it enters into, or takes steps or proposes to enter into, an arrangement, compromise or composition with its creditors or a class of them, or an assignment for the benefit of its creditors or a class of them;
- (e) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent or states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (g) it becomes an insolvent under administration;

- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F (1) of the Corporations Act;
- (i) it fails to take the required action set out in a statutory demand (made in accordance with section 289 of the Companies Act) within 15 working days of the date of service (or such longer period as a court has ordered);
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (k) a request is sent or delivered in accordance with section 318(1)(d) of the Companies Act, or a notice is issued under section 319 of the Companies Act;
- (l) a writ of execution is issued against it or its property;
- (m) it ceases to carry on business or pay its debts as and when they fall due, or threatens to do so, or it is taken under applicable laws to be unable to pay its debts or stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (n) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

Insurance means the insurance policies as set out in the Contract Details.

Premises means the location(s) where the Goods are to be delivered and the Services to be provided as set out in the Contract Details.

Prices means the price list attached at Annexure C.

Services means the services to be supplied as set out at Annexure A.

Service Levels means the service levels set at Annexure B.

Start Date means the date set out in the Contract Details.

Stay means a stay on enforcing rights against a party which arises under the Corporations Act or Companies Act if that party becomes subject to an event described in paragraph (c) or (d) of the definition of Insolvency Event.

2. SCOPE OF AGREEMENT

2.1 The parties agree that the following documents together comprise the Agreement:

- (a) each Purchase Order;
- (b) the Contract Details;
- (c) these Standard Terms and Conditions; and
- (d) each Schedule or Annexure (if applicable).

2.2 If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents referred to in clause 2.1 then, unless otherwise stated by JLG, the documents take precedence in the above order.

2.3 This Agreement governs the purchase and supply of Goods and Services (as applicable) as required by JLG and set out in each Purchase Order.

2.4 The terms and conditions of this Agreement override any standard terms and conditions of the Supplier.

3. TERM

This Agreement commences on the Start Date and continues for the Term, unless terminated earlier in accordance with clause 20.

4. PURCHASE ORDERS

4.1 JLG may place orders for the Goods and or Services by issuing the Supplier with a Purchase Order in the form used by JLG from time to time.

4.2 The Supplier must:

- (a) process all Purchaser Orders immediately on receipt;
- (b) supply the Goods and or Services in accordance with the terms of this Agreement, the reasonable directions of JLG, all applicable laws, standards and other requirements imposed by governmental agencies.

4.3 JLG reserves the right to adjust or cancel a Purchase Order at any time, which may be in progress. The Supplier will document the costs incurred by the adjustment or cancellation and submit an invoice to JLG for review, authorisation and payment in accordance with clause 12. JLG will pay these costs within thirty (30) days unless JLG considers the costs in relation to a cancellation could have reasonably been mitigated by the Supplier.

5. NO MINIMUM ORDERS OR EXCLUSIVITY

5.1 The Supplier agrees that JLG is not obliged to issue any Purchase Orders and JLG does not guarantee any volume of business or commitment to ordering any minimum quantity or value from the Supplier.

5.2 Nothing in this Agreement creates an exclusive relationship between JLG and the Supplier in respect of the Goods and Services.

6. OVER AND UNDER SUPPLY

6.1 The Supplier agrees to only supply the Goods and Services as shown on the applicable Purchase Order. JLG is under no obligation to accept or pay for oversupply of Goods or Services.

6.2 If the Supplier provides less than the Goods or Services specified in the Purchase Order JLG may, at its option:

- (c) reject the Goods or Services;
- (d) require the Supplier to supply the shortfall of Goods or provide further Services at the Supplier's expense; or
- (e) request a credit against the invoice for the Goods or Services.

7. DELIVERY

7.1 The Supplier must deliver the Goods and perform the Services (as applicable) in accordance with all requirements set out in the Purchase Order.

7.2 Title and risk of damage or loss to the Goods (if applicable) passes to JLG on delivery.

7.3 When on the Premises, whether to deliver the Goods or perform the Services, the Supplier must observe all of JLG's rules and policies (as notified to the Supplier from time to time) relating to security of, access to, or use of JLG's Premises.

8. DELAY

- 8.1 The Supplier must, immediately on becoming aware of anything that is likely to, or which will, result in a delay in the supply of the Goods or Services, notify JLG. The Supplier must also provide details of:
- (a) the exact nature of the problem;
 - (b) the cause of the problem;
 - (c) steps being taken to minimise or remove the problem.
- 8.2 The Supplier must comply with all of JLG's reasonable directions to prevent or minimise the impact of the delay.
- 8.3 The Supplier acknowledges that JLG may engage an alternate supplier to provide the Goods or Services (or similar) at the Supplier's cost if the Supplier is delayed by more than seven (7) days.

9. DEFECTS

- 9.1 JLG may reject any of the Goods or Services within fourteen (14) days after delivery of the Goods or completion of the Services, if those Goods or Services are defective and or do not comply with the requirements of this Agreement.
- 9.2 Upon receipt of notice of rejection, the Supplier must within five (5) days or such other timeframe as agreed between the parties:
- (d) correct and rework the rejected Services;
 - (e) at JLG's election, repair or resupply the rejected Goods.
- 9.3 If the Supplier fails to rectify the rejected Goods or Services in accordance with clause 9.2, JLG may correct or engage a third party to correct the defect at the Supplier's cost.

10. SUBCONTRACTING

- 10.1 The Supplier must not subcontract any part of this Agreement without the prior written consent of JLG.
- 10.2 Subcontracting any part of this Agreement in accordance with clause 10.1 does not relieve the Supplier from any of its obligations under this Agreement. All acts and omissions of the Supplier's subcontractors, employees and agents will be deemed to be the acts and omissions of the Supplier.
- 10.3 The Supplier must ensure that the terms of any subcontract for the performance of obligations under this Agreement is consistent with the terms of this Agreement.

11. PRICING

- 11.1 In consideration for the Supplier supplying the Goods and Services (as applicable) in accordance with this Agreement, JLG will pay the Supplier the applicable Price.
- 11.2 Prices for the Goods and Services are to be calculated in accordance with this Agreement unless otherwise specified in a Purchase Order.
- 11.3 Prices are fixed for the Term of this Agreement unless otherwise agreed in writing by the parties.

12. PAYMENT

- 12.1 Within seven (7) days of the end of each month, the Supplier must submit to JLG a tax invoice including the following information:
- (a) Supplier name, address and ABN or NZBN number (as applicable);
 - (b) Purchase Orders delivered in that month;
 - (c) for Goods, the quantity delivered and unit cost;
 - (d) for Services, the day and hours spent providing the Services as well as the hourly rate charged; and
 - (e) the Total cost and GST.

12.2 JLG will pay all invoices issued by the Supplier within thirty (30) days following receipt to an account nominated by the Supplier.

12.3 JLG may withhold or setoff any payments due to the Supplier against any monies or debts owing by the Supplier.

13. GST

13.1 Expressions used in this clause have the same meaning given to those expressions in the Australian *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or *Goods and Services Tax Act 1985* (NZ) (as applicable).

13.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

13.3 Subject to clause 13.4, if GST is imposed on any Taxable Supply made under or in connection with this Agreement (**GST Amount**), the recipient must pay to the supplier the GST Amount in addition to and (unless otherwise agreed) at the same time as payment for the Taxable Supply is required to be made under this Agreement.

13.4 Unless otherwise agreed, the recipient of a Taxable Supply will have no obligation to make any payment in respect of that Taxable Supply until the supplier has provided the recipient with a valid Tax Invoice for that Taxable Supply.

14. SERVICE LEVELS

14.1 All Goods and Services must comply with the Service Levels, the requirements specified in the Purchase Order or as otherwise agreed by the parties in writing from time to time.

14.2 If JLG, acting reasonably, believes the Goods and or Services do not meet the required Service Levels, JLG may require the Supplier to resupply the Goods or Services at no additional cost to JLG.

14.3 The parties may from time to time request and agree to changes or additions to the Service Levels.

15. SUPPLIER WARRANTIES

15.1 The Supplier warrants that:

- (a) the Supplier and its subcontractors, employees and agents engaged in providing the Services have the necessary and appropriate skills, capabilities, resources and experience to provide the Services;
- (b) the Services will be rendered with due care and skill;

- (c) the Goods will be fit for the purpose goods of the same kind are commonly supplied and any other reasonable purpose made known to the Supplier;
- (d) the Goods will be of merchantable quality and free from defects in their entirety; and
- (e) the Goods and Services will comply with all laws and applicable industry standards.

16. CONFIDENTIAL INFORMATION

16.1 A party may obtain knowledge of, or access to, the other party's Confidential Information. The parties agree they:

- (a) must hold each other's Confidential Information in strictest confidence;
- (b) only use that Confidential Information for the purposes of this Agreement;
- (c) will not copy, reproduce, sell, assign, licence, market, transfer, give or otherwise disclose the Confidential Information to third parties;
- (d) will advise their employees, agents and representatives of their obligations to keep the Confidential Information confidential.

16.2 Clause 16.1 does not apply to any use or disclosure of Confidential Information:

- (a) by a recipient party to the extent necessary to:
 - (i) comply with any law, binding directive of a regulator or a court order; or
 - (ii) obtain professional advice in relation to matters arising under or in connection with this document.
- (b) which is in or becomes part of the public domain otherwise than through breach of an obligation of confidence;
- (c) which was known to a recipient party at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or
- (d) which a recipient party acquires from a third party where that third party was entitled to disclose it.

16.3 Each party acknowledges that a breach of the confidentiality obligations set out in this clause 16 by it may cause the other irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to a claim for damages and any other remedies available at law or in equity, such party may seek specific performance or injunctive relief (as appropriate) against any breach or threatened breach by the other party, or the employees, subcontractors or agents of the other party.

17. INTELLECTUAL PROPERTY

17.1 Nothing in this Agreement affects the ownership of a party's Background IP in any way.

18. INSURANCE

18.1 The Supplier must take out and maintain, at its own expense, the Insurance.

18.2 The Insurance must be current during the Term and professional indemnity insurance must be maintained for seven (7) years after expiry of the Term.

18.3 The Supplier must provide JLG with a copy of the Insurance policies or certificates of currency on request.

19. LIABILITY & INDEMNITY

19.1 Each party agrees that they do not rely on any guarantee, term, condition, warranty, undertaking, inducement or representation not expressly stated in this Agreement.

19.2 The Supplier indemnifies JLG against all Claims and expenses incurred or suffered in connection with or arising out of the performance by the Supplier, or a breach by the Supplier, its subcontractors, agents or employees, of the provisions of this Agreement or as the result of a Claim made or threatened by a third party except to the extent such loss, liability, action, claims, demands, damages, costs and expenses is caused by an act or omission of an JLG.

20. TERMINATION

20.1 Either party, as applicable, has the right to terminate this Agreement as follows:

- (a) without cause on thirty (30) days' written notice;
- (b) immediately upon receiving written notice:
- (c) for any material breach of this Agreement (or series of breaches which collectively constitute a material breach) that is not or cannot be, cured within seven (7) days after receipt by the party in default of a written notice specifying the breach and requiring its cure; or
- (d) where an Insolvency Event occurs to the other party and that Insolvency Event:
 - (i) does not give rise to a Stay; or
 - (ii) gives rise to a Stay, but a court makes an order to lift that Stay.

20.2 If this Agreement is terminated:

- (a) the Supplier will continue to perform its obligations under this Agreement diligently until the termination of this Agreement becomes effective and will provide JLG with an invoice for all Goods and Services delivered up to the effective date of termination (**Final Invoice**);
- (b) JLG will pay the Final Invoice in accordance with the payment terms set out in clause 12; and
- (c) both parties will cease all use of, and either return or destroy all of, the disclosing party's Confidential Information.

21. GENERAL

21.1 Relationship between the parties

Except as expressly provided to the contrary in this Agreement, nothing in this Agreement will constitute the parties as principal and agent, employer and employee, partners or otherwise liable for the acts or omissions of any other party.

21.2 Entire agreement

This Agreement records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or

negotiations by, or between, the parties in relation to the subject matter of this Agreement.

21.3 Further assurance

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this Agreement.

21.4 Counterparts

This Agreement and any variation may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

21.5 Survival

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this Agreement will remain valid and binding following expiry or termination of this Agreement. Any other provision by its nature intended to survive expiry or termination of this Agreement survives expiry or termination of this Agreement.

21.6 No waiver

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this Agreement does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

21.7 Cumulative rights

The rights, powers, authorities, discretions and remedies of a party under this Agreement do not exclude any other right, power, authority, discretion or remedy.

21.8 Severability

If any provision of this Agreement is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the Agreement in which event, the remaining provisions of this Agreement operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this Agreement.

21.9 Variation

This Agreement can only be amended, supplemented or replaced by another document signed by the parties.

21.10 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this Agreement.

ANNEXURE A – Services

Annexure B – Service Levels

Annexure C – Price List