

TERMS AND CONDITIONS OF TRADE

1. Definitions

In these conditions:

"Agreement" means any agreement or contract entered into for the provision of Goods and/or Services by the Supplier to the Customer;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring Goods or Services from the Supplier;

"Force Majeure Event" means any act, event, omission or circumstance which, in the opinion of the Supplier:

(a) is not within the reasonable control of the Supplier; and

(b) alone or when taken together with any other Force Majeure Event, prevents the Supplier from performing any obligations owed to the Customer including but not limited to the supply of Goods and Services to the Customer,

including but not limited to unexpected shortage of materials or facilities, default by sub-contractors or suppliers, strikes, lock-outs or other industrial action (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, fire, flood, accidental or malicious damage, compliance with any law or governmental order, rule, regulation or direction or breakdown in machinery;

"Goods" means goods supplied by the Supplier to the Customer;

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"Loss" means any loss, liability, damage, expense or cost whatsoever and includes but is not limited to:

(a) indirect or consequential loss or damage;

(b) loss of profits;

(c) loss of business opportunity;

(d) loss of anticipated savings;

(e) depletion of goodwill; and

(f) damage to equipment or property.

"Supplier" means: Australian Rollforming Manufacturers Pty Ltd ACN 079 800 641

The relevant contracting party is described in the quotation provided to the Customer.

"Services" means services supplied by the Supplier to the Customer; and

"Terms" means these Terms and Conditions of Trade.

2. Basis of Agreement

2.1 Unless otherwise agreed by the Supplier in writing:

(a) **the Terms apply exclusively to and are incorporated into every Agreement;** and

(b) **the Terms prevail over and cannot be varied or supplanted by any terms or conditions contained or referred to in the Customer's purchase order, confirmation of order, acceptance of quotation, or specification or other document supplied by the Customer or implied by trade custom, practice or course of dealing.**

2.2 Any written quotation provided by the Supplier to the Customer concerning the proposed supply of Goods or Services is:

(a) valid for 30 days;

(b) an invitation to treat only; and

(c) provided on the basis that no Agreement shall come into existence except in accordance with clause 2.3.

2.3 The Customer's purchase order, or the Customer's acceptance of a quotation for Goods or Services by the Supplier, constitutes an offer by the Customer to purchase the Goods or Services on these Terms. The offer placed by the Customer shall be accepted by the Supplier and an Agreement shall be established when the Supplier:

(a) **confirms its acceptance of the Customer's offer in writing or by electronic form;** or

(b) **starts to provide the Goods or Services.**

2.4 The Agreement may include additional terms in the Supplier's quotation, which are not inconsistent with the Terms.

2.5 The Supplier in its absolute discretion may refuse to accept any offer.

2.6 It is the Customer's responsibility to provide the Supplier with its specific requirements in relation to the Goods and Services.

2.7 The Supplier may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of notice.

3. Pricing

3.1 Prices quoted for the supply of Goods and Services exclude GST and any other taxes or duties imposed on or in relation to the Goods and Services. In addition to payment of the price of Goods and Services, the Customer may pay any GST and any other taxes or duties imposed on the Goods and Services

3.2 Unless expressly specified by the Supplier, the prices quoted for Goods or Services excludes any design costs incurred by the Supplier. The Supplier reserves the right to charge the Customer for the costs incurred by the Supplier in relation to the provision of design services.

3.3 When calculating any amounts to be charged pursuant to clause 3.2, the Supplier will have regard to market rates for comparable design services.

3.4 Prices for Goods and Services are set in accordance with the Supplier's price list as amended from time to time and distributed to the Customer.

3.5 If the Customer requests any variation to the Agreement, the Supplier may increase the price to account for the variation.

- 3.6 Where there is any change in the costs incurred by the Supplier in relation to Goods or Services, the Supplier may vary its price for the Goods or Services to take account of any such change, by notifying the Customer.
4. **Payment**
- 4.1 **Unless otherwise agreed in writing:**
- (a) Subject to clause 4.1(d), payment for the Goods or Services must be made within 30 day of the date of the Supplier's invoice.
- (b) Time for payment shall be of the essence of the Agreement.
- (c) Where the Customer defaults in payment of any money then:
- (i) interest at a rate of two percent higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* shall be paid on demand made by the Supplier without prejudice to any other rights of the Supplier;
- (ii) the Supplier may charge the Customer for, and the Customer must indemnify the Supplier from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it as a result of the default or in taking action to enforce compliance with the Terms or to recover any Goods;
- (iii) the Supplier may cease or suspend for such period as the Supplier thinks fit, supply of any further Goods or Services to the Customer; and
- (iv) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier.
- (d) The Supplier reserves the right to require payment in full on delivery of the Goods or completion of the Services.
- 4.2 **All payments must be made in Australian dollars in either cash, cheque, credit card or EFTPOS.**
- 4.3 **Payment by cheque is not deemed made until the proceeds of the cheque have cleared.**
- 4.4 **Payment terms may be revoked or amended at the sole discretion of the Supplier immediately upon giving written notice to the Customer.**
- 4.5 **Clauses 5.1 may also be relied upon, at the option of the Supplier:**
- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme or arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
5. **Passing of Property**
- 5.1 **Until full payment in cleared funds is received by the Supplier for all Goods and Services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:**
- (a) title and property in all Goods remain vested in the Supplier and do not pass to the Customer;
- (b) the Customer must hold the Goods as fiduciary bailee and agent for the Supplier;
- (c) the Customer must keep the Goods separate from its goods and maintain the labelling and packaging of the Supplier;
- (d) the Customer is required to hold the proceeds of any sale of the Goods on trust for the Supplier in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- (e) the Supplier may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.
- (f) The Supplier will retain ownership of all materials left over after the production process is complete. This includes material supplied by the Customer unless specifically agreed to in writing before the contract has commenced.
6. **Intellectual Property**
- 6.1 **The Customer acknowledges that the Supplier may invest time and money into the design and development of goods to be supplied to the Customer and that unless otherwise agreed in writing by the Supplier, the Customer is prohibited from making or having made by any third party any goods described in a quotation or Agreement or described in any drawing, designs, design proposals, plans, specifications or any other visible data accompanying or relating to a quotation or Agreement.**
- 6.2 **Clause 6.2 does not apply where the drawing, design, design proposal, plan, specification or other visible data in a quotation or Agreement was wholly contributed by the Customer.**
7. **Risk and Insurance**
- 7.1 **The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately on the Goods being despatched or taken from the Supplier's premises.**
- 7.2 **The Goods are sold to the Customer on the basis that the Customer has obtained all necessary licences or permits under all relevant laws and regulations in relation to the Goods.**
- 7.3 **The Customer assumes all risk and liability for Loss to persons or to property of the Customer or of third parties where that Loss arises from the use, installation or possession of any of the Goods, whether used singularly or in combination with other substances or any processes.**
8. **Performance of Agreement**
- 8.1 **The Supplier shall:**
- (a) use reasonable endeavours to provide the Goods or Services; and
- (b) use reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time shall not be of the essence for provision of the Goods or Services.

- 8.2 The Customer shall:**
- (a) co-operate with the Supplier in all matters relating to the provision of the Goods or Services;
 - (b) provide the Supplier, its agents, sub-contractors, consultants and employees, in a timely matter and at no charge, with:
 - (i) access to the customer's premises, data and other facilities reasonably required by the Supplier; and
 - (ii) any information the Supplier may reasonably require and ensure that it is accurate in all material respects.
- 9. Delivery**
- 9.1 The Supplier will, at its discretion, arrange for the delivery of the Goods to the Customer and designate the route and the means of transportation for the delivery of Goods. In the event that the Customer requires a more expensive route or means of transportation the Customer will reimburse the Supplier for the extra cost involved.**
- 9.2 Unless otherwise agreed in writing by the Supplier, the Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Customer at the point of delivery.**
- 9.3 The Customer authorises the Supplier to subcontract delivery in its absolute discretion.**
- 9.4 The Customer indemnifies the Supplier against any Loss suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where caused by the negligence of the Supplier.**
- 9.5 If the Supplier does not receive forwarding instructions sufficient to enable it to dispatch the Goods or the Goods are not picked up by the Customer within 14 days of notification that the Goods are ready, the Customer shall be deemed to have taken delivery of the Goods from such date. The Customer shall be liable for storage charges payable monthly on demand.**
- 9.6 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of Goods invoiced.**
- 10. Liability**
- 10.1 To the extent permitted by law:**
- (a) except as specifically set out herein or contained in any warranty statement provided with the Goods or Services, all terms, conditions or warranties in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design, technical specification, or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise are hereby expressly excluded from the Agreement;
 - (b) replacement or repair of the Goods or resupply of the Services is the absolute limit of the Supplier's liability howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Customer or any third party;
 - (c) the Supplier is not liable for any Loss suffered by the Customer or any third party, howsoever caused;
 - (d) the Supplier will not be liable for any Loss suffered by or any claims made by the Customer or a third party in relation to the Goods once the Goods have been installed or fixed into place; and
 - (e) the Supplier will not be liable for any Loss suffered by the Customer where the Supplier has failed to deliver Goods or Services or fails to meet any delivery date or cancels or suspends the supply of the Goods or Services.
- 10.2 Any warranty provided by the Supplier does not apply in circumstances where:**
- (a) the Goods or Services are not defective;
 - (b) the Goods were used or services required for a purpose other than for which they were intended;
 - (c) the Goods were repaired, modified or altered by any person other than the Supplier;
 - (d) the defect has arisen due to misuse, neglect or accident;
 - (e) the defect has arisen due to the incorrect installation of the Goods;
 - (f) the Goods have not been stored or maintained as recommended by the Supplier;
 - (g) the defect has arisen due to normal wear and tear on the Goods; or
 - (h) the Customer is in breach of the Agreement
- 10.3 The Customer acknowledges that:**
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information, specification or assistance provided by the Supplier in relation to the Goods or Services or their use or application;
 - (b) any advice, recommendation, information, or specification is provided as a guideline only;
 - (c) it has the sole responsibility of satisfying itself that the Goods or Services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by the Supplier;
 - (d) any decision of the Goods provided in quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.
- 10.4 The Customer shall be liable to the Supplier for all Losses sustained or incurred by the Supplier arising from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement.**
- 10.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Services which cannot be excluded, restricted or modified.**
- 11. Cancellation by the Customer**
- 11.1 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier after that order has been accepted.**
- 11.2 If the Customer purports to cancel an order and the Supplier agrees to the cancellation, any deposit paid by the Customer will be forfeited.**
- 11.3 The Supplier, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice. The Supplier may request additional information or the provision of further security to a credit facility and may suspend or cancel a credit facility if the information or security requested is not provided with a reasonable time.**

12. Returns and Exchanges
- 12.1 Subject to clause 12.2, the Supplier will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies the Supplier with full details within 14 days of delivery and must be made before the Goods have been installed or laid.
- 12.2 When any defects, shortages, claim for damage or non-compliance with the Agreement specifications is accepted by the Supplier, the Supplier may, at its option, replace the Goods, or refund the price of the Goods.
- 12.3 If the Customer fails to give the notice as required in clause 12.1, it is deemed to have accepted the Goods.
- 12.4 The Supplier will not under any circumstances accept Goods for return that:
 - (a) have been specifically produced, imported or acquired to fulfil any contract;
 - (b) are discontinued goods or no longer stocked by the Supplier;
 - (c) have been altered in any way;
 - (d) have been used; or
 - (e) are not in their original condition and packaging.
- 12.5 If the Supplier accepts Goods for return, the Customer will receive a credit for the returned Goods equal to the price charged by the Supplier less a 20% deduction for handling and restocking charges.
- 12.6 The Customer must:
 - (a) obtain the Supplier's prior written approval for return of Goods; and
 - (b) pay all freight charges and costs associated with return of Goods.
13. Force Majeure
- 13.1 The Supplier shall have no liability to the Customer for any Loss incurred by the Customer as a result of any Force Majeure Event.
- 13.2 Subject to clause 13.3, for the duration of the Force Majeure Event the obligations of the Supplier, to the extent they are affected by the Force Majeure Event are suspended.
- 13.3 Where a Force Majeure Event has occurred, the Supplier may cancel a Customer order by notice in writing to the Customer.
14. Miscellaneous
- 14.1 The law of Victoria from time to time governs the Terms and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 14.2 Failure by the Supplier to enforce any of these Terms shall not be construed as a waiver of any of the Supplier's rights.
- 14.3 If any Term or part thereof is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that Term shall, to the extent required, be deemed not to form part of the Agreement and the validity and enforceability of the other provisions of the Agreement shall not be effected.
- 14.4 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.
- 14.5 The Customer may not assign any of its rights under the Agreement without the Supplier's written consent.
15. Privacy
- 15.1 The Supplier is bound by the *Privacy Act* 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to the Supplier in accordance with the *Privacy Act*.
- 15.2 The Supplier requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by the Supplier in connection with this Agreement.