

1. Definitions

In these Terms:

"**ACL**" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010;

"**Agreement**" means any agreement for the provision of goods or services by Rolls to the Customer;

"**consumer**" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

"**Customer**" means the person, jointly and severally if more than one, acquiring goods or services from Rolls;

"**goods**" means goods supplied by Rolls 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;

"**PPSA**" means the *Personal Property Securities Act* 2009 as amended;

"**Rolls**" means RollsPack Pty Ltd (ABN 54 174 349 603);

"**services**" means services supplied by Rolls to the Customer; and

"**Terms**" means these Terms and Conditions of Trade.

2. Basis of Agreement

2.1 Unless otherwise agreed by Rolls in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by Rolls to the Customer for the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms include additional terms in Rolls' quotation. In the event of any inconsistency between these Terms and the terms of any quotation, the terms of the quotation will prevail.

2.4 An Agreement is accepted by Rolls when Rolls accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services.

2.5 Rolls has absolute discretion to refuse to accept any offer.

2.6 The Customer must provide Rolls with its specific requirements, if any, in relation to the goods and services.

2.7 Rolls may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

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.

3.2 If the Customer requests any variation to the Agreement, Rolls may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by Rolls in relation to goods or services, Rolls

may vary its price to take account of any such change, by notifying the Customer.

3.4 Rolls shall make its best endeavors to deliver the quantity of goods ordered, but Rolls reserves the right to vary the quantity ordered up to 10% of the ordered quantity in the case of an order in which the quantity exceeds 1,000 items and by 20% in the case of an order in which the quantity of the goods is 1,000 items or less. The customer accepts the variation and agrees to pay for the actual quantity supplied unless otherwise agreed in writing by the parties. In the case of Rewind, the allowable variation is 25% on orders of 250 kgs or less and 10% for orders over 250 kgs. In the case of Bunting, the allowable variation is 15% of the ordered quantity.

3.5 When proofs, artwork, designs or concepts are required to be produced, any additional work undertaken by Rolls or any alteration required on the initial proof or any subsequent proofs including alternation in style may attract an additional charge by Rolls to the Customer. No responsibility shall be accepted by Rolls for errors in proofs which are approved by the Customer and all such proofs, artwork, designs, concepts and any other pre-print or preparatory work may be retained by Rolls as a lien to secure payment by the Customer to Rolls of any amounts outstanding to Rolls from time to time.

3.6 In the event that a new plate is required to enable Rolls to produce the goods for the Customer, the Customer agrees to pay Rolls for the cost of the production of the plate which remains the property of Rolls at all times. Rolls will store the plate for re-use in any future orders by the Customer until the plate becomes unusable.

4. Payment

4.1 Unless otherwise agreed in writing:

- (a) Subject to 4.1(b), full payment for the goods or services must be made within 30 days of the date of Rolls' invoice.
- (b) Rolls reserves the right to require payment in full on delivery of the goods or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at Rolls' sole discretion immediately upon giving the Customer written notice.

4.4 The time for payment is of the essence.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to Rolls, then all money which would become payable by the Customer to Rolls at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Rolls may, without prejudice to any of its other accrued or contingent right :

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;

- (b) charge the Customer for, and the Customer must indemnify Rolls from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
- (c) cease or suspend supply of any further goods or services to the Customer;
- (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at Rolls' option:

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of 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, administrator, receiver or manager or similar functionary appointed in respect of its assets, 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.

6. Passing of Property

6.1 Until Rolls receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to Rolls by the Customer:

- (a) title and property in all goods remain vested in Rolls and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for Rolls;
- (c) the Customer must keep the goods separate from its goods and maintain Rolls' labeling and packaging;
- (d) the Customer must hold the proceeds of sale of the goods on trust for Rolls in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;
- (e) in addition to its rights under the PPSA, Rolls may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Rolls, and for this purpose the Customer irrevocably licenses Rolls to enter such premises and also indemnifies Rolls from and against all costs, claims, demands or actions by any party arising from such action.

7. Intellectual Property

7.1 Where goods are produced by Rolls in accordance with specifications or blueprints

provided by the Customer, the Customer warrants to Rolls that it is the owner or the specifications or blueprints and/or that it has legally acquired such specifications and blueprints and that Rolls shall not be infringing the intellectual property of any other person in producing and delivering the goods and the Customer hereby indemnifies Rolls from and against all and any liabilities, claims, demands, action, damages, costs and expenses which may be incurred by or made brought instituted or awarded against Rolls arising directly or indirectly out of the infringement of any intellectual property of any other person. In this clause the term "intellectual property" shall include all patents, trademarks, trade names, logos, designs, symbols, copyrights and knowhow.

8. Personal Property Securities Act

8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

8.2 For the purposes of the PPSA:

- (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and Rolls has a Purchase Money Security Interest in all present and future goods supplied by Rolls to the Customer and the proceeds of the goods;
- (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Rolls on the Personal Property Securities Register.

8.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from Rolls' premises and not at any later time.

8.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

8.5 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Rolls will apply only to the extent that they are mandatory or Rolls agrees to their application in writing; and
- (b) where Rolls has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

8.6 The Customer must immediately upon Rolls' request:

- (a) do all things and execute all documents

necessary to give effect to the security interest created under this Agreement; and

- (b) procure from any person considered by Rolls to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Rolls may at any time require.

8.7 Rolls may allocate amounts received from the Customer in any manner Rolls determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Rolls.

9. Risk and Insurance

9.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from Rolls' premises.

9.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

9.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by Rolls, unless recoverable from Rolls on the failure of any statutory guarantee under the ACL.

10. Performance of Agreement

10.1 Any period or date for delivery of goods or provision of services stated by Rolls is an estimate only and not a contractual commitment.

10.2 Rolls will use its reasonable endeavors to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

10.3 If Rolls cannot complete the services by any estimated date, it will complete the services within a reasonable time.

11. Delivery

11.1 Subject to clause 11.2, Rolls will arrange for the delivery of the goods to the Customer.

11.2 The Customer is 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 to the point of delivery.

11.3 Rolls may make part delivery of goods or provision of services and Rolls may invoice the Customer for the goods or services provided.

11.4 The Customer indemnifies Rolls against any loss or damage suffered by Rolls, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and Rolls has not used due care and skill.

11.5 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.

11.6 If agreed that the Customer will collect the goods:

- (a) the Customer must collect the goods

within 7 days of being advised they are ready;

- (b) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

12. Liability

12.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

12.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Rolls for failure of a statutory guarantee under the ACL.

12.3 If the Customer on-supplies the goods to a consumer:

- (a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) is the absolute limit of Rolls' liability to the Customer;

- (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of Rolls' liability to the Customer;

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.

12.4 If clause 12.2 or 12.3 does not apply, then other than as stated in the Terms or any written warranty statement Rolls is not liable to the Customer in any way 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.

12.5 Rolls is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL..

12.6 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Rolls in relation to the goods or services or their use or application.

- (b) it has not made known, either expressly or by implication, to Rolls any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.

12.7 Rolls makes no warranty as to the quality, state,

condition or fitness of the goods or their compliance with any such legislation relating to the marking, labeling and/or packaging of such goods and compliance with any such legislation shall be the sole responsibility of the Customer.

12.8 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.

13. Cancellation

13.1 If the Customer cancels an order for goods, the Customer shall become liable to pay to Rolls all costs, damages and expenses incurred by Rolls to the date of such cancellation together with all consequential losses and loss of profits incurred by Rolls as a consequence of cancellation of the order by the Customer.

13.2 In the event that the Customer requests that part of any order be suspended for a period of thirty (30) days or more, Rolls shall be entitled to payment in full for the portion of work completed.

13.3 If Rolls is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

13.4 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Rolls once the order has been accepted.

14. Shortages and Exchanges

14.1 Subject to clause 14.3 and 14.5, Rolls will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies Rolls with full details and description within 7 days of delivery otherwise the Customer is deemed to have accepted the goods.

14.2 Rolls will at all times retain the ownership of any pallets used for delivery of the goods and the Customer agrees to indemnify Rolls in respect of any pallets not returned in good order and condition to Rolls.

14.3 When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by Rolls, Rolls may, at its option, replace the goods, or refund the price of the goods.

14.4 Subject to clause 14.5, Rolls will not under any circumstances accept goods for return that:

- (a) have been specifically produced, imported or acquired to fulfill the Agreement;
- (b) are discontinued goods or no longer stocked by Rolls;
- (c) have been altered in any way;
- (d) have been used; or
- (e) are not in their original condition and packaging.

14.5 If the Customer is a consumer, nothing in this clause 14 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

15. Force Majeure

15.1 Rolls is not liable in any way howsoever arising

under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Rolls may suspend or terminate the Agreement by written notice to the Customer.

16. Miscellaneous

16.1 The law of Victoria from time to time governs the Terms. 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.

16.2 Rolls' failure to enforce any of these Terms shall not be construed as a waiver of any of Rolls' rights.

16.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

16.4 A notice must be in writing and handed personally or sent by email, 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 or email are deemed received on confirmation of successful transmission.

16.5 The Customer must comply with the National Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.