

TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1 "RML" shall mean RML Machinery Limited, its successors and assigns or any person acting on behalf of and with the authority of RML Machinery Limited.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by RML to the Customer.
- 1.3 "Guarantor" shall mean that the person (or persons) who agrees to be liable for the debts of the Customer on a principle debtor basis.
- 1.4 "Goods" shall mean all Goods provided by RML to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provide by RML to the Customer.
- 1.5 "Services" shall mean all services supplied by RML to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between RML and the Customer in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by RML from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by RML shall constitute acceptance of the terms and conditions herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customer shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of RML.
- 2.4 The Customer shall give RML not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer address, Email address, or business practice). The Customer shall be liable for any loss incurred by RML as a result of the Customer's failure to comply with this clause.
- 2.5 Goods are supplied by RML only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Price and Payment

- 3.1 At RML's sole discretion the Price shall be either:
 - a) As indicated on invoices provided by RML to the Customer in respect of Goods supplied; or
 - b) RML's quoted Price (subject to clause 3.2) which shall be valid for a period of thirty (30) days.
- 3.2 RML reserves the right to change the Price in the event of a variation to RML's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to RML in the cost of materials, including steel and labour, will be charged for on the basis of RML's quotation and will be shown as

variations on the invoice.) Payment for all variations must be made in full at their time of completion.

- 3.3 RML may submit detailed progress payment claims in accordance with RML's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.4 At RML's sole discretion:
 - a) Payment shall be due on delivery of Goods; or
 - b) Payment for approved Customers shall be made by instalments in accordance with RML's payment schedule; or
 - c) Payment for approved Customers shall be due twentieth (20th) month following the month in which the invoice is forwarded to the Customer's email address or address for notices; or
 - d) On any other terms as agreed with the customer at the time of order.
- 3.5 Payment will be made by direct credit to RML's nominated bank account.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery of Goods

- 4.1 At RML's sole discretion delivery of the Goods shall take place when:
 - a) The Customer takes possession of the Goods at RML's address; or
 - b) The Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by RML or RML's nominated driver).
- 4.2 At RML's sole discretion the costs of delivery are:
 - a) In addition to the Price; or
 - b) For the Customer's account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then RML shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 RML may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The failure of RML to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7 RML shall not be liable for any loss or damage whatsoever due to failure by RML to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of RML.

5. Risk

- 5.1 If RML retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, RML is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by RML is sufficient evidence of RML's rights to receive the insurance proceeds without the need for any person dealing with RML to make further enquiries.
- 5.3 The Customer acknowledges that it is the Customer's responsibility to check measurements supplied, before RML commences the Services. RML shall not be liable for any defects, or loss damage or costs however arising resulting from the Customer's

failure to comply with this clause. Measurements taken off plans or the Customer's figures by RML are done so at the Customer's own risk and no responsibility is taken by RML for their accuracy.

- 5.4 In the event that any completed Goods measuring over one (1) cubic metre are left uncollected, then RML may at its sole discretion, store the Goods for the Customer and the Customer shall be liable for all storage costs charged or incurred by RML and in the event that the Goods are stored elsewhere all cartage charges incurred by RML.

6. Title

6.1 RML and Customer agree that ownership of the Goods shall not pass until:

- a) the Customer has paid RML all amounts owing for the particular Goods; and
- b) the Customer has met all other obligations due by the Customer to RML in respect of all contracts between RML and the Customer.

6.2 It is agreed that:

- a) where practicable the Goods shall be kept separate and identifiable until RML has received payment and all other obligations of the Customer are met; and
- b) until such time as ownership of the Goods shall pass from RML to the Customer RML may give notice in writing to the Customer to return the Goods or any of them to RML. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- c) the Customer is only a bailee of the Goods and until such time as RML has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to RML for the Goods, on trust for RML; and
- d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that RML will be the owner of the end products; and
- e) if the Customer fails to return the Goods to RML then RML or RML's agent may (at the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and RML will not be liable for any reasonable loss or damage suffered as a result of any action by RML under this clause.

7. Personal Property Securities Act 1999 ("PPSA")

7.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- b) a security interest is taken in all Goods previously supplied by RML to the Customer (if any) and all Goods that will be supplied in the future by RML to the Customer.

7.2 The Customer undertakes to:

- a) sign any further documents and/or provide further information (such information to be complete, accurate and up-to-date in all respects) which RML may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- b) indemnify, and upon demand reimburse, RML for all expenses incurred in registering a

financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charges thereby;

- c) not register a financing change statement or a demand without the prior written consent of RML; and

- d) immediately advise RML of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

7.3 RML and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

7.4 The Customer waives the rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

7.5 Unless otherwise agreed to in writing by RML, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

7.6 The Customer shall unconditionally ratify any actions taken by RML under clauses 7.1 to 7.5.

8. Customer Disclaimer

8.1 The Customer hereby disclaims any right to rescind or cancel any contract with RML or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by RML and the customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.

9. Defects

9.1 Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify RML of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford RML an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which RML has agreed in writing that the Customer is entitled to reject, RML's liability is limited to either (at RML's discretion) replacing the Goods or repairing the Goods.

10. Returns

10.1 Returns will only be accepted provided that:

- a) The Customer has complied with the provisions of clause 10.1; and
- b) RML has agreed in writing to accept the return of the Goods; and
- c) The Goods are returned at the Customer's cost within ten (10) days of the delivery date; and
- d) RML will not be liable for Goods which have not been stored or used in a proper manner; and
- e) The Goods are returned in the condition in which they were delivered and with all packaging materials, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

10.2 RML may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.

10.3 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

11. Warranty

- 11.1 RML warrants that the goods manufactured by RML will be free from defects due to faulty design, materials and workmanship (except as regards defects specifically drawn to the Customer's attention, before any contract is formed between RML and the Customer, or if the Customer examines the Goods the subject of such contract before such contract is formed then except as regards defects which that examination ought to reveal).
- 11.2 With respect to Goods or part or components purchased by RML and sold to the Customer which are not manufactured by RML, RML will use its reasonable endeavours to assign to the Customer any warranties which RML may have received from the supplier of such Goods or parts or components.
- 11.3 If it is proven to RML's reasonable satisfaction that Goods manufactured by RML are not free from defects due to faulty design, materials and workmanship (excepts as revealed by examination as referred to in clause 11.1 of these terms) then RML shall, at no cost and at its option, either:
- Repair such Goods;
 - Replace such Goods with the same or equivalent Goods at the point of delivery applicable to the contract under which such Goods were supplied to the Customer by RML; or
 - Refund to the Customer the contract price of such Goods.
- 11.4 This warranty does not apply in respect of defects arising from:
- The use of goods of consumable nature; or
 - Fair wear and tear.
- 11.5 This warranty does not apply unless:
- The Goods have been properly handled, located, used, maintained and stored;
 - Defects occur within 3 calendar months after the Goods have been delivered to the Customer.
 - RML is notified in writing within seven days of the alleged defect first coming to the notice of the Customer and the Customer returns the defective Goods to RML, or if necessary, at the sole discretion of RML, to the works where such Goods were manufactured or assembled, free of charge; and
 - The Customer has fulfilled all of its contractual obligations.
- 11.6 The benefit of the Warranty is personal to the Customer and is non-assignable without the prior written consent of RML.

12. Consumer Guarantees Act 1993

- 12.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by RML to the Customer.

13. Intellectual Property

- 13.1 Where RML has designed, drawn or written Goods for the Customer, then the copyright in those designs, drawings and documents shall remain vested in RML and shall only be used by the Customer at RML's discretion.
- 13.2 The Customer warrants that all designs or instructions to RML will not cause RML to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify RML against any action taken by a third party against RML in respect of any infringement.
- 13.3 The Customer agrees that RML may use any documents, Designs, drawings or Goods created by

RML for the purposes of advertising, marketing or entry into any competition.

14. Default & Consequences of Default

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at RML's sole discretion such interest shall compound monthly at such a rate).
- 14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by RML.
- 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify RML from and against all costs and disbursements incurred by RML in pursuing the debt including legal cost on a solicitor and own client basis and RML's collection agency costs.
- 14.4 Without prejudice to any other remedies RML may have, if at any time the Customer is in breach of any obligation (including those relating to payment) RML may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. RML will not be liable to the Customer for any loss or damage the Customer suffers because RML has exercised its rights under this clause.
- 14.5 If any account remains overdue after 30 days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00) shall be levied for administration fees, such sum shall become immediately due and payable.
- 14.6 Without prejudice to RML's other remedies at law RML shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to RML shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to RML becomes overdue, or in RML's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or purposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.