



## Steel Processing Services

### General Terms and Conditions of Sale

#### Application of terms and definition

1. These Conditions apply and form part of any:
  - a. quotation made by Rollco;
  - b. Order;
  - c. Acceptance of an Order by Rollco.
  
2. The following definitions apply to these Conditions:
  - a. *Conditions* means these General Terms and Conditions of Sale;
  - b. *Consumer* means a person who acquires Goods from Rollco where:
    - i. the amount paid or payable for the Goods does not exceed \$40,000; or
    - ii. the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, unless the Goods are acquired for the purpose of re-supply or the purpose of using them up or transforming them in trade or commerce;
  - c. *Force Majeure* means an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond Rollco's control;
  - d. *Goods* means the supply by Rollco of any service, product or material the subject of the quotation referred to in an Order;
  - e. *Order* means a request received by Rollco for Rollco to supply and/or deliver Goods referred to in a quotation;
  - f. *Price Rise* means an increase in the cost of producing or delivering the Goods;
  - g. *PPSA* means the Personal Property Securities Act 2009 and if a term used in these Conditions in the section "Application of the PPSA" has a particular meaning in the PPSA, then it has the same meaning in that section;
  - h. *Purchaser* means the person or entity who submits an Order to Rollco to acquire Goods.

## **Quotations and prices**

3. A quotation shall state the price for the Goods.
4. Unless otherwise indicated, all prices for Goods are exclusive of all applicable taxes and charges.
5. The price of Goods stated in a quotation will remain valid for a period of 30 days after the date of the quotation unless Rollco withdraws, revokes or varies the quotation at any time before the Purchaser submits an Order in respect of the quotation.

## **Order and contract**

6. The Purchaser must submit an Order to Rollco.
7. In submitting the Order, the Purchaser warrants that any matter set out in the quotation is correct and the Goods the subject of the quotation will be suitable for the Purchaser's intended use.
8. Rollco reserves the right to accept or decline, in whole or in part, any Order. Any acceptance by Rollco of any Order is deemed to be solely on terms of these Conditions and on no other terms.
9. The agreement to fulfil the Order starts on the date Rollco agrees to supply the Goods to the Purchaser. Subject to clause 8, this date is 5 business days after the date on which Rollco receives the Order.
10. If there is a Price Rise in the period after the agreement to fulfil the Order starts and before the date of collection or delivery of the Goods, Rollco reserves the right to increase the price of the Goods. The Purchaser shall accept any such Price Rise.
11. Unless otherwise agreed, the price of the Goods does not include the cost of delivery of the Goods.
12. The Customer warrants that the supply of Goods by Rollco will not infringe the intellectual property rights of third parties. The Purchaser will indemnify Rollco for any loss, damage or expense (including legal costs on an indemnity basis) in any way related to an alleged or actual infringement of any patent, registered designs, trademarks or intellectual property.

## **Payment**

13. Unless Rollco grants credit to the Purchaser, and subject to Rollco's right to withdraw credit, the Purchaser must:
  - a. if the Goods are to be delivered - make payment of the price of the Goods and the cost of delivery of the Goods at or before the date of delivery of the Goods;
  - b. if the Goods are to be collected - make payment of the price of the Goods at or before the date of collection of the Goods.
14. Where the Purchaser has an approved credit account with Rollco, the Purchaser shall ensure that payment for the Goods is made to Rollco in accordance with the terms agreed between Rollco and the Purchaser.
15. Rollco reserves the right to charge interest on any amount overdue from the date it becomes due to the date payment is received at the rate of 8% above the cash rate published by the Reserve Bank of Australia compounded daily. All payments made by the Purchaser will first be applied to the payment of accrued interest.

16. Rollco may set off any amount owed by the Purchaser to Rollco against any amount of money owed, or may become owing, by Rollco to the Purchaser. The Purchaser waives any right to set off any amount that is, or may become, owing by the Purchaser to Rollco against any amount owing by Rollco to the Purchaser. This clause overrides any other document or agreement to the contrary.

#### **Default by purchaser**

17. Where the Purchaser is in default in the performance of any of its obligations under these Conditions and the Goods have not been supplied to a Consumer, Rollco may refuse, without prejudice to any other rights it may have under these Conditions or at law, to supply or deliver further Goods to the Purchaser until such time as the Purchaser has remedied that default, and/or may choose to terminate the contract.
18. If the Goods have been supplied by Rollco to a Consumer and the Purchaser is in default in the performance of any of its material obligations under these Conditions, Rollco may refuse to deliver further Goods until such time as the Purchaser has remedied that default and where:
- a. the Purchaser has not notified Rollco of any damage, inaccuracies or defects under clause 41 of this Contract; and
  - b. the Purchaser does not remedy that default within 14 days of the Purchaser receiving written notification, or such other time as may be agreed by the parties, Rollco may terminate the contract in relation to Goods that have not been delivered.
19. If the Purchaser (including a Purchaser who is a Consumer) commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, Rollco may at its option exercise any or all of the following rights in addition to any other rights it may have under these Conditions or at law:
- a. suspend deliveries of further Goods to the Purchaser whether under this contract or otherwise;
  - b. terminate the contract in relation to Goods that have not been delivered;
  - c. withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to Rollco by the Purchaser;
  - d. issue an invoice for, and demand immediate payment of, Goods ordered by the Purchaser but not delivered.
20. The Purchaser as beneficial owner charges in favour of Rollco all of its interest in all of the present and future real property of the Purchaser as security for the due and punctual payment of all debts and monetary liabilities owed by the Purchaser to Rollco pursuant to a contract on or including the terms of these Conditions. The Purchaser consents to Rollco lodging a caveat to note its interest. Upon demand by Rollco, the Purchaser agrees to immediately execute a mortgage on terms satisfactory to Rollco to more particularly describe the security interest conferred by this clause. Should the Purchaser fail within a reasonable time of such demand to execute such mortgage then the Purchaser irrevocably appoints Rollco as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Purchaser.

#### **Delivery and risk**

21. Rollco shall deliver to the Purchaser the Goods to a delivery point nominated by the Purchaser and accepted by Rollco.

22. Rollco reserves the right to:
- a. arrange transport by any means in its absolute discretion in making the delivery to the delivery point;
  - b. determine whether delivery of the Goods is effected in a single delivery or by instalments;
  - c. charge additional delivery cost if delivery to the delivery point is adversely affected by access to the delivery point or the ability to unload in a proper and timely manner at the delivery point.
23. Dates and times for delivery are estimates only.
24. The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee to the delivery point.
25. Where Rollco or its transport contractor enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as a delivery point, the Purchaser:
- a. releases Rollco from any claim the Purchaser may at any time have had against Rollco but for this release in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by Rollco or its transport contractor of Goods to such premises; and
  - b. indemnifies and holds Rollco harmless from and against any loss, damage or liability suffered or incurred by Rollco in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by Rollco or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by Rollco arises out of the negligence or wilful misconduct of Rollco or its transport contractor.
26. No defect or claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the order.
27. If Rollco is prevented either directly or indirectly from performing any of its obligations under these Conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it shall be entitled, at its option, by notice to the Purchaser, either to:
- a. extend the time for delivery of the Goods for a reasonable period; or
  - b. subject to refunding the Purchaser for any payment already made to Rollco in respect of those particular Goods (if any), terminate this contract,
- and the Purchaser shall not have any claim against Rollco for damages or any other remedy for breach of contract.
28. Goods ordered for collection will be held by Rollco for a period of 10 business days after Rollco has informed the Purchaser that they are available for collection.
29. If the Purchaser does not collect the Goods by that time, Rollco may:
- a. remove the Goods and store them at another location at the Purchaser's expense;
  - b. sell the Goods by whatever means and use the proceeds of sale to pay any sum of money owing to Rollco for storage or sale costs before accounting to the Purchaser for the balance.

## **Retention of title**

30. The Purchaser agrees that legal and equitable title to the Goods is retained by Rollco until Rollco receives payment in full from the Purchaser for the Goods and all other monies owing by the Purchaser to Rollco at any time. Prior to title in the Goods passing to the Purchaser, the Purchaser:
- a. holds the Goods as bailee and as fiduciary agent of Rollco;
  - b. where the Purchaser processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold an equivalent value of the processed goods as that owing to Rollco on trust for Rollco as bailee and as fiduciary agent of Rollco;
  - c. must store the Goods or such part of the processed goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of Rollco;
  - d. must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;
  - e. must not sell the Goods except with the prior written consent of Rollco or in the ordinary course of the Purchaser's business, provided that any such sale is at arms' length and on market terms;
  - f. any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for Rollco in a separate account; and
  - g. must not create any encumbrance over the Goods which is inconsistent with Rollco's title and ownership of the Goods.
31. If the Purchaser is in breach of these Conditions including, without limitation, failure by the Purchaser to make payment for the Goods by the date specified by Rollco to the Purchaser or in Rollco's reasonable opinion the payment of any amount in respect of the Goods supplied by Rollco is in jeopardy, the Purchaser must return the Goods to Rollco immediately on demand.
32. If the Purchaser does not return the Goods to Rollco on demand under clause 31, the Purchaser irrevocably authorises representatives of Rollco to enter upon any site where the Goods are located to take possession of the Goods without prior notice, and the Purchaser indemnifies Rollco for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Rollco in connection with the retaking possession of the Goods or the exercise by Rollco of its rights under this clause, and the Purchaser shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

## **Application of the PPSA**

33. Clauses 33 to 40 apply to the extent that Rollco's interest in any Goods is a security interest.
34. The Goods are cold rolled, formed or fabricated steel products.
35. The Purchaser acknowledges and agrees that Rollco may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
36. Rollco can apply amounts it receives from the Purchaser towards amounts owing to it in such order as Rollco chooses.

37. If the Purchaser defaults in the performance of any obligation owed to Rollco under these Conditions or any other agreement for Rollco to supply Goods to the Purchaser, Rollco may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and Rollco agree that the following provisions of the PPSA do not apply to the enforcement by Rollco of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
38. The Purchaser and Rollco agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
39. The Purchaser must promptly do anything required by Rollco to ensure that Rollco's security interest is a perfected security interest and has priority over all other security interests in the Goods.
40. Nothing in this clauses 33 to 40 is limited by any other provision of these Conditions or any other agreement between the parties.

#### **Inaccurate supply and damage or defects in the Goods**

41. The Purchaser shall check all Goods received immediately upon unloading and shall notify Rollco in writing within 2 Business Days of the date of delivery or collection of the Goods of:
  - a. any inaccuracies or short supply of Goods;
  - b. any fault, damage or defect in the Goods;
  - c. failure of Goods to comply with the terms of a contract made pursuant to these Conditions.
42. Subject to the rights of Consumers set out in clause 44, if the Purchaser does not comply with clause 41, Rollco will not be responsible for any loss or damage whatsoever and howsoever caused in any way related to the matters referred to in clause 41(a) to (c), save that where the Purchaser is a Consumer this clause will not apply where such loss or damage arises from the negligence or wilful misconduct of Rollco, or any of its officers, employees or agents.
43. Subject to the rights of Consumers set out in clause 44, if the Purchaser complies with clause 41, then Rollco will at its option (if in its opinion, the Purchaser's notice is reasonable and the Purchaser has not used the Goods) repair or replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and Rollco shall have no additional liability to the Purchaser.

#### **Warranties and other matters**

44. Rollco acknowledges that in respect to Consumers certain guarantees for the supply of goods or services cannot be excluded, restricted or modified by these Conditions. Nothing in these Conditions is intended to exclude or restrict the application of any such guarantees.
45. Subject to the rights of Consumers set out in clause 44:
  - a. Rollco shall not be responsible for the consequence of any representation made or technical advice given by its employees, agents or sub-contractors in connection with the design, installation and use of the Goods, and the Purchaser agrees that all such advice is accepted by the Purchaser entirely at the Purchaser's risk:

- b. Rollco's liability to the Purchaser (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited, at Rollco's option, to:
    - i. in the case of Goods - the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods: or
    - ii. in the case of services - the resupply of services or paying for the cost of resupplying the services;
  - c. Rollco is not liable to the Purchaser or anyone else in connection with the Goods or the supply of the Goods or with these Conditions (including any changes to the Conditions), including without limitation for:
    - i. any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from:
      - 1. the loading, unloading or delivery of the Goods;
      - 2. a failure to deliver, or delay in delivering, the Goods;
      - 3. a failure to install the Goods in accordance with Rollco's recommended fixing procedures as published from time to time;
      - 4. the removal of defective Goods or the installation of replacement Goods; or
      - 5. the use of any tool or equipment loaned or hired out by Rollco;
    - ii. any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
    - iii. any claim, action or proceeding by a third party against the Purchaser (or any loss, damages or liability incurred or suffered by the Purchaser as a result of any such claim, action or proceeding).
46. If Rollco is required to process the Purchaser's goods or materials then Rollco does not give any warranty or assurance that materials supplied by the Purchaser are suitable for such processing. Subject to the rights of Consumers as set out in clause 44, Rollco accepts no responsibility and shall not in any way be liable to the Purchaser for any damage done or caused to such materials or goods, except if you are a Purchaser under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of Rollco or any of its officers, employees or agents.
47. Subject to the rights of Consumers set out in clause 44, unless the Goods have been supplied to the Purchaser by Rollco under a Consumer Contract, the Purchaser agrees that it does not rely on the skill or judgement of Rollco in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to Rollco and Rollco has acknowledged in writing that the Goods will be fit for the particular purpose.
48. If the Purchaser, its nominee, employer or servant, is required to attend Rollco's premises for the purposes of obtaining a quotation, or in connection with an Order or payment, then the Purchaser, its nominee, employer or servant, agrees to comply with any reasonable direction made by Rollco whilst present on Rollco's premises.

## **General**

49. These Conditions set out the entire agreement between the parties in relation to their subject matter.
50. The law applicable to the agreement between Rollco and the Purchaser is the law of the New South Wales. Rollco and the Purchaser submit to the jurisdiction of the relevant State court.
51. Nothing in these Conditions shall constitute Rollco as a subcontractor of the Purchaser. Rollco's obligations are limited to those of a material supplier.
52. Nothing in these Conditions shall constitute a licence for the use of Rollco's intellectual property and the Purchaser warrants it will not use Rollco's intellectual property except in incorporating the Goods into the project for which they were purchased and on no other project or work.
53. If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.