

## ROCLA GENERAL TERMS AND CONDITIONS

### 1. INTERPRETATION

"Customer" shall mean the Sole Trader, Partnership, Company or Trustee to whom the product/s are supplied including that entity's employees, contractors, partners and/or agents.

"parties" shall mean Rocla and the Customer.

"product" shall mean any pipe, pipe related product or any other item whatsoever supplied by Rocla to the Customer.

"Rocla" shall mean Rocla Pty Ltd ACN 000 032 191 including its employees, contractors, partners and/or agents.

"PPSA" means the Personal Property Securities Act 2009 (Cth);

"PPS register" means the Personal Property Securities Register;

"purchase money security interest", "security interest" and "verification statement" all have the meanings given by the PPSA.

### 2. CONTRACT

These general terms and conditions of sale form the contract between the Customer and Rocla and the contract does not include any terms or conditions varying or in addition to these general terms and conditions of sale unless such terms and conditions have been expressly agreed in writing by Rocla. No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

### 3. CANCELLATION

(1) The Customer may only cancel this contract with Rocla's consent and only on the basis that the Customer meets all loss, damage, cost or expense, including loss of profits, incurred by Rocla as a result of the cancellation.

(2) Rocla may suspend delivery, cease manufacture or cancel the contract, if the Customer at any time:

(a) breaches any terms of the contract or any other contract with Rocla;

(b) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or

(c) refuses or neglects to take delivery of the products.

### 4. PRICE VARIATION

(1) Unless otherwise stated in this contract Rocla may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by Rocla after the date of this contract.

(2) Where a list price applies to products all prices listed:

(a) are subject to alteration without notice;

(b) are applicable to all deliveries on or after the effective date of any alteration;

(c) do not include tax or other government impost unless specifically stated.

### 5. VARIATIONS TO SCOPE OF CONTRACT

The price is based upon:

(a) the scope of the work as detailed in the information provided by the Customer to Rocla

for the purpose of this contract including, where applicable, plans, specifications

(including standards and finish), schedules, and nominated quantities; and

(b) delivery arrangements in accordance with clause 8 and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitling Rocla to vary the price stated.

### 6. SPECIFICATIONS

(1) Where Rocla manufactures or supplies products according to the Customer's specifications:

(a) Rocla does not warrant the suitability or performance of the product; and

(b) the Customer shall provide to Rocla accurate information sufficient to enable Rocla to provide the products specified and the Customer warrants to Rocla that the information and any products to be manufactured by Rocla under the contract do not breach any copyright, registered design, patent or other right of any third party and the Customer shall indemnify Rocla in relation to any such breach.

(2) Unless otherwise stated in this contract the products shall be in conformity with a standard determined by Rocla.

### 7. PAYMENT

(1) Time for payment of the amount due to Rocla shall be of the essence in this contract and the amount due shall include the price, any variations to the price and any additional charges which Rocla is entitled to make.

(2) Subject to clauses 7(3), 7(4), 7(5) and 7(6), the Customer shall pay the amount due in accordance with the credit arrangements agreed by Rocla.

(3) Where a credit arrangement has been made, payment for all the products supplied will become immediately due and payable, regardless of the credit arrangement, in the event any of the following occur:

(a) an amount due remains unpaid as at the due date;

(b) the Customer enters either Bankruptcy, Part X, Receivership, Voluntary Administration or Liquidation;

(c) a meeting of the Customer's creditors is called.

(4) Where no credit arrangements have been previously agreed by Rocla, but credit has been agreed by Rocla as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.

(5) Where no credit arrangements have been agreed by Rocla and the products are delivered within the Commonwealth of Australia, the Customer shall pay the amount due before the first delivery of the products.

(6) Where the products are to be delivered outside of the Commonwealth of Australia:

(a) terms of payment (unless otherwise agreed in writing) shall be by means of irrevocable letter of credit established in Rocla's name with a bank of its nomination;

(b) Rocla shall be entitled to payment in full for the products covered by shipping documents, consisting of proper bills of lading, invoices and, in the case of C.I.F sales, negotiable insurance certificates, or a certificate of manufacture if the sale is made on such basis, upon Rocla tendering those documents to the Customer or the Customer's authorised agent;

(c) If the products are ready for shipment but the Customer is unable for any reason to accept delivery or Rocla is unable to obtain proper shipping documents for a period of 30 days because of a lack of transportation, non-insurability of the shipment or government regulations (Australia or any other country) Rocla may terminate this agreement or become entitled to payment upon tender to the Customer, or its authorised agent, of the certificate of manufacture.

(7) The Customer shall pay interest, at the current bank overdraft rate paid by Rocla from time to time, calculated monthly on any amount not paid by the due date.

(8) The Customer shall pay all Rocla's expenses of collection of overdue monies and enforcement of the contract on a full indemnity basis. Such expenses shall include, without limitation, collection fees and/or commission, agent's fees and legal fees.

(9) Where price is stated on a volumetric basis, payment will be based on measurement of the volume of product as loaded by Rocla for delivery.

## 8. ORDERS AND DELIVERY

- (1) All orders for products are subject to acceptance from Rocla.
- (2) Acceptance of orders involving import and export conditions shall be subject to Rocla being furnished with evidence satisfactory to Rocla that all requisite licences and permits have been granted and that all other Government prerequisites (both Australian and countries of destination) have been complied with. If such evidence is not furnished within 30 days from the date of acceptance of an order, the order shall be subject to cancellation by Rocla.
- (3) Subject to clause 8(4) delivery shall be on reasonable notice from the Customer to Rocla and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- (4) Where this contract includes a Delivery Schedule delivery shall be in accordance with the dates and other information contained in such Schedule.
- (5) Rocla shall not be liable for delay in delivery arising from any cause whatsoever.
- (6) Where the Customer refuses or denies delivery, the Customer's obligation to pay for products, as set out in clause 7, remains unchanged. The Customer shall also pay any additional storage, freight, holding or handling charges incurred by Rocla.
- (7) Rocla reserves the right to deliver by instalments and failure to deliver any instalment shall not entitle the Customer to terminate the contract.
- (8) Deliveries are subject to suitable access, firm standing, storage, unloading and manoeuvring space, as determined by Rocla. Rocla shall not be liable for, and the Customer shall indemnify Rocla against any claims for damage caused to access ways, storage areas, plant, equipment or works during delivery.
- (9) Additional costs incurred by Rocla in delivering or unloading the products;
  - (a) outside the hours of 7.30a.m. to 4.00p.m. weekdays (excluding public holidays);
  - (b) due to delays at the site or an unsuitable site; or
  - (c) where less than full truckloads are required, shall be at the Customer's expense.
- (10) The Customer warrants that its receivable facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer hereby indemnifies Rocla against any breach of such standards, laws or regulations during delivery, and against any damage or loss caused by leakage, spillage, breakage or contamination during or caused by delivery.

## 9. TITLE & PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- (1) Whilst the risk in the products passes on delivery, legal and equitable title in the products will not pass to the Customer until payment in full for all debts accrued or owed by the Customer to Rocla has been received by Rocla in cleared funds.
- (2) Until Rocla receives payment for the products in full, Rocla reserves the following rights:
  - (a) the legal and equitable ownership of the products;
  - (b) the right to enter upon the Customer's premises and retake possession of the products;
  - (c) the right to keep or resell any products repossessed under clause 9.2(b); and
  - (d) any other rights Rocla may have at law or under the PPSA.
- (3) Until Rocla receives payment for the products in full, the Customer acknowledges that Rocla has a purchase money security interest which attaches over the products and their proceeds and a security interest in relation to other amounts owed by the Customer to Rocla.
- (4) For the avoidance of doubt, Rocla may register its purchase money security interest and security interest on the PPS register established by the PPSA and, where necessary, amend the registration.
- (5) The Customer undertakes to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which Rocla asks and consider necessary for the purposes of:
  - (a) ensuring that a security interest created under this agreement is enforceable, perfected and otherwise effective;
  - (b) enabling Rocla to apply for any registration, or give any notification, in connection with a security interest created under this agreement so that the security interest has the priority required by Rocla, including anything Rocla asks the Customer to do in connection with the PPSA.
- (6) The Customer must not grant any other person a security interest over the products or their proceeds.
- (7) To the extent permitted by law, if the PPSA applies, the Customer irrevocably waives its rights it may have to:
  - (a) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - (b) redeem the products under section 142 of the PPSA;
  - (c) reinstate the contract under section 143 of the PPSA;
  - (d) receive a verification statement as defined in the PPSA
- (8) Nothing in this clause 9 prevents Rocla from taking action against the Customer for the purchase price of the products.
- (9) Until title in the products passes to the Customer, and without prejudice to Rocla's rights under the PPSA:
  - (a) the Customer may use the products with or in other items on condition that the final commodity will be Rocla's property as a security for full payment for the products;
  - (b) until the Customer uses or sells the products, the Customer must store them separately so that they are clearly identifiable as Rocla's property;
  - (c) the Customer may fix the products into the articles belonging to any other person on condition that the resulting item is owned in common by Rocla and that other person.
  - (d) the Customer may sell the products in the ordinary course of the Customer's business on the following conditions:
    - (i) any proceeds of sale received by the Customer are held by the Customer on trust for Rocla to the extent that the proceeds of sale relate to Rocla's products which are incorporated into the final commodity or item;
    - (ii) the Customer must keep Rocla's proportion of the proceeds of sale separately and so that they are clearly identifiable as Rocla's;
    - (iii) if the Customer has not received the proceeds of sale, it will, if Rocla requires, transfer to Rocla the Customer's rights in respect of the sale price.
- (10) In addition to being liable to pay all Rocla's enforcement expenses as set out in clause 7(8) the Customer agrees to be liable for Rocla's costs of our registration of its purchase money security interest and security interest on the PPS register.

## 10. DEFECTS

- (1) The Customer shall ensure it has an authorised representative at the delivery site who shall check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket shall represent acknowledgment by the Customer that the products comply with its order and have been supplied in accordance with this contract.
- (2) Notice of any defects shall be given to Rocla in writing on the delivery docket/receipt/manifest signed by the Customer and immediately returned with the cartage contractor. Where the point of delivery or collection is unattended, the Customer shall give notice in writing to Rocla, within 24 hours from the time of delivery or collection and prior to installation, of any defects in the products.

(3) If notice in accordance with clauses 10(1) or 10(2) is not given, the products shall be deemed to be in good order and condition and in accordance with the contract and the Customer shall accept the products accordingly.

(4) Rocla shall have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product shall not be installed.

#### **11. TESTING AND REPORTING**

(1) Where the Customer requires the products to be subject to special testing or inspection the Customer shall pay all costs of and associated with such testing or inspection.

(2) Any inspector or other person attending Rocla's premises on behalf of the Customer shall be authorised in writing by the Customer.

(3) The Customer shall provide Rocla with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to Rocla's products.

#### **12. LIMITATION OF LIABILITY**

(1) If a product is defective and the Customer advises Rocla of that defect in accordance with clause 10(1) or 10(2) Rocla shall repair or resupply the product, but Rocla shall not be liable for the removal of any defective products or for the re-installation of any products or for any consequential losses or loss of profits.

(2) Rocla shall not be liable for any defect, loss, damage or injury howsoever arising by reason of:

(a) a failure to use the products in a manner other than what is normally expected to be done with or in relation to the products;

(b) any delay in delivery;

(c) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the products.

(3) Any design or description of use, capacity, durability, colour, manner of installation, information, detail contained in drawings, data sheets, technical brochures or other documents provided by Rocla are given as a general guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the products for the Customer's particular purpose, use or application and Rocla shall not be liable in these respects.

(4) Other than expressly provided in this contract Rocla provides no other warranty to the Customer in relation to the products and this contract comprises the whole agreement between the parties.

(5) The Competition and Consumer Act 2010 ("the Act") enables Rocla to limit its liability for breach of certain conditions and warranties implied by the Act. To the fullest extent permitted by the Act and other similar legislation the liability of Rocla for a breach of a condition or warranty is limited to one of the following (selected at the option of Rocla):

(a) the replacement of the products; or

(b) the cost of the replacement of the products; or

(c) the repair of the products; or

(d) the cost of the repair of the products.

#### **13. RISK**

Risk in the products shall pass to the Customer upon delivery and, in the event of a site being unattended, the delivery docket/manifest signed by the cartage contractor shall be prima facie evidence of delivery of the products.

#### **14. AMENDMENTS AND WAIVER**

Rocla shall not be taken to have agreed to any amendment or waiver of any provision of these terms and conditions or of the contract unless the amendment or waiver shall be in writing signed by Rocla. No terms and conditions referred by the Customer after the date of this contract shall form part of this contract unless expressly agreed in writing by Rocla.

#### **15. GOVERNING LAW**

The contract is governed by the law for the time being of the State from which the products are to be supplied.

#### **16. FORCE MAJEURE**

Rocla shall not be liable for any delay, loss, damage or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events include industrial disputes, the unavailability of equipment or materials, fire, flood, machinery breakdown, civil disturbance, acts of God or government action.

#### **17. SUBJECT TO STATUTE**

The contract is subject to the provisions of any statute applicable to it and which may not be varied by the terms of the contract. If any provision of the contract is void or unenforceable that provision shall be severed and the remaining provisions shall continue with full force and effect.

#### **18. NOTICES**

All notices given under or in connection with this contract shall be in writing and given or delivered to the recipient at its address specified in this contract or at its registered office or principal place of business.

#### **19. CONFIDENTIAL INFORMATION**

If at any time Rocla discloses to the Customer or the Customer becomes aware of confidential information of Rocla including confidential information relating to products, material, procedures, tests or equipment, the Customer shall not use the information for any purpose not approved by Rocla and shall not disclose that confidential information to any other person unless expressly agreed in writing by Rocla.

#### **20. ASSIGNMENT**

This contract is assignable by the Customer in whole or in part only with Rocla's consent.

#### **21. RETURNABLE PACKAGING**

Unless otherwise stated, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the products remain the property of Rocla and shall be returned in good order and condition to Rocla within 30 days of the date of delivery. Any such packaging not returned by the due date shall be paid for by the Customer at a price determined by Rocla.

#### **22. SAMPLES AND BLENDING**

Any sample product or sample colour is provided to indicate only the general nature of the product. Rocla provides no warranty or guarantee that the products supplied shall correspond in colour, texture or blend with any sample or with any previous or future product supplied. Rocla shall not be liable for any failure of the Customer or others to blend the products.

#### **23. NON-CONFORMING PRODUCT**

Where a product is supplied on the basis of a description or marking such as "nonconforming", "second", "reject" or similar, no warranty or undertaking (express or implied) whatsoever is given by Rocla. Notwithstanding the preceding terms and conditions, Rocla shall not be liable in any way for the performance or use of, or any defect in, such a product.

#### **24. FITTINGS**

Unless otherwise stated in this contract, cast in or similar fittings for handling the products are to be removed or finished by the Customer.

#### **25. PRESSURE APPLICATIONS**

Unless otherwise stated in this contract, the products supplied are not warranted by Rocla to be suitable for applications or use involving internal pressure.