

Pro-Roll Ltd
Terms and Conditions of Sale

1 Definitions

In these Conditions:

- (a) "Pro-Roll Ltd" is called the "the Company" and any other party with whom the Company contracts is called "the Customer".
- (b) "Order": the Customer's order as set out in the Customer's purchase order (and accepted in writing by the Company).
- (c) "Contract": the contract between the Company and the Customer in accordance with these Conditions.

2 The Contract

- (a) No Order of the Customer placed with the Company shall be binding on the Company unless and until it is accepted by the Company in writing. The Company is not obliged to accept cancellation of accepted orders and may require payment of a cancellation charge before accepting any cancellation. Unless otherwise provided in the Contract, any trade terms specified in the Contract shall be interpreted in accordance with the provisions of the Incoterms 2000 (as varied or amended as at the date of the Contract) and subject as aforesaid all such provisions of these Conditions. Any Contract shall incorporate and be subject to these Conditions.
- (b) The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them: they shall not form part of the Contract or any other contract between the Company and the Customer for the sale of the goods or supply of services.
- (c) A quotation given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 business days from its date of issue.
- (d) These conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 The Contract Price

Unless stated otherwise in the Contract.

- (a) The price of goods or services therein, stated does not include the cost of carriage to the contracted place of delivery. Any costs for the transportation shall be borne by the Customer (and, or his agent).
- (b) The price shall be as set out in the Order. The supplier may increase the price to reflect any increase due to:
 - (i) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any requests by the Customer to change the delivery date(s), quantities or types of goods/services ordered, or a change by the Customer in the specification; or
 - (iii) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.and the Customer shall be deemed to have agreed to pay any varied price in place of any other price quoted or agreed.
- (c) There shall be added to the price for the goods any value added tax and any other tax and duty relating to the manufacture, transportation, export, import, sale or delivery of the goods (whether initially charged on or payable by the Company or the Customer) and (where appropriate) all freight and carriage charges incurred by the Company
- (d) Quotations in a currency other than Sterling (£) are based on the rate of exchange at the time of quoting and unless otherwise stated the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.

2 Payment

- (a) Unless otherwise provided in the Contract, accounts for the price or prices of the goods are payable net cash no later than 30 days after the date of despatch of the goods or of notification that the goods are ready for despatch by collection, whichever is the earlier.
- (b) The Company shall be entitled to interest on any part of the Contract price not paid by its due date from that date until payment at the rate of whichever is the higher of:
 - (i) 3 percent annum above HSBC Plc Base Rate prevailing from time to time during such period; or
 - (ii) interest payable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

Such interest shall accrue on a daily basis from the due date of payment until the actual date of payment of the overdue amount, whether before or after Judgment. The Customer shall pay the interest together with the overdue amount.

- (c) Where any goods are delivered by instalments (whether at the Customer's request or not) each instalment shall be deemed to be the subject of a separate contract and these Conditions shall apply to such Contract *mutatis mutandis*. The Company shall be entitled to request payment for any instalment of the goods so delivered, in accordance with the provisions of clause 4(a) of these Conditions and failure to pay within the relevant period specified shall entitle the Company to suspend all further deliveries of the goods pending payment without prejudice to any other remedy available to the Company.
- (d) The Customer shall not be entitled to withhold payment of any amount due and payable under this or any other Contract to the Company because of any dispute or claim by the Customer in respect of faulty goods or any other alleged breach of Contract nor shall the Customer be entitled to set-off against any amount payable under the Contract, any monies which are not then due and payable by the Company or in respect of which the Company disputes liability.
- (e) The Company shall, in respect of all unpaid debts of the Customer, have a general lien on all goods and property of the Customer (whether or not paid for), in the possession of the Company and shall be entitled, upon the expiration of 14 days notice, to dispose of such goods or property as it thinks fit and to apply the proceeds towards such debts.

3 Delivery

- (a) Whilst the Company shall seek to comply with any dates for despatch or delivery of the goods stated in the Contract any dates quoted for delivery are approximate and time shall not be of the essence. If the Company fails to despatch or deliver the goods by such date or dates, such failure shall not constitute a breach of the contract and the Customer shall not be entitled to treat the contract as repudiated or to rescind it or any related contract in whole or in part or to claim compensation for such failure.
- (b) Unless otherwise provided in the Contract where the Contract is for the delivery of goods quoted as "ex works", delivery shall be made when the goods are advised as being ready for collection by the Customer, its appointed agents or transportation contractors.
- (c) Should expedited delivery be agreed and necessitate overtime or additional costs, such costs and overtime expenses shall be paid by the Customer.
- (d) The company shall not be liable for any discrepancies in weight unless the Customer shall have given the company written notice within 7 days of the receipt of the goods and shall have afforded to the Company a reasonable opportunity of witnessing a re-weighing thereof before the goods have been used, processed or sold.
- (e) Where the Company undertakes the delivery of the goods carriage paid to the Customer's premises or in accordance with the Customer's delivery instructions, the Company shall not in any event be liable:
 - (i) for any loss, damage, deviation, delay, or detention or mis-delivery of the goods in the course of transit unless the Customer shall have given to the company and the carrier within 3 days of receipt of the goods written notice thereof.
 - (ii) for non-delivery or non-arrival of the whole or any part of any consignment of the goods of any separate package unless the Customer shall have given to the Company and the carrier written notice thereof within 14 days of the date of the Company's advice note or other notification of the despatch of the goods.

4 Storage

If the Company shall notify the Customer that the goods are ready for despatch or collection and if the Customer fails to call upon the Company to make delivery of the goods or to collect the same within 14 days of such notification then the Customer shall pay to the Company a reasonable charge for the storage and insurance of the goods from 14 days after such notification until the Customer actually calls upon the Company to make delivery thereof or to collect the same from the Company.

5 Inspection & Tests

If the Contract stipulates for tests or inspection of the goods by or on behalf of the Customer before delivery, such tests and inspection shall be made at the Company's works or an independently recognised test laboratory and shall constitute the Customer's final opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the Contract and free from apparent defects. If upon reasonable notice the Customer fails to inspect or test the goods or if having inspected or tested the goods at the said works, the Customer does not within 7 days thereafter notify the Company in writing that the goods are not in conformity with the Contract or free from apparent defects specifying the matters complained of, then the Customer shall be conclusively deemed to have accepted the goods as being in conformity with the Contract and free from apparent defects and shall not thereafter be entitled to reject or require replacement of the goods or

compensation in respect of the goods. Gauges, weights, quantities and sizes will so far as possible be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Customer, who shall not be entitled to reject any goods or require replacement of any goods on the grounds that they are not precisely as specified. Unless otherwise specifically agreed, all tests, test pieces and inspections, whatsoever required by the Customer, will be charged extra.

6 Description

- (a) Unless exact quantities are specified in the Company's acceptance of Order, Orders shall be regarded as completed notwithstanding a deficiency or surplus in quantity of not more than 10 per cent and the Company reserves the right to adjust the price accordingly.
- (b) In the case of all goods made specifically to the Customer's specifications and designs:
 - (i) the Customer undertakes to indemnify the Company and keep the Company fully and effectually indemnified against all actions, proceedings, damages, penalties, costs, claims and expenses whatsoever in respect of any infringement or alleged infringement by the Company of any intellectual property rights of third parties (including without limitation) patent, copyright, design, trade mark or any other proprietary right in the execution and performance of the Contract and such indemnity shall extend to any amount paid by the Company (upon legal advice) in settlement of any claim out of court.
 - (ii) the Company accepts no responsibility for the accuracy of patents, drawings, particulars or specifications supplied by the Customer and the Company shall have the right to destroy without notice the Customer's patents, drawings, dies, rolls, etc. which have not been used for 3 years.

7 Property and Risk

- (a) The risk in respect of all goods supplied under the Contract shall pass to the Customer upon the goods being delivered to the Customer as provided in the Contract or in accordance with the Customer's delivery instructions. Title to the goods shall not pass to the Customer unless and until the purchase price of the goods comprised in this or any other Contract between the Company and the Customer shall have been paid or satisfied in full in cleared funds.
- (b) Until title to the goods has passed to the Customer, the Customer shall:
 - (i) hold the goods on a fiduciary basis as the Company's bailee;
 - (ii) store the goods separately from all other goods held by the Customer so they remain readily identifiable as the Company's property;
 - (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (iv) maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (v) notify the Company immediately if it becomes subject to any of the events listed in clause 12; and
 - (vi) give the Company such information relating to the goods as the Company may require from time to time.
- (c) the Company may at any time recover and re-sell the goods (if in the Customer's possession) if any of the events specified in clause 12. hereof shall occur (or if the Company reasonably believes that any such event is about to happen and notifies the Customer) and/or if any sum owed by the Customer to the Company under any Contract is not paid on the due date then provided the goods have not been resold or irrevocably incorporated into another produce the Company, its servants or agents, together with appropriate transport shall be entitled at any time to enter upon the Customer's premises where the goods are situated in order to recover the goods.
- (d) The Customer may re-sell the goods in the ordinary course of its business for the account of the Company and to pass good title in the goods to its customer being a bona-fide purchaser for value without notice of the Company's rights but the Customer's right of re-sale shall automatically cease upon the occurrence of any of the events referred to in clause 9(c) above.
- (e) Nothing in this clause 9 shall entitle the Customer to return the goods or to delay payment therefore.

8 Defects

- (a) Subject to clause 10(b), and provided that such goods are first returned to the Company, (carriage paid) for examination by the Company before they have been used, sold, or processed in any way the Company undertakes in respect of any goods supplied which are within 1 month from the date of their original despatch, shown to the Company's reasonable satisfaction to be defective by

reason of faulty workmanship and not as a result of improper use, maintenance or storage by the Customer, that the Company will as its sole option:

- (i) refund to the Customer the Contract price for such goods; or
 - (ii) in the case of hirework, the Company will either re-work the goods or re-manufacture replacement material provided by the Customer; or
 - (iii) require the Customer to retain the goods and grant to the Customer such reasonable allowance in respect of such defect as the Company shall, acting reasonably, assess. Provided that such allowance shall not in any event exceed the estimated cost of remedying the defect or the Contract price for the goods, whichever shall be the lower.
- (b) In no circumstances shall the Company be liable to the Customer:
- (i) for any defects in the goods or if the goods are not in accordance with the Contract where such defect or discrepancy would be apparent on a reasonable examination of the goods unless the Customer shall have given to the Company within 7 days after the receipt of the goods a notice in writing specifying the matters complained of and the Customer shall thereafter afford to the Company a reasonable opportunity of inspecting the goods before they have been used, sold or processed in any way;
 - (ii) where the Customer has accepted the goods following inspection in accordance with clause 7 or where the Customer is deemed to have inspected the goods in accordance with clause 7; and
 - (iii) for any loss, damage or liability (other than the liability specifically accepted under clause 10 (a)) whether direct, indirect, consequential or incidental and whether arising in contract or in tort (including negligence on the part of the Company, its servants or agents) arising out of or in connection with any defect in the goods or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or breach of a fundamental term thereof) of the Company, its servants or agents in the performance of the Contract.
- (c) The foregoing shall not exclude the liability of the Company:
- (i) for death or personal injury resulting from the negligence of the Company, its servants or agents as provided in the Unfair Contract Terms Act 1977; or
 - (ii) in respect of any warranty condition or other term implied by the Unfair Contract Terms Act 1977 in the event of the Customer dealing as a "consumer" as defined by section 12 of the said Act and in respect of which it is not possible to exclude or restrict liability; or
 - (iii) in respect of defective products in accordance with the Consumer Protection Act 1987; or
 - (iv) for fraud or fraudulent misrepresentation; or
 - (v) in respect of any matter where it would be unlawful for the Company to exclude or restrict liability.
- (d) Any goods returned by the Customer shall be at the Customer's risk and the Customer shall re-pack the same either in the original packing or if this is impracticable, in other suitable packing.

9 Hirework

- (a) Hirework and work involving the use of the Customer's materials is undertaken by the Company only on the express understanding that the Company cannot be responsible for any distortion, faults or defects which appear or develop during, or are caused by the work, howsoever arising, even resulting from any fault or negligence or mistake of the Company. The Company gives no guarantee or warranty of any kind but subject to the availability of capacity and facilities, it will endeavour to correct any such distortion, faults or defects at the Customer's expense and risk. The Company shall not in any circumstances be liable for damages, compensation, costs, expenses, losses or any other liabilities, whether direct or indirect or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.
- (b) Unless it is otherwise expressly agreed in writing, any waste material resulting from the performance of any hirework shall become the property of the Company but it is expressly agreed between the Company and the Customer that the Company may at any time order the Customer to remove any such waste material, and the Customer hereby agrees that on receipt of any such order from the Company, it will forthwith comply with such order.
- (c) The Customer understands that:
- (i) the Company requires accurate information regarding the type of and properties of the goods it requires to be worked; and

- (ii) incorrect information provided pursuant to clause 11(c)(i) could result in damage to the Company's plant and machinery. Accordingly the Customer agrees that it will reimburse the Company for any damage caused to any plant or machinery of the Company as a result of materials supplied by the Customer to the Company.

10 Customer's Insolvency, Incapacity or Default

- (a) If the Customer becomes subject to any of the events listed in clause 12(b) or the Company reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Company, the Company may at its option determine the Contract, cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of goods delivered to the Customer shall become immediately due.
- (b) For the purposes of clause 12 (a) the relevant events are:
- (c) The Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- (d) The Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (e) (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- (f) A creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- (h) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- (i) Any petition is presented for the winding up of the Customer or a liquidator is appointed; or
- (j) A person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (k) Any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12 (b) (i) to 12 (b) (viii) (inclusive); or
- (l) The Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (m) The financial position of the Customer deteriorates to such an extent that in the opinion of the Company the capability of the Company adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- (n) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- (o) The Customer fails to provide any letters of credit, bill of exchange or other security required by the Company; or
- (p) If the Customer commits a material breach of the Contract or of any of its other obligation to the Company; or
- (q) If any amount due by the Customer to the Company is not paid on its due date for payment.

11 Force Majeure

The Company shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Company's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms,

earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12 Severance

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or party provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13 Legal Construction and Arbitration

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

14 Assignment

- (a) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge or subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.