

Rolls Enterprises Pty Ltd T/A Rolls & Associates Surveyors – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "Consultant" shall mean Rolls Enterprises Pty Ltd T/A Rolls & Associates Surveyors and its successors and assigns.
 - 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
 - 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Consultant to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
 - 1.5 "Services" shall mean all services supplied by the Consultant to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
 - 1.6 "Fee" shall mean the cost of the Goods as agreed between the Consultant and the Client subject to clause 4 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by the Consultant from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Consultant shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Fee.
 - 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Consultant.
 - 2.4 None of the Consultant's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Consultant in writing nor is the Consultant bound by any such unauthorised statements.
 - 2.5 The Client undertakes to give the Consultant not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).
- 3. Goods**
 - 3.1 The Goods are as described on the invoices, Fee Proposal, work authorisation or any other work commencement forms as provided by the Consultant to the Client.
- 4. Fee And Payment**
 - 4.1 At the Consultant's sole discretion the Fee shall be either;
 - (a) as indicated on invoices provided by the Consultant to the Client in respect of Goods supplied; or
 - (b) the Consultant's current Fee, at the date of delivery of the Goods, according to the Consultant's current Fee list; or
 - (c) the Consultant's proposed Fee (subject to clause 4.2) which shall be binding upon the Consultant provided that the Client shall accept in writing the Consultant's Fee Proposal within thirty (30) days.
 - 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Consultant's Fee Proposal and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
 - 4.3 At the Consultant's sole discretion a deposit may be required. The deposit amount or percentage of the Fee will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
 - 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, Fee Proposal or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
 - 4.5 The Consultant may withhold delivery of the Goods until the Client has paid for them, in which event payment shall be made before the delivery date.
 - 4.6 At the Consultant's sole discretion, payment for approved Clients shall be made by instalments in accordance with the Consultant's delivery/payment schedule.
 - 4.7 At the Consultant's sole discretion, payment for approved Client's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
 - 4.8 At the Consultant's sole discretion, for certain approved Clients payment will be due seven (7) days following the date of the invoice.
 - 4.9 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Consultant.
 - 4.10 The Fee shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any Fee Proposal given by the Consultant.
- 5. Delivery Of Goods / Services**
 - 5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at the Consultant's address.
 - 5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Consultant for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
 - 5.3 The costs of carriage and any insurance which the Client reasonably directs the Consultant to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Fee. The carrier shall be deemed to be the Client's agent.
- 5.4 Where there is no agreement that the Consultant shall send the Goods to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.
 - 5.5 The Consultant may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
 - 5.6 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
 - 5.7 The failure of the Consultant to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.8 The Consultant shall not be liable for any loss or damage whatever due to failure by the Consultant to deliver the Goods (or any of them) promptly or at all.
- 6. Risk**
 - 6.1 If the Consultant retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
 - 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Consultant is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Fee for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Fee has become payable under the Contract. The production of these terms and conditions by the Consultant is sufficient evidence of the Consultant's rights to receive the insurance proceeds without the need for any person dealing with the Consultant to make further enquiries.
- 7. Client's Disclaimer**
 - 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Consultant and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Consultant shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.
- 8. Errors and Omissions**
 - 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Consultant of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or fee proposal. The Client shall afford the Consultant an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
 - 8.2 For defective Goods, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) replacing the Goods or repairing the Goods provided that the Client has complied with the provisions of clause 8.1.
- 9. Lien & Stoppage in Transit**
 - 9.1 Where the Consultant has not received or been tendered the whole of the Fee, or the payment has been dishonoured, the Consultant shall have:
 - (a) a lien on the goods;
 - (b) the right to retain them for the Fee while the Consultant is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,
 - (e) the foregoing right of disposal,provided that the lien of the Consultant shall continue despite the commencement of proceedings or judgement for the Fee having been obtained.
- 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 11. Intellectual Property**
 - 11.1 Where the Consultant has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Consultant, and shall only be used by the Client at the Consultant's discretion.
- 12. Default & Consequences Of Default**
 - 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
 - 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Consultant from and against all the Consultant's costs and disbursements including on a solicitor and own client basis and in addition all of the Consultant's nominees costs of collection.
 - 12.3 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Consultant may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant exercised its rights under this clause.

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- 12.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
- (a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
- then without prejudice to the Consultant's other remedies at law
- (i) the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Consultant shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.
- 13. Title**
- 13.1 It is the intention of the Consultant and agreed by the Client that property in the Goods shall not pass until:
- (a) The Client has paid all amounts owing for the particular Goods, and
 - (b) The Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client, and that the Goods shall be kept separate until the Consultant shall have received payment and all other obligations of the Client are met.
- 13.2 It is further agreed that:
- (a) Until such time as ownership of the Goods shall pass from the Consultant to the Client the Consultant may give notice in writing to the Client to return the Goods or any of them to the Consultant. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
 - (b) If the Client fails to return the Goods to the Consultant then the Consultant or the Consultant's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (c) The Client is only a bailee of the Goods and until such time as the Consultant has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Consultant.
 - (d) The Client shall not deal with the money of the Consultant in any way which may be adverse to the Consultant.
 - (e) Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership of rights in respect of the Goods shall continue.
 - (f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Consultant.
 - (g) The Consultant may require payment of the Fee or the balance of the Fee due together with any other amounts due from the Client to the Consultant arising out of these terms and conditions, and the Consultant may take any lawful steps to require payment of the amounts due and the Fee.
 - (h) The Consultant can issue proceedings to recover the Fee of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
 - (i) Until such time the Client has the Consultant's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Consultant will be the owner of the end products.
- 14. Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which the Consultant may have howsoever:
- (a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Consultant or the Consultant's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Consultant (or the Consultant's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Consultant elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Consultant from and against all the Consultant's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Consultant or the Consultant's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Consultant and/or the Consultant's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Consultant and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Consultant and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Consultant's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 15. Cancellation**
- 15.1 The Consultant may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Consultant shall not be liable for any loss or damage whatever arising from such cancellation.
- 16. Privacy Act 1988**
- 16.1 The Client and/or the Guarantor/s agree for the Consultant to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Consultant.
- 16.2 The Client and/or the Guarantor/s agree that the Consultant may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Client;
 - (b) To notify other credit providers of a default by the Client;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
 - (d) To assess the credit worthiness of Client and/or Guarantor/s.
- 16.3 The Client consents to the Consultant being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that Personal Data provided may be used and retained by the Consultant for the following purposes and for other purposes as shall be agreed between the Client and Consultant or required by law from time to time:
- (a) provision of Services & Goods;
 - (b) marketing of Services and/or Goods by the Consultant, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.
- 16.5 The Consultant may give, information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 17. Unpaid Consultant's Rights To Dispose Of Goods**
- 17.1 In the event that:
- (a) the Consultant retains possession or control of the Goods; and
 - (b) payment of the Fee is due to the Consultant; and
 - (c) the Consultant has made demand in writing of the Client for payment of the Fee in terms of this contract; and
 - (d) the Consultant has not received the Fee of the Goods,
- then, whether the property in the Goods has passed to the Client or has remained with the Consultant, the Consultant may dispose of the Goods and may claim from the Client the loss to the Consultant on such disposal.
- 18. General**
- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 All Goods supplied by the Consultant are subject to the laws of New South Wales and the Consultant takes no responsibility for changes in the law which affect the Goods supplied.
- 18.3 The Consultant shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Consultant of these terms and conditions.
- 18.4 In the event of any breach of this contract by the Consultant the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Consultant exceed the Fee of the Goods.
- 18.5 The Client shall not set off against the Fee amounts due from the Consultant.
- 18.6 The Consultant may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7 The Consultant reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Consultant notifies the Client of such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.