

GENERAL TERMS AND CONDITIONS OF SALE

1. General terms and conditions

- 1.1. These general terms and conditions of sale (hereinafter T&C) apply to all sales of products made by Rotho Blaas New Zealand Ltd, level 188 Quay Street, Auckland Central, Auckland (hereinafter referred to as RB). Any exceptions agreed between the parties for individual orders shall in any case apply exclusively to such orders and shall not constitute a modification of the T&C for other purchases made by the customer.
- 1.2. RB shall supply the products exclusively based on these T&C and, if there are any, other agreements signed by both parties. Any General Terms and Conditions of the person or firm who purchases the products from RB "the Buyer") shall only be valid upon written confirmation by RB.
- 1.3. If any individual clause of these T&C or of any further agreements stipulated by the parties is found to be invalid, illegal or unenforceable, it shall be deemed deleted but that shall not affect the remaining provisions. If any provision of the T&C or of any further agreements stipulated by the parties is deemed deleted under this clause 1.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

2. Technical documentation

- 2.1. RB is not liable for any printing errors, technical data, drawings, references to weights and measures and translations in the printed catalogues. The latest version of the catalogues' technical data sheets available can be consulted on RB website.

3. Delivery terms

- 3.1. The quantities supplied and the characteristics of the products are those indicated in the written order confirmation issued by RB. RB may deliver the products by instalments and, if it does so, the quantities are specified in the respective transport documents and RB shall be entitled to invoice for the products separately.
- 3.2. Delivery date estimates are indicative only. RB will not be responsible for delays in delivery caused by events outside RB's reasonable control or any act or omission of the Buyer; where delays are not caused by an event outside of RB's reasonable control or an act or omission of the Buyer, RB's liability to the Buyer shall be limited to the reasonable costs and expenses of obtaining replacement goods.
- 3.3. The Buyer shall confirm receipt of the product on the transport document and/or transport bill of the shipper/carrier, in paper or digital format. The Buyer shall also note any claim regarding the quantity/type of product, packaging, transport damage, visible at the time of delivery on the transport document and/or transport bill of the shipper/carrier upon delivery. Otherwise, any complaints shall not be taken into consideration by RB, which shall not be held liable in this regard. Non-latent damages or non-conformities must be notified within 10 days from the date of delivery to the RB sales agent with photo and brief description.

4. Returns

- 4.1. Save for returns of faulty products (which shall be governed by the provisions of clause 11, returns of products are not permitted unless otherwise agreed in writing between the parties and in any case not later than 30 days from the purchase date.
- 4.2. If the return of the products is authorised, a handling fee determined from time to time by RB will be charged to the Buyer, together with the costs of transporting the products from the Buyer's premises

to RB's premises. Returned goods must be in their original condition, unused, packed in their original packaging and ready for sale. Transport costs for the return of the products shall be borne by the customer. In any case, returns of out-of-catalogue products, products with expiry date and/or products specifically manufactured for the Buyer are not permitted.

5. Risk transfer

- 5.1. The risk in the products is transferred from RB to the Buyer according to the INCOTERMS set out in the "commercial documents" (being all or any of the following documents: offer for purchase, order confirmation and invoice). In the absence of any specification, the risk is transferred upon sending of the products, and therefore upon delivery of the products by RB to the forwarder/carrier.

6. Prices and payment methods

- 6.1. The price charged for the products is the price indicated in the order confirmation or, in absence, in the order submitted by the Buyer to RB. The price shall be ex warehouse RB.
- 6.2. Prices stated are in New Zealand dollars, exclusive of GST and any transport and handling charges. The amount of GST payable will be calculated by multiplying the sum of the price for the goods by the rate of GST applicable at the time of the supply. RB will issue a tax invoice to the customer in relation to any supply that is subject to GST.
- 6.3. The Buyer shall pay all sums due in respect of the products in accordance with the payment terms specified in the commercial documents.
- 6.4. If the buyer fails to make any payment of any invoice, or any required milestone payment, by the date on which that payment is due, then RB may, without prejudice to any other right or remedy, which RB may otherwise have, and in addition to any such other right or remedy, take any action including the following:
 - (i) charge interest (both before and after any judgment) on the amount unpaid from the due date until payment of the overdue sum at the rate of 4% per annum above the overdraft rate payable by RB to its bankers unless and until payment is made in full (a part of the month being treated as a full month for the purpose of calculating interest); and
 - (ii) call on and give effect to any right that RB may have in respect of any security in place, including: guarantees given by directors or any other parties, secured real property, bank guarantees or any rights pursuant to the PPSA; and
 - (iii) suspend, defer or cancel any outstanding supply of any goods which are to be supplied to the buyer, under these terms and conditions, or under any other arrangement, unless and until the overdue amount is paid in full; and
 - (iv) recover from the buyer on an indemnity basis the costs incurred by it in recovering sums due to it from the buyer and enforcement of any of its remedies including securities.
- 6.5. In the event of an unforeseen price increase between the time of order confirmation on the time of delivery, RB may adjust the price accordingly, giving prior written notice to the customer.

7. Retention of title

- 7.1. The Buyer acknowledges and expressly agrees that, unless otherwise specified in writing by RB, the property in, and legal and equitable title to, the goods, remains with RB and does not pass to the Buyer, unless and until RB has received in full (in cleared funds) all sums due from the Buyer to RB in relation to the goods, and in relation to all other goods previously supplied to the Buyer by RB.
- 7.2. Until the customer has paid for the goods in full and

- ownership passes to the customer:
- a) RB is and remains the legal and equitable owner of the goods;
 - b) the Buyer holds the goods as a fiduciary agent and bailee for RB;
 - c) the customer must hold the goods as RB's bailee, insure the goods against all usual risks to full replacement value, not pledge or allow any lien, charge or other interest to arise over goods;
 - d) RB may enter the Buyer's premises or elsewhere at any time without notice to inspect the goods;
- (i) To the extent (if any) that the property in and legal title to the goods has passed to the Buyer by operation of law, then RB has a specific lien over the goods until paid for in full;
- 7.3. If the Buyer becomes insolvent, passes a resolution for winding up, or a court shall make an order to that effect, or a receiver or administrator is appointed over any assets or undertaking of the buyers lien, then:
- (i) The Buyer shall not sell, use or part with possession of the goods, and RB shall be entitled, without previous notice and without prejudice to RB's other remedies, to retake possession of the goods and for that purpose may enter upon any premises occupied or owned by the Buyer.
 - (ii) The Buyer waives the right to receive any PPSA notice in connection with RB taking possession of the goods;
 - (iii) The customer will be liable for all costs, losses and damages incurred or suffered by RB as a result of RB retaking possession of the goods or otherwise exercising its rights under this clause. The Buyer will indemnify RB and keep RB indemnified, for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecutions, actions, demands claims or proceedings brought by or against RB in connection with retaking possession of the goods or the exercise by RB of its rights under this clause.
- 7.4. If the goods are mixed, processed or used so that they lose their identity or are irrevocably incorporated in, mixed with or applied to other goods to make another item, then ownership of the goods will pass to the customer, however a portion of the proceeds of sale of any such item equivalent to the cost for the unpaid goods remains in trust for RB until payment for the goods is made in full.
- 7.5. The Buyer may use or sell goods in the ordinary course of business, and the buyer will then be the agent for RB to the extent necessary to account for the proceeds of any such sale. The Buyer must account to RB for that part of the proceeds of any such sale which equates to the price of the goods and shall hold that amount in a bank account on trust for and until paid to RB.
- 7.6. In the event of any payment of insurance in relation to the goods, the Buyer shall hold any insurance moneys received by the Buyer for goods owned by RB in a bank account on trust for and until paid to RB.
- 7.7. RB's rights as an unpaid seller will not be affected by RB retaining title to the goods.
- 8. Personal Property Security**
 "Personal Property Securities Act – defined terms in this clause have the same meaning as those given to them in the Personal Property Securities Act 1999 ("PPSA").
- 8.1. To secure the payment of any moneys owed by the Buyer under this agreement and the performance of any obligation of the Buyer under these T&C the Buyer grants a security interest in favour of RB in all goods supplied by RB to the Buyer (or for the Buyer's account) and all direct and indirect proceeds of any

dealing with such goods.

- 8.2. RB may register a financing statement under the PPSA in respect of all goods and direct and indirect proceeds of any dealing with such goods from time to time, including by reference to serial numbers (if appropriate).
- 8.3. The Buyer will provide on demand all information it will do all things required by RB, necessary to allow RB to perfect any security interest created under these T&C, including by registering any financing statement on the personal property securities register.
- 8.4. The Buyer waives the right to receive a verification statement in respect of any financing statement or financing change statement registered by RB.
- 8.5. To the extent permitted by law, the Buyer and RB contract out of sections 114 (1) (a), 120 (2), 121, 125, 129, 131, 133 and 134 of the PPSA.
- 9. Intellectual Property**
- 9.1. The Intellectual Property Rights (trademarks, trade names, copyrights, patents, designs and models, know-how, domain names) are the total and exclusive property of RB and their communication or use within the scope of these Terms and Conditions of Sale does not create, in relation to them, any right or claim on the part of the Purchaser. The Buyer undertakes not to perform any act incompatible with the ownership of the Intellectual Property Rights.
- 9.2. The Buyer acknowledges and accepts that: (I) RB is the exclusive owner of the Trade Marks and the other Intellectual Property Rights; (II) the Buyer shall refrain from registering and registering marks that are identical, similar and/or confusable with the Trade Marks; (III) the Buyer shall use the Trade Marks and the other Intellectual Property Rights only with the express consent of RB in compliance with the latter's instructions and exclusively for the purposes set forth in these Conditions of Sale; (IV) the Buyer undertakes not to modify, alter, remove, cancel or cover the RB Marks or other distinctive signs affixed to the Products or to add other marks or distinctive signs to these; (V) the Buyer undertakes not to register domain names that are identical, similar or that incorporate the RB Marks. Any violation of these provisions shall be prosecuted in accordance with the law.
- 9.3. In the event that the Buyer has registered or registered any privative right to the trademarks, names or other distinctive signs or any domain name of RB and/or those relating to the Products, in violation of the provisions of this paragraph, such registrations shall be considered automatically and by right transferred from the Buyer to RB and, therefore, the Purchaser hereby undertakes to carry out all the necessary actions to perfect and make effective the transfer of said rights from the Buyer to RB, without the Buyer having any right to consideration or reimbursement of the expenses and costs incurred.

10. Set-Off

- 10.1. All amounts due under the T&C shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. Warranty/guarantee not under the Consumer Guarantees Act

- 11.1. If the customer is not a consumer as defined in the Consumer Guarantees Act 1993 then RB warrants that the goods whether manufactured by RB, its manufacturers or its suppliers, as published in RB's price lists, brochures, catalogues, electronic media and other advertising material and supplied by RB shall, for a period of 12 months (or such other period as RB shall specify in writing) from the date of

dispatch of the goods from RB's premises, be free from defects, faulty workmanship, materials or design.

11.2. The warranties provided above shall be effective, and impose liability on RB to give effect to such warranty, only if:

- (i) RB is provided with written notice of the circumstances giving rise to the claim arising within 30 days of the occurrence of such circumstances; and
- (ii) it is permitted to inspect goods before they are repaired or replaced; and
- (iii) the Buyer returns the goods or components to RB's premises, at the buyer's expense; and
- (iv) RB is satisfied, by its own examination of the goods, that any alleged circumstances giving rise to the claim have not been caused by improper use, installation, operation, damage due to accident, neglect, lightning, power surge or from improper repair alteration, modification or adjustment to the goods.

11.3. Any repairs alterations or other work carried out to the goods by a person other than an authorised representative of RB shall invalidate the warranty in this clause.

11.4. Any replacement goods or repaired goods will be guaranteed on these terms for any unexpired portion of the period of guarantee given in the original goods for 90 days whichever is the longer period. Any goods which have been replaced will belong to RB.

11.5. If the Buyer requests or insists that warranty service be carried out on site or at the Buyer's premises and any cost over and above the direct costs of replacing or repairing of goods or the component parts of the goods at RB's premises shall be at the customer's expense.

11.6. If the Buyer requests or insists that warranty service (or any other service or attendance) be carried out on site or at the Buyer's premises, the Buyer grants to RB and its employees, agents and representatives a right to enter onto its premises to effect any inspection, repair or replacement. The customer shall ensure that RB's employees, agents and representatives are provided with a safe and secure working environment at its premises.

12. Warranty/guarantee under consumer guarantees act (if applicable)

12.1. The Consumer Guarantees Act 1993 may guarantee certain conditions, warranties and undertakings in relation to goods. Nothing in these conditions of sale shall derogate from the guarantees which apply under the Consumer Guarantees Act where goods are required by the customer for personal, domestic, or household use or consumption. To the extent they apply, these guarantees cannot be modified nor excluded by contract, and these conditions of sale do not purport to modify or exclude any conditions, warranties, guarantees undertakings under the Consumer Guarantees Act.

12.2. If the customer requires, or holds itself out as acquiring, goods for the purposes of a business in terms of section 43 (2) of the Consumer Guarantees Act, the provisions of the Consumer Guarantees Act shall not apply to that supply.

12.3. If the Buyer acquires goods from RB for resupply as, or incorporate any of the goods into, goods ordinarily acquired for personal household or domestic use (consumer products), the customer warrants that:

- (i) If it supplies the consumer products for resupply by its customer, the customer will ensure that the customer's terms and conditions of supply require its customer and each person in the distribution chain to include in their supply agreements or conditions of sale, obligations requiring their customers to exclude

liability for any claims under the Consumer Guarantees Act, but only where the end user/consumer acquires a consumer products for the purposes of a business;

- (ii) If it supplies the consumer products directly to an end user/consumer it will do so using written terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act, but only where the end user/consumer acquires the consumer products for the purposes of a business.

(iii) If the Buyer purchases goods as a consumer as defined in the Consumer Guarantees Act 1993 then:

- (a) In the event of a breach by RB of a guarantee imposed by the Consumer Guarantees Act, the Buyer may be entitled to an identical replacement (or one of similar value if reasonably available), a refund or compensation for drop in value of the goods, at the Buyer's option.

- (b) In the case of a minor failure, the customer may be entitled to have the goods repaired, replaced or obtain a refund at RB's option.

12.4. To the extent permitted by law, RB's liability for any loss, injury or damage, shall be limited to making good, by replacement or repair, at RB's option, and at the Buyer's expense in relation to costs over and above the direct cost of replacing or repairing the goods or the component parts of the goods at RB's premises, any defects which appear under proper use.

12.5. This obligation will not apply if the defect arises because the Buyer has altered or repaired the goods without the written consent of RB, the defect arises because the Buyer did not follow RB's and/or the manufacturer's instructions for storage, usage, installation, commissioning or maintenance of the goods. The obligation will not apply if the Buyer has failed to notify RB of any defect, where the defect should have been apparent on reasonable inspection or the customer fails to notify RB of the defect within 12 months (or such other period as RB shall specify) of the date of dispatch of the goods.

13. Representations as to performance and fitness for purpose

13.1. Except as expressly set out in these terms and conditions and the Consumer Guarantees Act, RB makes no warranty, representation or other statement and respect of the goods, the quality or their fitness for any purpose, except as stated expressly in these terms and conditions, or as may otherwise be required by law.

13.2. Unless any performance figures, tolerances or characteristics have been specifically reviewed, and expressly warranted by an authorised officer of RB in writing, RB's view is that environmental and operational circumstances will affect such figures, tolerances or characteristics and RB recommends that the customer conduct independent assessment and verification of the subject of the figures, tolerances and characteristics to determine their veracity, application and reliability of any representation.

13.3. The responsibility for ensuring that the goods are sufficiently suitable for a particular purpose is the Buyers, unless specifically stated in writing by an authorised officer of RB.

13.4. The Buyer acknowledges and agrees that RB can accept no liability for any failure of goods to comply with such criteria, whether attributable to RB's negligence or otherwise; and

13.5. Any advice or recommendation given by an employee of RB which is not confirmed in writing by an authorised officer of RB, ought to be assessed and verified by the Buyer, and is acted on entirely at the

- Buyer's risk and RB shall not be liable for any such advice or recommendation which is not so confirmed.
- 13.6. In the event of the customer relying on any representation, warranty, statement, advice recommendation, which proves to be incorrect, inaccurate or misleading RB's liability will be limited to the refund of the price paid for the goods to RB or, at RB's option, the supply of replacement goods which are sufficient and suitable, and in no event will RB be liable for any consequential or indirect loss, including loss of revenue, profit or opportunity.

14. Liability exclusion

- 14.1. This clause sets out the full extent of RB's obligations and liability to the Buyer with respect to the goods under any contract. All other terms and conditions, warranties and representations that might otherwise be implied by statute or otherwise, are hereby expressly excluded, save for those that cannot be excluded restricted or modified by law.
- 14.2. To the fullest extent permitted by law and subject only to any express exceptions contained in these terms and conditions, RB will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct or indirect or consequential loss (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of use, loss of cost of recovery of data, depletion of goodwill, business interruption, increased purchasing or manufacturing costs, loss of opportunity, loss of contracts and like loss) howsoever caused or arising out of or in connection with any of the goods or the manufacture, sale, performance, characteristics or supply or failure or delay in performance or supply of the goods by RB or on the part of RB's employees, agents, manufacturers, suppliers or subcontractors. Any breach by RB of any of the express or implied conditions of the contract, any use made of resale or on supply of any of the goods when a product incorporating the goods were developed using the goods and any act or omission of RB at the customer's premises, any statement made or not made or advice given or not given by or on behalf of RB, including without limitation any statement as to compliance with legislation or regulation or otherwise under the contract.
- 14.3. RB does not exclude, restrict or modify any liability that cannot be excluded restricted or modified by law including liability under the Consumer Guarantees Act 1993. However where such statutory provisions apply, or where the customer is entitled to claim under an express provision of these conditions then to the extent permitted by law RB's total liability shall be limited at its option to either replacement of the goods by RB or supply of equivalent goods by RB or the payment of the reasonable documented cost of replacing the goods or the payment of the reasonable documented cost of acquiring equivalent goods or the repair of the goods by RB or the payment of the reasonable documented cost of having the goods repaired. No costs of rectification, other than directly by RB, shall be accepted without prior acceptance in writing signed by an authorised officer of RB.
- 14.4. Notwithstanding anything else in these terms and conditions, and to the extent permissible by law, RB's aggregate liability arising out of performance or non-performance of obligations under these conditions, whether under the law of contract, tort, statute or otherwise, shall be limited to either: the cost of repair or replacement of the goods supplied to the customer, the price paid to RB by the original customer for the items giving rise to the claim or to

NZ \$10,000, whichever amount is the lesser.

- 14.5. Notwithstanding anything else in this agreement, and the extent permissible by law, RB shall not be liable to the Buyer or to any third party for any business interruption, loss of profit, revenue, materials, anticipated savings, goodwill or the like (whether direct or indirect), or for any other form of incidental or consequential loss or damage of any kind.
- 14.6. RB shall not be liable for any loss or damage where an action against it for such loss or damage is commenced after a period of 18 months has elapsed after the circumstances in which the alleged cause of action has occurred. This clause shall apply regardless of any other contrary provision in these terms and conditions and regardless of the form of action. Each provision of these conditions which provides for limitation of liability, disclaimer of warranty or condition or exclusion of damages is separate and independent.
- 15. WEEE recycling**
- 15.1. The Buyer of EEE is informed of the obligation not to dispose of the same as mixed urban waste and to carry out separate collection for said waste. When purchasing a new EEE, he may deliver the equivalent WEEE to RB in the indicated manner.
- 16. Force majeure**
- 16.1. "Force Majeure" means the occurrence of an event or circumstance that prevents or impedes a party from performing one or more of its contractual obligations under the T&C, if and to the extent that that party proves: [a] that such impediment is beyond its reasonable control; and [b] that it could not reasonably have been foreseen at the time of the conclusion of the contract for the purchase of the relevant products; and [c] that the effects of the impediment could not reasonably have been avoided or overcome by the affected party.
- 16.2. In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this Clause: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation; (v) plague, pandemic, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labour disturbance such as boycott, strike and lock-out, go- slow, occupation of factories and premises.
- 16.3. A party successfully invoking this Clause is relieved from its duty to perform its obligations under the contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected party. Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate

the contract by notification within a reasonable period to the other party. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days.

17. Termination clause

17.1. If, after accepting the Buyer's order for the products, RB becomes aware that the Buyer is in a compromised financial situation and/or subject to bankruptcy/proceedings, RB may request a performance guarantee or withdraw from the order, calculating the costs incurred up to that time and being entitled to recover such costs from the Buyer.

18. Competent jurisdiction and applicable law

18.1. The relationship between the parties and these T&C and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation, shall be governed by and construed in accordance with the law of New Zealand. In the event of disputes or claim arising out of or in connection with these T&C, which the parties are unable to resolve amicably pursuant to clauses 19.1 to 19.4 below, the Courts of New Zealand shall have exclusive jurisdiction.

19. Resolution of disputes

19.1. These procedures are the exclusive procedures for the resolution of all such disputes between the parties under these conditions.

19.2. In the event of a dispute arising in relation to these conditions or to any goods supplied pursuant to these conditions of sale the parties will use their best endeavours and attempt in good faith to promptly resolve the dispute direct negotiation.

19.3. Negotiations will be conducted in the English language between representatives of the parties who have authority to settle the dispute within 30 days of a party providing written notice to the other party of the matter and circumstances giving rise to the dispute (notice of dispute).

19.4. If the dispute has not been resolved within 30 days

of a party giving a notice of dispute, either party may request the presence of the New Zealand Law Society to appoint a mediator. Mediation must take place within 90 days of the date of the notice of dispute. The mediator's fees and expenses shall be apportioned equally to each side.

19.5. Any dispute not so resolved by negotiation and mediation may then be submitted to a court of competent jurisdiction in New Zealand.

20. Privacy

20.1. In accordance with applicable data protection laws, the Client is informed that his personal data (name of the contact person/management/owner, address, e-mail address, telephone number, fax number) are necessary for the execution of the contract for the sale and purchase of the products and will be transmitted for this purpose to other companies of the Rotho Blaas Group (<https://www.rothoblaas.com/contacts>) and may also be transmitted to lawyers to enforce its contractual rights, credit institutions, accountants, professionals in the management and administration of RB or service companies working on behalf of RB.

20.2. RB shall retain the data until the expiry of the statutory retention and limitation periods. The data subject enjoys the rights set forth in the applicable data protection laws (right of access to his/her personal data, rectification, cancellation, limitation of processing, personal data portability, opposition to processing, right to lodge a complaint to the Supervisory Authority). For more detailed information and to exercise these rights, please contact RB privacy contact person at privacy@rothoblaas.com.

21. Code of Ethics

21.1. The Buyer declares to know and respect the contents of RB's Code of Ethics, available on the RB website.

22. Variation

22.1. No variation of the T&C shall be effective unless it is in writing and signed by the parties (or their authorised representatives).