

# ROCLA (PTY) LTD

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 Definitions

For the purposes of these Terms, unless the context requires otherwise:

“Credit Approved Customer”	means a Customer which has been granted credit-facilities by Rocla in accordance with clause 6;
“Customer”	means a company, close corporation; partnership; sole proprietor, person or persons or any other party who has dealings with Rocla with a view to purchasing Products or with whom Rocla enters into a contract of sale in respect of Products;
“Products”	means products indicated on quotations, tenders, orders or other company forms, and/ or sold and supplied by Rocla to the Customer;
“Rocla”	means Rocla (Pty) Ltd, registration number 1973/ 013163/ 07; and
“these Terms”	means these Standard Terms and Conditions of Sale.

#### 1.2 General Interpretation

In addition to this clause 1, unless the context requires otherwise:

- 1.2.1 the singular shall include the plural and vice versa;
- 1.2.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two; and
- 1.2.3 natural persons include created entities (corporate or unincorporated) and vice versa.

#### 1.3 Headings and Sub-headings

All the headings and sub-headings in these Terms are for convenience only and are not to be taken into account for the purpose of interpreting it.

### 2. TERMS AND CONDITIONS OF SALE

- 2.1 Any quotation, tender, order, or contract of sale between Rocla and the Customer in respect of Products, and any variation thereto, shall be subject to the terms and conditions contained in these Terms.
- 2.2 By placing an order and thereby accepting these Terms, the Customer shall be deemed to have agreed that all existing arrangements between Rocla and the Customer in respect of Products shall be governed by these Terms.

### 3. QUOTATION AND PRICE

- 3.1 Quotations are subject to the availability of raw materials and stocks of any Products at the time of manufacture and or delivery.
- 3.2 Save as may be specified on any quotation form, prices are not subject to any discount and are applicable to deliveries made during normal working hours, from Monday to Friday.
- 3.3 All Product is supplied at the Rocla ruling price list on the date of despatch from the factory and not in terms of earlier quotations or prices at the date of order, irrespective of method of delivery.
- 3.4 All prices are strictly nett and exclusive of Value Added Tax. In the case of delivery other than delivery at the factory, prices are subject to adjustment in respect of any increase / decrease in the cost of delivery arising directly or indirectly from any one or more causes, in particular:
  - 3.4.1 in the case of delivery by rail or road any increase in Spoornet railage and / or transport rates and / or any other transport costs, including fuel costs.
  - 3.4.2 Any statutes or law or regulation, bye-law or notice having the effect of law.
- 3.5 Rocla is a supplier and shall not be considered to be a contractor or sub-contractor or in any other way be bound by the terms of any other agreement or contractual document to which Rocla is not directly a party.

#### **4. ORDERS**

- 4.1 Any order by the Customer for Products (including any acceptance of a quotation) shall be duly authorised and recorded on the Customer's official written order form, together with the order number, delivery address, invoicing address and all other pertinent details required for Rocla to execute the order.
- 4.2 The Customer's order shall be binding on Rocla when Rocla duly authorises and notes its acceptance on its Acknowledgement of Order Form and transmits this to the Customer.
- 4.3 No order accepted by Rocla shall be varied or cancelled by the Customer except with the written consent of Rocla.
- 4.4 Rocla may split an order to facilitate payment by the Customer to Rocla on a monthly statement of account.
- 4.5 The Customer agrees to pay all costs resulting from any acts or omissions of the Customer, including but not limited to, suspension of supply of Products, modification of requirements, requirements that work be completed earlier than agreed or failure or delay in giving particulars required to enable work to proceed on schedule.
- 4.6 Rocla shall have the right, in its sole discretion, to appoint subcontractors and to provide alternative products.

#### **5. PAYMENT TERMS**

- 5.1 The Customer shall pay to Rocla the full amount reflected in the tax invoice issued by Rocla:
- 5.1.1 promptly upon presentation of the tax invoice to the Customer; or
- 5.1.2 in case of a Credit Approved Customer, within 30 (thirty) days from the date of the statement.
- 5.2 A Credit Approved Customer, which fails to make payment in accordance with clause 6 forfeits its right to credit facilities granted in terms of clause 60 and all amounts outstanding to its account shall become immediately due and payable.
- 5.3 A certificate purportedly signed by an independent auditor and/ or any director of Rocla (whose authority need not be proved) in respect of the indebtedness of the Customer shall be prima facie proof of the amount due to Rocla by the Customer.
- 5.4 The Customer shall not be entitled to claim any set-off or deduction in respect of any payment due by the Customer to Rocla for Products.
- 5.5 Rocla shall have the right, in its sole discretion, to appropriate payment made by the Customer to such accounts of the Customer as it may decide on.

#### **6. CREDIT FACILITIES**

- 6.1 Rocla may, in its sole discretion, grant credit facilities to the Customer.
- 6.2 In order to qualify for credit facilities, the Customer shall:
- 6.2.1 complete Rocla's Standard Application for Credit Facilities to the satisfaction of Rocla; and
- 6.2.2 transmit to Rocla the original Standard Application for Credit Facilities, signed by the Customer's duly authorised representative, together with any related documentation.
- 6.3 Rocla shall have the right, in its sole discretion, to amend or withdraw any credit facilities granted to the Customer, without notice to the Customer, and any amounts then owing to Rocla by the Customer under the credit facilities will become due and payable on demand.
- 6.4 The Customer consents to Rocla obtaining from and / or sharing information on the Customers' account with other credit grantors and / or credit bureau. Information obtained and / or shared with such companies is used only to make credit granting decisions and to prevent fraud.

#### **7. FORM OF PAYMENT**

- 7.1 Payment by the Customer is to be made in cash at Rocla's premises or by electronic transfer of funds or direct deposit into Rocla's bank account.
- 7.2 Payment by cheque, or any other form of payment not described in clause 7.1, will not constitute payment in cash unless and until the Customer's bank or any other financial institution either clears or guarantees the cheque as being "good for funds".
- 7.3 Cheques delayed or lost in transit will not constitute payment.
- 7.4 Where the Customer's cheque is dishonoured, Rocla shall have the right to proceed against the Customer for recovery of the debt, and the Customer waives its right to insist on notice of dishonour or protest being given to it.

**8. LATE PAYMENTS**

- 8.1 Any amounts not paid by the Customer by due date shall bear interest at 2% (two per cent) above the prime lending rate of The Standard Bank Limited, calculated daily and compounded monthly from date of acceptance of the order to the date of payment.

**9. DELIVERY**

- 9.1 Rocla shall provide the dates and times of delivery of Products in good faith and shall not be liable to the Customer for any subsequent variations.
- 9.2 Rocla shall be entitled, in its sole discretion, to split the delivery of Products in quantities, on the dates and at the times it decides, and to invoice separately each delivery actually made.
- 9.3 Any delivery of Products by Rocla to the Customer shall be deemed to be completed when the Products are off-loaded at the delivery address of the Customer, failing which, the premises of the Customer, or when the Products are handed over to the third party engaged to transport the Products on behalf of the Customer in terms of clause 9.6.
- 9.4 The Customer shall provide suitable access roads to and level ground at the point of off-loading at the delivery address or premises of the Customer.
- 9.5 Delivery will be in full economical loads and at one point only. Rocla will under no circumstances string Products on site or at the point of delivery.
- 9.6 If Rocla agrees to engage a third party to transport the Products, Rocla is hereby authorised to engage, at the cost of the Customer, such third party on the Customer's behalf and on the terms deemed fit by Rocla. The Customer indemnifies Rocla and holds it harmless against any claims that may arise from such agreement.
- 9.7 The signature of any employee or representative of the Customer on Rocla's Delivery Note (copy or original) shall be prima facie proof that the type and quantity of Products, manufactured to the correct specifications, were properly delivered to and accepted by the Customer.

**10. RETURN OF GOODS**

- 10.1 If the Customer inspects the Products and finds all or any of them do not comply with the standards set by the South African Bureau of Standards or that they have been incorrectly delivered ("the Returnable Material(s)"), then the Customer may return the Returnable Material(s) within 3 (three) days of the date of delivery at its own cost and in the original packaging with the Delivery Note endorsed with details of the complaint.
- 10.2 Rocla shall have the right, in its sole discretion, to accept or refuse to grant credit for or to repair or replace the Returnable Material(s).
- 10.3 Subject to clause 10.1 the Customer shall not return any Products except at the sole discretion of Rocla and in accordance with written agreement with Rocla.

**11. OWNERSHIP & RISK**

- 11.1 Ownership in the Products shall not pass to the Customer until they have been paid for in full.
- 11.2 The risk of damage to, destruction or theft of the Products shall pass to the Customer on completion of delivery as referred to in clause 9.3.
- 11.3 The Customer shall insure the Products against loss and damage, to the satisfaction of Rocla, until the Products have been paid for in full.
- 11.4 Until the Products have been paid for in full, the Customer shall not encumber the Products or purport to transfer ownership in the Products to any third party and shall advise third parties of Rocla's rights in the Products.
- 11.5 The Customer authorises Rocla to enter its premises to repossess, pursuant to clause 15.1.2 any Products delivered and indemnifies Rocla and holds it harmless against any damage whatsoever relating to the removal of such Products.
- 11.6 Where ownership in the Products sought to be repossessed has passed to the Customer or to a third party by operation of law, the Customer shall or shall procure the re-transfer of such Products to Rocla.

**12. COPYRIGHTS**

- 12.1 The Customer acknowledges all copyrights and shall not duplicate copyrighted material.
- 12.2 The Customer indemnifies Rocla and holds it harmless against any claims, costs and expenses arising out of the infringement of copyright, patent, trademark or design supplied by the Customer.

**13. WARRANTY**

- 13.1 Rocla warrants that the Products shall meet the standards set by the South African Bureau of Standards, provided that the Products are not tampered with or stored or used outside Rocla's specifications.

13.2 All other warranties, whether express or implied, including any warranty that the Products are fit for a particular purpose, including the purpose for which they were ordered, are hereby specifically excluded.

13.3 Rocla's liability for any breach of this warranty shall be limited to the repair or replacement of the Products.

#### **14. EXCLUSION OF LIABILITY**

14.1 Rocla shall not be liable to the Customer for any loss or damage arising out of the improper or negligent use of Products, and the Customer indemnifies Rocla against any claims arising from the use of the Products by third parties.

14.2 Rocla shall not be liable to the Customer for any loss resulting from the delay in or cancellation of the Customer's order arising from a cause beyond Rocla's control, including but not limited to, inability to secure labour, power, Products or supplies, computer services, act of God, war, civil disturbance, riot, state of emergency, strike, lockout, other labour disputes, fire, flood, drought or legislation.

14.3 Rocla shall not be liable for any negligent or innocent misrepresentation made by it or its employees.

14.4 Rocla shall not be liable under any circumstances for any special, indirect or consequential damages, including but not limited to, loss of profit.

#### **15. BREACH**

15.1 If the Customer has not paid Rocla in full by the due date or breaches any other term of these Terms, or if Rocla receives information relating to any application for the liquidation or sequestration, any compromise with creditors or any execution against the assets of the Customer, then Rocla shall have the right, in its sole discretion and without prejudice to any other right it may have in law:

15.1.1 to cancel the contract;

15.1.2 to repossess and/or recover any Products delivered to the Customer;

15.1.3 to institute action to recover any outstanding amounts, which shall be immediately due and payable, and/ or damages; and/ or

15.1.4 to stop or suspend supply of Products and to demand payment for Products manufactured and/ or awaiting delivery.

15.2 For the purposes of clause 15.1.2, where Rocla repossesses Products, the Customer shall be liable inter alia for the difference between the selling price and the value of any Products at the time of repossession, as well as for the costs of repossession. A sworn valuation shall be prima facie proof of the value of the repossessed Products. If the Products are not recovered for any reason whatsoever, the value shall be deemed to be zero.

15.3 No claim under these Terms shall arise unless:

15.3.1 it is supported by the original tax invoice; and

15.3.2 the Customer has, within 3 (three) days of the alleged breach occurring, given Rocla 30 (thirty) days written notice by prepaid registered post to rectify any breach of these Terms.

#### **16. ARBITRATION**

16.1 Where any matter regarding the quality of Products remains unresolved after the expiry of 14 (fourteen) days as from the date of complaint, Rocla or the Customer may refer the matter to the South African Bureau of Standards for resolution of the dispute and the decision of the South African Bureau of Standards shall be final and binding on Rocla and the Customer.

16.2 Where any other dispute between Rocla and the Customer arising from or in connection with these Terms remains unresolved after the expiry of 14 (fourteen) days as from the date of dispute, Rocla or the Customer may refer the matter to the Arbitration Foundation of South Africa for resolution in accordance with the Rules for the Arbitration Foundation of South Africa and the decision of the Arbitration Foundation of South Africa shall be final and binding on Rocla and the Customer.

#### **17. SURETYSHIP**

17.1 Rocla shall have the right, in its sole discretion, to request personal suretyships from the employees or representatives of the Customer or an alternative form of security in respect of payment by the Customer.

17.2 If the Customer is unwilling or unable to provide suretyships or an alternative form of security to the satisfaction of Rocla, Rocla shall be entitled to withdraw any offer of sale or any credit facilities.

#### **18. COSTS**

18.1 The Customer shall be liable to Rocla for all legal expenses on the attorney-and-own-client scale incurred by Rocla in the event of any default by the Customer or any litigation in regard to the validity and enforceability of these Terms.

18.2 The Customer shall be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Rocla may demand.

## 19. ADDRESSES

19.1 Any document shall be deemed to have been received by the Customer:

19.1.1 within 3 (three) days of posting the document by prepaid registered mail, or within 48 (forty-eight) hours of posting it by overnight courier, or within 7 (seven) days of posting it by surface mail to the business or postal addresses of the Customer or to the personal address of any director, member, partner or owner of the Customer;

19.1.2 within 14 (fourteen) hours of being faxed to any of the fax numbers of the Customer or any director, member, partner or owner of the Customer; or

19.1.3 on being delivered by hand to the Customer or any director, member, partner or owner of the Customer.

19.2 The Customer chooses as its address for legal execution its business address or the physical addresses of any director, member, partner or owner of the Customer.

19.3 The Customer undertakes to inform Rocla in writing:

19.3.1 within 7 (seven) days of any change of director, member, partner or owner or address; and

19.3.2 14 (fourteen) days prior to the selling or alienating of the Customer's business.

## 20. GENERAL

20.1 These Terms represent the entire agreement between the Customer and Rocla, and no other terms or conditions, whether express or implied, will apply unless such addition or variation is agreed to by Rocla in writing. Similarly, no cancellation will be effective unless in writing.

20.2 No indulgence whatsoever by Rocla will affect these Terms or any of the rights of Rocla and such indulgence shall not constitute a waiver by Rocla in respect of any of its rights herein. Under no circumstances will Rocla be stopped from exercising any of its rights under these Terms.

20.3 Each of the terms herein shall be a separate and divisible term so that the invalidity of any part of these Terms shall not affect the validity of any other part.

20.4 The Customer does not rely on any representations made by Rocla in respect of the Products other than those contained in these Terms. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Rocla in respect of the Products are for information only and shall not form part of the Agreement unless agreed to by Rocla in writing.

20.5 These Terms and their interpretation are subject to South African law. The Customer hereby consents to the jurisdiction of the Magistrates Court in terms of section 45 of the Magistrate's Court Act 1944, as amended. Rocla shall have the right, in its sole discretion, to institute any legal action in the Magistrate's Court or High Court of South Africa.

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