

# Rhino Linings Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Rhino" means Rhino Linings Australasia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Rhino Linings Australasia Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally. "Goods" means all Goods or Services supplied by Rhino to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.3 "Goods" means all Goods or Services supplied by Rhino to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between Rhino and the Customer in accordance with clause 5 below.
- 2. Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Rhino's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Rhino Linings.
- 3. Electronic Transactions Act 2000**
- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with the Electronic Transactions Act or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 4. Change in Control**
- 4.1 The Customer shall give Rhino not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number, or business practice). The Customer shall be liable for any loss incurred by Rhino as a result of the Customer's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At Rhino's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Rhino to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to Rhino's current price list; or
- (c) Rhino's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Rhino reserves the right to change the Price if a variation to Rhino's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Rhino in the cost of taxes, levies, raw materials and labour) will be charged for on the basis of Rhino's quotation and shall be shown as variations on the invoice.
- 5.3 At Rhino's sole discretion a deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Rhino, payment terms will be on the customer invoice.
- 5.5 Payment may be made by EFT, Credit card, or by any other method as agreed to between the Customer and Rhino.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Rhino an amount equal to any GST Rhino must pay for any supply by Rhino under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods**
- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Rhino's address; or
- (b) Rhino (or Rhino's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Rhino's sole discretion the cost of delivery is included in the Price.
- 6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Rhino shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Rhino may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by Rhino to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Rhino will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Rhino is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Rhino is sufficient evidence of Rhino's rights to receive the insurance proceeds without the need for any person dealing with Rhino to make further enquiries.
- 7.3 If the Customer requests Rhino to leave Goods outside Rhino's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 7.4 Any advice, recommendation, information, assistance or service provided by Rhino in relation to Goods or Services supplied is given in good faith, is based on Rhino's own knowledge and experience and shall be accepted without liability on the part of Rhino and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
- 8. Title**
- 8.1 Rhino and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Rhino all amounts owing to Rhino; and
- (b) the Customer has met all of its other obligations to Rhino.
- 8.2 Receipt by Rhino 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Rhino on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Rhino and must pay to Rhino the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Rhino and must pay or deliver the proceeds to Rhino on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Rhino and must sell, dispose of or return the resulting product to Rhino as it so directs.
- (e) the Customer irrevocably authorises Rhino to enter any premises where Rhino believes the Goods are kept and recover possession of the Goods.
- (f) Rhino may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Rhino.
- (h) Rhino may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 9. Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Rhino to the Customer.
- 9.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Rhino may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Rhino for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Rhino;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Rhino;
- (e) immediately advise Rhino of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Rhino and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Rhino, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by Rhino under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10. Security and Charge**
- 10.1 In consideration of Rhino agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies Rhino from and against all Rhino's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Rhino's rights under this clause.
- 10.3 The Customer irrevocably appoints Rhino and each director of Rhino as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
- 11. Warranty & Return**
- 11.1 Rhino warrants, that if any defect in any of its goods supplied are apparent, and is reported in writing to Rhino immediately the Client becomes aware of such defects and within fourteen (14) days of the goods received.
- 11.2 Rhino will only warrant goods supplied to the Client as per and in accordance with the manufacturer's terms of warranty.
- 11.3 Warranties on product performance in industrial applications are job specific and the Client should contact Rhino for further details required.
- 11.4 The warranty shall cease and not be effective, and Rhino shall thereafter in no circumstances be liable under the terms of the warranty, if the goods are altered, damaged or used.
- 11.5 Rhino makes no warranty whatsoever as to the merchantability of, or suitability for goods and services provided to perform any particular purpose and/or application.
- 11.6 Rhino may issue specific coating warranties from time to time, however, they are excluded from these Terms and Conditions of Trade.
- 11.7 No claim for any defect in goods supplied to the Client, will be recognised unless full payment of all outstanding invoices payable to Rhino by the Client, are paid in full.
- 11.8 Rhino at its sole discretion, may accept the return of goods only if:
- a) The Client advises Rhino in writing within fourteen (14) days of receiving the goods, that they are not required by the Client, and
- b) The Client is to pay the cost to return the goods to Rhino, and
- c) The goods upon returning to Rhino and after inspection, are not defective, damaged and in a resalable condition, and
- d) A restocking fee of 15% is paid by the Client
- e) The goods are not non-stock "made to order" or custom colour items brought in or manufactured specifically, at the request of the Client.
- 11.9 In respect of all claims, Rhino shall not be liable to compensate the Client for any delay in replacing the goods or in properly assessing the Client's claim.
- 12. Default and Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Rhino's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Customer owes Rhino any money the Customer shall indemnify Rhino from and against all costs and disbursements incurred by Rhino in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Rhino's contract default fee, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies Rhino may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Rhino may suspend or terminate the supply of Goods to the Customer. Rhino will not be liable to the Customer for any loss or damage the Customer suffers because Rhino has exercised its rights under this clause.
- 12.4 Without prejudice to Rhino's other remedies at law Rhino shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Rhino shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Rhino becomes overdue, or in Rhino's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer 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 Customer or any asset of the Customer.
- 13. Cancellation**
- 13.1 Rhino may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Rhino shall repay to the Customer any money paid by the Customer for the Goods. Rhino shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Rhino as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14. Privacy Act 1988**
- 14.1 The Customer agrees for Rhino to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Rhino.
- 14.2 The Customer agrees that Rhino may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Customer consents to Rhino being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Customer agrees that personal credit information provided may be used and retained by Rhino for the following purposes (and for other purposes as shall be agreed between the Customer and Rhino or required by law from time to time):
- (a) the provision of Goods; and/or
- (b) the marketing of Goods by Rhino, its agents or distributors; and
- (c) analysing, verifying and/or checking the Customer's credit payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 14.5 Rhino may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that Rhino is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of Rhino, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by Rhino has been paid or otherwise discharged.
- 15. General**
- 15.1 The failure by Rhino to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Rhino's right to subsequently enforce that provision. 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.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland in which Rhino has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.
- 15.3 Subject to clause 11, Rhino shall be under no liability whatsoever to the Customer for any indirect, incidental, punitive and/or consequential loss (including, but not limited to, damages for injuries to persons (except in respect of death or personal injury caused by the negligence of Rhino) and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Rhino of these terms and conditions, and/or by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of this agreement, or arising out of or in connection with any act or omission of Rhino relating to the manufacture or supply of Goods, their resale by a distributor, or their use by any Customer or otherwise. (Alternatively, Rhino's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 15.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Rhino nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.5 Rhino may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 15.6 The Customer agrees that Rhino may amend these terms and conditions at any time. If Rhino makes a change to these terms and conditions, then that change will take effect from the date on which Rhino notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Rhino to provide Goods to the Customer.
- 15.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.