

TERMS AND CONDITIONS OF SALE

AGREEMENT

1. These are the entire Terms and Conditions of Sale ("**Terms**") governing the supply of goods and services ("**the goods**") by RONDO BUILDING SERVICES PTY. LTD. (ACN 000 289 207) and its associated entities (collectively "**Rondo**") to its customers, whether a person or an entity ("**Customer**").
2. Except as set out in clause 3 or agreed in writing by a duly authorised officer of Rondo, no other terms and conditions (including terms and conditions that may appear on an order form or other document issued by Customer) will be binding on Rondo.

ORDERS

3. All orders are subject to acceptance by Rondo. Once an order is accepted, a binding contract will come into existence between Rondo and Customer with respect to the goods ordered by Customer ("**Contract**"). The Contract will comprise of the accepted order and these Terms.
4. Customer may not cancel an accepted order unless Customer has requested cancellation of that accepted order and Rondo agrees to the cancellation. If Customer requests cancellation or modification of any accepted order or part order for special goods, Rondo may charge to Customer the costs of any special goods or materials already acquired and the cost of any labour and tooling expended to the date of such cancellation or alteration.

PRICES AND QUOTATION

5. No quotation by Rondo constitutes an offer. Prices quoted are binding on the parties for thirty (30) days from the date on the quotation unless otherwise notified to Customer in writing. After that time, prices may increase in accordance with Rondo's then current price list and Customer should request from Rondo a new quotation for the goods and services.
6. Unless otherwise stated in writing all prices are strictly net and are based on goods acquired being available at Rondo distribution centre in Sydney, Melbourne, Brisbane, Adelaide, Perth, Auckland and Christchurch. Customer is responsible for delivery cost from Rondo distribution centres, as required by Rondo from time to time.
7. Customer agrees to pay Rondo administration, handling and merchant fees in respect of any copies of documents required or other processing involved in the conduct of Customer's account including but not limited to account administration fees, merchant or other fees incurred as a result of payment by credit or charge card or BPay.

TAX

8. GST, sales tax or any other applicable tax or duty payable must be paid by or reimbursed by Customer to Rondo on demand upon presentation of the relevant tax invoice.
9. Customer indemnifies Rondo in respect of all taxes and duties including GST arising out of any sale of goods or the subsequent use of goods after the sale to Customer.
10. If Customer fails to pay such GST when due, Rondo may recover it from Customer as a debt under the Contract.
11. Any party that becomes aware of the occurrence of any adjustment event in connection with the Contract must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST, or refund of GST, on that supply is paid no later than twenty (20) days after the parties first become aware of the adjustment event.
12. For the purposes of clauses 8 to 11, terms used which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

TERMS OF PAYMENT

13. Customer must pay all amounts invoiced by Rondo (without and free from set-off, withholding, counterclaim, defence or any other right or claim (except where such set-off, withholding, counterclaim, defence or any other right or claim cannot be excluded by law)) in accordance with the "Payment Terms" set out in the "Application for Commercial Credit" completed and signed by the Customer.
14. Invoices delivered by Rondo in accordance with clause 13, may be delivered in person, sent by post, facsimile or email.
15. Time for payment of the goods is of the essence. Customer must not withhold payment to Rondo by reason of query or dispute. If Customer fails to make payment in accordance with clause 13, Rondo will be entitled to:
 - (a) require payment of cash upon delivery of further goods or cease any deliveries to Customer and terminate any agreement in relation to goods that have not been delivered;
 - (b) charge interest on any unpaid amount at the rate of 1.75% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by Commonwealth Bank of Australia. Such interest charge to be computed from the due date for payment, calculated on a daily basis until full payment has been made. Payments received from Customer will be credited first against any interest charge. The parties agree that such interest charge is not a penalty but is a true measure of damages incurred by Rondo; and
 - (c) claim from Customer all costs, expenses and charges incurred by Rondo to recover such monies or goods due from Customer including but not limited to any mercantile agents costs and legal costs and disbursements on a solicitor-client basis;
 - (d) require immediate payment of all amounts invoiced by Rondo but remain unpaid together with interest and costs, expenses and charges as described in this clause 15.
16. Customers having overdue accounts may not benefit from any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until their accounts are fully paid up.
17. Rondo may engage a third party to collect any amounts invoiced by Rondo that are not paid by the date set out in the payment terms as agreed between the parties or when required by Rondo ("**Debt Collector**"). Customer must comply with any requests for payment made by a Debt Collector.

DELIVERY

18. Rondo may choose the method of transport as it deems appropriate and will use commercially reasonable efforts to deliver the goods. Any time quoted for delivery is an estimate only, failure to deliver the goods at the specified time will not confer any right of cancellation or refusal of delivery on Customer or render Rondo liable for any loss or damages directly or indirectly sustained by Customer as a result.
19. Rondo's obligation to deliver shall be discharged at the earlier of arrival of the goods at Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. Customer must unload the goods upon delivery.
20. If Customer is unable or unwilling to accept delivery when the goods are ready for delivery, Rondo will be entitled to charge a fee for any transportation, storage or other consequential costs due to Customer's non-acceptance.
21. Customer is responsible for delivery cost from Rondo distribution centres, as required by Rondo from time to time. Rondo may, at its discretion, make and invoice partial deliveries and each partial delivery will be a separate sale pursuant to the Contract.

INSPECTION AND RETURNS

22. Other than any rights of Customer (where applicable) under clauses 38 to 44, Rondo will not be liable for any mis-delivery, mis-description, shortage, defect or damage of goods.

23. Other than any rights of Customer (where applicable) under clauses 38 to 44, Rondo will only accept return of the goods provided that:
- (a) the Customer must, as soon as possible after delivery, check whether the goods were damaged or defective when delivered and, if so, a claim is to be made in writing within seven (7) days of the date of delivery of those goods;
 - (b) the goods are preserved intact and made available for inspection by a representative of Rondo and the Customer further warrants not to admit liability, or deal with any complaint on behalf of Rondo, in respect of any complaint or claim relating to the goods, unless otherwise agreed by Rondo;
 - (c) a "Goods Return Authority" has been issued by a duly authorised officer of Rondo; and
 - (d) the goods are returned to Rondo in the same order and condition in which they were delivered.
- Rondo will at its option, replace those goods or reimburse Customer the amount of the purchase price paid for them less any handling charge set forth in clause 24.
24. Goods returned may be subject to a handling charge of up to 20% of the invoiced value of the returned goods. Return freight and other expenses will be paid for by Customer. Any returned goods must be accompanied with the relevant invoice numbers and a Goods Return Authority.

PROPERTY AND RISK

25. Notwithstanding delivery of the goods or their installation, property in any goods will remain with Rondo until Customer has paid and discharged all indebtedness to Rondo on any account whatsoever, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made. The risk in the goods shall pass to Customer upon delivery in accordance with clause 19.
26. Until all payments in connection with the supply and delivery of the goods are made, Customer acknowledges that it is in possession of the goods solely as a bailee for Rondo and until such payment:
- (a) Customer shall be fully responsible for any loss or damage to the goods following delivery;
 - (b) Customer shall store the goods separately from its own goods and those of any other party and in a manner which clearly identifies the goods, whether as separate chattels or as components, as the property of Rondo;
 - (c) Customer may sell the goods independently or affixed to other materials solely as an agent and bailee for Rondo (without the right to bind Rondo to any liability to any third party), on the condition that the purchaser is expressly made aware of the existence of Rondo's rights under this clause, and hold the entire proceeds from the sale in a separate account on trust for Rondo; and
 - (d) Customer shall maintain records of goods owned by Rondo, the persons to whom the goods are sold or disposed to and the payments made by such persons for such goods. Customer shall allow Rondo to inspect these records and the goods themselves on request.
27. Customer irrevocably grants to Rondo, its officers, agents and employees, an unrestricted right and licence, without notice to enter premises occupied by Customer to identify and remove any of the goods the property of Rondo in accordance with the Contract without in any way being liable to Customer or any person claiming through the Customer. Rondo shall have the right to sell or dispose of any such goods removed in its sole discretion and shall not be liable for any loss occasioned thereby. All costs and expenses incurred by Rondo as a result of taking action in accordance with this clause along with transportation and storage charges, must be paid by Customer to Rondo on demand.
28. If the goods are affixed to other materials, the totality thereof shall be the sole and exclusive property of Rondo until all payments in connection with the supply and delivery of the goods have been made in full to Rondo unless the other materials are the property of a third party Customer, in which case the totality thereof shall be deemed to be owned by Rondo and such third party as tenants in common in shares corresponding to the respective amounts owed by Customer to Rondo and such third party.
29. The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by Rondo and will automatically cease if Customer being a natural person commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed (each an "Insolvency Event") or where Customer is in default of any of its obligations under the Contract.
30. Customer acknowledges and agrees that clauses 25 to 29 create a "purchase money security interest" ("PMSI") in the goods within the meaning of the *Personal Property Securities Act 2009* ("PPSA"), which secures the amount of the price for the supply of relevant goods to Customer ("the Money Secured") and attaches to the goods on delivery to Customer.
31. The Customer warrants that it does not intend to use the goods for personal, domestic or household purposes.

CHARGE

32. In addition to the PMSI, for the purpose of securing the Money Secured, Customer:
- (a) charges all of its beneficial interest in real and personal property (including all property acquired after the date of the Contract) in favour of Rondo whether or not a demand has been made on Customer;
 - (b) agrees to deliver to Rondo within seven (7) days of written demand a Memorandum of Mortgage in registrable form and that the Money Secured is payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Titles Office of New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where Customer has any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration;
 - (c) authorises and consents to Rondo taking all actions necessary to give effect to this security including the lodgement of a caveat upon title of Customer's real property. Customer hereby irrevocably appoints Rondo and any person nominated by Rondo severally the attorney of Customer, with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security; and
 - (d) agrees that the charge under this clause with respect to its personal property is a security interest within the meaning of the PPSA and attaches to personal property when the goods are delivered to Customer.
33. If the charge created by clause 32 is or becomes void or unenforceable, it may be severed from the Contract without any effect on the validity of the remaining provisions of the Contract.

PERSONAL PROPERTIES SECURITIES ACT 2009

34. Rondo is entitled to register the PMSI referred to in clause 30 under the PPSA and Customer must sign all documents and take all steps as Rondo may reasonably require in connection with the registration, perfection and enforcement of PMSI. Customer must not grant any security interest in the goods to any third party without the prior written consent of

- Rondo. Customer will pay any costs or expenses or losses incurred by Rondo to keep Rondo indemnified against any loss, damage or liability to third parties in relation to registering or enforcing Rondo's PMSI.
35. To the extent permitted by law, Customer irrevocably appoints Rondo to be their attorney to do anything which the Customer agrees to under the Contract and anything which Rondo or its representatives thinks desirable to protect the PMSI.
36. Customer waives its right to be provided with verification statements pursuant to section 157 of the PPSA. In addition, the parties agree that the following provisions of the PPSA do not apply (to the extent permitted in the PPSA) to the enforcement of Rondo's PMSI or security interest: sections 95 (to the extent that it requires Rondo to give a notice to Customer), 96, 125, 130 (to the extent that it requires Rondo to give a notice to Customer), 132(3)(d) and 135 (pursuant to s 115(1) of the PPSA) and sections 127, 129(2) and (3), 132, 134(2), 135, 136(3) to (5), and 137 (pursuant to s 115(7) of the PPSA) and sections 142 and 143 (redemption of collateral and reinstatement of security agreement).
37. Customer and Rondo agree not to disclose any third person information referred to in section 275(1) of the PPSA and that this is a confidentiality agreement for the purposes of section 275(7) of the PPSA.

WARRANTY AND LIMITATION OF LIABILITY

38. The Contract does not exclude, restrict or modify any guarantees, warranties, representations or conditions implied or imposed by any provisions of any Commonwealth, State or Territorial Law, including the Australian Consumer Law, as amended from time to time ("ACL") (or any liability under them) which by law cannot be excluded, restricted or modified.
39. In the case of goods supplied by Rondo to a Customer who is a consumer (as defined in the ACL), the following notice applies to Customer:
 "Our goods come with warranties and guarantees that cannot be excluded under the ACL, ("**Consumer Guarantees**"). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonable foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
 Clauses 22 to 24 (Inspection and Returns), the manufacturer's warranty (if any) under clause 41 and Rondo's express warranty (if any) with respect to certain goods under clause 42 are in addition to (but may overlap with) any rights and remedies Customer may have under the Consumer Guarantees as a consumer.
40. In the case of goods supplied by Rondo to a Customer who is not a consumer (as defined in the ACL), the rights of Customer under clauses 22 to 24, the manufacturer's warranty (if any) under clause 41 and Rondo's express warranty (if any) with respect to certain goods under clause 42 are the sole remedies of Customer.
41. If the goods come with a manufacturer's warranty, Rondo will use its best endeavours to pass on to the Customer the benefit of such warranties with respect to the goods or parts thereof supplied to the Customer, subject to the terms and conditions of such warranties.
42. If the goods come with Rondo's express warranty (such as the EXANGLE® RT product range) the express warranty will be granted on the terms and conditions of the relevant warranty card. The customer must make a claim as set out in the warranty card.
43. Subject to clauses 38 to 42, and to the extent permitted by law:
- (a) all terms, guarantees, warranties representations or conditions which are not expressly stated in the Contract are excluded. Customer agrees that it has not relied on any inducement, representation or statement made by or on behalf of Rondo in purchasing the goods and there are no other implied conditions or warranties and no collateral contracts in connection with the supply of the goods by Rondo (except such as may be in writing and signed by a duly authorised representative of Rondo);
 - (b) to the extent permitted by law, Rondo will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity, damage to goodwill, loss of data, arising out of in connection with the goods or the Contract (including as a result of not being able to use the goods or their late supply) whether at common law, under contract, tort (including negligence), in equity, under statute or otherwise; and
 - (c) Rondo's total liability arising out of any act, omission or event or in connection with the goods or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by Customer for the purchase of goods under these Terms in the 60 day period prior to the act, omission or event.
44. Where by law Rondo is unable to exclude liability under terms, guarantees, warranties, representations or conditions implied or imposed by law but is able to limit its liability (such as with respect to goods not of a kind ordinarily acquired for personal, domestic or household use or consumption) to the extent of permissible by laws, Rondo's liability for any breach is limited, at its sole discretion, to one of the following options only: the repair of the goods; the replacement of the goods or the supply of equivalent goods; payment of the cost of repairing the goods; or payment of the cost of replacing the goods or acquiring equivalent goods.

FORCE MAJEURE

45. Rondo shall not be liable for any failure or delay in supply or delivery the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of Rondo including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, acts of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind (each a "**Force Majeure Event**").
46. If a Force Majeure Event arises:
- (a) either party may at its absolute discretion terminate the Contract by written notice to the other party and if terminated, Rondo will be entitled to the amounts provided at clause 49(a); and
 - (b) Rondo may suspend Rondo's obligations under this Contract, including to deliver the goods, without penalty.

DEFAULT

47. An event of default ("**Event of Default**") is taken to have occurred if Customer:
- (a) refuses or fails to pay any amounts when due under the Contract;
 - (b) defaults in performing any of its obligations under the Contract;
 - (c) informs the other party or the other party's creditors generally that an Insolvency Event has occurred or that the first party is financially unable to proceed with the Contract;
 - (d) has execution levied against it by a creditor;
 - (e) is an individual and:
 - (i) commits an act of bankruptcy, is made bankrupt, makes a proposal for a scheme of arrangement or composition;
 - (ii) has a bankruptcy petition levied against him or her or presents his or her own petition;
 - (iii) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made; or

- (f) is a corporation and:
- (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller, receiver or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within fourteen (14) days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution to be wound up voluntarily;
 - (vii) a mortgagee of any of its property takes possession of that property;
 - (viii) has a change of its directors, ownership or change of more than 10% of its shareholding and the other party does not consent to this change at least five (5) days before the change occurs.

TERMINATION AND AMENDMENT

48. If Customer causes an Event of Default, Rondo is entitled, at its sole discretion:
- (a) to terminate or suspend the Contract, which will take effect after notification to Customer and immediately recover possession of any goods not paid for in accordance with the Contract, while reserving all available rights and remedies available to it at law in recovery of any unpaid or due amounts; or
 - (b) amend the terms of the Contract (including the Terms), which Customer may accept, failing which Rondo may terminate the Contract.
- If Customer disagrees with the Contract as amended under clause 48(b), Customer may terminate the Contract after the date the amendments take effect.
49. In the event the Contract is terminated in accordance with clause 48(a):
- (a) Rondo shall issue Customer with an invoice for:
 - (i) the amount of all unpaid invoices; and
 - (ii) all amounts due in accordance with the terms of the Contract which would have been due but for the termination of the Contract, had an invoice been issued on the day of the termination; and
 - (b) Customer shall pay the amount of the invoice at subclause (a)(i) without and free from any setoff, deduction, withholding, counterclaim, defence or any other right or claim against any person (except where such setoff, deduction, withholding, counterclaim, defence or right or claim cannot be excluded by law) within seven (7) days.
50. Rondo may at any time amend these Terms, which will take effect after notification to Customer and will apply for all future orders. If Customer disagrees with the amended Terms, Customer may terminate this agreement and any contract for accepted orders after the date the amendments take effect.

PRIVACY

51. Rondo will handle, protect and disclose any of Customer's personal information (as defined in the *Privacy Act 1988*) collected in connection with the Contract in accordance with its Privacy Policy (as amended from time to time) and, where applicable, its Credit Reporting Policy & Credit Reporting - Statement of Notifiable Matters (as amended from time to time), published on the Rondo Website.

SEVERANCE

52. Any part of the Contract which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this agreement is not affected.

GOVERNING LAW

53. Customer agrees that the Contract shall be construed according to the laws as in force in the State of New South Wales, or within such State or Territory in Australia as Rondo may in its sole discretion determine. Proceedings by either Rondo or Customer may be instituted and/or continued in such State or Territory in Australia as Rondo may in its sole discretion determine. Failing such determination Customer consents to any proceedings being instituted and heard by an appropriate Court sitting in the State of New South Wales.

SERVICE OF DOCUMENTS

54. Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of Customer. Customer further agrees to accept service of notices (under the following Acts) via e-mail (in addition to any and all other forms of service authorised under the following Acts, as applicable):
- (a) *Building and Construction Industry Security of Payment Act 1999* (NSW)
 - (b) *Building and Construction Industry Payment Act 2004* (QLD)
 - (c) *Building and Construction Industry Security of Payment Act 2002* (VIC)
 - (d) *Security of Payment - Construction Contracts Act 2004* (WA)
 - (e) *Building and Construction Industry (Security of Payment) Act 2009* (SA)
 - (f) *Building and Construction Industry (Security of Payment) Act 2009* (ACT)
 - (g) *Building and Construction Industry (Security of Payment) Act 2009* (TAS).

CONFIDENTIALITY

55. Rondo and Customer agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
- (a) prior approval in writing has been obtained from the other party;
 - (b) disclosure is required by law; or
 - (c) the information is in the public domain prior to the disclosure by the party.
56. The expression "**any third party**" does not include the financial or legal advisors of a party or a related body corporate of a party.

ELECTRONIC COMMUNICATIONS

57. Customer agrees that all email communications from Rondo to Customer (including invoices and service of notices) constitute an "electronic communication" within the meaning of the *Electronic Transactions Act 2000* (NSW) (the "ET Act") and by receiving invoices and service of notices by email, Customer is designating "an information system for the purpose of receiving electronic communications" within the meaning of the ET Act.
58. Customer agrees that evidence of the "dispatch" by Rondo of an email is prima facie evidence of the "receipt" of the email by Customer (within the meaning of the ET Act). Unless the contrary is proven, the time of "receipt" will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

