

Terms of Trade

Interpretation

1. In these conditions:

- (a) "Rockcote" means Rockcote Enterprises Pty Ltd ABN 42 066 227 174, which is the manufacturer and supplier of architectural coating products.
 - (b) "Buyer" means the purchaser of the Goods from Rockcote.
 - (c) "Dispatched" means the Goods have been removed from the premises of Rockcote for the purpose of delivery to the Buyer, or any other party, pursuant to an Order.
 - (d) "Goods" means all products and, if any, services supplied by Rockcote to the Buyer from time to time, whether on credit or otherwise.
 - (e) "Order" means any request by the Buyer for the supply of Goods by Rockcote, whether that supply is to the Buyer or to any other party and whether the request amounts to an offer or an invitation to treat from the Buyer.
 - (f) "Specifications" means any written specification relating to the Goods that details the quantities, processes and or conditions required for the correct use of the Goods.
 - (g) singular includes plural and vice versa and any gender includes every gender;
 - (h) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
 - (i) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
 - (j) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement; and
 - (k) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.
- (l) nothing in these conditions may be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

General

2. These conditions (which can only be waived in writing signed by Rockcote) will prevail over all conditions expressed or implied in any Order placed by the Buyer to the extent of any inconsistency.

Terms of sale

3. The Goods sold by Rockcote are sold on these terms and conditions.

Rockcote's quotations

4. Unless previously withdrawn, Rockcote's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 60 days only after its date. Rockcote reserves the right to refuse any Order based on any quotation within 7 days after the receipt of the Order.

Packing

5. The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense despite that such cost may have been omitted from any quotation.

Shortage

6. The Buyer waives any claim for shortage of any Goods delivered if a claim in respect of short delivery has not been lodged with Rockcote within seven (7) days from the date of receipt of the Goods by the Buyer.

Quantities, etc

7. All drawings, particulars of quantities, weights and dimensions submitted to, or provided by, Rockcote are approximate only and any deviation from any of these things does not vitiate any contract with Rockcote or form grounds for any claim against Rockcote.

7.1 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods. The Buyer acknowledges that it has not relied upon any descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter as an inducement into entering into this Agreement.

7.2 Where drawings, particulars of quantities and or dimensions are supplied to Rockcote, Rockcote's price is based on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by Rockcote, then any such increase or decrease is to be adjusted on a unit rate basis according to unit prices set out in the quotation provided by Rockcote in relation to the Order.

Performance

8. Any performance standards, figures or representations as to quality given by Rockcote are estimates only. Rockcote is under no liability for damages for failure of the Goods to attain such performance standards figures or quality unless specifically warranted in writing. Any such warranties are subject to the recognised tolerances applicable to such performance standards figures or quality.

Delivery

9. The delivery times made known to the Buyer are estimates only and Rockcote is not liable for late delivery or non-delivery.

9.1 Rockcote is not to be liable for any loss, damage or delay occasioned to the Buyer, its customers or any other person, arising from late or non-delivery or late application of the Goods.

9.2 Rockcote may at its option deliver the Goods to the Buyer in any number of installments unless there is agreement in writing to the effect that the Buyer will not take delivery by installments.

9.3 If Rockcote delivers any of the Goods by installments, and any one of those installments is defective for any reason:

- (a) it is not a repudiation of the contract of sale formed by these conditions; and
- (b) the defective installment is a severable breach that gives rise only to a claim for compensation.

Loss or damage in transit

10. Rockcote is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not Rockcote is legally responsible for the person who caused or contributed to that loss or damage).

10.1 Rockcote must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:

- (a) has notified Rockcote and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
- (b) lodges a claim for compensation upon the carrier within three (3) days of the date of receipt of the Goods.

Guarantee

11. Rockcote's liability for the Goods is limited to making good any defects by repairing the defects, or at Rockcote's option, by replacement of the Goods, within a period not exceeding twelve (12) calendar months after the Goods have been dispatched, provided:

- (a) defects have arisen solely from faulty materials or workmanship on the part of Rockcote;
- (b) the Goods have not received maltreatment, inattention or interference;
- (c) accessories or tools of any kind used by the Buyer or any other party in application of the Goods are manufactured by or approved by Rockcote;
- (d) the Goods are applied strictly in accordance with Rockcote's Specifications; and
- (e) the defective goods are promptly returned to Rockcote free of cost to Rockcote.

11.1 If the Goods are not manufactured by Rockcote the guarantee of the manufacturer of those Goods is accepted by the Buyer as the only guarantee given to the Buyer in respect of the Goods. Rockcote agrees to assign to the Buyer on request by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to Rockcote under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

11.2 Rockcote is not liable for and the Buyer releases Rockcote from any claims in respect of faulty or defective design or manufacture of any Goods unless such design or manufacture has been wholly performed by Rockcote and the responsibility for any claim has been specifically accepted by Rockcote in writing. In any event Rockcote's liability under this paragraph is limited strictly to the liability provided in paragraph 11.

11.3 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, application of the Goods, materials or workmanship or otherwise are expressly excluded. Rockcote is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the manufacture supply or application of the Goods or arising out of Rockcote's negligence or in any other way whatsoever.

11.4 The Buyer indemnifies Rockcote against any liability or loss arising from, and any costs charges or expense incurred with, a claim by any party against Rockcote arising out of or in connection with the supply of the goods to the Buyer or the supply of the Goods to that party at the request of the Buyer.

Trade Practices Act 1974

12. Rockcote's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to:

12.1 in the case of Goods, any one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;

12.2 in the case of services:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

12.3 Rockcote's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the Goods; or
- (b) the cost of obtaining equivalent Goods.

Prices & Payment

13.1 Unless otherwise stated all prices quoted by Rockcote are inclusive of Goods and Services Tax (GST).

13.2 Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of weights, cost of materials and other charges affecting the cost of production ruling on the date it is made.

13.3 If Rockcote makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

13.4 The price of the Goods is payable net. **Payment of the price of the Goods must be made within the agreed trading terms unless other terms of payment are expressly stated in writing.**

Rights in relation to the Goods:

14.1 In connection with the Goods while they remain the property of Rockcote, the Buyer agrees with Rockcote that:

14.1.1 the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation Rockcote owes to the Buyer;

14.1.2 the Buyer cannot claim any lien over the Goods;

14.1.3 the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by Rockcote;

14.1.4 where the Buyer is in actual or constructive possession of the Goods:

14.1.4.1 the Buyer will not deliver them or any document of title to the Goods to any person except as directed by Rockcote; and

14.1.4.2 it is in possession of the Goods as a bailee of those Goods and owes Rockcote the duties and liabilities of a bailee.

14.2 In connection with the Goods, Rockcote states to the Buyer that:

14.2.1 Rockcote has the right to supply the Goods to the Buyer;

14.2.2 the activities of the Buyer in receiving supply of the Goods do not infringe the rights of the owner of the Goods (where Rockcote is not the owner of the Goods);

14.2.3 if the Goods are not owned by Rockcote, that Rockcote is authorised to supply the Goods to the Buyer.

14.3 Rockcote and the Buyer agree that:

14.3.1 the property of Rockcote in the Goods remains with Rockcote until Rockcote has been paid in full for the Goods under all individual contracts for the supply of the Goods between Rockcote and the Buyer;

14.3.2 the Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full;

14.3.3 pending payment in full for the Goods, the Buyer:

14.3.3.1 must not supply any of the Goods to any person outside its ordinary or usual course of business;

14.3.3.2 must not allow any person to have or acquire any security interest in the Goods;

14.4 Despite paragraph 13.3, if the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer have been paid to Rockcote, the Buyer agrees that:

14.4.1 it holds the proceeds of re-supply of the Goods on trust for and as agent for Rockcote immediately when they are receivable or are received;

14.4.2 it must either pay the amount of the proceeds of re-supply to Rockcote immediately when they are received or pay those proceeds into an account with a bank, financial institution or deposit-taking institution as trustee for Rockcote;

14.4.3 if the Buyer fails to pay for the Goods within the period of credit (if any) extended by Rockcote to the Buyer, Rockcote may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agree that Rockcote has an irrevocable licence to do so.

Buyer's property

15. Any property of Rockcote in the Buyer's possession, custody or control is completely at the Buyer's risk as regards loss of or damage caused to or by the property.

Storage

16. Rockcote reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within fourteen (14) days of a request by Rockcote for such instructions. In that event, Rockcote may charge for storage from the first day after Rockcote requests the Buyer to provide delivery instructions.

Returned Goods

17. Rockcote is not under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.

17.1 If Rockcote agrees to accept returned Goods from the Buyer, the Buyer must return the Goods to Rockcote at Rockcote's place of business stated in these conditions or at any other address Rockcote may specify for that purpose.

Goods sold

18. All Goods to be supplied by Rockcote to the Buyer are as described on the Order accepted in writing by Rockcote and the Buyer and the description on the Order (modified as may be agreed in writing) prevails over all other descriptions including any specification by or enquiry of the Buyer.

Cancellation

19. No Order may be cancelled except with Rockcote's consent in writing and on terms which will indemnify Rockcote against all losses.

Waiver

20. The failure of either party to enforce at any time any of the provisions of this agreement is not to be construed to be a waiver of any such provision or of the right of either party to enforce such provision at a later time.

This agreement may not be assigned by the Buyer and the performance of the Buyer's duties under this agreement may not be delegated under any circumstances.