



## GENERAL CONDITIONS FOR BUSINESS WITH ROLLO POWER SOLUTIONS

### Definitions

1 (a) In this agreement the terms shall have the meanings set out following:

the "Company" shall mean Rollo Power Solutions, a trading division of Finning (UK) Ltd. (Company No. 367090) whose registered office is situated at Watling Street, Cannock, Staffordshire, WS11 8LL and its agents, employees and sub-contractors

the "Customer" shall mean any legal person (which term shall include without limitation an individual partnership or body corporate or association) buying goods or for whom work is done and / or materials applied under any agreement with the Company.

the "Goods" shall mean the materials more particularly described in the attached order sheet to be sold by the Company to the Customer.

"Statutory Rights" shall mean the rights as so defined by the Customer Transactions (Restriction on Statements) Order 1976 or any statutory regulation mending or replacing the same.

"Work" and "Sales" includes repair, installation work and the sale and supply of goods and materials

### Construction

1 (b) The headings in these terms and conditions are for ease of reference only and do not affect the construction of the clauses.

Any provision of this agreement which is determined by an appropriate Court to be void shall be deemed to be severed from this agreement.

### Sale of Goods / Services

2 (a) The Company agrees to sell the Goods and or provide the services referred to in the attached Order form (or in any agreed variation thereof). It is acknowledged between the parties that minor variations to specifications shall be permissible providing always that such variations do not render the Goods unfit for the purposes identified in the Customer's order or involve additional costs to the Customer.

2 (b) Unless notice is given to the Company within four days of dispatch of acceptance of an order by the Company, that acceptance shall be deemed correctly to represent the Customer's order in all respects. The Customer shall promptly inspect the goods received and shall be deemed to have accepted the Goods if they are not accepted within a reasonable period. The Parties agree that seven days shall (save in respect of latent defects) for the purposes of this agreement be deemed to be a reasonable period for a consumer to identify any minor defects.

(c) The Company shall not be obliged to accept any cancellation of a Customer's order after dispatch of the Goods ordered.

### Sale of Goods Sourced from Third Parties

3 (a) In the case of a sale to the Customer of or including items not of the Company's own manufacture, the price of such items to be paid by the Customer will be the manufacturer's price prevailing at the time of the dispatch of the goods.

3 (b) Any extra expense occasioned by any variation by the Customer of the order (i.e. quantity, sizes, material or instructions) shall be added to the estimate or contract price. Variations of contract must be agreed between the parties in writing.

### Terms of Payment

4 (a) The Company's terms of payment are strictly one calendar month after date of invoice. The Company shall thereafter be entitled to charge the Customer interest of the rate of 2% per month on any amounts from time to time remaining due and unpaid. Time shall be of the essence in relation to payment. If, in the event of late payment, collection is made through judicial or other channels, the amount of the claim will be increased by 10% to cover administration costs and the judicial and extra judicial costs shall be borne by the Customer in the amount paid or owed by us.

4 (b) The Client shall pay the Price for the Goods or Services together with VAT chargeable thereon. Unless otherwise agreed in writing, all payments should be made without any deductions or offset, immediately upon receipt of the invoice to the designated account or an office of The Company.

All prices are quoted 'EXW' (Ex Works), Incoterms 2000.

### Estimates

5 (a) (i) Where the Company gives the Customer an estimate of the cost of work or repairs which it is proposed the Company should undertake, such estimate is given upon the following terms:

The Company shall not be bound to carry out the work or repairs within the price estimate so given.

(ii) Where during the course of work or repairs being carried out by the Company it appears that the Company's estimate will be exceeded by 10% of the original estimate the Company shall give a revised estimate to the Customer. The Customer shall then have the option to accept such revised estimate or to instruct the Company to discontinue the work or repairs upon payment by the Customer of the Company's proper charges (at the Company's standard rates) for work or repairs already carried out.

5 (b) Where no estimate has been given by the Company the Customer shall pay the Company's standard rates or other rates negotiated with the Company for all the work and repairs carried out, such details of rates having previously been supplied to the Customer or being available on request.

#### **Warranties regarding Goods and or services**

6 (a) In the case of a sale to a person dealing as a consumer as defined by Section 12 of the Unfair Contract Terms Act 1977, goods are supplied with the benefit of the warranties implied by Sections 12-15 inclusive of the Sale of Goods Act 1979 as amended. Services shall be performed in accordance with Section 13 of the Sale of Goods and Supply of Services Act 1982.

6 (b) In the case of a sale to a person dealing otherwise than as a consumer but which is not an international supply contract as defined by the Unfair Contract Terms Act 1977, goods are supplied with the benefit of the conditions and Warranties Implied by Section 12 of the Sale of Goods Act 1979 (implied terms as to title) as amended.

6 (c) Subject to (a) and (b) above, all conditions or warranties, whether express or implied, statutory or otherwise are hereby excluded in the case of a sale by the Company. Further subject to any Statutory limitations the Company's liability for any losses, claims, damages or expenses arising out of or in connection with this Agreement, howsoever caused, including by negligence, breach of duty (statutory or otherwise), breach of contract shall not exceed the price paid in respect of the Goods or Services.

6 (d) Except where the Company is in breach of the conditions or warranties provided for in sub-clauses (a) and (b) above the Company shall not be liable for any damage, injury or loss (including consequential or economic loss) to the Customer or any third party (except for death or personal injury arising out of the negligence of the Company) arising out of the Company's mis-delivery, delay or failure to carry out the work or out of the Company's defective workmanship or defective goods or material supplied by the Company.

(i) As to the extent to which provision is made below:-

(A) The Company shall replace free of charge any items which are defective provided that such defects are attributable to faulty materials or faulty workmanship by the Company or to damage caused prior to such items leaving the Company's premises.

(B) Where the sale is of or includes items not of the Company's own manufacture the Company shall at the request and expense of the Customer use its best endeavours to obtain for the Customer the benefit of any warranty, guarantee or undertaking supplied by the manufacturing of such items. In the case of such items the Company's liability shall in no case be more extensive than the liability to the Company of the person firm or Company obtained such items under the terms and conditions on which such items were supplied to the Company.

6 (e) Without prejudice to the above, in the case of a contract for work and or for the supply of materials the Company's liability shall be limited as follows:

(i) As to the extent to which the exclusion of such liability on the part of the Company may be disallowed under statute or statutory regulation.

(ii) In the case of a wrong or defective part or parts supplied, the Company shall without further charge to the Customer replace such wrong or defective part or parts provided that the Company is given notice of within fourteen days of the return to the Customer of the item to which such wrong or defective part or parts had been fitted.

6 (f) To the extent that the Company may be limited in respect of entitlement to pursue indemnities (by reason of time limits under the Hague Visby Rules or otherwise) any claims shall be advanced against the Company within one year from the date of the arrival of the Goods.

6 (g) All pre-contractual representations upon which the Customer wishes to rely have been set out in writing on the Order sheet.

Nothing in the foregoing shall affect or derogate from the statutory rights of the Customer.

#### **Cancellation**

7. In the event of the cancellation of the agreement or failure to take possession of the goods to be delivered by us, the Customer shall, with immediate effect, owe 15% of the agreed price, without prejudice to our right to demand from the Customer, in addition to this payment towards the costs and lost profit, full compensation for the damages suffered as a result of the cancellation.

## Force Majeure

8. Neither the Company nor the Customer shall have a claim against the other in respect of any damage or loss to the other resulting from an act of God, war, strike, lock out, industrial action, fire, flood, drought, tempest or other event beyond their reasonable control. The Company shall serve notice in writing on the Customer as soon as reasonably practicable specifying the nature and extent of the Force Majeure Event and shall have no liability in respect of its failure to perform or delay in performing the Services or any other liability for loss or damage as are caused by the Force Majeure Event. Further all estimates given or proper charges for work carried out are based upon the work being down without delays or breaks resulting from any such occurrences. In the event of there being any such occurrences resulting in an increased cost to the Company in carrying out the work, the increased cost shall be notified to the Customer and added to the estimate / proper charges and the Company shall be entitled to have further reasonable time in which to complete the work.

## Bankruptcy

9 (a) If a Customer shall become bankrupt, insolvent or enter into any form of liquidation or arrangement (including without limitation CVAs, Administration, PVAs, IVAs) for the benefit of his/her or its creditors or become unable or refuse or neglect to carry out his/her or its obligations under the Contract or shall prevent or obstruct the carrying out of work by the Company, the Company may determine the Contract forthwith by serving notice in writing to the Customer either by registered post or by leaving such notice on the site where the work is being carried out without prejudice to any other rights and remedies that the Company may have. The Customer agrees to notify the Company immediately of the commencement of any such process.

9 (b) The Customer shall, free of charge, unload all goods and materials upon arrival at the prescribed destination where the work is to be carried out and provide secure and dry storage and all reasonable facilities for the execution of the work without interruption during working hours or any additional hours which are agreed between the Company and the Customer. If goods and materials are not stored where they are actually to be used, the Customer shall, when required by the Company, transport them to the place of use in readiness for the Company's workmen. The Customer shall be responsible for safe condition of such goods and materials until, on authority of the Company, they are removed from the site or all title in the goods materials shall pass to the Customer as prescribed there under.

## Repairs

10 (a) The Customer warrants that he is the owner of any items left for work or repair or is the authorized agent to the owner of such items.

10 (b) Subject to the Customer's reasonable express instructions in writing, which the Company has agreed, the Company reserves to itself absolute discretion as to the time, place, method and procedure of carrying out any work or repair. If any Goods have to be repaired at the Customer's property then the Customer will ensure that their premises are safe for the Company's employees or servants.

10 (c) The Company shall be entitled in its absolute discretion to carry out any work or repair by employing or instructing any other person to perform part or all of such work by entrusting items left for work or repair to any other person on such terms as that person may stipulate.

## Retention of Title/ Transfer of risk and ownership

11 (a) Goods agreed to be sold will remain the property of the Company until all monies due to the Company from the Customer, whether in respect of goods now agreed to be sold or on any other ground whatsoever, are paid to the Company. Accordingly, title shall not pass to the Customer until the payment is made in full by the Customer to the Company. Notwithstanding the property in the goods remaining with the Company until full payments are made, the risk in those goods shall pass on their delivery / installation to the Customer.

11 (b) The Customer shall hold any such goods in a fiduciary capacity as bailee thereof and shall keep such goods separate from the goods of the Customer and / or third parties and shall mark goods agreed to be sold by the Company so as clearly to indicate that they are the property of the Company. The Customer has a duty to take reasonable care of and to ensure the safety and security of goods until title passes.

11 (c) If such goods shall, in the course of any manufacturing or other process, be mixed or combined with any other goods to form finished articles ("Finished Articles") the Finished Articles shall upon completion of such manufacturing or other process be separated from all other products manufactured by the Customer and marked in a manner described in paragraph (b) and the property in the Finished Articles shall upon such separation vest in the Company.

11 (d) Any proceeds of sale of such goods and/or Finished Articles shall likewise be held by the Customer in a fiduciary capacity Upon Trust for the Company. The Customer has a duty to take reasonable care of and to ensure the safety and security of goods until title passes.

11 (e) In the event that any payment to the Customer arising from the sale of such goods or Finished Articles shall be applied in the reduction or satisfaction of any overdraft or other indebtedness of the Customer to any creditor holding any security with the result that upon commencement of any insolvency proceedings in relation to the Customer or at the time of the appointment of any Receiver or Receiver and Manager thereof the value of the security held by such creditor is in excess of the amount of the overdraft or other indebtedness (if any), the Company shall succeed to the rights of the creditor's security up to the extent of the amount then owed to the Company by the Customer or the aforementioned excess, whichever shall be the lesser.

11 (f) Passing of the risk in respect of all direct and consequential damages is in principle, determined by the Incoterm used in clause 4. However if the Customer, after being given notice of default, continues to fail to accept the product, The Company will be entitled to charge the Customer for the costs of storing the product. Should the occasion arise, The Company will be entitled to unimpeded access to the delivered products. The Customer will grant all cooperation in order to give to The Company to opportunity of exercising the condition with regard to ownership given in paragraph 13 by taking back the delivered products, including any disassembly that may be required.

#### **Delivery**

12 (a) Unless specifically agreed otherwise the Customer shall arrange collection of any Goods from the Companies business premises.

12 (b) In the event that the Company undertakes to arrange delivery of goods or materials, then in respect of any consignment accepted for carriage by road service, the Convention on the International Carriage of Goods by Road (CMR) shall apply. Any such contract of carriage is subject to the limits of liability contained in the CMR in respect of the loss of, damage to or delay to a Consignment.

12 (c) In the event that the Company undertakes to arrange carriage by air and the contract of carriage involves an ultimate destination or stop outside the country of origin, the Warsaw Convention shall apply. Any such contract of carriage is subject to the limits of liability contained in the Warsaw Convention in respect of the loss of, damage to or delay to a Consignment.

12 (d) For any Consignment accepted for carriage by sea and where the services of a shipping company or international transport operator are used, the Customer expressly authorizes the Company to enter into a contract, on behalf of the Customer, with the shipping company or international transport operator.

The Customer agrees that the carriage shall be subject to the trading conditions of the shipping company or international transport operator with whom the contract was entered into by the Company on behalf of the Customer. The Customer expressly agrees that the Company shall be relieved of any liability for the loss of, damage to or delay to a Consignment where such loss of, damage to or delay to is the result of any event that is beyond the control of the Company.

#### **Lien**

13 (a) Except where it is expressly otherwise agreed by the Company, the Customer shall pay for all work and repairs carried out on his behalf on or before collection of items left for work or repair, and the Company shall not be obliged to deliver up possession of any items left for work or repair until payment in full has been made.

13 (b) The Company shall have lien over any items left with it for work or repair for the payment of any amounts owing by the Customer to the Company whether in respect of that work or repair or not, together with any accrued interest and/or storage charges as hereinafter provided.

13 (c) When any items left for repair are ready for collection the Company shall give notice thereof to the Customer. After the expiry of fourteen days from the delivery of such notice to the Customer, the Company shall no longer have any responsibility for or duties in connection with the items and shall not be regarded as the Customer's bailee. If any items remain uncollected for a period exceeding three months after the Company has given written notice to the Customer that such items are ready for collection, the Company shall in its discretion be entitled to charge for storage of such items at the rate of 1% per month of the Gross Value of the consignment stored until such items are collected by the Customer.

13 (d) If after the expiry of three months from the Customer having received such notification from the Company that items are ready for collection such items or any of them shall remain in the Company's possession whether because of the Customer's failure to collect such items to any of them or his failure or refusal to pay charges for work or repairs carried out, or interest or storage charges accrued or any part thereof, the Company shall be entitled to sell such items or any of them and to deduct from the proceeds of sale and the amount of any charges for work and repair done, interest and storage charges accrued, before accounting to the Customer for any balance of such proceeds of sale. This right shall be in addition to any rights under the Torts Interference with Goods Act 1977, or any statute / regulation replacing the same.

13 (e) Notification shall be sent by post to the Customer's residence, place of business, or other address given by the Customer and shall be deemed to have been received by him in due course of post.

14. Where the acceptance of an order or estimate provides for stage payments, if any payments shall not be made as agreed, work may be suspended without the Company thereby incurring liability for any claim, damage or loss and except in so far as shall relate to the dates on which stage payments are due, time shall not be of the essence in this Contract.

15. Where the Company is called out by the Customer following installation work carried out by the Company on the basis of an alleged defect in the work done or materials or parts supplied by the Company the Company shall be entitled to invoice the Customer (under normal terms of payment) for the cost to the Company of that call out, where the allegation made proves to have been made without the foundation, there being no defect in the work done or the materials or parts supplied by the Company.

#### **Intellectual property**

16. Copyright and all other intellectual property rights created by the Company in performing the Services or manufacturing the goods shall belong to the Company. However, the Company grants the Customer a licence to use such rights created by the Company on a non-exclusive basis to the extent necessary for the purpose of using the Services or Goods created by the Company, subject to receiving all the sums payable by the Customer to the Company under this Agreement.

#### **Notices**

17. Any notices which need to be given under this Agreement shall be sent in writing to either party's registered office address or principal place of business.

#### **Assignment**

18. Neither party can assign its rights under this Agreement without the consent of the other party, which shall not be unreasonably withheld.

#### **Waiver**

19. No failure by either party to exercise any of its rights under this Agreement shall be deemed to amount to a waiver of such rights or prevent the exercise of such rights at a later date.

#### **Third-party rights**

20. No-one who is not a party to this Agreement has any benefit or any right to enforce any term of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.

#### **Liability**

21 (a) The liability of The Company is confined to compliance with the warranty obligations described in article 6 of these conditions.

21 (b) With the exception of gross negligence on the part of The Company all liability of The Company, such as loss through business interruption, other consequential loss and loss as a result of liability vis-à-vis third parties is excluded.

21 (c) The Customer is obliged to hold harmless and indemnify The Company with reference to all claims of third parties for compensation of damage for which the liability of The Company in relationship with the Customer has been excluded in these conditions.

#### **Applicable law and dispute resolution**

22. This Agreement, and any disputes which may arise in connection with it, shall be governed by and construed in accordance with English and Welsh law and the parties shall submit to the exclusive jurisdiction of the English and Welsh courts.

#### **Entire agreement**

23. These terms and conditions together with the attached order sheet constitutes the entire agreement and understanding of the parties and supersedes any previous agreement and understanding between the parties relating to the supply of the Services by the Contractor to the Client.

This Agreement is made between the parties on the date shown on the order sheet of this Agreement.