

# Rollor Packaging General Terms and Conditions of Sale

January 2019

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## 1. SELLER'S CONDITIONS OF SALE APPLY

(a) These are the Terms and Conditions of sale which apply to and govern all sales made by Rollor B.V. (registered in The Netherlands with company number 63867508, whose registered office is at Eikenlaan 21, 5263 GM Vught and whose VAT number is NL855433632B01 ('The Seller') to any person, company or firm who purchases goods from the Seller ('The Buyer').

(b) A Contract will be formed between the Seller and the Buyer in accordance with paragraph 2.

(c) By entering into a Contract for the purchase of goods from the Seller, the Buyer accepts and agrees to be bound by these Terms and Conditions. These Terms and Conditions shall apply as the complete and exclusive terms of each Contract to the exclusion of any other terms which are implied by trade, custom, practice or course of dealing, and no variation from the Buyer contained in any documents from the Buyer including but not exhaustively any letter, receipt acknowledgement, or other form shall be effective unless expressly agreed by the Seller in writing.

(d) These Terms and Conditions are in the English language and available in Dutch language on request.

## 2. FORMATION OF CONTRACT

(a) All quotations and tenders whether contained in a price list or otherwise are not to be considered as an offer by the Seller, and the Seller shall not be bound to sell, until the Seller has communicated acceptance to the Buyer of the Buyer's order in accordance with this paragraph 2.

(b) A Contract shall only come into existence when the Seller communicates written acceptance to the Buyer of the Buyer's order or otherwise performs any act consistent with fulfilling the order.

(c) When the Seller is selling online, a Contract shall only come into existence when the Seller issues the Buyer with an order confirmation by email. The shopping pages on the Seller's website will guide the Buyer through the steps it needs to take to place an order and the Seller's order process allows the Buyer to check and amend any errors before submitting its order.

(d) Any quotation given by the Seller

shall not constitute an offer for sale or a representation that those goods are available for sale. Any quotation shall only be valid for a period of 30 days from its date of issue.

## 3. PRICES

(a) All prices quoted are calculated from costs available at the date of quotation and are exclusive of VAT.

(b) Subject to paragraph 3(c), all prices quoted are exclusive of delivery charges unless expressly specified on Seller's order confirmation.

(c) The seller will charge the Buyer delivery charges when the delivery is outside The Netherlands.

(d) The Seller reserves the right to increase the quoted price if:

(i) there is an increase in any costs payable by the Seller between the date of quotation and dispatch of the goods beyond the reasonable control of the Seller including (without limitation) foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs;

(ii) the Buyer requests to change the delivery date(s), quantities or types of goods ordered, or the specification for the goods; or

(iii) there is a delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

(e) Where prices are quoted online, the prices of the goods will be as quoted on the Seller's website at the time the Buyer submits its order. The Seller takes all reasonable care to ensure that the prices of goods are correct at the time when the relevant information was entered onto the system, however it is always possible that some of the goods may be incorrectly priced. If the pricing error is obvious and unmistakable and could have reasonably been recognised as a mispricing, the Seller does not have to provide the goods to the Buyer at the incorrect price.

(f) On printed orders the price confirmed is exclusive of artwork and clichés which may be charged separately.

## 4. DELIVERY

(a) Unless otherwise and previously agreed in writing (on each occasion) between the Seller and Buyer, acceptance

by the Buyer of goods which have been ordered shall occur upon delivery, or attempted delivery, to the Buyer.

(b) If the Buyer fails to take delivery at the time specified in the Contract the Seller shall be entitled without prejudice to any other rights it may have to either treat the Contract as at an end and resell the goods and/or invoice the Buyer for the goods at which point payment in full shall immediately become due and payable.

(c) For goods which are contracted for delivery by instalment, late delivery of an instalment shall not entitle the Buyer to reject any other instalment under the same Contract.

(d) Any date of delivery given by the Seller to the Buyer shall be an estimate date only and while the Seller will endeavour to comply with any such date, the Seller shall not be responsible for late delivery and time of delivery shall not be of the essence of the Contract

(e) Without prejudice to the generality of the foregoing, the Seller shall not be liable for late delivery or failure to deliver through any cause which is beyond the reasonable control of the Seller.

## 5. STOCK AGREEMENTS

At the Seller's option, the Seller may enter into a Rolling Stock or Stock Holding Agreement ('Stock Agreement') with the Buyer and any additional terms and conditions contained in such Stock Agreement shall be incorporated into the Contract. In the event of any inconsistency between these Terms and Conditions and any Stock Agreement, these Terms and Conditions shall prevail to the extent of any inconsistency.

## 6. RISK AND TITLE

(a) All goods are at the Buyer's risk from the time that delivery, or attempted delivery, takes place at the location stipulated in the Contract.

(b) Goods shall remain the sole and absolute property of the Seller as legal and equitable owner of the goods until payment for the goods due under the Contract and payment of all other sums due to the Seller from the Buyer have been received in full by the Seller.

(c) Until the property in the goods passes to the Buyer, in accordance with paragraph 6(b), the Buyer shall:

(i) store separately and mark the goods so that they are readily identifiable as the property of the Seller;

(ii) hold the goods as agent for the Seller;

(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the goods;

(iv) maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

(d) The Seller shall be entitled to serve notice on the Buyer indicating its intention to retake possession of the Seller's goods if the Buyer is in breach of the payment terms under the Contract or if the Seller reasonably considers that its property is in jeopardy or the Buyer becomes (or the Seller reasonably believes the Buyer is about to become) subject to any of the events listed in paragraph 11(iii). On receipt of such notice from the Seller, the goods shall be immediately delivered to the Seller, and/or the Seller by its employees or agents shall have the right (without trespass) to enter upon any land, building or vehicles of the Buyer to take possession of the goods.

(e) On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this paragraph 6 shall remain in effect.

## 7. BUYER'S WARRANTY

(a) The Buyer warrants that it is purchasing the goods from the Seller as a business and not as a consumer.

(b) For the avoidance of doubt, the Seller reserves the right to reject any order received from a consumer.

(c) For the purposes of this paragraph 7, 'consumer' shall mean a natural person who is acting for purposes which are wholly or mainly outside such person's trade, business, craft or profession.

## 8. LIMITATION OF SELLER'S LIABILITY

(a) Subject to paragraph 16, in any case where it is established to the satisfaction of the Seller that there has been a short delivery, or a failure to deliver the goods to their destination or that the goods have been damaged (whether wholly or in part) prior to delivery, the Seller will (at its option) replace or repair the goods, or refund the price of the goods provided that:

(i) any complaint by the Buyer of short delivery of or damage to the goods must be notified in writing to the Seller immediately upon delivery of the goods;

(ii) any complaint by the Buyer of failure to deliver must be notified within 10 days of the receipt by the Buyer of the invoice or advice of dispatch whichever is the earlier.

(b) Except in the case of any goods (or part of the goods) which are manufactured by a third party and where the provisions of paragraph 8(e) shall apply, the Seller warrants that any goods supplied will at the time of delivery and for a period of 6 months from the date of delivery:

(i) be of satisfactory quality; and

(ii) correspond in all material respects with the description of the goods in the Contract. The Buyer acknowledges and agrees that due to technology changes and/or improvements to manufacturing processes, less product weight and/or thickness will be required to attain the same performance standards of the goods. Accordingly, any reference to weight and/or thickness of the goods set out in the Contract is indicative only and the Seller shall not be deemed to be in breach of this clause if the weight and/or thickness of goods supplied does not correspond exactly with that stated in the Contract provided that the goods achieve the same performance standard.

(c) If the goods fail to comply with the warranty set out in paragraph 8(b), provided the Buyer has paid for the goods in full, the Seller shall:

(i) replace the goods without further charge; or

(ii) accept the return of the goods and credit the Buyer with the price of the goods, or

(iii) make the Buyer an allowance being the difference between the value of the goods at the time of the complaint by the Buyer and the invoice price provided that any complaint by the Buyer shall have been notified in writing to the Seller immediately upon delivery.

(d) The Seller shall not be liable for the goods failure to comply with the warranty set out in paragraph 8(b) if:

(i) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, use and maintenance of the goods or (if there are none) good trade practice regarding

the same;

(ii) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;

(iii) the Buyer alters or repairs the goods without the written consent of the Seller;

(iv) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(v) the goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

(e) In the case of goods (or any part of goods) which are manufactured by a third party, the Seller shall use its reasonable endeavours to pass on to the Buyer the benefit of any express guarantee or warranty received by the Seller from the manufacturer or supplier of the goods (or part of goods).

(f) Where the goods are required for a purpose other than the normal or usual purpose for which such goods are commonly supplied then no condition or warranty or fitness for the purpose of goods shall be implied unless the Buyer has made known to the Seller in writing the exact purpose for which the goods are intended to be used, and the Seller has expressly acknowledged in writing to the Buyer prior to the date the Contract is formed, that the goods are suitable for such purpose.

(g) Except as set out in the Contract, any other implied term, condition or warranty, statutory or otherwise, as to the quality of the goods sold or their fitness for any particular purpose or as to their correspondence with any description or sample is excluded to the fullest extent permitted by law.

(h) The Seller shall not be bound by any statement, warranty or representation given by or made on its behalf unless specifically stated in writing and expressly signed stating it is to be incorporated in the Contract and the Buyer expressly acknowledges and agrees that it has not relied on any statement, warranty or representation which is not incorporated in the Contract.

(i) Subject to paragraph 8(k) The Seller shall be under no liability if the goods are not paid for by the due date.

(j) Subject to paragraph 8(k) the Seller's

total liability in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the value of the goods.

(k) Nothing in the Contract shall limit or exclude the Seller's liability for:

(i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(ii) fraud or fraudulent misrepresentation;

(iii) any other liability that cannot be excluded by law.

## 9. CONSEQUENTIAL LOSS

Subject to paragraph 8(k) the Seller shall not in any event be liable to the Buyer in contract or tort or otherwise for any indirect or consequential loss or damage whenever or howsoever arising.

## 10. TIME OF PAYMENT

(a) Unless otherwise agreed in writing by the Seller, all invoices shall be paid in full by the Buyer within 30 days of delivery.

(b) Time of payment shall be of the essence of the Contract. If the Buyer is in default the Seller may:

(i) suspend further deliveries of any goods under the Contract, or any other contracts with the Buyer; and/or

(ii) charge the statutory interest for commercial transactions as published by the ECB form time to time (<http://www.wettelijkereente.net/wettelijkereente1.aspx>) on any overdue account from the day following that on which payment was due until payment by way of cleared funds has been received in full.

(c) The Buyer shall pay all amounts in full without any set-off, counter-claim, deduction or withholding (except for any deduction or withholding required by law).

(d) The Seller shall have the right to charge the Buyer for any and all reasonable legal costs incurred by the Seller arising out of or in connection with the Seller recovering its debts from, or otherwise enforcing its rights against, the Buyer. Nothing in this paragraph 10(a) shall prejudice any statutory right that the Seller may have to charge interest on such debts owing.

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## 11. RIGHT OF TERMINATION

(a) The Seller shall have the option (without prejudice to any of its other rights against the Buyer) by notice in writing to the Buyer to terminate any Contract between the Seller and the Buyer or to suspend delivery in the following events:

(i) if any sum owing by the Buyer to the Seller is overdue whether for the same or any other Contract; and/or

(ii) if the Buyer is in breach of any term of the same or any other Contract with the Seller; and/or

(iii) if the Buyer enters into any composition or arrangement with or for the benefit of its creditors, or has a receiving order in bankruptcy made against him or (if a corporate body) goes into liquidation either voluntary or compulsory or under supervision or has a receiver appointed over all or any of its assets or if the Buyer threatens to cease trading.

(b) The Buyer shall have no right to cancel an order or terminate the Contract except where the Seller has given its consent in writing. In such circumstances, the Seller reserves the right to charge the Buyer a restocking fee equivalent to 15% of the value of the Contract.

## 12. WAIVER

No failure or delay by the Seller to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 13. FORCE MAJEURE

The Seller shall not be liable for failure to perform the Contract whether wholly or in part if the failure is caused wholly or partly by any circumstance or circumstances outside the control of the Seller.

## 14. INTELLECTUAL PROPERTY

The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller in connection with any claim made against the Seller for actual

or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Buyer's designs, plans or specifications. This paragraph 14 shall survive termination of the Contract.

## 15. SIZE OF MATERIALS AND DESCRIPTIVE MATTER

(a) Unless specific warranties in writing are provided by the Seller, all sizes referred to on any price lists, estimates or brochures are approximate only.

(b) Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures or reproduced on the Seller's website are produced for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the Contract or have any contractual force.

## 16. QUANTITY

The Seller cannot guarantee exact quantities in respect of any goods supplied and shall be deemed to have fulfilled its obligation under the Contract by delivery or manufacture the quantity as specified in the Contract plus or minus the tolerances as listed in paragraph 21.2. The Buyer shall pay the contract rate for the actual quantity delivered.

## 17. PRINT ORIGINATION WORK

Designs originated by the Seller remain the Seller's intellectual property.

## 18. PROOF READING

No responsibility or liability shall be accepted by the Seller for any errors in proof approved by the Buyer.

## 19. ALTERATION

Where the goods consist of printed items, alterations from the original copy on or after the first proof is approved by the Buyer, may be subject to any additional charge.

## 20. PALLETS

Where palletised deliveries are requested or necessary, pallets may be charged extra. Pallets may be subsequently returned at the Buyer's expense and risk, and provided they are returned in the

same condition as delivered, the cost of the pallets (but not the delivery cost) will be credited to the Buyer at the price originally charged.

## 21. TOLERANCES

21.1 With respect to the agreed specifications, the deviations included below, both upwards and downwards, shall be permissible. For the purpose of assessment, the average of the total of the quantity delivered in one type, quality, color and version shall serve as a benchmark. For specifications other than those mentioned below, the deviations permissible for previous deliveries and, failing those, the usual deviations shall be acceptable.

21.2 Regarding quantity, we shall be deemed to have performed properly if deviations in quantities do not exceed:

For paper goods

- 20% above or below the indicated quantity for orders of less than 1000 pcs.

- 15% above or below the indicated quantity for orders between 1.000 and 5.000 pcs.

- 10% above or below the indicated quantity for orders above 5.000 pcs

For cardboard

- 20% above or below the indicated quantity for orders of less than 1000 pcs.

- 15% above or below the indicated quantity for orders between 1.000 and 5.000 pcs.

- 10% above or below the indicated quantity for orders above 5.000 pcs

21.3 Regarding quality we are not liable for color deviations of the printing inks used as well as for small deviations in the cardboard. A tolerance of max. 8% on the gram weights on the original components is permitted.

21.4 If a packaging range has been constructed of different types of material, we shall not guarantee any unity of color.

21.5 Regarding gram weights, the permissible deviation in agreed gram weight is:

for paper

- up to 39 grams/m<sup>2</sup>: 8%

- 40 to 59 grams/m<sup>2</sup>: 5%

- 60 or more grams/m<sup>2</sup>: 4%

for cardboard

- up to 500 grams/m<sup>2</sup>: 5%

- from 500 grams/m<sup>2</sup>: 8%.

## 21.6 Regarding measurements,

a. Boxes are internally measured and the dimensions are in millimetres are specified in the order: length – width – height.

b. On dimensions, a deviation of a maximum of + or – 5% is permitted in each direction, unless otherwise agreed in writing.

Except where agreed different in writing the Seller shall be deemed to have fulfilled its obligations under the Contract by producing goods within the tolerances laid down in paragraph 21 above.

## 22. DISPUTE RESOLUTION PROCEDURE

(a) If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (Dispute) then:

(i) either party shall give to the other party written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, representatives of each party with authority to settle the Dispute shall attempt in good faith to resolve the Dispute;

(ii) if the representatives of each party are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to directors (or equivalent) of each party who shall attempt in good faith to resolve it; and

(iii) if the directors (or equivalent) of each party are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties will attempt to settle it by Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by both parties. To initiate the mediation, a party must serve notice in writing to the other party to the Dispute, requesting a mediation. The mediation will start not later than 30 days after the date of the notice.

(b) Notwithstanding clause 22(a), the Seller shall at any time at its sole option have the right to refer any Dispute to any court with competent jurisdiction, which courts shall have exclusive jurisdiction in relation to the Dispute, in accordance with clause 23.

## 23. LAW

The Contract is governed by, and is to be construed in accordance with, Dutch Law and the Seller and the Buyer irrevocably submit to the exclusive jurisdiction of the Dutch Courts in 's Hertogenbosch.

## 24. THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 is expressly excluded from the Contract.

## 25. MISCELLANEOUS

(a) The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the Seller's prior written consent.

(b) Notices shall be deemed to have been duly given if sent by post, fax or email transmission or personal delivery. Notices given by post shall be deemed to have been given 2 business days after dispatch and notices given by fax or email transmission or personal delivery on the date of transmission or delivery.

(c) If any provision or part of any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part of any provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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