

## TERMS AND CONDITIONS OF SALE

### WHAT THIS DOCUMENT DOES

This document sets out the terms and conditions (“**Terms**”) we agree with you the customer (“**you**”) in respect of all present and future sales of goods (“**Goods**”), and all delivery and carriage services (“**Carriage**”) provided, by Royal Wolf Trading Australia Pty Ltd ABN 38 069 244 417 (“**we**” or “**us**”). If you wish to purchase Goods or obtain Carriage from us we may ask you to sign or otherwise authorize or accept a quote or other document we present to you (“**Quote**”). The Quote is not a separate contract but is part of and must be read together with these Terms. You enter into this agreement by signing or otherwise authorizing or accepting a Quote. A Quote may include special conditions which apply in addition to these Terms. We may decline to Quote goods to you in our discretion.

### 1. PAYMENT

You agree to pay us the specified price and related charges (“**Purchase Price**”) of the Goods before delivery or by the due date, as we determine.

### 2. LATE PAYMENTS

If any amount is not paid on the due date, you must pay interest on the amount not paid (“**Overdue Amount**”). Interest on any Overdue Amount will be calculated monthly, at the rate of eight (8%) percent per annum, from and including the due date to and including the date we receive the full Overdue Amount.

### 3. RISK AND USE

3.1 Risk in the Goods passes to you on delivery to you, your agent or carrier.

3.2 You must use and operate the Goods safely, in compliance with all applicable laws, regulations, standards, Codes of Practice, Building Codes, local, state and federal requirements, and only for their intended use.

### 4. RETENTION OF TITLE

4.1 You agree that title to the Goods will only be transferred to you when we receive payment in full of all money owing to us in relation to the Goods. Until we receive payment of such money you will hold the Goods as bailee only. Prior to receipt by us of the amount owing you must:

- (a) not intermingle the Goods with any other property;
- (b) not change the Goods in any way;
- (c) not change or obscure in any way any identification marking that we have placed on the Goods by lettering or numbering;
- (d) not sell the Goods except to a bona fide purchaser for full value;
- (e) keep all proceeds from the sale of the Goods on our behalf in a separate trust account;

(f) promptly pay the proceeds of any sale of the Goods to us.

4.2 The payment of the proceeds from the sale of the Goods by you does not relieve you of your obligation to pay to us the balance of the Purchase Price plus any interest or other amounts payable.

### 5. PERSONAL PROPERTY SECURITIES ACT

5.1 You acknowledge and agree that the provisions of section 4 create a security interest in all present and future Goods supplied. This security interest in the Goods extends to the proceeds for the purposes of the *Personal Property Securities Act 2009* (Cth) (the “**PPS Act**”) and to the extent applicable the PPS Act applies in addition to any rights we have under these Terms. For the purposes of the PPS Act the collateral is described as containers and related goods and that or other collateral may be further or differently described in a Quote.

5.2 You warrant that any Goods or materials purchased from us are not purchased predominantly for personal, domestic or household purposes.

5.3 You acknowledge that we may do anything reasonably necessary to protect our interest in the Goods, including but not limited to registering any security interest which we have over the Goods under the PPS Act. You agree without charge to provide all information and do all things reasonably necessary to assist us to undertake the matters set out above including to ensure our interest has first priority. You waive pursuant to section 157 (3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration event.

5.4 You and we agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Goods to the extent, if any, mentioned:

- (a) section 95 (notice of removal of accession)
- (b) section 125 (obligation to dispose of or retain collateral) in that we may extend the time for delay as we consider appropriate
- (c) section 129 (disposal by purchase)
- (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal
- (e) paragraph 132(3)(d) (contents of statement of account after disposal)
- (f) subsection 132(4) (statement of account if no disposal)
- (g) section 135 (notice of retention)
- (h) section 142 (redemption of collateral)
- (i) section 143 (reinstatement of security agreement).

## TERMS AND CONDITIONS OF SALE

5.5 You agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Act. You must do everything necessary on your part to ensure that section 275(6)(a) continues to apply.

### **6. WHAT ARE OUR RIGHTS IF YOU COMMIT A BREACH?**

If you (i) fail to pay any amount payable by you to us under these Terms on the due date and you do not remedy your failure within two (2) business days of the date that we notify you in writing of your failure, or (ii) you fail to perform any other obligation under these Terms and you do not remedy your failure within (5) business days of the date that we notify you in writing of your failure or, (iii) you cease doing business, have a liquidator, administrator, receiver and manager, controller or other like officer appointed over any or all of your assets, become insolvent, commit an act of bankruptcy or become the subject of a proceeding under any bankruptcy act, or its counterpart under the law of any territory outside of the jurisdiction of Australia, then without limiting our rights or remedies in any way we may (but are not obliged to) immediately and without releasing you from any accrued obligations do one or more of the following:

- (a) terminate this agreement including any sale of the Goods to you;
- (b) declare the balance of the Purchase Price due and payable by you;
- (c) retake possession of the Goods; and
- (d) remedy any default that you commit under these Terms (at your cost).

### **7. YOUR RIGHTS TO POSSESSION OF THE GOODS CEASE**

If we terminate this agreement for the sale of the Goods to you, you will no longer be entitled to possession of the Goods and you must immediately return the Goods to us (at your cost). After we terminate this agreement, nothing in these Terms gives you any express or implied right or entitlement to, and you must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over the Goods.

### **8. RIGHT TO RECOVER GOODS**

If we are entitled to retake possession of the Goods, you hereby irrevocably authorise us to enter upon any premises where the Goods are located, and to use such reasonable force as may be necessary, for the purpose of removal of any Goods and to do so at your cost.

### **9. WHAT HAPPENS TO PROPERTY ATTACHED TO THE GOODS?**

If we retake possession of all or any part of the Goods, you authorize us to take possession of any property in, on or attached to the Goods which is not our property.

### **10. WARRANTIES**

This section 10 does not affect any legal rights you have, including under the Australian Consumer Law, to the extent the law does not allow them to be excluded.

#### **10.1 State of the Goods**

You acknowledge and agree that you:

- (a) have the opportunity to inspect the Goods prior to or upon their delivery to you; and (b) you accept them in their current state.

#### **10.2 Specific warranties excluded**

Without limiting paragraph 10.1, we make no express or implied warranty in relation to:

- (a) the fitness of the Goods for any particular purpose;
- (b) the merchantability of the Goods; or
- (c) the description, state, quality or condition of the Goods.

#### **10.3 Not Liable**

To the full extent permitted by law, we exclude and are not liable for any condition or warranty (of any kind) which is not expressly set out in these Terms.

#### **10.4 Repair**

To the extent that the law permits you to present Goods to us for repair or replacement, the Goods may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.

### **11. GENERAL**

#### **11.1 Notices**

All notices under these Terms must be in writing and be given to the address shown in the Quote, or to such other address as may be designated in writing by either party to the other.

#### **11.2 Binding**

These Terms are binding upon you and us, your and our successors and assigns and are governed by the laws of New South Wales. The parties consent to the non-exclusive jurisdiction of the Courts of New South Wales.

#### **11.3 Override and variation**

These Terms override and exclude any terms and conditions provided by you. These Terms may only be modified or varied if agreed in writing by the parties.

## TERMS AND CONDITIONS OF SALE

### **11.4 No waiver of rights**

A failure to exercise or delay in exercising any right, power or remedy by either party does not operate as a waiver.

### **11.5 Cumulative rights**

Our rights under these Terms are in addition to, and do not exclude, any rights at common law, equity or any other agreement between you and us.

### **11.6 Intellectual property**

We own all intellectual property rights attributable to the Goods or anything we do in connection with these Terms including in any inventions, drawings, designs or other work. Drawings provided are our property and are conditionally loaned to you and you agree not to reproduce them in whole or in part, nor make any use of them that has not been approved in writing by us.

### **11.7 Consent**

You consent to us using and disclosing your personal information for the purposes of direct marketing.

### **11.8 Consequential Loss**

To the full extent permitted by law, we are not liable for any indirect, economic, special or consequential loss or damage of any nature, including, without limitation, any loss of business or revenue, loss of profits, loss of opportunity, loss of goodwill, anticipated savings or expenses, in connection with or arising out of these Terms or a Quote or the supply of the Goods or Carriage services. Nothing in this section does, or is intended to exclude or limit any rights you may have under the Australian Consumer Law. To the extent permitted by s.64A of the Australian Consumer Law in respect of goods and services other than of a kind ordinary acquired for personal, domestic or household use or consumption our liability is limited to the re-supply of the relevant goods or services.

### **11.9 Expenses**

Should it be necessary for us to incur legal and/or other expenses (including commercial agent and private enquiry fees) in enforcement of our rights under these Terms or in obtaining or attempting to obtain payment of any amount due by you, you undertake to reimburse us on an indemnity basis the whole amount of such expenses and fees.

### **11.10 Your Right to Terminate**

You may terminate this agreement by written notice if:

- (i) we are in breach of this agreement and the breach is not remedied within five (5) business days of written notice being received by us requiring the breach to be remedied; or (ii) we cease doing business or a

liquidator, administrator, receiver and manager, controller or other like officer is appointed over any or all of our assets.

## **12. CARRIAGE**

- (a) Where we or our subcontractors provide Carriage for you, we and our subcontractors are not common carriers and accept no liability as such.
- (b) All Carriage is performed at your risk. You bear all risk of loss or damage to or arising out of the Goods or their contents. This section 12(b) does not apply to regulated transactions. For the purposes of this section a regulated transaction is one under a consumer contact or a small business contract for the purposes of section 23 of the Australian Consumer Law.
- (c) You must not tender for Carriage any dangerous, explosive, flammable, hazardous or damaging goods without presenting a full description of those goods.
- (d) We and our subcontractors are not liable for failure to deliver, delay in delivery of, or misdelivery of the Goods or their contents, due to weather or other circumstances beyond our control. In this event we or our subcontractors will deliver as soon as reasonably possible.
- (e) Sections 10 and 11.8 of these Terms (with any necessary changes) apply to Carriage with references to the provision of Goods in those sections to read as references to the provision of Carriage.