

# GENERAL TERMS AND CONDITIONS OF SALE - BRITISH COLUMBIA

## 1. General Terms and Conditions

1.1. These general terms and conditions of sale (these "Terms") apply to all sales of products (the "Products") made by ROTHO BLAAS CANADA CONSTRUCTION PRODUCTS INC. ("RB") to a customer (the "Customer") in British Columbia, Canada, unless otherwise agreed to in writing by RB and the Customer (each a "Party" and collectively the "Parties"). Any exception to these Terms agreed to between the Parties for an individual order, in any case, applies exclusively to such individual order and does not constitute a modification of these Terms for other purchases made by the Customer or otherwise.

1.2. RB supplies the Products exclusively based on these Terms and other agreements signed by both of the Parties, if any. The general terms and conditions of the Customer, if any, are only applicable to the Products if agreed to in writing by RB.

1.3 If any provision of these Terms is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability attaches only to such provision or part thereof, and the remaining part of such provision and all other provisions hereof continue in full force and effect.

## 2. Technical Documentation

2.1. The latest versions of RB's catalogues are available on the RB website (<https://www.rothoblaas.com/catalogues-rothoblaas>) (the "Catalogues"). Any drawings, illustrations, photographs, descriptions, specifications, technical data, measurements, weights, dimensions or other specifications contained in the Catalogues (the "Product Descriptions") are approximate and provided for the purpose of demonstrating general characteristics of the Products. RB does not warrant that the Product Descriptions are accurate, complete, reliable, current, or error-free. If the Products are not as described, the Customer's sole remedy is to return the Products in unused condition in accordance with Article 4 (Returns).

## 3. Delivery

3.1. The quantities and the characteristics of the Products are as indicated in the written order confirmation issued by RB (the "Order Confirmation"). RB may deliver the Products in instalments. If RB delivers the Products in instalments, then the quantities of the Products in such instalments are as specified in the respective transport documents and RB may invoice for the instalments separately.

3.2. Delivery dates are estimates only. RB is not responsible for delays in delivery caused by events outside of RB's reasonable control including, without limitation, any act or omission of the Customer. Where delays are not caused by an event outside of RB's reasonable control, RB's liability to the Customer is limited to the reasonable costs and expenses of replacing the Products.

3.3. The Customer will confirm receipt of the Products on the transport document of the carrier (the "Transport Documents") whether in paper or digital format. At the time of delivery, the Customer will inspect the Products and note on the Transport Documents any issues with the quantity or type of the Products or packaging, and any visible transport

damage. Unless noted by the Customer on the Transport Documents at the time of delivery, RB is not required to consider any complaints for non-latent damages or non-conformities with the Products and is not liable in this regard. RB is not required to consider or remedy any non-latent damages or non-conformities unless a brief description of the complaint and photographic evidence, if possible, are provided to RB within 10 days from the delivery date.

## 4. Returns

4.1. Unless otherwise agreed to in writing between the Parties within 30 days of the purchase date, the Customer is not permitted to return the Products to RB.

4.2. Handling fees, transportation and other costs apply to any return of the Products (the "Returned Products") and are borne by the Customer. RB will not accept the Returned Products unless in their original condition and packaging unused and ready for resale.

4.3. RB will not accept any return of the Products which are "out-of-catalogue", expired, or were manufactured specifically for the Customer.

## 5. Risk

5.1. The risk of loss and title to the Products passes from RB to the Customer in accordance with the INCOTERMS set forth in any of the offer to purchase, the Order Confirmation or invoice (the "Commercial Documents"). In the absence of any specification, the risk is transferred upon RB's delivery of the Products to the carrier.

## 6. Prices and Payment

6.1. The price of the Products is as indicated in the Order Confirmation or, in the absence thereof, the order submitted by the Customer to RB, if so accepted by RB in writing (the "Price"). The Price is ex warehouse RB.

6.2. All prices stated are exclusive of any value added tax unless expressly stated otherwise.

6.3. The Customer will pay all amounts due in respect of the Products in accordance with the payment terms specified in the Commercial Documents.

6.4. If any amount owing to RB under the Commercial Documents is not paid when it is due (the "Unpaid Amount"), then the Customer will pay interest on the Unpaid Amount at the prime lending rate established by the Bank of Canada, calculated quarterly and compounded semi-annually, plus 5% per annum, from the date the Unpaid Amount is due until the date that the payment is received by RB. This stipulation for interest does not prejudice or affect any remedies of RB under these Terms or the Commercial Documents or otherwise or relieve the Customer of the obligation to pay the Unpaid Amount or other amounts at the time and in the manner specified in the Commercial Documents.

6.5. In the event of an unforeseen price increase between the time of the Order Confirmation and the time of delivery, the Price may be adjusted accordingly with prior notice to the Customer.

## 7. Title Retention

7.1. The Buyer acknowledges and expressly agrees that, unless otherwise specified in writing by RB, the property in, and legal and equitable title to, the Products, remains with RB and does not pass to the Buyer, unless and until RB has received in full (in cleared funds) all sums due from the Buyer to RB in relation to the Products, and in relation to all other

Products previously supplied to the Buyer by RB.

7.2. All trademarks, trade names, copyrights, patents, designs and models, know-how, and domain names used by RB in the course of RB's business (the "Intellectual Property") are the total and exclusive property of RB and their communication or use within the scope of these Terms does not create, in relation to them, any right, title or ownership claim on the part of the Customer. The Customer will not perform any act incompatible with the ownership of the Intellectual Property.

7.3. The Customer: (i) acknowledges and accepts that RB is the exclusive owner of the Intellectual Property; (ii) will refrain from depositing and registering marks that are identical, similar and/or confusable with the Intellectual Property; (iii) will use the Intellectual Property only with the express consent of RB in compliance with RB's instructions and exclusively for the purposes set forth in these Terms; (iv) will not modify, alter, remove, cancel or cover any of RB's branding, marks or other distinctive signs or elements affixed to the Products or add other branding, marks or distinctive signs or elements to the Products; and (v) will not register domain names that are identical or similar to those of RB or that incorporate the Intellectual Property. Any violation of these Title Retention provisions is subject to prosecution in accordance with the applicable law.

7.4. If the Customer has registered or does register any exclusive right to the Intellectual Property in violation of these Title Retention provisions, then any such registrations are deemed to be automatically and rightfully transferred by the Customer to RB and the Customer hereby agrees to take all necessary steps to perfect and make effective the transfer of any such registrations from the Customer to RB, without consideration, reimbursement of expenses or costs incurred, or compensation of whatsoever kind.

## **8. Set-Off**

8.1. The Customer will pay all amounts due under these Terms or the Commercial Documents in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by applicable law) unless otherwise agreed upon in writing by the Parties.

## **9. Warranty and Liability**

9.1. RB warrants, for a period of 12 months from the date of delivery of the Products to the Customer, that the Products: (i) are free from any material defects in design, material and workmanship; (ii) are of merchantable quality (within the meaning of the *Sale of Goods Act*, R.S.B.C. 1996, c. 410); and (iii) conform in all material respects with the description thereof specified in the Catalogues (collectively the "Warranty").

9.2. The Customer's sole and exclusive remedy for breach of these warranty provisions is for RB (in its sole discretion) to repair or replace the Products or refund the Customer the amounts paid in respect of the Products (the "Warranty Remedy"). RB may perform the Warranty Remedy according to its own time and organization. RB is not required to perform the Warranty Remedy unless notified by the Customer and provided with adequate documentation of the non-compliance with the Warranty within eight days of discovery thereof by the Customer.

9.3. Unless otherwise agreed to in writing by the Parties, the Warranty does not cover the effects of reasonable wear and tear or damage arising after

delivery due to improper or careless use, excessive stress, use of inappropriate materials or particular effects of external agents. If the Customer or end-user of the Products makes any modifications to, or performs any repair work on the Products, then the Warranty is null and void and of no force or effect. Personal protective equipment and anchoring devices are subject to periodic inspection by the Customer, as per the documentation attached to such product which the Customer covenants to comply with.

9.4. If, in RB's performance of the Warranty Remedy, it is determined that the deficiency is not covered under the Warranty, then the cost of such is borne by the Customer. The Warranty is null and void and of no force and effect unless the Customer makes payment for the Products when due.

9.5. Any other claims of the Customer against RB not covered under the Warranty are expressly excluded, without prejudice to Article 10 (Other Liabilities).

## **10. Other Liabilities**

10.1. Nothing in these Terms limits any liability which cannot legally be limited, including liability for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; or (iii) breach of the terms implied by section 16 of the *Sale of Goods Act*, R.S.B.C. 1996, c. 410.

10.2. RB's total liability to the Customer arising hereunder or in connection herewith, whether arising in contract, tort (including negligence), misrepresentation, restitution or otherwise does not exceed the amounts paid by the Customer to RB in respect of the Products to which the claim relates.

## **11. EEE Recycling**

11.1. The Customer acknowledges and accepts the obligation not to dispose of any electronic and electrical equipment ("EEE") in the same manner as mixed urban waste in contravention of Federal, Provincial and Municipal laws and covenants to carry out separate collection for said EEE waste in accordance with local laws. When purchasing new EEE, the Customer may deliver the equivalent used RB EEE to RB in the manner indicated by RB.

## **12. Force Majeure**

12.1. "Force Majeure" means the occurrence of an event or circumstance that prevents or impedes one or both of the Parties from performing one or more of their respective contractual obligations under these Terms if and to the extent that that the Party proves that: (i) such impediment is beyond its reasonable control; and (ii) such impediment could not reasonably have been foreseen at the time of the conclusion of any agreement for the purchase of the Products between the Parties; and (iii) the effects of the impediment could not reasonably have been avoided or overcome by the Party so affected.

12.2. In the absence of proof to the contrary, the following events affecting the Party are presumed to fulfil conditions (i) and (ii) under Paragraph 12.1 of these Terms: war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation, civil war, riot, rebellion and revolution, military or usurped power, insurrection, acts of terrorism, sabotage or piracy, currency and trade restriction, embargo, sanction, acts of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation, plague, epidemic, natural disaster or extreme natural event, explosion,

fire, destruction of equipment, prolonged break-down of transport, telecommunication, information systems or energy, general labor disturbances such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

12.3. A Party successfully invoking these Force Majeure provisions is relieved from its duty to perform its obligations under any agreement between the Parties and from any liability in damages or from any other remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof is received by the other Party. Where the effect of the impediment or event invoked is temporary, the above consequences apply only as long as the impediment invoked impedes performance by the Party so affected. Where the duration of the impediment invoked has the effect of substantially depriving the Parties of what they were reasonably entitled to expect under agreement between them, either of the Parties may terminate such agreement by notification within a reasonable period to the other Party. Unless otherwise agreed to in writing between the Parties, the Parties expressly agree that such agreement may be terminated by either Party if the duration of the impediment exceeds 120 days.

### **13. Hardship**

13.1. The Parties are bound to perform their contractual obligations even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the formation of the agreement.

13.2. Notwithstanding Paragraph 13.1 of these Terms, where a Party proves that: (i) the continued performance of its contractual obligations has become excessively onerous due to an event beyond its reasonable control which was not reasonably foreseeable at the time of the formation of the agreement; and (ii) it could not reasonably have avoided or overcome the event or its consequences, then the Parties are bound, within a reasonable time of the invocation of these Hardship provisions, to negotiate alternative contractual terms which reasonably allow the Parties to overcome the consequences of the event.

### **14. Termination**

14.1. If, after accepting an order for the Products from the Customer, RB becomes aware that the Customer is in a precarious financial situation and/or subject to bankruptcy or insolvency proceedings, then RB may request a performance guarantee from the principal of the Customer or an affiliate (within the meaning of the *Business Corporations Act*, S.B.C. 2002, c. 57) or withdraw from the order, and calculate the costs incurred up to that time which are to be borne by the Customer.

### **15. Competent Jurisdiction and Applicable Law**

15.1. The relationship between the Parties, these Terms, the Commercial Documents and any dispute or claim (including noncontractual disputes or claims) arising out of or in connection with them or their subject matter or formation, are governed by and construed in accordance with the laws of the Province of British Columbia. In the event of any such disputes or claim, which the Parties are unable to resolve amicably, the Court of British Columbia has exclusive

jurisdiction.

### **16. Privacy**

16.1. In accordance with applicable data protection laws, the Customer acknowledges and agrees that the Customer's personal information including, without limitation, the name of the contact person/management/owner, address, e-mail address, telephone number, and fax number (the "Personal Information") are necessary for the execution of the agreement for the purchase and sale of the Products and to carry out the transactions contemplated thereby. Accordingly, the Customer consents to the sharing and transmission of the Personal Information among the companies of the Rotho Blaas Group (<https://www.rothoblaas.com/contacts>) and their respective agents, lawyers, credit institutions, accountants, and other professionals in the management and administration of RB or service companies working on behalf of RB, as necessary in the sole discretion of RB.

16.2. RB will retain the Personal Information until the expiration of any applicable statutory retention and limitation periods. The Customer enjoys the rights set forth in any applicable data protection laws (right of access to Personal Information, rectification, cancellation, limitation of processing, personal data portability, opposition to processing, right to lodge a complaint to the relevant supervisory authority). The Customer is deemed to have reviewed and accepted RB's Privacy Policy (<https://www.rothoblaas.com/privacy-policy>). For more detailed information and to exercise these rights, the Customer may contact RB's Privacy Representative by email at the following address: [privacy@rothoblaas.com](mailto:privacy@rothoblaas.com).

### **17. Code of Ethics and Other Policies**

17.1. The Customer is deemed to have reviewed and accepted all of RB's policies available on RB's website (<https://www.rothoblaas.com/>) including, without limitation, RB's Code of Ethics (<https://www.rothoblaas.com/company-rothoblaas>).

### **18. Amendment and Waiver**

18.1. No modification of or amendment to these Terms is valid or binding unless set forth in writing and duly executed by both of the Parties and no waiver of any breach of any term or provision of these Terms is effective or binding unless made in writing and signed by the Party purporting to give the same, and unless otherwise provided, is limited to the specific breach waived.