

BIRDROLLERS AUSTRALIA PTY LTD

(ACN 627 146 436)

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TERMS OF TRADE

1. These Terms of Trade: (a) prevail in the event of any inconsistency between any terms and conditions contained in any Purchase Order or similar document submitted by the Customer to BirdRollers; and (b) shall apply and form part of the Contract between the parties notwithstanding that the Customer has not expressly accepted these Terms and Conditions, if the Customer (or any of the Customers) requests or instructs BirdRollers to proceed with the Supply or any of the Supply, or by conduct accepts the Supply.
2. Notwithstanding any other term of this Agreement BirdRollers may at any time before the completion of the Supply (including after having commenced the Supply) require all registered proprietors of the land on which the Site is located to provide written acceptance of its Quotation for the Supply (and/or for any further Quotation for any additional or varied Supply). A failure or refusal by any such person to sign any of these documents will entitle BirdRollers to suspend or terminate the Supply in which case it will not be liable for any further Supply and may immediately invoice the Customer for the Supply made to date on a pro rata basis (including for Components supplied for the Works and for labour).
3. The Supply does not include Excluded Works. The Supply includes Included Works. Design work is required to be paid for in advance. Our design work is copyright protected. If the Customer does not proceed with the works then provided the design work has been paid for the Customer has an irrevocable licence to use the design at the Site for which the design was prepared but BirdRollers will not be liable for any fault with or damage caused by the Supply or installation unless it supervised the same, and then only to the extent provided by these Terms. The rights to use the design may not be assigned to any third party (including a transferee or occupier of the Site) and may not be copied or disseminated.
4. BirdRollers may require the Customer to pay for Components prior to the supply and installation and BirdRollers may charge a 10% margin in addition to the cost of Components (plus GST) supplied by third parties.
5. BirdRollers does not warrant that in the case of it supplying, installing, connecting or disconnecting Components that they will be compatible with existing electronic, electrical or other components or devices or fixtures or fittings used at the Site. Customer acknowledges that BirdRollers is not liable for any damage or loss, including Consequential Loss suffered by the Customer as a result of any incompatibility or conflict.
6. Unless before BirdRollers commences the Supply the Customer provides a proposed Works Schedule which is agreed to by BirdRollers (subject to BirdRollers having the right to requote the Price in the event that the Works in the Works Schedule differs from the Quoted Supply) BirdRollers will determine the order for carrying out the Supply and the timeframe. The Customer acknowledges that the Works in the Works Schedule will differ from the quoted works if they cause additional costs to BirdRollers for Components or labour.
7. The Customer will give BirdRollers access to the Site (and will ensure that the areas where BirdRollers is required to carry out the Supply is free of all obstructions and Hazards) and will provide such Site Corridors to, through and within the Site as may be required by BirdRollers for safely carrying out the Supply. The Customer will put protective coverings over any surfaces or items that might be susceptible to easy damage in any work areas, Site Corridors or access areas used or to be used by BirdRollers to avoid the possibility of damage – and BirdRollers will not be liable for damage to any such property if the owner has not taken these steps, and then its liability is limited to the extent provided by these Terms.
8. Where third party Components are used by BirdRollers as part of the Works it does not separately warrant their fitness or serviceability and the Customer must rely on the warranty provided by the manufacturer or distributor. BirdRollers does not separately warrant the accuracy or reliability of any instructions provided by the manufacturer or distributor and BirdRollers is not liable for any loss or damage (including death and personal injury) for the failure or malfunction of third party Components notwithstanding that BirdRollers may have examined and tested the third party Components. BirdRollers may charge for removal and reinstallation of any third party Components that fail or malfunction if that failure or malfunction is not due directly to an act or omission of BirdRollers in installation or to BirdRollers having recommended incorrect Components for the purpose and all third party Components will be at the risk of the Customer from the time they are delivered to the Site and must be insured.
9. In the event of BirdRollers encountering obstructions or obstacles that delay or add to the Supply it shall have the right to adjust the Price to allow for any additional costs in Materials, equipment or man hours due to demobilisation and remobilisation.
10. It is the Customer's sole responsibility to: (a) acquaint itself with the requirements of all relevant governmental and statutory or other stipulations including OHS and FWA relating to the use and application to which the Components are put including safety; (b) to comply with all such requirements; and (c) to maintain the Goods in a safe and serviceable manner once the installation has been completed and commissioned by BirdRollers.
11. If any Goods or things to be installed or used by BirdRollers are supplied by the Customer then the Customer warrants to BirdRollers they: (a) are compliant with all relevant laws, regulations and

specifications and Australian Standards; (b) do not infringe any IP; and (c) the Customer has unencumbered title to them and authority to instruct BirdRollers to use, install or commission them.

12. Except in the case of negligence, BirdRollers will not be liable for inadvertent, accidental or incidental damage to the Customer's Property arising out of the Works when providing the Services and completing the Works. It will not be liable to the Customer for any loss, direct or indirect, of any description, including Consequential Loss arising out of such damage or the interruption or loss of electrical or other power or services or any other services to the Site, including damage to computers and electronic equipment, including loss of data. The Customer indemnifies BirdRollers in the event of any inadvertent damage or destruction being caused by Crew to any property of third parties at the Site or any injury to any person at the Site including the Customer as a result of a failure by the Customer to abide fully, and at all times, and in all respects, with these Terms.
13. BirdRollers may prior to, during and at the completion of the Supply take photos (including videos) of the Site which it may use for training and promotional and commercial purposes both on-line and off-line and all copyright in any such material shall be the absolute property of BirdRollers and the Customer will not be entitled to any payment for the use of the images or sounds by BirdRollers and hereby irrevocably and absolutely consents to BirdRollers using the material for any such promotional purposes provided that BirdRollers may not include in any such photos images that identify any person (other than Crew) without the prior written consent of that person. BirdRollers may bring its photographers onto Site for purposes of taking the photos during any period when Crew are on Site. BirdRollers may also before, during and at the completion of the Work or any portion of Work take photos of the Site to record the condition of walls, surfaces, fixtures, fittings as an ongoing record of their condition.
14. BirdRollers is not liable to service or reinspect the Works after completion unless the Customer has a maintenance or re-inspection agreement with BirdRollers, in which case BirdRollers may charge the agreed or its then current and usual fees and charges for any re-inspection, servicing or maintenance (including recommissioning, programming or Customer tuition or training).
15. BirdRollers does not warrant that in the case of the supply of Goods or Materials that the Customer has the right to use any associated IP or IP Rights not specifically supplied or referred to in writing by the manufacturer or BirdRollers.
16. The Customer: (a) covenants that it is entitled to instruct BirdRollers to undertake the Supply at the Site on behalf of all legal owners of the land where the Site is located; (b) accepts sole responsibility for the accuracy and description of the Site and Site Corridors as described to BirdRollers; (c) will before the commencement of the Works alert BirdRollers to any Characteristics of the Site and Site Corridors or Contiguous Areas that may affect BirdRollers' ability, safety, to or methods for safely carrying out the Works (including the location of manholes, power, water, communication ports and cables); (d) warrants that any Drawings of the Site and Works or parts of the Site and Works are accurate, free of error and can be relied on by BirdRollers (without it infringing any copyright) for the basis for budgeting, costing, planning and carrying out the Works; (e) warrants that measurements and distances shown in Drawings may be treated by BirdRollers as estimates if the circumstances warrant and it may make adjustments between Drawings scale dimensions and Drawings figured dimensions by Site measurements to resolve any apparent inconsistencies and may proceed with the Works on that basis even if it involves changes in finished dimensions or an increase in the costs or time for completing the Works; (f) warrants that from the commencement of the Works the Customer will give unrestricted access to BirdRollers as it desires to Site Corridors and the Site to carry out the Works and will ensure that safe Site Corridors are readily available for Crew, equipment, Goods and Materials and they will be kept unobstructed by the Customer; (g) charges the land comprised in the Site with payment to BirdRollers of all moneys that are or will or may become payable to BirdRollers under this Agreement and agrees to BirdRollers lodging a caveat (absolute or subject to interest) over the said land to secure all such moneys; (h) warrants that Customer will obtain all necessary building licences and permits as may be required from any Authority before the Works are commenced; (i) there are no Contaminants at the Site that might present a hazard to Crew; (j) warrants that where required, the Customer has sought and obtained all permissions, consents and authorities of all owners, mortgagees or chargees of the Site and Site Corridors and owners and occupiers of Contiguous Areas prior to BirdRollers undertaking the Works; and (k) acknowledges that none of the Crew (other than sub-contract licensed painters, plumbers and licensed electricians) hold licences to carry out electrical work, plumbing work or painting work and if any such work is part of the Supply BirdRollers may either sub-contract the work at the expense of the Customer (in which case BirdRollers will be the Customer's agent for hiring those sub-contractors and the agreement for their work will be between the Customer and the sub-contractor) or work with the Customer's licensed painters, licensed plumbers and licensed electricians in which case they must not obstruct or impede the Supply or any work of the Crew.
17. If BirdRollers encounters any Impediments, Contaminants or Force Majeure Event it may suspend all Works and the Customer will be liable to pay BirdRollers for Works undertaken to that time including all Materials and Goods supplied by BirdRollers whether or not installed and whether or not BirdRollers completes the Supply.
18. The Customer warrants that it has in place all Insurances for Components from the time of their delivery to the Site and acknowledges that it is the Customer's responsibility to ensure that the Components are safely stored at the Site. It's the Customer's responsibility to be at the site, or have an agent at the Site, to accept delivery of any Components delivered to the Site by BirdRollers or any supplier until installed by BirdRollers.

Any such items that are lost, stolen or damaged after delivery to Site must be replaced at the Customer's cost.

19. The Customer fully and irrevocably indemnifies BirdRollers for any loss or damage occasioned to the owner of any Contiguous Areas and for all Third Party Claims arising out of the Works unless that loss or damage arises directly from any negligent act or omission of BirdRollers or breach by BirdRollers of this Agreement.
20. The Customer agrees that BirdRollers shall be required to adhere only as closely as is practical to Drawings as the Site conditions at the time of the carrying out of the Works permit, taking into account the structures at the Site and safety, and BirdRollers shall not be liable to the Customer for any deviations from the Works that are reasonably necessary due to such factors and it may charge and the Customer must pay for increased costs associated with such changes.
21. BirdRollers is not liable to supply Excluded Works as part of the Supply, but may agree with the Customer to do so as a Variation for additional payment or on a restitution basis at BirdRollers' usual rates and mark-ups.
22. The Customer acknowledges and agrees that BirdRollers will not be liable for the repair, re-commissioning or re-programming or re-working of any of the Components in the Supply where any of them have been altered (including by the addition or removal of items or the installation of other things at the Site) not undertaken by BirdRollers.
23. The Customer will provide access to the Site and Site Corridors for BirdRollers during BirdRollers' usual hours of work and if BirdRollers is denied access to the Site then the costs of keeping or remarshalling labour to the Site will be a Variation to be paid for by the Customer.
24. Either party may terminate this Agreement immediately by oral or written notice to the other party: (a) if the other party breaches a material term of this Agreement capable of being remedied and fails to remedy the breach within twenty-four (24) hours of being given oral or written notice of the breach; (b) if the other party breaches a material term of this Agreement which is not capable of remedy; or (c) if the other party is unable to pay its debts as they fall due or makes or commences negotiations with a view to making a general rescheduling of its indebtedness, a scheme of arrangement or composition with its creditors, or takes any steps to wind up or cease trading or appoints a receiver, administrator or other officer.
25. The Customer shall be liable to pay interest at eight per cent (8%) per annum calculated daily on any outstanding payment to BirdRollers.
26. If the Customer cancels the Agreement it must forthwith on written demand pay BirdRollers for any costs, expenses or losses incurred by BirdRollers for arranging Materials and Crew.
27. Where required, the Customer will promptly and fully assist BirdRollers by obtaining plans of underground pipes and cables at the Site at least two (2) clear working days before BirdRollers' proposed work on the Site by requesting the same from Dial Before You Dig. If the Customer fails to do so, BirdRollers may nonetheless proceed with the Work and the Customer indemnifies BirdRollers for any loss or damage sustained by BirdRollers as a result of any such failure by the Customer.
28. Risk in all Components forming part of the Supply or Variation will pass to the Customer on delivery to the Site and it is the sole responsibility of the Customer to ensure the security of the same at the Site and for its insurance.
29. Any warranty as to the Components forming part of the Supply are limited to the written warranty provided by the manufacturer.
30. The Customer is not entitled to claim any right of set-off for any payments due to BirdRollers and must pay the full amount of BirdRollers' claims for the Supply.
31. Either party may refer any relevant dispute to an adjudicator under the *Construction Contracts Act 2004* (Western Australia), but are not obliged to do so and may institute any form of dispute resolution process they are entitled to. A party may not institute an arbitration of a dispute under this Agreement without the prior written consent of the other party.
32. No power or right of a party under this Agreement is waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
33. Any provision in these Terms which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to leave the remainder of these Terms valid and enforceable. If that provision cannot be read down it will be severed to the extent of that invalidity or unenforceability without affecting the remaining provisions of these Terms.
34. These Terms and Conditions are governed by the law of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia in respect of any proceedings in connection with the Supply or these Terms.
35. Notwithstanding the provision of any statute, BirdRollers is entitled to claim the costs of any Legal Process instituted or defended by BirdRollers in respect of the Supply and will be entitled to claim all costs of any such Legal Process on a solicitor and client basis notwithstanding that without this Term BirdRollers would

not otherwise be entitled to recover those costs. BirdRollers is entitled to be represented by and claim the costs (on a solicitor and client basis) of legal representation in respect of any claim against the Customer including a minor case claim in the Magistrates Court. The right of BirdRollers to any such costs for any such Legal Process will not apply to the extent that any Court of competent jurisdiction upholds any claim by the Customer against BirdRollers.

36. Where the Works include painting or repainting the paint must be sourced and supplied by the Customer as BirdRollers does not accept responsibility for mismatched paint colours. If the Customer asks BirdRollers to provide the paint it is done so on the basis that the Customer provides the required colour details or samples and BirdRollers is not liable if the paint obtained does not properly match the specification or sample.
37. Where the Works include any work by a licensed electrician or licensed painter, or any other person who is not an employee of BirdRollers then that person is engaged – even where engaged by BirdRollers – on the basis that he is the contractor and the Customer is the principal and BirdRollers acts only as agent for the Customer and the licensed electrician or licensed painter may issue tax invoices addressed to the Customer. The Customer will be liable to pay the tax invoices. BirdRollers is not responsible to the Customer for the scope or quality of work by the licensed electrician or licensed painter.
38. The Customer must at its cost provide transport to and from Site campsites and accommodation and meals that equate to those provided to employees of the Customer, as well as campsite and Site security for all Crew and Materials.
39. No liquidated damages – BirdRollers will not be liable for any liquidated damages to any person for any reason, including breach of contract or repudiation of contract by BirdRollers.
40. Additional costs due to latent and hidden defects of the Site or existing site fixtures or fittings will be borne by the Customer.
41. The Definitions form part of these Terms.

Definitions

“Authority” means a governmental, semi-governmental, local governmental, statutory, public, ministerial, civil, administrative, fiscal, judicial or licensing or other authority, body or board.

“BirdRollers” means BirdRollers Australia Pty Ltd (ABN 627 146 436).

“Characteristics” means any feature of the Site or Site Corridors that present, unknown or unforeseen (at the time of the Quote Impediments, including Pre-Works or any Re-Works).

“Components” means Goods and Materials supplied by BirdRollers and all third party materials (whether delivered to BirdRollers or the Customer) and goods supplied by third party suppliers to BirdRollers included in the Supply or any Variation.

“Consequential Loss” means loss or damage arising from a breach of contract, tort (including breach of duty of care), in law, in equity, or under statute, including loss of use, loss of access, loss of production, loss of opportunity, loss of income, profits or revenue, loss of access to markets (including share markets), loss of goodwill, loss of business reputation, damage to credit rating and all or any similar or dissimilar loss whether or not within the reasonable contemplation of the parties at the time of the making of the Agreement for the Supply and the carrying out of the Works (including emergency works undertaken without instructions).

“Contaminants” means the presence in or about the Site of any asbestos, oil or chemical spill or material or substance or thing that is at a concentration or in a form or in a state above the concentration at which it is normally present in or about the Site in the same locality, such that it presents a risk of harm to human health or to part of the Environment.

“Contiguous Areas” includes all areas outside the Site including areas under the control of the Customer and areas that are not under the control of the Customer and areas under the control or owned by Third Parties.

“Crew” refers to all personnel supplied by BirdRollers and any sub-contractors (including licensed painters and licensed electricians).

“Customer” means the person who agreed the Supply with BirdRollers and all legal owners (including registered proprietors) of the land where the Site is, jointly and severally.

“Drawings” includes drawings, measurements, sketches, schematics, pictorial representations, photographs (and other visual aids) used to describe the Works.

“Environment” includes all natural and man-made things at the Site, air, natural water, flora and fauna.

“Excluded Works” include: (a) software not written by the Suppliers of Components; (b) electrical work behind a GPO – BirdRollers only provides technical (but not licensed electrical) work from the user side of GPOs; (c) provision of any electrical wiring or cabling not quoted for; (d) Scaffolding; (e) skip bins or removal of packaging, boxes for Components or work debris (unless quoted for); (f) commissioning or re-commissioning of ventilation or air-conditioning to meet any operational specification (including any operational specification that existed prior to the Supply) unless expressly quoted for; (g) Variations not agreed to by BirdRollers; (h) digging or excavation; (h) removal and replacement of Surfaces; (i) painting or repainting after Supply when quoted for; (j) electrical work by a licensed electrician unless quoted for. BirdRollers is not required to undertake any Works unless its quote for such Works has been accepted, in writing, by the Customer.

“Force Majeure Event” means a Supply Event which is not within the control of BirdRollers and which by the exercise of reasonable care BirdRollers is not able to prevent or overcome. Force Majeure events include embargos, acts of war, revolution, insurrection, native title issues, trade union activity (lawful and unlawful), unlawful acts against public order or authority, governmental restraints, weather conditions that inhibit the performance of the Supply. A Force Majeure event occurs if the event affects any site, the Site and any BirdRollers personnel, if it causes, contributes to or results in increased cost for BirdRollers or non-performance or delay in the performance by BirdRollers of any of its obligations of Supply; and the occurrence and the effects or circumstances could not have been prevented, overcome or remedied by the exercise of reasonable care on the part of BirdRollers. For the avoidance of doubt, a failure by a supplier to BirdRollers to supply as required (including as to cost reflected in the Quotation) or in the time required to enable BirdRollers to make the Supply to the Customer is a Force Majeure event for BirdRollers.

“FWA” means Fair Work Australia requirements.

“Goods” includes all devices and things (including software) not manufactured by BirdRollers that are supplied by the Customer or by BirdRollers or used by BirdRollers and includes components or devices already installed at the Site.

“GST Law” means *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

“Hazards” includes the presence at the Site of any thing or any person that may or does interfere with or distract from the Supply including visitors, other tradespeople, animals, children, vehicles, sporting equipment, furniture and chattels of every description (including work tools not being used by BirdRollers). Hazards does not include Scaffolding where provided at the request of BirdRollers.

“Impediments” means the existence of, presence of or proximity of things or circumstances whether or not known at the time of the Quote including obstructions that may result or do result in injury or damage to any of BirdRollers’ equipment or Crew or to Goods or Materials, where the existence of the impediment has not been the subject of prior written notice from the Customer to BirdRollers before the Works were undertaken.

“Included Works” refers to items expressly stated in the accepted Quotation (and subsequent accepted quotations).

“Insurance” and “Insurances” means all insurances (whether compulsory or otherwise) that can be taken out in relation to the Site (including what is commonly called public liability, property, contents and third party insurance) for any loss that might be caused by the Customer, an owner or occupier of the Site, an owner or occupier of any Contiguous Areas (or a Third Party, for the purpose of any Third Party Claims under this Agreement) and any Property of any of them.

“IP” and “IP Rights” means all intellectual property rights attached to or forming part of any Goods or Materials.

“Legal Process” includes Letters of Demand, Creditor’s Statutory Demands, proceedings under the *Construction Contracts Act 2004* (Western Australia) and proceedings in the Magistrates Court for claims including any minor case claim.

“Materials” means all things and components used by BirdRollers in the Works and where the context permits includes Goods.

“OHS” means occupational health and safety.

“Pre-Works” means any work of any nature (including construction) that occurred prior to the Supply, whether or not of a plumbing nature.

“Property” means any property, including fixtures, fittings and chattels (including vehicles, furniture and all items in or about the Site including property in which any person other than the Customer has any legal or equitable interest.

“Quotation” means the quotation accepted by the Customer and any subsequent quote or pricing for any Variation.

“Re-Works” means any work of any nature (including construction) that occurs during the Supply, whether or not of and electrical or painting nature but not part of the Supply.

“Scaffolding” means anything other than 2m stepladders, including supported scaffolding, suspended scaffolding, rolling scaffolding, mobile scaffolding, aerial lifts and all other means of supporting Crew and materials for work at heights of more than 3 metres above a pre-existing in situ working platform or surface.

“Site” means the address for the delivery of the Supply and all work areas including roof spaces, stairwells and cavities.

“Site Corridors” means the availability of unobstructed ingress and egress from a public road to the Site and for unobstructed access within the Site.

“Supply” means all of the things provided by BirdRollers, including Goods, Materials, Components, labour and expertise (including commissioning, programming and Customer tuition) for the Works and “Supply Event” has a corresponding meaning.

“Surfaces” includes fixed carpet, lino, timber or other fixed cladding, tiles, brick, slab and tile paving, planter boxes, plants and similar things.

“Tax Invoice” has the meaning given to it under the GST Law.

“Third Party Claims” means any claim in respect of loss or destruction of or injury or damage to or loss of use of any real or personal property (including choses in action and rights) any personal injury to or death of any person arising out of or caused by any act or omission or the supply or non-supply of the Services by BirdRollers including claims made by the Customer and any agent, employee, representative or family member or invitee of the Customer.

“Variation” and “Variations” means an addition, amendment, deletion or change in the quoted Supply including design changes, changes in dimensions and changes in Goods or Materials. The Customer acknowledges that the Quote is based on assumptions by BirdRollers that all existing installations at the Site comply with law, regulations and relevant Australian Standards and that any unquoted work required of BirdRollers to bring existing installations into compliance with law, regulation and relevant Australian Standards or to make it compatible with the Supply Components will constitute a Variation. BirdRollers is not obliged to undertake any Variation and may instead suspend the Works until the Variation is performed by others or terminate the Agreement and claim costs for that part of the Supply made to date.

“Works” means the supply things included in the Supply, or the Supply; including Variations where relevant.

END OF TERMS OF TRADE