

CONFIDENTIAL



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NATIONAL FLEET FITOUTS

LIGHT COMMERCIAL VEHICLES

RXI National Fitouts Provide:

- Consistency across your fleet • Superb quality
- Peace of mind • Seamless experience • QA ISO 9001 Accredited

RXI GROUP

Terms of Trade

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RXI GROUP
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1. Definitions

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

"Agreement" means any agreement for the provision of goods or services by RXI to the Customer;

"consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

"Customer" means the person, jointly and severally if more than one, acquiring goods or services from RXI;

"goods" means goods supplied by RXI to the Customer;

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

"RXI" means RXI Group (ACN 164 142 705) trading as the RXI Group (ABN 26 164 142 705);

"services" means services supplied by RXI to the Customer in relation to the goods, including installation and fitment services; and

"Terms" means these Terms and Conditions of Trade.

2. Basis of Agreement

2.1 Unless otherwise agreed by RXI in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by RXI to the Customer for the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in RXI's quotation, which are not inconsistent with the Terms.

2.4 An Agreement is accepted by RXI when RXI accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services.

2.5 RXI has absolute discretion to refuse to accept any offer.

2.6 The Customer must provide RXI with its specific requirements, if any, in relation to the goods and services.

2.7 RXI may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 Prices quoted for the supply of goods and services include GST and any other taxes or duties imposed on or in relation to the goods and services.

3.2 If the Customer requests any variation to the Agreement, RXI may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by RXI in relation to goods or services, RXI may vary its price to take account of any such change, by notifying the Customer.

4. Payment

4.1 Unless otherwise agreed in writing:

- (a) Subject to 4.1(b), full payment for the goods or services must be made within 30 days of the date of RXI's invoice.

(b) RXI reserves the right to require payment in full on delivery of the goods or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at RXI's sole discretion immediately upon giving the Customer written notice.

4.4 The time for payment is of the essence.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to RXI, then all money which would become payable by the Customer to RXI at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and RXI may, without prejudice to any of its other accrued or contingent rights:

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 4% for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify RXI from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;

(c) cease or suspend supply of any further goods or services to the Customer;

(d) by written notice to the Customer, terminate any uncompleted contract with the Customer.

5.2 Clauses 5.1(c) and 5.1(d) may also be relied upon, at RXI's option:

(a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Passing of Property

6.1 Until RXI receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to RXI by the Customer:

(a) title and property in all goods remain vested in RXI and do not pass to the Customer;

(b) the Customer must hold the goods as fiduciary bailee and agent for RXI;

(c) the Customer must keep the goods separate from its goods and maintain RXI's labelling and packaging;

(d) the Customer must hold the proceeds of sale of the goods on trust for RXI in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;

- (e) in addition to its rights under the PPSA, RXI may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of RXI, and for this purpose the Customer irrevocably licences RXI to enter such premises and also indemnifies RXI from and against all costs, claims, demands or actions by any party arising from such action.

7. Lien

7.1 If RXI installs the goods in accordance with clause 12, then:

- (a) RXI retains a general lien over the Customer's vehicle; and
- (b) if RXI is in possession of the vehicle, may withhold and retain possession of the vehicle and charge the Customer storage costs incurred by RXI until full payment in cleared funds is made for the goods and services.

8. Personal Property Securities Act

8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

8.2 For the purposes of the PPSA:

- (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and RXI has a Purchase Money Security Interest in all present and future goods supplied by RXI to the Customer and the proceeds of the goods;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by RXI on the Personal Property Securities Register.

8.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from RXI's premises and not at any later time.

8.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

8.5 RXI and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

8.6 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on RXI will apply only to the extent that they are mandatory or RXI agrees to their application in writing; and
- (b) where RXI has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

8.7 The Customer must immediately upon RXI's request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by RXI to be relevant to its security position such agreements and waivers (including as equivalent to those above) as RXI may at any time require.

8.8 RXI may allocate amounts received from the Customer in any manner RXI determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by RXI.

8.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.

9. Risk and Insurance

9.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from RXI's premises.

9.2 The goods are sold to the Customer and the services are provided on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

9.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, self installation, installation by RXI or possession of any of the goods sold by RXI, unless recoverable from RXI on the failure of any statutory guarantee under the ACL.

10. Performance of Agreement

10.1 Any period or date for delivery of goods or provision of services stated by RXI is an estimate only and not a contractual commitment.

10.2 RXI will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

10.3 If RXI cannot complete the services by any estimated date, it will complete the services within a reasonable time.

11. Delivery

11.1 Subject to clause 11.6, RXI will arrange for the delivery of the goods to the Customer.

11.2 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

11.3 RXI may make part delivery of goods or provision of services and RXI may invoice the Customer for the goods or services provided.

11.4 The Customer indemnifies RXI against any loss or damage suffered by RXI, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and RXI has not used due care and skill.

11.5 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.

11.6 If agreed that the Customer will collect the goods:

- (a) the Customer must collect the goods with 7 days of being advised they are ready;
- (b) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

12. Installation of Goods

12.1 Subject to clause 12.2, the Customer must install the goods.

12.2 RXI and the Customer may agree that RXI will install the goods.

12.3 If RXI installs the goods, then the Customer must:

- (a) specify the exact configuration of the goods to be installed; and
- (b) make their vehicle available to RXI to perform the installation services.

12.4 If the Customer requests any alterations to the configuration of the installed goods as specified in clause 12.3(a), RXI may increase the price to account for the variation.

12.5 To the extent permitted by law and subject to clause 13, RXI will not be liable to the Customer in any way arising out of or in connection with the installation of the goods.

13. Liability

13.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design, installation or performance of the goods or services or any contractual remedy for their failure. Customer must confirm to the Customer's own satisfaction that goods are suitable before use.

13.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against RXI for failure of a statutory guarantee under the ACL.

13.3 If the Customer on-supplies the goods to a consumer and:

- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of RXI's liability to the Customer;
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of RXI's liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

13.4 If clause 13.2 or 13.3 do not apply, then other than as stated in the Terms or any written warranty statement RXI is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

13.5 RXI is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

13.6 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by RXI in relation to the goods or services or their use or application.
- (b) it has not made known, either expressly or by implication, to RXI any purpose for which it requires the goods or services and it has the sole

responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.

13.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

14. Cancellation

14.1 If RXI is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

14.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on RXI once the order has been accepted.

15. Shortages and Exchanges

15.1 Subject to clauses 15.2 and 15.4, RXI will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies RXI with full details and description within 10 days of delivery otherwise the Customer is deemed to have accepted the goods.

15.2 When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by RXI, RXI may, at its option, replace the goods, or refund the price of the goods.

15.3 Subject to clause 15.4, RXI will not under any circumstances accept goods for return that:

- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
- (b) are discontinued goods or no longer stocked by RXI;
- (c) have been altered in any way;
- (d) have been used; or
- (e) are not in their original condition and packaging.

15.4 If the Customer is a consumer, nothing in this clause 15 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

16. Force Majeure

16.1 RXI is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, pandemics, acts of God, acts or threat of terrorism or war. If an event of majeure occurs, RXI may suspend or terminate the Agreement by written notice to the Customer.

17. Miscellaneous

17.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

17.2 RXI's failure to enforce any of these Terms shall not be construed as a waiver of any of RXI's rights.

17.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

17.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.