

Terms & Conditions of Sale

As revised January 2021



1. Definitions

"On A Roll"	On A Roll Carpet & Vinyl Pty Ltd as trustee for The Isbell Family Trust (ABN 54 543 091 157; ACN 615 756 904).
"Buyer"	The organization, person or people who buy goods and/or services from On A Roll.
"Order"	Written request for supply of Goods and/or Services from the Buyer to On A Roll.
"Contract"	A Contract is formed when On A Roll supplies a quotation and receives an Order for that quotation. The quotation(s), Order(s) and invoice(s) form a Contract subject to these Conditions.
"Goods"	The articles to be supplied to the Buyer by On A Roll.
"Services"	The labour and professional activities provided to the Buyer by On A Roll or subcontractors to On A Roll.
"Conditions"	These Terms and Conditions of sale.

2. Application and Variation

- 2.1. These Terms and Conditions are deemed to be incorporated in the sale of goods and supply of services by On A Roll to the Buyer. These Conditions cannot be varied except in writing signed by each party. Buyer's Order, in writing or verbally, shall be deemed to be an offer to On A Roll on these Conditions. If any terms and conditions of the Buyer's Order are inconsistent with these Conditions, these Conditions take precedence.

3. Cancellation

- 3.1. Buyer is not, without On A Roll's written consent, able to terminate any Contract or materially vary any specifications after issue of any confirmation of Order by On A Roll. Such consent may be made conditional on payment by Buyer of a cancellation charge if applicable, being an assessment of damage suffered by On A Roll.
- 3.2. Changes in the specifications provided by the Buyer, or errors or omissions from the specifications which results in extra cost to or work by On A Roll will be charged to the Buyer at On A Roll's standard rates for such work. On A Roll will use its reasonable best endeavours to advise Buyer in advance of the need for any additional work. Where the requested changes, errors or omissions materially affect the specifications, On A Roll shall have the option to terminate the Contract by written notice within a reasonable time of becoming aware of the extent of the effect on the specifications. On A Roll shall refund any monies paid by the Buyer less reasonable costs incurred by On A Roll to the date of termination.
- 3.3. Requests to return Goods for any reason not related to the quality of the Goods will be considered at On A Roll's discretion.
- 3.4. Should On A Roll be unable to purchase the ordered Goods from their supplier, On A Roll may cancel the Contract and upon cancellation any payment made by the Buyer will be refunded.
- 3.5. Upon cancellation of the Contract the Buyer shall have no further rights or remedies against On A Roll for failure to supply the Goods or Services.

4. Price and Price Variation

- 4.1. Unless otherwise stated by On A Roll in writing, prices quoted are net Ex-Works prices ruling at date of quotation. Any levies or taxes, including sales tax or consumption tax, government charges, duties, or excise, insurance and delivery charges are (unless otherwise stated) additional to prices quoted and shall be borne by the Buyer.
- 4.2. Quotations given are always subject to availability of product and materials and quoted prices are firm for the number of days listed in the quotation and thereafter shall be subject to immediate variation by On A Roll in its absolute discretion and without prior notice.
- 4.3. If between the date of a quotation or initial agreement on price and the date of delivery, the price payable by On A Roll for significant material items included in the quotation shall have increased for whatever reason including currency variation, On A Roll may increase the price and shall in writing so notify the Buyer, who shall accept the material at the new price. On A Roll shall only increase the price by such amount as is necessary to compensate for the increased cost to On A Roll.

5. Invoicing and Payment

- 5.1. Subject to On A Roll's approval of Buyer's current credit rating, full payment shall be made within credit terms as stated on quotation and/or invoice unless otherwise specified by On A Roll in writing. Payment by cheque shall not be deemed made until clearance of the cheque.
- 5.2. On A Roll reserves the right at its discretion at any time to withdraw or alter any credit terms and substitute with cash on order or any other terms.
- 5.3. If the Buyer fails to make any payment, On A Roll may charge interest on the outstanding amount/amounts at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) from the due date of payment until the date of full payment. In addition, a twenty (20) percent Recovery Charge will be applied to accounts where collection action is undertaken.
- 5.4. Part payment is made from the Buyer prior to placing the order for Goods with On A Roll's suppliers. The amount of part payment required will be detailed on the initial quotation and/or invoice.
- 5.5. The balance is to be paid on collection or delivery of the Goods when sold on "supply only" basis, or upon installation of the Goods if On A Roll are providing installation services for the Goods purchased.

6. Title and Risk

- 6.1. The property in the Goods and materials sold and delivered pursuant to an Order shall remain with On A Roll until full payment is made by the Buyer to On A Roll together with all charges for extra materials and / or works.
- 6.2. Risk shall pass to the Buyer when Goods and materials are delivered to the Buyer's nominated location(s) or Goods are picked up from On A Roll premises.
- 6.3. The Buyer hereby authorises On A Roll or its nominated representatives to enter the Buyer's premises or the premises at which the Goods are located and retake possession of any Goods for which payment in full has not been made by the agreed payment terms.
- 6.4. The Buyer hereby indemnifies On A Roll against liability, damage and expense On A Roll may incur or suffer by virtue of such entry and re-taking possession.

7. Delivery

- 7.1. Delivery dates and times quoted by On A Roll are approximate only and do not constitute a guarantee of delivery at all or delivery by such a date. On A Roll will not be liable to the Buyer for any loss or damage suffered either directly or indirectly because of a delay in the delivery of the Goods and/or Services.
- 7.2. Buyer shall take any action necessary on its part for timely delivery of the materials.

8. Limitation and Exclusion

- 8.1. On A Roll shall be under no liability to the Buyer for any damages or losses, direct or indirect, or consequential resulting from defects in design, materials or workmanship or failure of materials.
- 8.2. On A Roll shall not in any event be liable to the Buyer for consequential loss whether or not arising from breach of Contract, negligence or any other fault on the part of On A Roll, its servants or agents and whether or not in the contemplation of On A Roll and/or the Buyer at, or prior to, the commencement of the Contract.
- 8.3. Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability of On A Roll for death or personal injury resulting from the negligence of On A Roll, its employees, agents, or sub-contractors.
- 8.4. If the Buyer is a consumer as defined in the Australian Consumer Law Schedule to the Competition and Consumer Act 2010 (Cth) as amended ("ACL"), nothing in these Conditions restricts, limits or modifies the Buyer's rights or remedies against On A Roll for failure of a statutory guarantee provided under the ACL.
- 8.5. On A Roll will not accept responsibility for any of the following:
 - 8.5.1. Cleaning and maintenance of Goods;
 - 8.5.2. Installation of Goods when sold on "supply only" basis;
 - 8.5.3. Damage during delivery, unloading, unwrapping and storage of Goods by Buyer or Buyer's representative;
 - 8.5.4. Where the Goods have been treated (other than by On A Roll) with any agent or substance including but not limited to anti-soiling or flame-proofing materials;
 - 8.5.5. Any variation between samples and ordered Goods including but not limited to colour, weight, texture, weave etc that is within acceptable normal commercial tolerance;

- 8.5.6. Product fading when exposed to direct sunlight beyond accepted industry standards or manufacturer's specifications;
- 8.5.7. Shading, watermarking or reverse piling on cut pile Goods – this is a random, permanent feature not necessarily confined to traffic areas and is not a manufacturing or laying fault;
- 8.5.8. Where the Goods have been used or installed in a situation or location that is not suitable for the Goods (eg residential carpet or flatweave in a commercial application);
- 8.5.9. Where textile floor covering (eg carpet, carpet tiles) has been installed by someone other than On A Roll and has not been installed in accordance with Australian Standard AS 2455-2019;
- 8.5.10. Where resilient floor covering (eg vinyl) has been installed by someone other than On A Roll and has not been installed in accordance with Australian Standard AS 1884:2021;
- 8.5.11. Where flatweave floor covering has been installed by someone other than On A Roll;
- 8.5.12. Where the floorcovering has been uplifted after the original installation process and then re-fitted;
- 8.5.13. Where concrete floor substrate has not been laid in accordance with all building regulations, where it doesn't have a moisture barrier installed and is not dry and in a fit condition to receive the flooring to be installed;
- 8.5.14. Damage to or failure of floor coverings installed by On A Roll caused or due to moisture, dampness or water of any kind which may enter through or over concrete substrate;
- 8.5.15. Any other circumstance On A Roll has no control over;
- 8.5.16. Any other circumstances resulting from Buyer's negligence.

9. Insolvency and Default

- 9.1. On A Roll may by notice in writing effective immediately or on such other date specified in the notice (without any previous notice or other act on the part of On A Roll and notwithstanding that On A Roll may have waived some previous default or matter of the same or a like nature) terminate the Contract if:
 - 9.1.1. Buyer shall commit any breach of the Contract (including, without limitation, terms concerning the time for payment of any monies payable under the Contract);
 - 9.1.2. Buyer compounds with or negotiates for any composition with its creditors generally;
 - 9.1.3. being an individual, Buyer shall die, become permanently incapacitated, or have a trustee appointed or a receiving order made against them or commit any act of insolvency;
 - 9.1.4. being a body corporate or legal persona, Buyer shall call any meeting of its creditors or have a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enter into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commit any other act of insolvency;
 - 9.1.5. the financial position of the Buyer, or some other fact or circumstance, leads On A Roll to believe on reasonable grounds that the Buyer is likely to materially fail to complete its obligations under the Contract;
- 9.2. In the event of such termination:-
 - 9.2.1. Buyer shall forthwith on demand deliver to On A Roll any Goods already provided and, in default thereof, On A Roll shall be entitled to repossess the same and for such purpose to enter into and upon any premises of Buyer where the Goods are suspected to be situated without being liable for any damage caused thereof, and Buyer shall indemnify On A Roll from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising; and
 - 9.2.2. On A Roll shall be entitled by notice in writing to Buyer to declare immediately due and payable any amounts outstanding from Buyer to On A Roll under this or any other contract (such sums thereby becoming forthwith due and payable); and
 - 9.2.3. On A Roll claims damages from Buyer for breach of the Contract.

10. Legal Expenses

- 10.1. The Buyer shall pay all costs, charges and expenses including reasonable legal fees incurred in retaking possession of the Goods or in the collection of any such sums which may be due and owing to On A Roll by the Buyer, including the defence of any action brought against On A Roll for damages caused by the Goods to any person while the Goods are in the possession of the Buyer.

11. Force Majeure

- 11.1. Neither party shall be liable for breach of the Contract (other than payment) if and to the extent that fulfilment of a term or condition hereof has been prevented, hindered or delayed by force majeure as defined in Condition 11.2 below, and in such event that time for fulfilment of such a term shall be extended for such period as is reasonable in all the circumstances.
- 11.2. The expression "force majeure" shall mean any event or circumstance beyond the immediate control of either party, including without prejudice to the generality of the foregoing, strikes, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, war national or international, emergency, destruction or damage due to nature forces, fire, flood, explosion, and compliance with orders or requests of any national or local authority.

12. Confidentiality

- 12.1. Each party shall keep confidential any trade secrets or other confidential information of the other party including any information, document or item which may not otherwise at law be classified as confidential but which is commercially sensitive.

13. Publicity

- 13.1. Buyer hereby authorises On A Roll to promote, photograph and publicise in a manner which is dignified, truthful, not misleading and not prejudicial to the goodwill or reputation of Buyer On A Roll's involvement with Buyer in a general manner, excluding any specific technical details.

14. Miscellaneous

- 14.1. Headings are included in these Conditions for convenience and identification only and are not to be taken to limit the meaning of any part of these Conditions.
- 14.2. If any provision or part of a provision of the Contract should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held enforceable or invalid shall be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down it shall be severed from the remainder of the Contract which shall not be affected by such severance.
- 14.3. The rights of On A Roll shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach.
- 14.4. These Conditions and every Contract connected therewith shall be governed by the laws applicable in the State of Victoria, and any claim or dispute arising there from shall be submitted to the courts of that jurisdiction.
- 14.5. The reliance on or enforcement of any of the Conditions contained herein shall give no right to the Buyer to cancel the Contract.
- 14.6. Notwithstanding the foregoing, if during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between On A Roll and the Buyer in regard to the Contract or the construction of these conditions or anything therein contained or the rights or liabilities of On A Roll or the Buyer, such dispute, difference or question shall be referred to a sole Arbitrator or Arbiter to be agreed upon by On A Roll and the Buyer; failing agreement to be appointed at the request of either On A Roll or the Buyer by the President for the time being of the Law Institute of Victoria. The decision of the Arbitrator or Arbiter shall be final and binding, no appeal shall lie from their decision on any point of law or fact to any court, and the Arbitrator or Arbiter shall not be entitled to state for the opinion of any court any question of law or fact.
- 14.7. Any notice required or authorised to be given or served under these Conditions shall be in writing and be deemed duly given or made if delivered or sent by pre-paid mail or by email communication as follows :
 - 14.7.1. to On A Roll at 79-81 Westgate Drive, Altona North, Victoria, 3025 or john@onarollflooring.com.au;
 - 14.7.2. to the Buyer at the Site or the address of the Buyer stipulated in the Contract; or such other address as may be notified by one party to the other; and
 - 14.7.3. where served by post shall be deemed served 48 hours following its posting.