

## Terms and Conditions of Sale | USA

### ROLF Spectacles Corp. Terms and Conditions of Sale

#### 1. GENERAL

All sales between ROLF Spectacles Corp. ("ROLF") and Customer are subject to the following terms and conditions:

These terms and conditions of commercial sale of ROLF (the „Terms and Conditions“) shall apply exclusively to, and form an integral part of all quotations and offers made by ROLF, and all acceptances, acknowledgments and confirmations by ROLF of any orders of Customer and any agreements („Agreement(s)“) regarding the sale by ROLF and purchase by Customer of goods and services („Products“), unless and to the extent ROLF explicitly agrees otherwise in writing.

Any terms and conditions set forth on any document or documents issued by Customer either before or after issuance of any document by ROLF setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by ROLF, and any such terms shall be wholly inapplicable to any sale made by ROLF to Customer and shall not be binding in any way on ROLF.

Manufacturer's "Terms and Conditions for the Sale and Delivery of Goods Rolf-Roland Wolf GmbH" are incorporated herein by reference and are available at [www.rolf-spectacles.com/us](http://www.rolf-spectacles.com/us).

Customer's orders are accepted upon written acknowledgement of the same by ROLF or shall be deemed accepted seven (7) days from the date the order was placed with ROLF but any order may be revoked by ROLF at any time prior to the acknowledgment of acceptance by ROLF.

#### 2. DESCRIPTION OF THE PRODUCTS

The dimension, colors, measures, illustrations and descriptions and the like of the Products as shown on ROLF's sample sets of the Products, catalogues, prospectuses, and other documents or on the internet are approximate only. Any images of the Products are for illustrative purposes only and may differ from an actual product. Due to the natural condition of materials and different lighting conditions, colors of the Products may vary due to their natural appearance. ROLF reserves the right to make changes to the Products ordered by the customer during the delivery period due to improvement in technology or legal requirements.

#### 3. DELIVERY AND SUPPLY

Unless agreed to otherwise, Products shall be delivered ex works New York, New York (INCOTERMS latest version) as designated and arranged by ROLF free of charge, unless otherwise agreed to in writing. Transport insurance will be arranged by ROLF only if expressly requested and will be on Customer's account. ROLF is entitled to arrange for part-shipments or advance delivery.

Delivery dates and periods are approximate only, shall not be binding, and are understood to be exclusive of the duration of transport. ROLF shall not be liable for, nor shall ROLF be in breach of its obligations to Customer, for any delivery made within a reasonable period of time before or after the communicated delivery date. ROLF agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Customer provides all necessary order and delivery information (i.e. information of measurements and other manufacturing requirements) sufficiently prior to the delivery date.

Customer will give ROLF written notice of failure to deliver, and provide ROLF with thirty (30) days within which to cure. If ROLF does not deliver within such thirty (30) day period, Customer's sole and exclusive remedy shall be to cancel the affected and undelivered portions of the related Agreement. In such event ROLF will refund or re-credit Customer within thirty (30) days for any sum that has been paid by Customer for the Products.

Unless provided for otherwise, title in the Products shall pass to Customer upon delivery and full payment of the purchase price. Until title in the Products has passed to Customer, Customer shall not assimilate, transfer or pledge any of the Products, or grant any right or title in the Products to any third party, except in the event such right or title is granted in normal course of business. Customer shall ensure that the Products remain identifiable as Products obtained from ROLF.

In the event ROLF's supplier for the manufacture of the Products is curtailed for any reason, ROLF shall have the right to arrange for the allocation of available Products, in its sole discretion, among its various customers and as a result may sell and deliver to Customer fewer Products than specified in the Agreement, as the case may be, without being responsible or liable to Customer for any damage resulting therefrom.

In the event that Customer deliberately fails to take delivery of the

Products (other than by reason of circumstances under control of ROLF) then without prejudice to any other rights or remedies available to ROLF, ROLF may: (i) charge Customer for re-delivery expenses; (ii) store the Products at Customer's expense until actual delivery can take place, and a ten percent (10%) re-stocking fee will be charged to Customer; or (iii) sell the Products at the best readily obtainable price and charge Customer for any shortfall below the price agreed to pay for the Products or credit Customer's account with proceeds received after deducting all reasonable storage, selling and other reasonable expenses.

Every effort will be made to process and deliver the Products within the delivery dates and periods as indicated on ROLF's acceptance acknowledgment. ROLF will inform Customer of any delay as soon as ROLF becomes aware of such. ROLF shall not be liable for any loss or damage suffered by Customer through reasonable or unavoidable delay in delivery.

Customer is obliged to properly examine the Products immediately after delivery and report any defects to ROLF within three (3) days of delivery of the Products. Time is of the essence. ROLF shall have the right to inspect the Products upon receipt of a report of damaged Products.

#### 4. FORCE MAJEURE

ROLF shall not be liable for any failure or delay in performance if:

- (i) such failure or delay results from interruptions in the Product manufacturing process by ROLF's manufacturer of the Products; or
- (ii) such failure or delay is caused by Force Majeure as defined below and/or by (case) law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without ROLF being responsible or liable to Customer for any damage resulting therefrom.

The expression „Force Majeure“ shall mean and include any circumstances or occurrences beyond ROLF's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which ROLF cannot reasonably be required to execute its obligations including force majeure and/or default by one of ROLF's suppliers. In the event that the Force Majeure extends for a period of two (2) consecutive months (or in the event that the delay is reasonably expected by ROLF to extend for a period of two (2) consecutive months), ROLF shall be entitled to cancel all or any part of the Agreement without any liability towards Customer.

#### 5. LIMITED WARRANTY AND DISCLAIMER

ROLF warrants that under normal use in accordance with manufacturer's applicable user manual the Products, shall, at the time of delivery to Customer and for a period of one (1) year from the date of delivery (or such other period as may be agreed upon in writing by the parties, or as communicated in writing at sale by ROLF) (the "Warranty Period"), be free from defects in material or workmanship and shall substantially conform to manufacturer's specifications for such Product, or such other specifications as ROLF has agreed to in writing, as applicable. ROLF's sole and exclusive obligation, and Customer's sole and exclusive right, with respect to claims under this warranty shall be limited, at ROLF's option, to (1) repair or (2) provide a replacement of the defective or non-conforming Product or (3) apply an appropriate credit for the purchase price thereof. ROLF will have a reasonable time to repair, replace or credit. ROLF is entitled at its option to replace the defective or non-conforming Product(s) with a product that has minor deviations in design and/or specifications not affecting the functionality of the agreed Product(s). The non-conforming or defective Products shall become ROLF's property as soon as they have been replaced or credited.

Customer may return Products repair or under warranty by shipping to ROLF's designated facility only in conformance with ROLF's then-current return material authorization policy. Unless otherwise agreed to, Customer shall pay for freight costs of returned Products for repairs but shall not pay for freight costs of returned Products under warranty and ROLF will pay for the freight costs to the Customer of returned Products under warranty. Customer shall pay for testing and handling costs associated therewith for Products that are not found to be defective or non-conforming under warranty.

Notwithstanding the foregoing, ROLF shall have no obligations under warranty and excluded from this warranty are alleged defects or non-conformance, and damages due to or a result of (1) ordinary and/or natural wear and tear (2) damp (3) extreme heat in rooms, or other influences of temperature or climate or similar effects (4) environmental (5) misuse, use other than as set forth in manufacturer's applicable user manual, neglect or accident, (6) improper repair, alteration, modification, storage, transportation or improper handling.

In the event that defects covered by warranty exist, ROLF has the option, to either rectify the defects within a reasonable period or to supply similar Products that are free from defects in exchange for the defective Products within a reasonable period of time.

Subject to the exclusions and limitations set forth in Section 6 of the Terms and Conditions, the foregoing states the entire liability of ROLF and its affiliates in connection with defective or non-conforming Products supplied hereunder.

#### 6. LIMITATION OF LIABILITY

ROLF SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE OF ANY PRODUCTS OR SERVICES BY ROLF OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY - EVEN IF ROLF HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

ROLF'S AGGREGATE AND CUMULATIVE LIABILITY TOWARDS CUSTOMER UNDER ANY AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCTS STATED IN THE RELATED AGREEMENT.

Any Customer's claim for damages must be brought by Customer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

**The limitations and exclusions set forth above in this Section 6 shall apply only to the extent permitted by applicable mandatory law.**

#### 7. PRICING

Prices in any offer, confirmation or Agreement are in U.S. Dollars unless agreed otherwise in writing between Customer and ROLF and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products or any other expenses. ROLF will add such taxes, duties and similar levies to the sales price where ROLF is required or enabled by law to pay or collect them and these will be paid by Customer together with the purchase price for the Products. Prices shall not include costs of transportation unless expressly agreed to otherwise.

#### 8. PAYMENT

Unless agreed otherwise and stated in the acceptance acknowledgment for an order, ROLF will invoice Customer in advance for the price of the Products, payable within eight (8) days of the order acknowledgment from ROLF. Invoices are due for payment as stated on the invoice unless agreed otherwise between ROLF and Customer in writing. Otherwise, and in addition to any other rights and remedies ROLF may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment is received in full. All payments shall be made to the designated ROLF address. If deliveries are made in installments, each installment will be invoiced separately and shall be paid when due. There are no discounts allowed for early payment unless agreed to in writing by ROLF. In the event that payments for the Products ordered are not required in advance, all deliveries of such Products agreed to by ROLF shall at all times be subject to credit approval of ROLF. If, in ROLF's sole judgment, Customer's financial condition at any time does not justify delivery of Products on the above payment terms, ROLF may nevertheless require full or partial payment in advance or other payment terms as a condition to delivery, and ROLF may suspend, delay or cancel and credit, delivery or any other performance by ROLF.

In the event of any default by Customer in the payment of any fees or charges due, or any other default by Customer, ROLF shall have the right to refuse performance and/or delivery of any Products until payments are brought current and ROLF may suspend, delay or cancel any credit, delivery or any other performance by ROLF. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

#### 9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

(a) ROLF, at its sole expense, shall: (i) defend or arrange for the defense of any legal proceeding brought by a third party against Customer to the extent that the proceeding includes a claim that any of the Products as sold by ROLF under an Agreement directly infringes the claimant's patent, copyright, trademark, or trade secret; and (ii) hold Customer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.

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(b) ROLF shall have no obligation or liability to Customer under Section 9 (a) (1) if ROLF is not: (i) promptly notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defense and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by Customer in such investigation, preparation, settlement and defense; (2) if the claim is made after a period of three (3) years from the date of delivery of the Product; (3) to the extent that any such claim arises from: (i) modification of the Products if the claim of infringement would have been avoided by use of the unmodified Products; or (ii) design, specifications or instructions furnished by Customer; (4) to the extent the claim is based directly or indirectly upon the quantity or value of products manufactured by means of the Products or upon the frequency of use or the amount of use of the Products irrespective of whether such claim alleges that the Products as such, or its use, infringe or contribute to the infringement of any intellectual property rights of the claimant; (5) for use beyond the specifications of the Products; (6) to the extent any such claim arises from Customer's manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Products after ROLF's notice to Customer that Customer should cease any such activity, provided such notice shall only be given if the Products are, or in ROLF's opinion are likely to become, the subject of such a claim of infringement; (7) for any costs or expenses incurred by Customer without ROLF's prior written consent; (8) to the extent any such claim arises from any infringement or alleged infringement of third party's intellectual property rights covering a standard set by a standard setting body and/or agreed between at least two companies; (9) for infringement of any third party's intellectual property rights covering the manufacture, testing or application of any assembly, circuit, combination, method or process in which the Products may have been used, or (10) for infringement of any third party's intellectual property rights with respect to which ROLF or any of its affiliates has informed Customer, or has published (in a datasheet or other specifications concerning the Products or elsewhere) a statement, that a separate license has to be obtained.

For such claims of infringements referred to in this Section 9(b), Customer shall indemnify ROLF and its affiliates against and hold them harmless from any damages or costs arising from or connected with such claims and shall reimburse all costs incurred by ROLF and its affiliates in defending any claim, demand, suit or proceeding for such infringement, provided ROLF gives Customer prompt notice in writing of any such suit or proceeding for infringement.

(c) If any of the Products are, or in ROLF's opinion are likely to become, the subject of a claim of infringement as referred to under Section 9 (a) above or if ROLF receives from a third party claiming infringement of third party intellectual property in relation to any of the Products, ROLF shall have the right, without obligation or liability and at its sole option, to: (i) procure for Customer the right to continue to use or sell the Products; (ii) provide replacement Products with a non-infringing product, or (iii) modify the Products in such a way as to make the modified Products non-infringing; or (iv) repurchase such Products from the Customer for the initial price paid by Customer less reasonable depreciation; or (v) suspend or discontinue supplies to Customer of the Products or parts to which such notice relates or (vi) terminate any Agreement to the extent related to such Product.

(d) Subject to the exclusions and limitations set forth in Section 6 of the Terms and Conditions, the foregoing states ROLF's entire liability and obligation to Customer and Customer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights or any other proprietary rights of any kind.

pay or collect them and these will be paid by Customer together with the purchase price for the Products. Prices shall not include costs of transportation unless expressly agreed to otherwise.

### 10. CONFIDENTIALITY

Customer acknowledges that all technical, commercial and financial data disclosed to Customer by ROLF and/or its affiliates is the confidential information of ROLF and/or its affiliates or ROLF. Customer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

### 11. EXPORT/IMPORT CONTROLS

Customer understands that certain transactions of ROLF are subject to export control laws and regulations, including but not limited to the UN, EU and the USA export control laws and regulations („Export Regulations“), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of ROLF to import, re-import or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects

to such Export Regulations and will from time to time govern the license and delivery of Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, ROLF may suspend its obligations and the Customer's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, ROLF may even terminate the relevant order in all cases without incurring any liability towards the Customer.

Customer warrants that it will comply in all respects with the import, re-import and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Customer. Customer accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Customer shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Customer shall indemnify ROLF against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Customer's or its customers' breach or non-compliance with this article.

Customer acknowledges that the obligations contained in this Agreement shall survive the termination of any agreement of other arrangement under which the products or technology was provided to Customer. In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between Customer and ROLF, Customer understands that the terms of this Agreement shall control and be binding upon Customer.

### 12. ASSIGNMENT AND SETOFF

Customer shall not assign any rights or obligations under the Agreement without the prior written consent of ROLF. Customer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Customer may have with ROLF or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Customer or on its behalf.

### 13. ANTI BRIBERY

Customer agrees that it now and in future shall comply with national law on prevention of bribery, as well as any other law transforming from ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (including the US Foreign Corrupt Practices Act). In general, the law makes it illegal to bribe or make a corrupt payment to an Official for the purpose of obtaining or retaining business, directing business to any person, or securing any improper advantage.

Customer's failure to comply with any provision of this section is grounds for immediate termination of any Agreement by ROLF (or its respective affiliate(s)), without ROLF's incurring any liability towards Customer. In the event of such termination, (i) ROLF shall be under no obligation to supply any Product to Customer, (ii) Customer shall be responsible for and indemnify ROLF for any damages, claims, penalties or other losses (including attorneys' fees) that may be asserted against or incurred by ROLF as a result of Customer's breach of this section; and (iii) ROLF shall be entitled to any other remedies available at law or in equity. The terms and conditions of this section shall survive any expiration or termination of this Agreement.

ROLF will only do business with those companies that respect the law and adhere to ethical standards and principles. Should ROLF receive any information to the contrary, ROLF will inform and Customer agrees to cooperate and provide whatever information is necessary to allow ROLF to decide whether there is any basis to any allegation received and whether the Agreement should continue. Such information includes, but is not limited to, books, records, documents, or other files.

### 14. GOVERNING LAW

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. It is expressly agreed and understood that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any offer, confirmation or Agreement. Nothing in this Section 14 shall be construed or interpreted as a limitation on either ROLF's or Customer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

### 15. ARBITRATION

Notwithstanding the above, any dispute, claim or controversy arising out of or respecting any matter contained in the Agreement including the question pertaining to the entering into of the same and its pre- and post effects, the parties to the Agreement shall, without delay, confer in good faith in an attempt to settle it but if they fail to do so within three (3) months, then upon application of either party, the matter shall be referred to and settled by arbitration before a panel of three (3) arbitrators by the American Arbitration Association in New York, NY under the then effective Rules of Commercial Arbitration of the American Arbitration Association. The language of the arbitration shall be in English. Any such arbitration will be conducted in New York City, NY.

In any arbitration involving the Agreement, the arbitrators shall not make any award which alters, changes, cancels or rescinds any provisions of the Agreement. The award of the arbitrators shall be final and binding, and judgment may be entered in any court of competent jurisdiction.

The arbitrators will be selected from a panel of persons having experience with and knowledge of ROLF's industry and one of them shall be an attorney. The arbitrators shall have no authority to award punitive damages nor any other damages not measured by the prevailing party's actual damages, and shall not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of an Agreement. Either party, before or during any arbitration may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the arbitration proceedings. Arbitration will not be required for recovery of specific property, such as actions for replevin. Neither party nor the arbitrators may disclose the existence or results of any arbitration hereunder without the prior written consent of both parties. Prior to initiation of arbitration or any other form of legal or equitable proceeding, the aggrieved party will give the other party written notice describing the claim and amount as to which it intends to initiate action.

Any such arbitration must be commenced no later than one (1) year from the date such claim or controversy arose. The award of the arbitrators shall be final and binding, and judgment may be entered thereon in any Court of competent jurisdiction.

### 16. BREACH AND TERMINATION

Without prejudice to any rights or remedies ROLF may have under the Agreement or at law, ROLF may, by written notice to Customer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (a) Customer violates or breaches any of the provisions of the Agreement;
- (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Customer, whether filed or instituted by Customer, voluntary or involuntary, a trustee or receiver is appointed over Customer, or any assignment is made for the benefit of creditors of Customer; or
- (c) the control or ownership of Customer changes.

Upon occurrence of any of the events referred to above, all payments to be made by Customer under the Agreement shall become immediately due and payable. In the event of cancellation, termination or expiration of an Agreement, the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

### 17. MISCELLANEOUS

(a) In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

(b) The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.