

Roll & Hill

Reseller Terms and Conditions

These terms and conditions (this “Agreement”) govern all sales of Roll & Hill, LLC (“Company”) Products by a third-party distributor (“Distributor”) to end-use customers. By purchasing Products from Company, Distributor agrees to this Agreement.

1. Definitions

In addition to the other terms defined in this Agreement, the following terms have the following meanings:

1.1 “Custom Products” means non-standard products.

1.2 “Intellectual Property Rights” means any and intellectual property rights, including, without limitation, patents, trademark, works of authorship, expressions, designs and design registrations, whether or not copyrightable, or forms of protection under the laws of any jurisdiction.

1.3 “Nonconforming Goods” means any Product that: (a) does not conform to the make/model number/UPC/SKU/product identifier listed in the applicable purchase order; or (b) on visual inspection, Distributor reasonably determines is defective.

1.4 “Products” means those standard products sold by Company from time to time.

1.5 “Trademarks” means those trademarks owned or licensed by Company that are listed on Schedule B.

2. Appointment as Reseller

Subject to the terms of this Agreement, Company grants to Distributor and Distributor hereby accept the non-exclusive right to market, display, and resell Products anywhere in the world (the “Territory”) to end-user customers of such Products for their own use (“End-Users”). Distributor may not (a) market, display, and resell Products to any third-party who or which it knows or should know, after inquiry, plans to resell, remarket or distribute Products, unless such third-party (a) does not hold inventory and (b) merely orders Products for the convenience of an End-User, which End-User pays the third-party for services in addition to paying for the Products (i.e. a designer or architect engaged by the End-User) and which End-User made the decision to purchase the Products. (b) or market, display, and resell Products to any third-party who or which it knows or should know, after inquiry, plans to modify Products or incorporate Products into any other products, and (c) may not modify Products or incorporate Products into any other products. Distributor acknowledges that its rights under this Agreement are non-exclusive and that the Company may sell the Products to anyone, including resellers, retailers and End-Users in the Territory.

3. Distributor Obligations

3.1 Marketing and Reselling of Products

Distributor will at its own expense: (a) use commercially reasonable efforts to promote, distribute, and transport Products in accordance with the high standards of quality practiced by Company, (b) exclusively purchase Products from Company, and will not purchase Products from any of the Company's authorized distributors, Company's authorized retailers, or other third parties, (c) obtain and maintain required certifications, credentials, licenses and permits necessary to conduct business in accordance with this Agreement, (d) if requested by Company, purchase and maintain on display in its showroom or retail location that amount of Products as determined by Company, which Products are for display only and not for resale; (e) comply with all laws in respect of the sale of Products and promptly inform the Company of any legal changes of which the Distributor becomes aware that impact the sale of Products; and (f) handle all customer service issues and customer claims and complaints.

3.2 Prohibited Acts

Notwithstanding anything to the contrary in this Agreement, and in addition to the restrictions in Section 2.1, Distributor will not (a) make, whether actually, apparently or ostensibly, any representations, warranties, guarantees, indemnities, similar claims or other commitments on behalf of Company or about the Company or the Products, that are in addition to or inconsistent with the express product warranty that the Company makes to Distributor with respect to each Product, (b) engage in any unfair, misleading or deceptive practices, including any product disparagement or "bait-and-switch" practices, (c) engage in marketing, distributing, or selling any knock-offs, counterfeits, or products substantially similar to Products, (d) violate any law in connection with its marketing, display or resale of Products and (e) sell Products online without prior written permission from Company.

3.3 Resale of the Products

Distributor will not list or advertise any Products for less than the Company's minimum advertised price ("MAP"), as listed on the Company reseller price list. . Distributor will only be allowed to advertise Products below the MAP with prior written approval from Company. Company has the right to refuse to fill any order for a Product that was advertised for less than the MAP without prior written permission. Company reserves the right to terminate this agreement immediately with Distributor for advertising Products for less than the MAP.

4. Product Sale Terms

4.1 Generally

All Products will be purchased and sold on the terms and conditions set out in this Agreement. The Company is under no obligation to supply or sell to Distributor any Products unless and until it accepts a purchase order from Distributor with respect to a sale of Products. Company may, in its sole discretion (a) cease selling any Product to Distributor, (b) offer new Products for Distributor to sell, and (c) effect changes to any Products or parts/accessories thereto (except where continued availability is required by law).

4.2 Orders Procedures

(a) Purchase Order — For all Product purchases, Distributor will issue a purchase order to Company in written form, each of which purchase orders is not binding on the Company until the Company confirms and accepts an applicable purchase order. By submitting a purchase order, Distributor merely makes an offer to purchase Products under the terms and conditions of this Agreement and on no other terms. Except for those items in the immediately following sentence, all terms and conditions contained or referenced in a

purchase order are void and have no effect. Each purchase order will set forth the (i) quantity and type of Products to be purchased, including make/model number, UPC/SKU/Product Identifier, (ii) requested delivery date, which must be no sooner than the Company's standard published lead time for Products (iii) the address where the Products will be delivered (the "Delivery Point") and a phone number for delivery. If Distributor desires a delivery date that is sooner than Company's standard published lead time for Products (a "Rush Order") it must indicate that in its purchase order, which as noted below, the Company may accept or reject in its sole discretion.

(b) **Purchase Order Acceptance** — Company may, in its sole discretion, accept or reject any purchase order. Company may accept any purchase order by confirming the order (whether by written confirmation, invoice or otherwise) or by delivering the Products, whichever occurs first. No purchase order is binding on Company unless accepted by Company as provided in this Agreement. Within two (2) business days after receiving any written confirmation from the Company, the Distributor must notify the Company of any errors in the confirmation and, if it fails to do so, the information in the confirmation will be deemed accurate.

(c) **Cancellation Of Purchase Orders** — Company may, in its sole discretion, without liability or penalty, reject or cancel any purchase order placed by Distributor and accepted by Company, in whole or in part. To cancel a purchase order, Distributor must notify Company within five (5) business days after the date of any order confirmation by the company for standard Products and within two (2) business days after the date of any order confirmation by the Company for Custom Products. Except as provided in the immediately prior sentence, Distributor will have no right to cancel or amend any purchase order once the Company accepts such purchase order and, notwithstanding the foregoing, Distributor has no right to cancel any Rush Order.

4.3 Shipment and Delivery

(a) **Generally** — Unless expressly agreed to by the Parties in writing, Distributor will select the method of shipment of and the carrier for the Products. Distributor acknowledges that the shipping method and carrier will affect the delivery date. No Products that are the subject of a purchase order will ship until the date on which all those Products are ready to ship and, therefore, the Distributor should separate Products into separate purchase orders if it requires Products to ship at different times. Products will generally ship two to three (2-3) business days after an order is complete and ready for shipment under the terms of this Agreement. If the Distributor desires to pick up the Products that are the subject of a purchase order, it may do so with the consent of the Company and at such time as the Products would otherwise be ready to ship under the terms of this Agreement.

(b) **Drop Ship** — At Company's discretion, and upon request of Distributor, Company will drop ship directly to End-User. All drop shipped orders under \$500 will incur a drop ship fee of \$35 in addition to all other fees. Unless expressly agreed to by the Parties, Company will deliver the Products to the Delivery Point, using Company's standard methods for packaging the Products.

(c) **Late Delivery** — In connection with any written acceptance of a purchase order, the Company will provide a non-binding estimated shipment date based on the Company's published standard lead times, with the exception of Custom Products that require at least sixteen (16) weeks for completion from the date the Company accepts a purchase Order. Company may notify Distributor of any shipping delays. Subject to Section 10.2, Company is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery.

4.4 Inspection

Distributor or, in the case of a drop shipped Product, a Customer will inspect Products received under this Agreement promptly upon receipt of the same. All Products will be deemed accepted by the Distributor unless it notifies the Company in writing within two (2) business days after receipt of such Product, furnishes written evidence or other documentation as required by Company, and such Products are, in fact, Nonconforming Goods, as reasonably determined by the Company, in its sole discretion. If Company determines that the Products properly rejected by the Distributor or, in the case of a drop shipped Product, a Customer within such 2 business day period are Nonconforming Goods, it will either, in its sole discretion (a) replace the Nonconforming Goods with conforming Products, or (b) refund the Price for the Nonconforming Goods together with all shipping expenses incurred by Distributor in connection with the same. If Company exercises its option to replace Nonconforming Goods, Company will, after receiving Distributor's shipment of Nonconforming Goods, ship to Distributor or the Customer, in the case of a drop shipped Product, the replaced Products to the Delivery Point. The remedies set out in this Section 4.5 are Distributor's exclusive remedy for Nonconforming Goods.

4.5 Limited Right of Return

Except as provided under Section 4.4, all sales of Products to Distributor under this Agreement are made on a one-way basis and Distributor has no right to return Products purchased under this Agreement. Notwithstanding the foregoing, the Company may accept a returned or refused item and, if it does, charge the Distributor a 15% restocking fee and maintain a credit of the remaining 85% against the next accepted purchase order submitted by Distributor.

4.6 Title and Risk of Loss

Title to Products shipped under any purchase order passes to Distributor upon Company's delivery of such Products to the carrier. Risk of loss to Products shipped under any purchase order passes to Distributor upon Company's delivery of such Products to the carrier.

4.7 Price And Payment

(a) Price — Distributor will purchase the Products from Company at the prices set out in Company's reseller price list as in effect on the date Distributor sends a purchase order to Company ("Prices"). Company may change prices at any time, with or without notice to Distributor and may in its discretion provide a discount of such prices. Company may charge 120% or more of the Prices for any Products that are subject of a Rush Order.

(b) Shipping Charges, Insurance And Taxes — Distributor will pay for shipping charges and insurance costs in accordance with Section 4.4. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Distributor under this Agreement, for all of which Distributor is responsible.

(c) Payment Terms — Unless otherwise agreed, Distributor will pay all amounts in each purchase order due to Company on or before the shipment date and no Products under a purchase order will ship until payment in full has been received by the Company for the entire purchase order. Distributor will make all payments in US dollars by check, credit card or wire transfer. All Custom Products and purchase orders of \$4,000.00 or more require a 50% deposit made with the purchase order. Company may at any time change its credit terms and require a deposit, a larger deposit or prepayment of any order if it has any reason (determined in its sole discretion) to doubt that the Distributor will pay timely or at all, which includes, without limitation, any prior late payment.

(d) Late Payments — Distributor will pay interest on all late payments, calculated daily and compounded annually, at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law. Distributor will also reimburse Company for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at Law (which Company does not waive by the exercise of any rights under this Agreement), Company may (a) suspend the delivery of any Products if Distributor fails to pay any amounts when due under this Agreement and (b) terminate this Agreement under the terms of Section 6.

5. Intellectual Property Matters

5.1 Ownership

The Company and its licensors own all Intellectual Property Rights in and to the Products and the Trademarks. Distributor does not acquire any ownership interest in any of the Company's Intellectual Property Rights under this Agreement. Any goodwill derived from the use by Distributor of Company's Intellectual Property Rights inures to the benefit of Company or its licensors, as the case may be.

5.2 Trademark License

Subject to the terms and conditions of this Agreement, Company hereby grants to Distributor a non-exclusive, non-transferable and non-sublicensable license to use Trademarks in the Territory during the Term solely on or in connection with the promotion, advertising and resale of Products in accordance with the terms and conditions of this Agreement. All uses by the Distributor of the Trademarks must be pre-approved by the Company. If the Company supplies the Distributor with promotional materials (e.g. catalogs, photography, samples), the Distributor may not modify those materials and may only use them to promote Products. Distributor will promptly discontinue the display or use of any trademark to change the manner in which a trademark is displayed or used with regard to the Products when requested by Company and upon the termination of this Agreement. Other than the express licenses granted by this Agreement, Company grants no right or license to Distributor by implication, estoppel or otherwise to the Products or any Intellectual Property Rights of Company.

5.3 Prohibited Acts

Distributor will not: (a) take any action that interferes with any of Company's Intellectual Property Rights; (b) challenge any right, title or interest of Company in or to Company's Intellectual Property Rights; (c) register or apply for registrations, anywhere in the world, for Trademarks or any other trademark that is similar to Trademarks that incorporates Trademarks in whole or in confusingly similar part; (d) use any mark, anywhere, that is confusingly similar to Trademarks; (e) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Products) or any Trademark or (f) alter, obscure or remove any of Trademarks or trademark or copyright notices or any other proprietary rights notices placed on Products, marketing materials or other materials that Company may provide.

5.4 Company Trademark Notices

Distributor will ensure that all Products sold by Distributor and all related quotations, specifications and descriptive literature, and all other materials carrying Trademarks, are marked with appropriate trademark notices in accordance with Company's instructions and, when use of the name of a Product designer is approved, must be credited as follows: "[name of designer] for Roll & Hill."

6. Term and Termination

The term of this Agreement commences on the Effective Date and continues, unless and until terminated as provided under this Agreement. Either party may terminate this Agreement

without cause by providing the other at least ten (10) days prior written notice to the Distributor. A termination of this Agreement will not affect any purchase orders that have been accepted by the Company prior to the effective date of such termination, all of which purchase orders will remain in effect in accordance with the terms of this Agreement.

7. Warranty Disclaimer

Except for the Company's standard published warranty for Products, neither Company nor any person on Company's behalf has made or makes any express or implied representation or warranty whatsoever, including any warranties of merchantability, fitness for a particular purpose, non-infringement, or performance of Products to standards specific to the country of import, whether arising by law, course of dealing, course of performance, usage of trade or otherwise, all of which are expressly disclaimed. Distributor acknowledges that it has not relied on any warranty or representation made by the Company or any person.

8. Indemnification

Distributor will indemnify, hold harmless, and defend Company and its parent, officers, directors, partners, members, shareholders, employees, agents, affiliates, successors and permitted assigns (collectively, "Company Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, "Losses), incurred by Company Indemnified Party or awarded against Company Indemnified Party in a final non-appealable judgment, arising out of or relating to any claim of a third party: (a) alleging or relating to any act or omission of Distributor or its employees or agents (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; (b) alleging or relating to any bodily injury, death of any person or damage to real or tangible personal property caused by the willful or grossly negligent acts or omissions of Distributor or its employees or agents; (c) relating to a purchase of a Product by any person or entity purchasing directly or indirectly through Distributor; and (d) relating to any failure by Distributor or its employees or agents to comply with the terms of this Agreement; (e) relating to any claims related to drop shipments.

9. Limitation Of Liability

9.1 Except for obligations to make payment under this agreement and except for any breach by Distributor of section 3.2 or 5, in no event is either party or its representatives liable for cosequential, indirect, incidental, special, exemplary, punitive or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to any breach of this Agreement, regardless of whether the damages were foreseeable, whether or not the breaching party was advised of the possibility of the damages, and the legal or equitable theory (contract, tort or otherwise) on which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. The Company has no liability to any customer as a result of the sale of Products to customers. The Distributor is responsible for collecting any amounts owed to it by a customer.

9.2 Except for obligations to make payment under this Agreement and except for any breach by distributor of section 3.2 or 5, in no event will each party's [aggregate liability for each claim arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid and amounts accrued but not yet paid to company under this Agreement in the twelve (12) months preceding the event giving rise to the claim. The foregoing limitations apply even if the remedies under this Agreement fail of their essential purpose.

10. Miscellaneous

10.1 Amendment

No amendment to or modification of this Agreement will be effective unless it is in writing and signed by an authorized representative of each Party.

10.2 Force Majeure

No Party will be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control ("Force Majeure Events"), including the following force majeure events: acts of God, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, legal requirements, embargoes, governmental action, and strikes, labor stoppages or slowdowns or other industrial disturbances. The Impacted Party will give Notice fifteen (15) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party will use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

In addition to the foregoing, the Product may be one that the Company is licensed or authorized to manufacture or sell by a third-party (a "Licensed Product") pursuant to an agreement between the Company and the third-party (the "License Agreement"). If a License Agreement expires, is terminated or changed for any reason and the Company's ability to sell or manufacture Licensed Products terminates or is otherwise impaired as a result of that expiration, termination or change, the Company will be relieved of any obligation to deliver or sell any such Licensed Products regardless of any other provision of this Agreement and the Company will not be in breach of any obligation to provide the Licensed Product to Distributor.

10.3 Distributor Representations and Warranties

Distributor represents and warrants to Company that it has full power and authority to enter into this Agreement.

10.4 Status as Independent Contractor

Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties or an employee/employer relationship. Distributor is an independent contractor under this Agreement. Distributor has no right or authority to assume or create any obligations on behalf of or in the Company or to bind the Company in any way.

10.5 Assignment

Distributor may not assign, voluntarily, by operation of law, or otherwise. Any attempt to assign this Agreement or any part thereof in contravention of the foregoing, and without the written consent of Company, will be void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of each party's permitted successors and assigns.

10.6 Choice of Law

This Agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to conflicts of law principles.

10.7 Entire Agreement

This Agreement, including all exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations and agreements, whether written or oral. Except for those items contemplated specifically by Section 4.2(a)(i), (ii), and (iii), terms or conditions included or referenced in any purchase order issued by Distributor will be null and void and of no force or effect and will not be incorporated into or a part of this Agreement. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement. The headings and captions are inserted for convenience of reference only and do not constitute a part of or modify any of the terms of this Agreement.

10.8 Notices

All notices and communications hereunder are required to be sent to the physical or the email address stated below (or such other address as subsequently notified in writing to the other party). If by physical delivery, notice will be by: (a) personal or next day delivery or (b) sent by express courier with written verification of delivery. All notices so given will be deemed given upon the earlier of the date of delivery if delivered periodically or one (1) day after dispatch if sent by courier. Either party may change the address to which notice or payment is to be sent by written notice to the other under the provisions of this paragraph.

If to Distributor:

The address or email address set forth in the last purchase order or
Any other address or email address on file with the Company

If to Company:

Roll & Hill, LLC, 32 33rd Street, Unit 10, Brooklyn, NY 11232 or
jason@rollandhill.com

10.9 Severability

If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force and effect and the unenforceable provision will be replaced with an enforceable provision that most nearly achieves the intent and economic effect of the unenforceable provision.

10.10 Waiver

No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed by both parties. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.