

TERMS AND CONDITIONS OF CONTRACT FOR SALE OF GOODS FOR QUOTATION AND NON QUOTATION SALES

1. DEFINITIONS

- (a) In these Conditions the following terms shall have the following meanings unless the context shall require otherwise:
- (i) 'Accession' means any Goods which are installed in or affixed to other goods;
 - (ii) 'Default' means a default under clause 12 of these Conditions;
 - (iii) 'Conditions' means these terms and conditions of sale and any written variations by Vicmesh;
 - (iv) 'Customer' means a customer specified in a Vicmesh 30 day credit application form (or if there is no such application, the person placing the Order, or on whose behalf an Order is placed with Vicmesh and/or the purchaser of any Goods or Works and in the case of a company shall include its successors, agents and permitted assigns and in the case of an individual shall include that individual's administrators and executors;
 - (v) 'Goods' means goods, products and materials supplied by Vicmesh to the Customer;
 - (vi) 'GST' means any tax including any additional tax imposed on the supply of or payment for Goods which is imposed or assessed under GST Law;
 - (vii) 'GST Law' means A New Tax System (Goods and Services Tax) Act 1999 (Cth), and all other related and ancillary legislation;
 - (viii) 'Order' means an invitation to treat by the Customer for the supply of Goods and/or the provision of Works;
 - (ix) 'Vicmesh' means Vic Mesh Pty Ltd (ACN 105 209 989) and its successors and assigns;
 - (x) 'Working Documents' shall mean architectural drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other documents, together with any variation or site instruction provided by the Customer to Vicmesh; and
 - (xi) 'Works' shall mean any raw materials purchased, labor performed, and/or services provided by Vicmesh in relation to or in connection with the supply of Goods pursuant to these Conditions;
 - (xii) 'Writing' means hard copy, signed by a Vicmesh authorized person in writing, or electronic, transmitted by a Vicmesh person authorized in writing; and
 - (xiii) 'PPSA' means the Personal Property Securities Act 2009 (Cth).
 - (xiv) 'Processed Goods' means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass.
 - (xv) If there shall be more than one (1) Purchaser these Conditions shall bind each of them jointly and severally.
 - (xvi) The terms 'financing statement', 'proceeds', 'purchase money security interest', 'security Agreement', 'security interest' and
 - (xvii) 'verification statement' have the respective meanings given to them under, or in the context of, the PPSA.

2. THE CONTRACT

- (a) The purchase of Goods and/or the provision of Works by Vicmesh to the Purchaser are governed by these Conditions, unless varied or authorized in writing by Vicmesh.
- (b) An Order may be made by a Customer in writing or verbally.
- (c) An Order is accepted by Vicmesh when the Customer:
 - (i) accepts a quotation given by Vicmesh;
 - (ii) Is sent a confirmation of the Order from Vicmesh;
 - (iii) Vicmesh commences the Works associated with the Order;
 - (iv) Vicmesh appropriates the relevant Goods for delivery to the Customer; or
 - (v) Vicmesh delivers the relevant Goodswhichever occurs earlier.
- (d) Once an Order has been accepted by Vicmesh the Customer cannot change or cancel an Order without the express written consent of Vicmesh.
- (e) The entire agreement between Vicmesh and the Purchaser with respect to the purchase of Goods and/or the provision of Works is governed by:
 - (i) these Conditions; and
 - (ii) any other terms and conditions which are imposed by law and cannot be excluded; and all other prior negotiations, proposals
 - (iii) and correspondence are superseded by these Conditions, and
 - (iv) The Guarantees provided with respect to the Purchaser.and all other prior negotiations, proposals and correspondence are superseded by these Terms and Conditions.
- (f) If at any time in relation to an Order, the supply of Goods or the provision of Works the Customer provides, refers to, submits or otherwise uses or purports to use terms and conditions other than these Conditions, the Customer agrees that such terms

3. VICMESH QUOTATIONS

- (a) A quotation is not an offer by Vicmesh. Vicmesh may withdraw or alter the quotation at any time without notice.
- (b) Unless Vicmesh withdraws the quotation, the quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of the quotation.
- (c) Any prices quoted apply only if all of the Goods and/or the Works required, included in the quotation, are purchased. If the Purchaser orders part

4. WORKING DOCUMENTS AND SCHEDULING

- (a) Where the Customer (or a third party on its behalf) provides Working Documents to Vicmesh for the scheduling or determination of the quantities of goods to be supplied:
 - (i) Vicmesh relies strictly on the accuracy of those Working Documents; and

- (ii) Vicmesh will endeavor to accurately estimate or schedule the correct quantities of Goods from those Working Documents as best it can, however it shall not be liable for any errors in the estimation or scheduling of the Goods. Vicmesh shall not be liable for the costs
- (iii) of any rectifications of such errors.
- (b) Vicmesh takes no responsibility should any Working Documents or other documents provided by or on behalf of the Customer breach intellectual property rights of any third party and the Customer agrees to indemnify Vicmesh against any such claim by a third party.

5. QUANTITIES – Steel Reinforcing Standard Grades of Materials and Measures

- (a) Subject to clause 5(b), Vicmesh will use its reasonable endeavors to:
 - (i) supply Goods having the grade of material specified in the Order Acknowledgment (if applicable); and
 - (ii) Ensure that any grade of material as specified in the Order Acknowledgment will, unless otherwise agreed, be in accordance with the applicable Australian Standards AS/NZS4671 and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of Vicmesh.
- (b) Unless otherwise agreed in writing:
 - (i) all Goods will be supplied and delivered in accordance with Vicmesh standard practice and shall be subject to Vicmesh normal tolerances, limitations and variations of the following: dimension, weight, shape, composition, mechanical properties, structure, quantity and service conditions;
 - (ii) any statements made by Vicmesh as to weight, length, quantity or other characteristics of Goods are approximate and Vicmesh may supply Goods on an actual or calculated basis (calculated in accordance with applicable Australian standards); and
 - (iii) Vicmesh statements as to weight, length, quantity or other characteristics are final (in the absence of manifest error) and will not be contested by the Customer unless the Customer has given Vicmesh written notice of any error within 14 days of delivery and a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

6. PRICES AND GST

- (a) Unless otherwise stated, all prices quoted by Vicmesh are GST exclusive. In addition to the price for the Goods and/or the provision of Works, the Customer must pay to Vicmesh:
 - (i) an amount equal to any GST Vicmesh must pay for any supply by Vicmesh under these Conditions; and
 - (ii) all excise, duties, or other taxes or charges which may be established or levied by a government authority (domestic or foreign) upon the Goods or Works or any part thereof, or the manufacture, use, sale or delivery thereof, irrespective of whether such excise, duties, taxes or charges are included in the invoice or the quotation or not.
- (b) The Customer must pay the amounts pursuant to clause 6(a), without deductions or set off of any other amounts, at the same time and on the same basis as the Customer pays the price (or the first part of it if Vicmesh agrees to the Customer paying the price in instalments).
- (c) If the Customer fails to pay the amounts pursuant to clause 6(a) when due, Vicmesh may recover the unpaid amounts from the Customer and the Guarantors as a debt under these Conditions.
- (d) Vicmesh at its discretion may apply interest upon any unpaid amounts at a rate of 10% per annum, with interest to be compounded daily until the unpaid amounts are paid in full.
- (e) Unless a tax invoice for an amount payable under clause 6(a)(i) has already been provided, Vicmesh must deliver a tax Invoice to the Customer within 14 days after receiving such payment.
- (f) Prices quoted are those ruling at the date of issue of the quotation and are subject to adjustment (in the absolute discretion of Vicmesh) for any variation in:
 - (i) the costs of labor, material or transport;
 - (ii) exchange rates, customs duty, freight or insurance;
 - (iii) suppliers' prices;

- (iv) the amount of Works required to produce the Goods due to a variation in specification approved by the parties; and
- (v) any other charges affecting the cost of production.
- (g) If Vicmesh suspends Works on any order due to the Customer's instructions or lack of instructions, Vicmesh may (in its absolute discretion) increase the quoted price to cover any extra expenses or costs Incurred.
- (h) Vicmesh reserves the right to charge additional administration fees (such as commercial credit account keeping fees) as determined by Vicmesh from time to time.

7. Payment

- (a) Where the Customer has an approved credit account with Vicmesh, the Customer shall pay for the Goods and/or Works within 30 days of the sales invoice date.
- (b) If the Customer does not have an approved credit account with Vicmesh, the Goods and/or Works must be paid for in full by cash or by bank cheque before Vicmesh starts work on the Customer's Order.
- (c) Credit card payment will incur a merchant fee unless otherwise stated.

8. DELIVERY

- (a) Vicmesh accepts no responsibility or duty to deliver, however it may elect to arrange delivery at its absolute discretion, at the Customer's cost and risk in all things.
- (b) If the quoted price from Vicmesh, for the supply of Goods, is an "ex-factory" price, Vicmesh shall deliver the Goods to the Customer at the premises of Vicmesh.
- (c) If the quoted price from Vicmesh, for the supply of Goods, is an "as delivered" price, Vicmesh shall deliver the Goods to the Customer pursuant to clause 8(d).
- (d) Where Vicmesh does deliver the Goods and/or Works to the Customer:
 - (i) the Customer shall nominate the site for delivery in writing to Vicmesh prior to the delivery of the Goods;
 - (ii) the Customer will ensure that an area is available which complies with all applicable Occupational Health and Safety and Welfare Legislation; and
 - (iii) Vicmesh shall satisfy its obligation by delivering the Goods on a truck at a curb or site adjacent to the Customer's job, store or site.
- (e) All delivery dates and times are only an estimate. Vicmesh is not liable to the Customer for any loss or damage (including consequential loss or damages) arising from late delivery.
- (f) Where the Customer does not accept delivery of Goods or allow provision of the Works which it has ordered from Vicmesh, when the Goods are ready for delivery or when the Works are to be provided by Vicmesh, the Customer shall be liable for additional charges at Vic Mesh's current rates for storage and/or double handling.
- (g) If, due to any cause whatsoever, Vicmesh is unable to supply particular Goods, Vicmesh may at its discretion supply to the Customer similar Goods, which in the opinion of Vicmesh are an appropriate substitute, without prior reference to the Customer. For the avoidance of doubt, Vicmesh shall not be liable for any delay, failure or inability to deliver, or for any loss or cost (including but not limited to consequential loss) incurred by the Customer.
- (h) The Customer must ensure that a representative of it is available at the time of delivery to acknowledge delivery by signing the delivery receipt. If a representative of the Customer is not in attendance when the Goods are delivered, Vicmesh reserves the right to unload the Goods at that time.
- (i) The Customer shall only be able to make any claim or demand on Vicmesh in respect of any shortages or inaccuracies in the goods delivered if, and only if, Vicmesh is so notified in writing within 24 hours of delivery or collection of the Goods.
- (j) Vicmesh will endeavor to rectify any inaccuracies or shortages as soon as possible after being notified in writing pursuant to clause 8(i) but will not be responsible for any loss or damage resulting from the shortage or inaccuracy.
- (k) Vicmesh will not be responsible for any claim from the Customer arising from or in any way relating to the unloading of the Goods.

- (l) Vicmesh may, in its absolute discretion, charge the Customer for any frustrated delivery to cover Vicmesh's cost of attempts to deliver.
- (m) Unless agreed in writing to the contrary, Vicmesh reserves the right to make part deliveries of any Order. A failure by Vicmesh to make delivery of the entire Order shall not invalidate the Customer's Order. If Vicmesh only delivers part of the Goods which are ordered by the Customer, Vicmesh shall still be entitled to invoice the Customer for those Goods delivered.
- (n) In the event of Vicmesh or its officers, agents or employees entering upon any property at the actual or implied request of the Customer, Vicmesh will not accept any responsibility for any damages suffered by the Customer or the Customer's officers, agents or employees to the Customer's property.
- (o) In the event that a vehicle engaged in the delivery of Goods to the Customer's property is disabled due to the condition of the Customer's property, the Customer shall be liable for all the cost of the salvage and repair of the vehicle.
- (p) The Customer shall indemnify Vicmesh and keep Vicmesh indemnified against any loss or damage suffered by Vicmesh or as a consequence of Vicmesh becoming liable to any third party directly or indirectly as a result of Vicmesh or its officers, agents or employees entering

9. RISK AND LEGAL TITLE

- (a) Title and risk in the Goods shall pass to the Customer on the occurrence of either delivery of the Goods to the Customer or the collection of the Goods by the Customer. However, title in the Goods shall not pass to the Customer until full payment is received by Vicmesh for the Goods and any other goods sold to the Customer by Vicmesh and until all cheques and other instruments are honored or met in full.
- (b) If the Goods are in the possession of the Customer at any time prior to the title therein passing to the Customer, the Customer shall retain the Goods in a good and merchantable condition until the Goods are either paid for or collected, as a bailee only.
- (c) In the event the Customer fails to pay for the Goods within the term specified by Vicmesh, Vicmesh may at its discretion, even after delivery of the Goods, register a security interest with respect to the Goods pursuant to the PPSA. The form and nature of the registration of security may include a registration upon the PPSR of a security interest with respect to the Goods.
- (d) The Customer shall in all cases be responsible for the payment of any insurance in respect of the Goods and in the event of Vicmesh contracting for any such insurance the Customer will reimburse, on demand, the cost of the relevant insurance premium to Vicmesh.
- (e) Until full payment is received by Vicmesh, the Customer shall be deemed to be a bailee of the Goods for and on behalf of Vicmesh and Vicmesh shall be entitled to any rights and remedies of a bailor.
- (f) Where the Customer purports to sell Goods to which the Customer does not have title, or otherwise deals with any interest in the Goods in any form to a third party (including when the Goods have been mixed with other Goods by manufacturing or otherwise), the Customer does so solely as trustee for Vicmesh.

10. SECURITY INTEREST, CHARGE, AND CONTRACTING OUT OF THE PPSA

- (a) The Customer acknowledges that each contract formed as a result of an Order pursuant to clause 2 of these Conditions constitutes a security agreement and that Vicmesh may register a financing statement on behalf of itself in respect of the security interests provided for by the contracts formed.
- (b) The Customer grants to Vicmesh a security interest in the Goods to secure payment of all monies which are payable by the Customer to Vicmesh from time to time in respect of Orders placed, Goods delivered, and/or Works provided.
- (c) The security interest referred to in clause 10(b):
 - (i) Extends to and continues in all proceeds, Accessions and Processed Goods; and
 - (ii) Is a purchase money security interest to the extent to which it secured payment of the part of the monies which may be outstanding which comprise any aggregate unpaid purchase price of Goods.
- (d) The Customer must not do or permit anything to be done that may result in the purchase money security interest ranking in priority behind any other security interest.

- (e) The Customer:
 - (i) waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under the Contract; and
 - (ii) contracts out of its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in paragraph (b)).
- (f) To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.

11. WARRANTIES AND LIMITATION OF LIABILITY

- (a) To the extent permitted by law these Conditions expressly exclude every warranty, condition, liability or representation concerning the Goods or Works.
- (b) The liability of Vicmesh and its employees or agents for a breach of any warranty or liability which cannot be excluded, restricted or modified by law, is limited, at Vicmesh's option to:
 - (i) in the case of Goods, any one or more of the following:
 - (A) the replacement of the relevant Goods or supply of equivalent Goods; or
 - (B) the repair of the Goods; or
 - (C) subject to the prior agreement of Vicmesh and the Customer, the payment of the costs of replacing the Goods or the payment of having the Goods repaired.
 - (ii) in the case of Works:
 - (A) the supplying of the Works again; or
 - (B) the payment of the cost of having the relevant Works provided again.
- (c) To the extent permitted by law, Vicmesh, its employees or agents shall not be liable for any loss or damage (including any consequential or special loss or damage) of any kind whatever, even if due to the negligence of Vicmesh, its employees or agents.
- (d) Except as required by law, Vicmesh will not be obliged to accept Goods returned for any reason.
- (e) The Customer indemnifies Vicmesh, its employees and agents from every liability, loss, damage, cost or expense, directly or indirectly incurred or suffered by Vicmesh caused by or contributed to by any of the following:
 - (i) Vicmesh complying with any instruction of the Customer about the Goods;
 - (ii) the Customer's failure to:
 - (A) with any law about the Goods or their use;
 - (B) take reasonable precaution to detect any matters in relation to which Vicmesh may become liable in any way (for example, under Part VA of the Trade Practices Act 1974 (Cth);
 - (C) take any reasonable precaution to bring to the attention of any potential users of the Goods any dangers associated with the Goods.
 - (iii) the use or operation of the Goods by the Customer; or
 - (iv) any negligence or breach of duty by the Customer of these conditions.

12. DEFAULT

- (a) The Customer shall be in default under these Conditions, where:
 - (i) the Customer fails for any reason to pay any monies when due to Vicmesh; or
 - (ii) the Customer fails to perform any of its obligations under these Conditions; or
 - (iii) the Customer exceeds the limit of any credit account with Vicmesh;
 - (iv) The Customer purports to cancel or change an Order after it has been accepted in accordance with clause 2(c) of these Conditions without the express written consent of Vicmesh;

- (v) any of the assets of the Customer are subject to a warrant of execution or similar for more than seven days after its levy or issue; or
 - (vi) the Customer suspends payment of its debts or is presumed to be insolvent within the meaning of the Corporations Act 2001 (Cth) or enters or proposes to enter into any arrangement, scheme or
 - (vii) composition with its creditors or ceases or threatens to cease carrying on business or is wound up or suffers the appointment of any external administration.
- (b) In the case of an event of a Default by the Customer, the Customer shall be in breach of these Conditions and Vicmesh shall be entitled to do any one or more of the following:
- (i) treat the whole of these Conditions as repudiated and sue the Customer for damages for breach of contract;
 - (ii) refuse to supply the Goods or provide the Works to the Customer;
 - (iii) treat any other contract between itself and the Customer as repudiated;
 - (iv) claim return of any Goods in the possession of the Customer where title has not passed to the Customer, pursuant to clause 9; and
 - (v) seek indemnity from the Customer for VicMesh's legal costs, fees, charges, expenses and outgoings on a solicitor and own client basis following from a Default.
- (c) The Guarantor(s) hereby charge all their real and personal property for the Company's indebtedness to Vicmesh.
- (d) For the purposes of clause 12(b)(i) above, the Customer agrees that in the event of a default under clauses 12(a)(v), (vi), and/or (vii), should Vicmesh determine in its absolute discretion that the Goods and/or Works the subject of any outstanding Orders of the Customer are unable to be repurposed to other customers of Vicmesh's business in order for Vicmesh to mitigate its loss, then Vicmesh may elect to seek liquidated damages from the Customer in an equal to the amount 90% of the amount payable by the Customer to Vicmesh in respect of any Order.
- (e) The Customer agrees that the calculation of Vicmesh's liquidated damages set out in clause 12(d) above is a genuine pre-estimate of the loss likely to be suffered by Vicmesh in respect of a given Order should these Conditions be repudiated by a Customer as a result of a default under clauses 12(a)(v), (vi), and (vii).
- (f) Nothing in Clause 12(d) above is to be taken as limiting Vicmesh's rights to otherwise pursue the Customer for damages resulting from a default of these Conditions.

13. FORCE MAJEURE

If Vicmesh is prevented (directly or indirectly) from supplying the Goods or providing the Works or any part thereof by reason of acts of God, strikes, lockouts, trade disputes, fire, breakdowns, delay in the manufacture of the Goods for any reason whatsoever, interruption of transport, government action, non- delivery or raw materials or any cause whatsoever (whether or not of a like nature to those specified above) outside of its control, Vicmesh shall be under no liability whatsoever to the Customer and Vicmesh shall be entitled, in its absolute discretion, to give notice to the Customer to either cancel the contract or to extend the time for performance by Vicmesh of its obligations.

14. NOTICE

- (a) A notice, consent or other communication under these Conditions is only effective if it is in writing, signed and either left at either the addressee's address or sent to the address by mail or faxed or emailed to the addressee's email address. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by fax or email, it is taken to have been received when the addressee actually receives in full and in legible form.
- (b) A person's address and fax number are those set

15. GOVERNING LAW

These Conditions shall be governed by the laws of the State of Victoria and the parties submit to the non- exclusive jurisdiction of the courts of that State.

16. NO ASSIGNMENT

The Customer must not assign its benefits or obligations under these Conditions without the prior consent in writing of Vicmesh.

17. NO WAIVER

- (a) A party waives a right relating to these Conditions only by notice to the other party that it waives that right.
- (b) A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or any other right.

18. SEVERANCE

If a provision of these Conditions would, but for this clause, be unenforceable:

- (a) The provision must be read down to the extent necessary to avoid that result; and
- (b) If the provision cannot be read down to that extent, it must be served

19. CONFIDENTIALITY

Vicmesh and the Customer agree that these Conditions and any other information furnished by one part to the other party pursuant to these Conditions shall be and remain confidential between the parties and the parties shall not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party (which, for the avoidance of doubt, excludes financial or legal advisors of a party to these Conditions and a related body corporate of a party to these Conditions) unless:

- (a) As required by law;
- (b) Prior approval in writing has been obtained from the other party; or
- (c) The information is in the public domain prior to the disclosure by the party.

20. PRIVACY

- (a) Where the Customer provides Vicmesh with personal information (as defined in the Privacy Act 1988 (Cth)) about any individual (including the Customer where applicable), the Customer must have that individual's consent to provide that information to the Supplier having regard to and for the purposes set out in this clause 20 and in Vicmesh's Privacy Policy (which is available on www.vicmesh.com.au and contains further information about Vicmesh's handling of personal information, types of information it collects, types of service providers used, countries to which personal information is likely to be disclosed, accessing and correcting personal information, privacy complaints, the credit reporting bodies used, information shared with those bodies and individuals' rights in relation to their information held by those bodies).
- (b) Vicmesh may collect, use and disclose that personal information for purposes relating to a Contract and/or an Order and to the Customer's credit application and account. This includes assessing the Customer's application, monitoring the value of and enforcing the security interests created by a Contract and/or Order, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application, order fulfilment and delivery, market research, planning, business development, debt collection and customer relationship management. Vicmesh may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Customer where the Customer is an individual and/or Guarantors), and deal with personal information in connection with any acquisition or potential acquisition of any part of the Vicmesh's business. Without the personal information sought, Vicmesh may not be able to do these things, including fulfill Orders and process credit applications.
- (c) Vicmesh may provide marketing communications to the Customer by email and other means on an ongoing basis, unless the Customer opts out by contacting Vicmesh or where legal restrictions apply.

- (d) Vicmesh may exchange personal information with any of its related bodies corporate, the Customer's guarantors and prospective guarantors (e.g. for the purpose of them deciding whether to act as guarantor), the Customer's representatives and Vicmesh's service providers. Vicmesh may also exchange that information with other credit providers for purposes including to: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these third parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, the Customer acknowledges and agrees for itself and as agent for each of its officers, employees, agents, contractors, guarantors and representatives that:
- (i) privacy obligations overseas may not always apply or may differ from Australian privacy laws;
 - (ii) Vicmesh may not be accountable for the third party under the Privacy Act or for the overseas recipient's storage, use or disclosure of the information;
 - (iii) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and
 - (iv) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).