

# 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) "Default" means a default under clause 11 of these Conditions;
  - (ii) "Conditions" means these terms and conditions of sale and any written variations by VicMesh;
  - (iii) "Goods" means goods, products and materials supplied by VicMesh to the Purchaser;
  - (iv) "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.
  - (v) "GST Law" means A New Tax System (Goods and Services Tax) Act 1999 (Cth), and all other related and ancillary legislation;
  - (vi) "Order" means an invitation to treat by the Purchaser for the supply of Goods and/or the provision of Works;
  - (vii) "Purchaser" means 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;
  - (viii) "VicMesh" means Vic Mesh Pty Ltd (ACN 105 209 989) and its successors and assigns;
  - (ix) "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 Purchaser to VicMesh; and
  - (x) "Works" shall mean any labor performed and/or services provided by VicMesh in relation to or in connection with the supply of Goods pursuant to these Conditions.
- (b) If there shall be more than one (1) Purchaser these Conditions shall bind each of them jointly and severally.
- (a) "PPSA" means the Personal Property Securities Act 2009 (Cth);
- (x) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "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 authorised in writing by VicMesh.

(b) The entire agreement between VicMesh and the Purchaser with respect to the purchase of Goods and/or the provision of Works is:

- (i) these Conditions; and
- (ii) any other terms and conditions which are imposed by law and cannot be excluded, and all prior negotiations, proposals and correspondence are superseded by these Conditions.

## 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 only of the Goods and/or Works quoted, VicMesh may submit a revised quotation.

## 4. WORKING DOCUMENTS AND SCHEDULING

(a) Where the Purchaser (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 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 Purchaser breach intellectual property rights of any third party and the Purchaser 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 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, quality 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 Purchaser 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 Purchaser 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 Purchaser pays the price (or the first part of it if VicMesh agrees to the Purchaser paying the price in installments).
- (c) If the Purchaser fails to pay the amounts pursuant to clause 6(a) when due, VicMesh may recover the unpaid amounts from the Purchaser as a debt under these Conditions.
- (d) 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 Purchaser within 14 days after receiving such payment.

(e) 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 labour, 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.
- (f) If VicMesh suspends Works on any order due to the Purchaser's instructions or lack of instructions, VicMesh may (in its absolute discretion) increase the quoted price to cover any extra expenses or costs incurred.
- (g) 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 Purchaser has an approved credit account with VicMesh, the Purchaser shall pay for the Goods and/or Works within 30 days of the sales invoice date.
- (b) If the Purchaser 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 Purchaser's Order.
- (c) Credit Card payment will incur a merchant fee unless otherwise specified

## 8. DELIVERY

- (a) VicMesh accepts no responsibility or duty to deliver, however it may elect to arrange delivery at its absolute discretion, at the Purchaser'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 Purchaser 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 Purchaser pursuant to clause 8(d).
- (d) Where VicMesh does deliver the Goods and/or Works to the Purchaser:
  - (i) The Purchaser shall nominate the site for delivery in writing to VicMesh prior to the delivery of the Goods;
  - (ii) The Purchaser 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 Purchaser's job, store or site.
- (e) All delivery dates and times are only an estimate. VicMesh is not liable to the Purchaser for any loss or damage (including consequential loss or damages) arising from late delivery.
- (f) Where the Purchaser 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 Purchaser shall be liable for additional charges at VicMesh'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 Purchaser similar Goods, which in the opinion of VicMesh are an appropriate substitute, without prior reference to the Purchaser. 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 Purchaser.
- (h) The Purchaser 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 Purchaser is not in attendance when the Goods are delivered, VicMesh reserves the right to unload the Goods at that time.
- (i) The Purchaser 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 Purchaser arising from or in any way relating to the unloading of the Goods.

(l) VicMesh may, in its absolute discretion, charge the Purchaser 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 Purchaser's Order. If VicMesh only delivers part of the Goods which are ordered by the Purchaser, VicMesh shall still be entitled to invoice the Purchaser 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 Purchaser, VicMesh will not accept any responsibility for any damages suffered by the Purchaser or Purchaser's officers, agents or employees or to the Purchasers property.
- (o) In the event that a vehicle engaged in the delivery of Goods to the Purchasers property is disabled due to the condition of the Purchaser's property, the Purchaser shall be liable for the cost of the salvage of the vehicle.
- (p) The Purchaser 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 any property at the actual or implied request of the Purchaser or unloading the Goods.

## 9. RISK AND LEGAL TITLE

- (a) Title and risk in the Goods shall pass to the Purchaser on the occurrence of either delivery of the Goods to the Purchaser or the collection of the Goods by the Purchaser. However title in the Goods shall not pass to the Purchaser until full payment is received by VicMesh for the Goods and any other goods sold to the Purchaser 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 Purchaser at any time prior to the title therein passing to the Purchaser, the Purchaser shall retain the Goods in a good and merchantable condition until the Goods are either paid for or collected, as a bailee only.
- (c) The Purchaser 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 Purchaser will reimburse on demand the cost of the relevant insurance premium to VicMesh.
- (d) Until full payment is received by VicMesh the Purchaser shall be deemed to be a bailee of the Goods for and on behalf of VicMesh and VicMesh shall be entitled to all rights and remedies of a bailor.
- (e) Where the Purchaser purports to sell Goods to which the Purchaser 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 Purchaser does so solely as trustee for VicMesh and the Purchaser shall receive proceeds of those Goods, as trustee for VicMesh and on its account shall keep such proceeds in a separate account.

## 10. CONTRACTING OUT OF THE PPSA

(a) 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)).
- (b) 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 Purchaser, 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 Purchaser 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 Purchaser about the Goods;
- (ii) the Purchaser's failure to:
  - (A) comply 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 Purchaser; or
- (iv) any negligence or breach of duty by the Purchaser of these Conditions.

## 12. DEFAULT

- (a) The Purchaser shall be in default under these Conditions, where:
  - (i) the Purchaser fails for any reason to pay any monies when due to VicMesh, or
  - (ii) the Purchaser fails to perform any of its obligations under these Conditions, or
  - (iii) the Purchaser exceeds the limit of any credit account with VicMesh; or
  - (iv) any of the assets of the Purchaser are subject to a warrant of execution or similar for more than seven days after its levy or issue; or
  - (v) the Purchaser 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 composition with its creditors or ceases or threatens to cease carrying on business or is wound up or suffers the appointment of any external administrator.

(b) In the case of an event of a Default by the Purchaser, the Purchaser 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;
- (ii) refuse to supply the Goods or provide the Works to the Purchaser;
- (iii) treat any other contract between itself and the Purchaser as repudiated;
- (iv) claim return of any Goods in the possession of the Purchaser where title has not passed to the Purchaser, pursuant to clause 9; and
- (v) seek indemnity from the Purchaser for VicMesh's legal costs, fees, charges, expenses and outgoings on a solicitor and own client basis flowing from a Default.

(c) The Guarantor(s) hereby charge all their real and personal property for the Company's indebtedness to VicMesh

## 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 of raw material or any cause whatsoever (whether or not of a like of nature to those specified above) outside its control, VicMesh shall be under no liability whatsoever to the Purchaser and VicMesh shall be entitled, in its absolute discretion, to give notice to the Purchaser to either to cancel the contract or to extend the time for the performance by VicMesh of its obligations.

## 14. NOTICE

(a) A notice, consent or other communication under these Conditions is only effective if it is writing, signed and either left at either the addressee's address or sent to the address by mail or fax 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 out in the quotation. VicMesh may send a notice to the Purchaser's last known address.

## 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 Purchaser 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 without effecting the validity and enforceability of the remainder of these Conditions.

## 19. CONFIDENTIALITY

VicMesh and the Purchaser agree that these Conditions and any other information furnished by one party 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 the public domain prior to the disclosure by the party.