

Terms and Conditions of Sale

1 Application of Conditions

- 1.1 These Conditions of Sale ("**Conditions**") apply to all quotations, offers and purchase orders made or accepted by VEGA Australia Pty. Ltd (ABN 55 003 346 905) of 34 Cawarra Road , Caringbah NSW 2229 ("**Company**") and to deliveries of all goods manufactured or supplied by the Company ("**Products**") to any person, firm or company which enters into an agreement with the Company ("**Customer**").
- 1.2 So far as applicable these Conditions also apply to the provision of any services including advice accompanying the supply of, or provided in relation to, Products ("**Services**") and, where the context allows, any reference to the supply of Products includes the provision of such Services.
- 1.3 These Conditions (which can only be waived or varied in writing by the Company) will prevail over all conditions of the Customer to the extent of any inconsistency.

2 Definitions

- 2.1 In these Conditions:

"**ACL**" means *Australian Consumer Law* as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;

"**Confidential Information**" means any proprietary or confidential documents, knowledge and information, prices, specifications, business and trade secrets, formulas and know-how, prices, production method, samples, models, drawings, data standard sheets, manuscripts and other technical and business documentation supplied or made known to the Customer, or other information in any form concerning the Company and its related entities worldwide;

"**Consequential Loss**" means any:

- (i) loss of profits;
- (ii) loss of revenue;
- (iii) loss of production;
- (iv) loss or denial of opportunity;
- (v) loss of or damage to goodwill;
- (vi) loss of business reputation, future reputation or publicity;
- (vii) loss of use;
- (viii) loss of interest;
- (ix) losses arising from claims by third parties;
- (x) loss of or damage to credit rating;
- (xi) loss of anticipated savings; and

- (xii) loss of contract,

whether direct, indirect or consequential;

"**Consumer Guarantees**" has the meaning given to the term in clause **Fehler! Verweisquelle konnte nicht gefunden werden.** of these Conditions;

"**Force Majeure Event**" means any cause whatsoever that is beyond the Company's control including but not limited to Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident;

"**GST**" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax; "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and "Taxable Supply" and "Tax Invoice" have the same meaning as in the GST Act;

"**Intellectual Property**" means all intellectual property rights of the Company (including, without limitation, all copyright, designs, trade marks and patents) of any nature in any samples, cost estimates, sketches, inventions, designs, works, discoveries, trade secrets, know-how, computer software, Confidential Information (including in electronic form) and subject matter other than works, any application or right to apply for registration of such rights;

"**Loss**" means any losses, liabilities, damages, costs, charges or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct or indirect (including Consequential Loss), fines and penalties.

3 Purchase Orders

- 3.1 Neither a Customer's quotation nor any order submitted or placed by a Customer ("**Purchase Order**") shall be binding on the Company unless and until the Company has given written acknowledgement of its acceptance on terms which include these Conditions ("**Order Confirmation**"). If Products are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.
- 3.2 Each supply which the Company makes in response to an Purchase Order will be regarded as a separate contract for sale which is subject to these Conditions ("**Contract**").

3.3 All quotations are valid for 30 days from the date of the quotation and are subject to change by the Company as notified by the Company up to the date of the Purchase Order.

3.4 If the Customer places the Purchase Order subject to finance, the Company will not be obliged to procure or supply the Product until the Customer has provided written evidence to the Company's reasonable satisfaction that such finance will be provided to the Customer.

4 Specification

4.1 Products are supplied in accordance with the specification as confirmed by the Company in writing at the time of concluding the Contract between the Company and the Customer ("**Specifications**"). Any Specifications as shown on the Purchase Order are deemed to be checked and accepted by the Customer. Any additions and alterations made to a Specification by the Company at the request of the Customer shall be subject to an additional charge as specified by the Company.

4.2 The Customer is solely responsible, and must itself examine and test the Products at its cost, to ensure they are fit or suitable for the Customer's purposes. The Company accepts no liability for the fitness or suitability of the Products for the Customer's particular purposes.

5 Prices and Payment

5.1 Subject to clause 5.2, the prices of the Products are the prices as stated in the current price lists as notified by the Company, unless otherwise notified individually and in writing by the Company to the Customer ("**Prices**").

5.2 If the Products are for reasons attributable to the Customer delivered more than 6 months after the date of the Purchase Order, then the Price which is current at the time of delivery applies, whereby a Price which was individually agreed increases pro rata to the price increase (if any) under any new price list which the Company may have issued since the date of the Purchase Order.

5.3 Unless otherwise specified by the Company in writing, all prices are:

- (a) quoted EX WORKS (INCOTERMS 2020) the Company's warehouse, factory or depot; and
- (b) exclusive of GST, packaging, freight costs, postage and insurance.

5.4 Unless otherwise agreed by the Company in writing, payment is due in full within 30 days of the date of the invoice. ("**Payment Date**").

5.5 If the Customer defaults in the payment of any money due to the Company pursuant to these Conditions on the Payment Date, then in addition

to any other rights which may be conferred upon the Company by law or equity, the Company will be entitled to be paid interest by the Customer on such money at the rate prescribed in Rule 36.7 of the Uniform Civil Procedure Rules 2005 (NSW) from the date of such default until full payment to the Company.

5.6 If payment is not made in accordance with clause 5.4, or if at any time the credit standing of the Customer, in the opinion of the Company, is at risk or has been impaired, the Company may refuse delivery of any Products ordered until alternative arrangements as to payment or credit in terms satisfactory to the Company have been agreed.

5.7 If GST is imposed on a Taxable Supply made by the Company to the Customer under or in connection with these Conditions, the Price of the Taxable Supply shall be equal to the GST-exclusive consideration that the Customer must pay to the Company for the Taxable Supply under these Conditions increased by an amount (the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to the Company issuing a Tax Invoice to the Customer, payable at the same time and in the same manner as the consideration to which it relates.

5.8 The Customer may not withhold or set off any payment or make deductions from any amount owing to the Company without the Company's prior written consent.

6 Cancellation of Purchase Order by Customer

6.1 A notice of cancellation or variation of a Purchase Order must be submitted by the Customer in writing and is only effective upon the written approval by the Company, whereby such approval can be withheld by the Company in its discretion.

6.2 When a Customer gives written notice of cancellation or variation and the Company approves such a request in accordance with clause 6.1, without prejudice to its other rights, the Company reserves the right to charge for all Products and Services it has performed and shall need to perform in fulfilling the Purchase Order or, if the work is substantially complete or the Products were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for a pro rata portion of the price set out in the applicable Purchase Order in addition to any other costs the Company incurs on the Customer's behalf.

6.3 When a Purchase Order is cancelled in accordance with this clause 6, the Company may seek reimbursement from the Customer for any costs which the Company is charged by third parties as a result of the Purchase Order being cancelled.

7 Delivery

- 7.1 Unless the Company otherwise agrees, delivery of Products shall be made to the delivery point specified in the applicable Purchase Order. The Customer shall be responsible for any costs incurred by the Company as a result of the address on the Purchase Order being incorrect and a redelivery by the Company to the correct delivery address, unless the need for such redelivery is caused by the Company.
- 7.2 Stated delivery times are no more than an estimate by the Company and shall not be binding upon the Company. The Company will not be liable for any consequential or other loss resulting partly or wholly from late delivery.
- 7.3 The Company may agree to fixed delivery times in writing ("**Fixed Delivery Times**"), in which case the Fixed Delivery Times are binding on the Company only if the Customer has provided to the Company on time any documents, permits, prepayments and approvals necessary to allow the Company to effect delivery.
- 7.4 Unless a partial delivery is unreasonable in the circumstances, the Company has the right to make partial delivery of the Products ("**Partial Delivery**"), in which case the Customer is only obliged to pay the portion of the Price which relates to the Partial Delivery.
- 7.5 If the Customer requests changes after the Company has issued an Order Confirmation and such changes affect the duration of production of the Products, the parties must renegotiate the delivery times. In the event that the parties cannot agree on new delivery times, the delivery times under the Contract will be extended in proportion to the increase in production time.
- 7.6 If the quantity of Products delivered does not correspond with the quantity stated on the Purchase Order, the Customer shall only be liable to pay for the quantity delivered in the case of short-delivery and for the price stated in the Purchase Order, in the case of over-delivery (subject in the latter case to the Customer permitting the Company to collect the surplus Products).
- 7.7 Any surplus Products delivered shall remain the property of the Company and the Customer shall take all necessary precautions for the safe custody and protection of such surplus Products until the time of their removal by the Company.
- 7.8 Subject to any right which the Customer may have under the ACL, the Customer shall not return any Products to the Company without its prior written consent.
- 7.9 Unless otherwise agreed by the Company in writing:
 - (a) The Customer must inspect the Products within a reasonable time after delivery. Where the Customer believes that there has been

damage to or loss of the Products during transport, the Customer must note in writing any such damage or loss at the time of delivery on the delivery documents of the transport company.

- (b) If the Customer believes that there is a defect in the Products, the Customer must not on-sell or use the Products in a manufacturing process and must notify the Company in writing within 7 days after becoming aware of the defect.

8 Instalment Deliveries

- 8.1 Deliveries by instalments during an agreed period ("**Delivery Period**") must be agreed by the parties at the time the Purchase Order is accepted by the Company.
- 8.2 If the parties agree a specific quantity of Products is to be delivered by way of instalments during the Delivery Period, the Customer must make the individual requests for the delivery of each instalment of the Products at regular intervals during the term of the Delivery Period on the relevant dates agreed by the parties.
- 8.3 Where Products are ordered for delivery by instalments, each instalment is deemed to be a separate order and a separate contract performed by the Company upon delivery of that instalment.

9 Product Returns for Credit

- 9.1 Subject to clause 9.2 and clause 9.3, the Customer is entitled to return any Products (where the Customer no longer wants the Products) and receive a credit equal to the Price of the Products being returned ("**Credit**"), if the Products are returned by the Customer within 90 days from the date of shipment of the Products by the Company to the Customer's delivery point.
- 9.2 A return for Credit by a Customer to the Company under clause 9.1 will incur a restocking fee equal to 25% of the Price of the Products being returned.
- 9.3 Customers are not entitled to return Products under clause 9.1 if the Products are purpose made to the Customer's requirements or Specifications.

10 Passing of Risk and Title

- 10.1 Unless otherwise agreed by the Company in writing, risk in the Products shall pass to the Customer when the Products are delivered in accordance with clause 7 at the time the Company notifies the Customer that the Products are ready for dispatch, with the risk passing at the latest when the Products are handed over to the shipping agent or carrier. The same applies in the case of partial delivery and if the Company delivers freight prepaid.

10.2 Notwithstanding that risk passes to the Customer under clause 10.1, legal and beneficial title (“Ownership”) in the Products shall remain with the Company until:

- (a) the Products are the subject of a Purchase Order; and
- (b) the price for the Products as well as any other amounts the Customer may owe the Company have been paid in full.

10.3 Until such time as Ownership in the Products passes to the Customer, the Customer shall:

- (a) be in a fiduciary relationship with the Company;
- (b) store the Products in a manner which makes them readily identifiable as the property of the Company;
- (c) hold the Products as bailee of the Company;
- (d) keep, and provide the Company at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Products; and
- (e) keep the Products insured against theft, damage and destruction (and provide to the Company upon request a copy of the insurance certificates).

10.4 Notwithstanding clauses 10.2 and 10.3, the Customer is entitled until notified by the Company or until the happening of any of the events set out in clause 10.10 to:

- (a) sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for the Company in a separate account; or
- (b) convert the Products into other products or attach, affix or incorporate the Products to or with other products.

10.5 To the extent that any Products sold by the Company to the Customer are subject to a retention of title under this clause 10, the Customer must on-sell any Products to its customers subject to retention of title.

10.6 The Customer is not an agent of the Company and does not have any rights in, or title to, the Products and the Customer must not grant or purport to grant right in, or title to, the Products to customers or any other third party or grant a security interest (as that term is defined in the PPSA) in the Products to any other party, or authorise any other party to take a security interest in the Products.

10.7 In the event that the Customer sells, uses or otherwise disposes of the Products (whether in their original condition or processed and

combined with other articles), the Customer will hold the proceeds of such sale, use or disposal on trust for the Company.

10.8 The Company is entitled at any time while any debt remains outstanding by the Customer to notify the Customer of its intention to take possession of the Products and for this purpose the Customer irrevocably authorises and licenses the Company and its servants and agents to enter upon the land and buildings of the Customer with all necessary equipment to take possession of the Products. The Company is not liable for damage or injury to any premises caused by the Company exercising its rights under this clause.

10.9 On receipt of notice from the Company, where there is a protest of a bill or on the happening of any of the events set out in clause 10.10, the following applies:

- the Customer’s authority to sell or otherwise deal with the Products as set out in clause 10.4 is withdrawn;
- the Company may at its discretion demand advance payment or cash payment on delivery for future deliveries of Products to the Customer;
- the Company may stop work on the production of Products under current Contracts or terminate such Contracts;
- the Company may withhold delivering further Products and all invoices issued by the Company to the Customer become due and payable immediately; and
- the Customer must immediately deliver to the Company all Products which are in the Ownership of the Company.

10.10 The Customer shall give immediate notice to the Company of:

- (a) the Customer becomes insolvent under administration as defined in Section 9 of the *Corporations Act 2001*;
- (b) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the Customer or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets;
- (c) the Customer resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;

- (d) the Customer becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of itself;
- (e) proceedings are commenced to make the Customer bankrupt or the Customer becomes bankrupt;
- (f) an event analogous to any of those set out in clauses 10.10(a) to 10.10(e) occurs.

11 Personal Property Securities Act 2009 ("PPSA")

11.1 The Customer acknowledges and agrees that it grants the Company a security interest in the Products and their proceeds by virtue of the Company's retention of title pursuant to clause 10.

11.2 The Customer undertakes to:

- a) do all things necessary and provide the Company on request all information the Company requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
- b) not to change its name in any form or other details on the PPSR without first notifying the Company.

11.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by these Conditions.

11.4 To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA:

- (a) section 95 (notice of removal of accession);
- (b) section 123(2) (notice of seizure);
- (c) section 125 (obligation to dispose of or retain collateral);
- (d) section 129(2) (notice of disposal by purchase);
- (e) section 130 (notice of disposal);
- (f) section 132(3)(d) (contents of statement of account after disposal);
- (g) section 132(4) (statement of account if no disposal)
- (h) section 135 (notice of retention);
- (i) section 142 (redemption of collateral); and
- (j) section 143 (reinstatement of security agreement).

11.5 The Customer appoints the Company as its attorney to sign in the Customer's name all documents which the Company considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.

11.6 The Customer will reimburse the Company for any fees payable by the Company in relation to the registration of the Security Interest created by these Conditions, including registration fees and maintenance fees.

11.7 These Conditions create a Security Interest in all Products which the Company has supplied to the Customer and all Products which the Company supplies to the Customer in the future. Initial registration of a financing statement by the Company in respect of the Customer under the PPSA covers Security Interests in Products supplied now or subsequently under these Conditions.

11.8 Unless otherwise defined in these Conditions, the terms and expressions used in this clause 11 have the meanings given to them, or by virtue of, the PPSA.

12 Conditions and Warranties

12.1 For the purposes of these Conditions, a Consumer Guarantee means a right or guarantee that the Customer may have under the ACL or other rights in relation to the supply of goods or services (such terms as implied into a contract) that cannot be lawfully excluded.

12.2 Subject to clause 12.3, the Company's liability in respect of any breach of or a failure to comply with any Consumer Guarantee is limited to the following:

- (a) in the case of Products, to
 - (i) the replacement the Products or the supply of equivalent products;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacing the Products or of acquiring equivalent products; or
 - (iv) the payment of the cost of having the Products repaired.
- (b) in the case of Services, to
 - (i) to the re-supply of the Services; or
 - (ii) the payment of the cost of having the Services supplied again.

12.3 The Company's liability in respect of a breach of or a failure to comply with a Consumer Guarantee

will not be limited in the way set out in clause 12.2 if:

(a) the Products or Services supplied are products or services 'of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 64A of the ACL;

(b) it is not 'fair or reasonable' for the Company to rely on such limitation in accordance with section 64A(3) of the ACL; or

(c) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the ACL.

12.4 Nothing in these Conditions excludes, restricts or modifies the application of the ACL and any rights which the Customer may have thereunder.

13 Limitation of Liability

13.1 Subject always to the Company's liability under ACL and the extent that liability cannot be legally limited or excluded:

(a) the Company's total aggregate liability arising out of or in connection with the Contract of which these Conditions form part, shall be limited to the price paid by the Customer for the Products and Services under the Contract per event and in aggregate; and

(b) the Company shall under no circumstances be liable for Consequential Loss whether or not such Loss was foreseeable.

14 Force Majeure Event

14.1 The Company shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations under a Contract occasioned by a Force Majeure Event. If a Force Majeure Event occurs, the Company may vary, cancel or suspend any Order Confirmation or Contract of which these Conditions form part without incurring any liability for any such loss or damage.

14.2 Where delivery is delayed as a result of a Force Majeure Event, the agreed delivery times will be extended as appropriate. If delivery is impossible or unreasonable as a result of a Force Majeure Event, the Company will no longer be obliged to effect delivery. Where the delay in delivery caused by a Force Majeure Event exceeds one (1) month, the Company and the Customer have the right to terminate the part of the Contract to which the delay relates.

15 Intellectual Property

15.1 The Company for and on behalf of itself, its related bodies corporate and licensors reserves ownership in any Intellectual Property, relating to the Quotations, Specifications, technical

drawings, price lists, tender documentation and Products (including any associated software) ("**Protected Items**"). Nothing in these Conditions operates or is intended to deny the Company or its related bodies corporate, or confer on the Customer, the Intellectual Property or any other intellectual property rights in the Protected Items.

15.2 The Customer must not use or make the Protected Items available to third parties without the prior written consent of the Company.

15.3 The Customer must only use the Protected Items and any associated Intellectual Property in accordance with the terms of the Contract.

15.4 The Customer must not use, reproduce or copy any software associated with the Product, without the prior written consent of the Company.

15.5 If the Customer becomes aware of any actual, threatened or suspected infringement of the Intellectual Property, the Customer must inform the Company promptly of the actual, threatened or suspected infringement.

15.6 The Customer shall indemnify the Company for and in respect of claims by any third party in relation to Products where such claims arise from, or can be attributed to, the special requirements or specifications of the Customer.

15.7 In the event that the Company provides documentation containing Intellectual Property or Confidential Information of the Company as part of a tender and such tender is unsuccessful, the Customer must immediately return to the Company any originals and copies of all materials which contain, or relate to, Intellectual Property of the Company and which are in the Customer's possession or under its control and, if requested by the Company, the Customer will provide the Company with a written confirmation that the Customer has complied with the terms of this clause.

16 Confidentiality

16.1 All Confidential Information is and will remain the exclusive property of the Company.

16.2 The Customer must not, except as required by law or by the Company directly or indirectly communicate any Confidential Information to any person without the prior written consent of the Company, and must at all times use its best endeavours to prevent the use or disclosure of any Confidential Information by third parties.

16.3 The Customer will impose the same obligation as set out under clause 16.2 on its employees and contractors who are involved in the performance of the Contract.

17 Privacy

The Customer acknowledges that the Customer's personal information as defined under the Privacy Act 1988 ("**Act**") is likely to be disclosed to recipients located in Germany. The Customer expressly consents by to the Company disclosing the Customer's personal information to third parties located outside Australia whereby a) the Company will not be accountable under the Act, b) the Customer will not be able to seek redress under the Act, c) the overseas recipient may not be subject to any privacy obligations or to any principles similar to the Australian Privacy Principles, d) the Customer may not be able to seek redress in the overseas jurisdiction; and e) the overseas recipient may be subject to a foreign law that could compel the disclosure of personal information to a third party, such as an overseas authority.

18 Assignment

The Contract of which these Conditions form part is personal to the parties and may only be assigned by a party with the prior written and informed consent of the other party.

19 Waiver

No neglect, delay or indulgence on the part of the Company in enforcing these Conditions shall prejudice the rights of a party or be construed as a waiver of any such rights.

20 Severability

If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

21 Whole Agreement

In relation to the subject matter of these Conditions, these Conditions supersede all oral and written communications by or on behalf of any of the parties.

22 Governing Law

The Conditions and any agreement of which they form part are governed by and must be construed in accordance with the laws which apply in the State of New South Wales and the parties submit to the non-exclusive jurisdiction of that State.