

Viking Plastics Engineering Pty Ltd (ACN 667 334 045)

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TERMS AND CONDITIONS OF TRADE/SALE

1 DEFINITIONS

1.1 In these Terms and Conditions of Trade/Sale ("**Terms of Sale**") unless specified to the contrary, the following words and phrases have the meaning given to them:

"**Application**" means the Application for Credit Account or Authorisation to Supply Form, which is attached to the Terms of Sale;

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

"**Customer**" means an entity or person acting on their behalf whose order for the purchase of Goods is accepted by VIKING;

"**Goods**" means the Goods supplied by VIKING to the Customer (and where the context so permits shall include any supply of Services as defined herein) as described on the invoices, quotation, work authorisation, purchase order or any other work commencement forms as provided by VIKING to the Customer;

"**GST Act**" means the *A New Tax System (Goods and Services Tax) Act (Cth) 1999*;

"**Guarantee and Indemnity**" means the Personal Guarantee and Indemnity which is attached to the Application;

"**Guarantor**" means each of the persons who executed the Guarantee and Indemnity;

"**VIKING**" means Viking Plastics Engineering Pty Ltd (ACN 006 190 978) its successors, assigns and any of its current and future Related Bodies Corporate or their respective assigns trading under various current and future names;

"**PMSI**" means a Purchase Monies Securities Interest as defined in section 14 of the PPSA. "**PPSA**" means the *Personal Property Securities Act (Cth) 2009*;

"**PPS Register**" means the Personal Property Securities register under the PPSA;

"**Price**" means the cost of Goods as agreed between VIKING and the Customer(s) subject to Clause 2;

"**Related Bodies Corporate**" means a body corporate that is related to VIKING by virtue of section 50 of the *Corporations Act (C/W) 2001*; and

"**Services**" means all services supplied by VIKING to the Customer in relation to the Goods ordered and includes fabrication, design and installation (if any) for the Goods.

2 PRICING/PAYMENT

2.1 Notwithstanding any prior acknowledgment by VIKING of the Price of Goods, the Price specified for Goods may at VIKING's option be subject to alteration to reflect VIKING's prices and charges in effect at the time of delivery.

2.2 Any variations in the invoice or contract Price as a consequence of currency fluctuations, taxes, customs duty or other imposts will be to the Customer's account.

2.3 VIKING will be entitled to set-off against any money owing to the Customer amounts owed to VIKING by the Customer on any account whatsoever. However, the Customer may not set-off any amount allegedly owing by VIKING to it against any amount due by it to VIKING.

2.4 Unless otherwise agreed to by VIKING, the only accepted means of paying accounts will be by cash, bank cheque, COD, credit card or electronic funds transfer, all without any deduction.

2.5 Abnormal payment: where payments are made that are not made in accordance with Clause 2.4, the Customer must also pay to VIKING an administration fee of 2% of the amount so paid. That fee is:

2.5.1 agreed to be the liquidated cost of processing that abnormal payment;

2.5.2 is payable at the same time as the account to which it relates is due.

2.6 Payments received by VIKING will be applied first in payment of interest and any costs of and incidental to debt recovery and any amounts payable pursuant to Clause 2 and then in reduction of principal.

2.7 Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.

3 ACCOUNT TERMS

- 3.1 Unless otherwise agreed in writing by VIKING, Goods must be paid in full prior to delivery/install.
- 3.2 Where credit is extended to the Customer, the terms of such credit are set-out in these Terms of Sale.
- 3.3 Unless otherwise agreed in writing by VIKING, the Customer must pay for all Goods sold on credit no later than 30 days from the date of delivery/install.
- 3.4 If the Customer does not pay VIKING by the due date in respect of Goods sold on credit, the Customer must pay interest on money overdue, at a rate of interest four percent (4%) higher than the rate of the time being fixed under section 2 of the *Penalty Interest Rates Act (Vic) 1983*:
 - 3.4.1 charged on a daily basis from the due date for payment until the actual date of payment; and
 - 3.4.2 where applicable, VIKING may debit the Customer's credit account monthly or at such other times it chooses for such interest.
- 3.5 The Customer must pay any legal costs (on a full indemnity basis), stamp duty, any bank charges or merchant fees or like charges levied on VIKING by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying VIKING any amounts on any account and any other expenses payable of and incidental to the performance or enforcement of or any litigation on these Terms of Sale or any Application or any security documents signed by the Customer or any Guarantor together with any other collection costs and dishonoured cheque fees.
- 3.6 Despite any other Clause to the contrary in these Terms of Sale, VIKING may withdraw the Customer's credit facilities at any time without notice or, at its discretion, alter the Customer's credit limit for any reason (including to meet the Customer's then buying needs). VIKING will notify the Customer of any alteration in the account statement. Any credit approval limit noted in this form, any monthly statement or otherwise will be for VIKING's convenience only and will not reflect what may actually be the credit limit of the credit account at any one time.
- 3.7 The Customer is liable for all purchases made under its account number and/or account name. In this regard:
 - 3.7.1 it is not the responsibility of VIKING to confirm authority for the purposes of supplying or delivering Goods to the Customer, its agent(s) or those who VIKING deems to be its agent; and
 - 3.7.2 it is the sole responsibility of the Customer to ensure there is no unauthorised use of its account number or name.
- 3.8 VIKING may, in its absolute discretion, charge an annual account keeping fee ("**Account Fee**"), (which will be one percent (1%)) of the credit limit or such lesser amount as determined by VIKING, again in its absolute discretion, and VIKING may debit the Account Fee to the Customer's account annually, in advance or at such other times it chooses.

4 DELIVERY

- 4.1 Goods will be delivered or deemed to be delivered when they are collected by the Customer from VIKING or delivered to the delivery place nominated by the Customer (as the case may be). If no such address is nominated, then delivery will be deemed to occur at the time when the Goods are ready for collection at the VIKING's premises.
- 4.2 The Customer must pay to VIKING packing, crating and delivery charges in accordance with VIKING's current rates as at the date of dispatch. If there is no current rate, then a reasonable delivery charge must be paid by the Customer.
- 4.3 VIKING reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within fourteen (14) days of a request by VIKING for such information.
- 4.4 The Customer authorises VIKING to deliver products to the place nominated by the Customer and to leave the products at such place whether or not any person is present to accept delivery. VIKING will not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- 4.5 VIKING will not be obliged to obtain a signed receipt or other acknowledgement from any person at the Customer's nominated place for delivery, but if a signed receipt or other acknowledgement is obtained from someone believed by VIKING (including its agent) to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement will be conclusive evidence of the Customer's acceptance of the Goods delivered.
- 4.6 Any times quoted by VIKING for delivery are estimates only and VIKING will not be liable to the Customer for any failure to deliver or for delay in delivery of Goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood hostility, civil commotion or any other cause whatsoever whether or not beyond the control of VIKING.
- 4.7 The Customer will not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 4.8 VIKING reserves the right to deliver Goods by instalments and each instalment will be deemed to be sold under a separate contract. Failure to deliver any instalment, or deliver any instalment on time will not entitle the Customer to repudiate the contract in whole or in part.

5 PROPERTY AND RISK

- 5.1 All Goods sold to the Customer (whether or not on credit) will be at the sole risk of the Customer as soon as they are collected by the Customer from VIKING or alternatively dispatched from VIKING's business premises (as the case may be).
- 5.2 Property in and title to Goods sold to the Customer on credit will not pass to the Customer until those Goods and all other amounts owed to VIKING by the Customer have been paid for in full, and until then:
 - 5.2.1 the Customer will hold such Goods as fiduciary and bailee for VIKING;
 - 5.2.2 such Goods must be stored separately and in a manner enabling them to be identified as Goods of VIKING and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix such Goods with other products or items such that the Goods concerned are no longer separately identifiable then the Customer and VIKING will be owners in common of the new product;
 - 5.2.3 the Customer may sell such Goods in the ordinary course of its business as bailee for VIKING, provided it hold the proceeds of sale in a separate account on trust for VIKING and they account to VIKING for those proceeds; and
 - 5.2.4 VIKING may at any time enter upon the Customer's premises to inspect the Goods.
- 5.3 The Customer must insure all Goods sold to it on credit against theft or any damage until such Goods have been paid for or until they are sold by the Customer, whichever occurs first, and VIKING will be entitled to call for details of the insurance policy.
- 5.4 If the Customer does not insure the Goods which have been sold on credit or fails to supply details of its insurance policy, the Customer must reimburse VIKING for the cost of any insurance which VIKING may reasonably arrange in respect of the Goods supplied to the Customer.

6 PERSONAL PROPERTY SECURITIES ACT

- 6.1 Any expression used in this Clause 6 which is defined in the PPSA will have the same meaning given to it in the PPSA.
- 6.2 The Customer agrees that these Terms of Sale create a PMSI in the Goods supplied presently and in the future by VIKING to the Customer on credit [and their proceeds].
- 6.3 The Customer must do all things necessary and execute all documents reasonably required by VIKING so as to enable VIKING:
 - 6.3.1 to register the PMSI on the PPS Register; and
 - 6.3.2 to ensure that VIKING acquires a perfected security interest under the PPSA in respect of the Goods sold to the Customer on credit and, where applicable, their proceeds.
- 6.4 The Customer must upon demand pay all of VIKING's expenses and legal costs (on a "*solicitor and own client basis*") in relation to or in connection with the registration of VIKING's security interest and all other costs associated with protection and enforcement of VIKING's security interest created by these Terms of Sale or by undertaking an audit under the provisions of the PPSA, or the repossession of the Goods the subject of these Terms of Sale or the exercise, enforcement or preservation of any right or interest under these Terms of Sale or any contract that VIKING has with the Customer.
- 6.5 The Customer acknowledges that the PMSI will not and does not lose its priority as a result of the renewal, refinancing, consolidation or restructure of the subject-matter of these Terms of Sale and any other purchase money obligations.
- 6.6 Until ownership of the Goods sold on credit passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law:
 - 6.6.1 to receive a notice of intention of removal of an accession (s.95);
 - 6.6.2 to receive a notice that VIKING has determined to enforce its security interest in accordance with the law (s.118);
 - 6.6.3 to receive a notice of enforcement action against liquid assets;
 - 6.6.4 to receive a notice of disposal of Goods by VIKING purchasing the Goods (s.129);
 - 6.6.5 to receive a notice to dispose of the Goods (s.130);
 - 6.6.6 to receive a statement of account following disposal of the Goods (s.132(2));
 - 6.6.7 to receive a statement of account if no disposal of the Goods every six months (s.152(4));
 - 6.6.8 to receive notice of any proposal by VIKING to retain the Goods (s.135(2));
 - 6.6.9 to object to any proposal by VIKING to either retain and dispose of the Goods(s.137(3));
 - 6.6.10 to redeem the Goods(s.142);

- 6.6.11 to reinstate the security agreement (s.143); and
- 6.6.12 to receive a notice of any verification statement (ss.157(1) and 157(3)).
- 6.7 To the extent permitted by the PPSA, these Terms of Sale exclude any provisions of the PPSA which may be excluded in VIKING's discretion and which would otherwise confer rights on the Customer.
- 6.8 The Customer further acknowledges and agrees that where VIKING has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- 6.9 The Customer's right to possession of Goods still owned by VIKING under these Terms of Sale will cease if:
- 6.9.1 the Customer being an individual, commits an act of bankruptcy;
- 6.9.2 the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a Deed of Company Arrangement;
- 6.9.3 the Customer ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice;
- 6.9.4 any cheque the Customer provides to VIKING is dishonoured for payment;
- 6.9.5 the Customer failing to comply with any demand for payment issued by VIKING; or
- 6.9.6 the Customer breaching any of these Terms of Sale and/or being in default under any other agreement between VIKING and the Customer.
- 6.10 Where the Customer's right to possession of Goods owned by VIKING ceases, the Customer expressly and irrevocably agrees that VIKING is entitled to:
- 6.10.1 enter any site or premises where the Goods supplied by VIKING are located (without liability for trespass) to repossess and remove such Goods; and
- 6.10.2 sell such repossessed Goods and apply the proceeds in reduction of the Customer's liability to VIKING.
- 6.11 The Customer (its successors and assigns, including any external manager or administrator) may not and must not object to VIKING, or its agents, entering any premises for the purpose of the previous Clause, and agrees to indemnify and keep indemnified in respect of any claims, actions and costs that may arise against VIKING in relation to the removal, repossession and sale of the Goods under these Terms of Sale, including any claims brought by third parties.
- 6.12 The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the money which may become payable to VIKING by the Customer, as is equivalent to VIKING's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest VIKING has on the value of the Goods recovered.
- 6.13 Until ownership of the Goods passes, the Customer must not give VIKING a written demand or allow any other person to give VIKING a written demand requiring VIKING to register a 'Financing Change Statement' under the PPSA or enter on or allow any other person to enter on the PPS Register a 'Financing Change Statement' under the PPSA.
- 6.14 The Customer agrees not to change the Customer name or undertake any changes to any documents that VIKING has registered, requires to be registered or are capable of being registered without the prior written consent of VIKING.

7 DEFAULT

- 7.1 If in respect of Goods sold to the Customer on credit:
- 7.1.1 VIKING has any reasonable grounds to believe that the Customer may not be able to make due and punctual payment to VIKING;
- 7.1.2 there is any default or failure by the Customer in making due and punctual payment to VIKING of any money owing by the Customer;
- 7.1.3 an administrator, liquidator or provisional liquidator is appointed in respect of the Customer;
- 7.1.4 a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer;
- 7.1.5 the Customer goes into bankruptcy or is wound up;
- 7.1.6 the Customer becomes, admits in writing that it is, or declared by a Court to be unable to pay its debts as and when they fall due; OR
- 7.1.7 there is a breach by the Customer of any of these Terms of Sale, then all money payable by the Customer to VIKING will, at VIKING'S election, become immediately due and payable notwithstanding the due date for payment may not have expired and VIKING, may, without prejudice to any other rights it may have, do any or all of the following:

- 7.1.8 place on stop any credit facilities which may have been extended to the Customer;
- 7.1.9 withdraw any credit facilities which may have been extended to the Customer;
- 7.1.10 withhold any further delivery of Goods;
- 7.1.11 in respect of Goods already delivered, enter onto the Customer's premises to recover and resell the Goods for its own benefit;
- 7.1.12 recover from the Customer the cost of materials or Goods acquired for the purpose of future deliveries; and/or
- 7.1.13 exercise such other rights as are afforded to VIKING under these Terms of Sale and/or the PPSA.

8 RETURN OF GOODS

8.1 The Customer acknowledges as follows:

- 8.1.1 Goods made to special order, Customer specification or non-catalogue items are under no circumstances accepted for credit or return. Cancellation of orders for special or non-catalogue items will definitely not be accepted, once these orders are in production.
- 8.1.2 that the application of the statutory consumer guarantees under the Australian Consumer Law (the "**Statutory Guarantees**") are excluded from all Goods sold by VIKING to the Customer (whether or not on credit) due to the Goods not being of the type that are for a consumer's normal domestic household use.
- 8.1.3 unless agreed in writing by VIKING, VIKING will not accept the return of Goods sold to the Customer. Goods accepted for return by VIKING may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by VIKING and deducted from the amount of credit allowed to Customer, this amount will be 20% of the purchase value of the returned Good(s) plus any freight and any other applicable de-commissioning charges.
- 8.1.4 the proof of purchase from the Customer must accompany all Goods returned to VIKING.
- 8.1.5 all claims for VIKING's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to VIKING within fourteen (14) days from the date of delivery. If the Customer fails to provide such notice then the Customer will be deemed to have accepted the Goods.
- 8.1.6 these Terms of Sale do not exclude, or limit the application of any provision of any statute including any implied condition or warranty ("**Implied Terms**") the exclusion of which would contravene any statute causing any part of this Clause to be void. To the extent permitted by law all Implied Terms and undertakings are expressly excluded.
- 8.1.7 VIKING's liability for breach of a non-excludable Implied Term is limited to, at VIKING's option, any one of the following:
 - (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods; or
 - (d) the payment of the cost of having the Goods repaired.
- 8.1.8 VIKING will not be liable for any direct or indirect losses or damages whatsoever, including consequential loss, loss of profits, loss of opportunity and/or loss of use.

8.2 Generally:

- 8.2.1 In respect of any warranty application to the Goods sold to the Customer, no claim by the Customer, whether for alleged damaged or defective Goods, shortage or for any other cause whatsoever, will be recognised by VIKING (and all such claims will be deemed absolutely waived by the Customer) unless notified in writing to and received by VIKING within fourteen (14) days after the date of delivery or collection as the case may be.
- 8.2.2 In the event that problems are encountered after the install of VIKING's Goods, and the Customer does not contact VIKING for assistance or clarification at the time of encountering such problems, VIKING will not be liable for any additional, ancillary or consequential loss, expenses or charges associated with such further trouble-shooting re-commissioning works whatsoever.
- 8.2.3 No claims will be accepted by VIKING in respect of variation in size, shade or gauge of Goods after the purchase order from the Customer is accepted by VIKING.
- 8.2.4 Orders placed with VIKING and secured by way of a deposit, may be subject to forfeiture of all or part of that deposit in the event that the order is subsequently cancelled by the customer.
- 8.2.5 VIKING reserves the right to change the Price of Goods, charge a storage fee or request a holding deposit for orders that are over thirty (30) days old.

9 PRIVACY

- 9.1 VIKING's Privacy Policy, available on its website, forms part of these Terms of Sale.
- 9.2 VIKING's website may be hosted, or some data may be stored overseas for reasons of uniformity and convenience. All personal information derived from Australia will still be treated in accordance with this Privacy Policy while being stored overseas.
- 9.3 In accordance with VIKING's Privacy Policy, the Customer and its Guarantor(s) agrees that VIKING may use or disclose information to third parties for the purposes of:
- 9.3.1 providing the Goods;
 - 9.3.2 providing information about Goods;
 - 9.3.3 sending information on VIKING and its products and services; and
 - 9.3.4 performing VIKING administrative operations;
 - 9.3.5 complying with legislative and regulatory requirements or as otherwise permitted or authorised by law;
 - 9.3.6 considering any other application the Customer may make to VIKING;
 - 9.3.7 managing VIKING's rights and obligations in relation to external payment systems, eg. credit card schemes and debit payment schemes;
 - 9.3.8 administration and use of VIKING Goods; and
 - 9.3.9 developing and identifying products and services that may interest the Customer.

10 FITNESS FOR PURPOSE

- 10.1 To the maximum extent permitted by law, the Customer agrees that it does not rely on the skill or judgement of VIKING, its employees and agents in relation to the suitability of any Goods for a particular purpose. Any advice, recommendation, information or assistance provided by VIKING is provided without any liability by VIKING whatsoever.
- 10.2 Without limiting the operation of the previous Clause:
- 10.2.1 The Customer acknowledges that the Goods purchased from VIKING have been ordered by the Customer from VIKING in accordance with the Customer's stated requirements.
 - 10.2.2 The Customer acknowledges that quantities estimated from plans are not precise. Accordingly, quantities quoted by VIKING's staff are approximate and no responsibility can or will be accepted by VIKING for estimated quantities in this regard.
 - 10.2.3 The Customer assumes all risk and responsibility for ordering the correct quantity of Goods and VIKING will in no way be responsible for any cost, expense, loss or damage which the Customer may suffer due to the ordering of an incorrect type or quantity of Goods.

11 GST

- 11.1 Any expression used in this Clause 11 which is defined in the GST Act will have the same meaning given to it in the GST Act.
- 11.2 With the exception of any amount payable under this Clause 11, unless otherwise expressly stated, all amounts stated to be payable by the Customer under these Terms of Sale are exclusive of GST.
- 11.3 If GST is imposed on any supply made under or in accordance with these Terms of Sale, the recipient of the taxable supply must pay to VIKING an additional amount equal to the GST payable on or for the taxable supply.
- 11.4 Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with these Terms of Sale, subject to the provision of a tax invoice by VIKING to the recipient.

12 TRUST AND TRUSTEES

12.1 Where the Customer is a trustee:

- 12.1.1 the Customer warrants that it has full power and authority to become bound by these Terms of Sale; and
- 12.1.2 the Customer acknowledges and agrees that:
 - (a) the trust and all the trust's real and personal property will be bound by these Terms of Sale; and
 - (b) that it becomes bound by these Terms of Sale both personally and as trustee, irrespective of whether or not it discloses to VIKING that it is a trustee at the time of entering into this or any other credit agreement with VIKING.

13 GENERAL CONDITIONS

13.1 Acceptance

A quotation will not constitute an offer to supply Goods to the Customer. No contract for the supply of Goods will exist between VIKING and the Customer until a Customer's order for Goods has been accepted by VIKING (such acceptance of a Customer's order may only be made and communicated by VIKING in writing or overt act of acceptance). VIKING may accept or refuse any order for Goods in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.

13.2 Any instructions received by VIKING from the Customer for the supply of Goods shall constitute acceptance of these Terms of Sale contained herein. Upon acceptance of these Terms of Sale by the Customer, the terms and conditions are irrevocable and can only be rescinded in accordance with these Terms of Sale or with the written consent of the manager of VIKING.

13.3 Should there be any variation to any of the information supplied by the Customer to VIKING in the Application or in the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust), the Customer must notify VIKING in writing within 14 days of the variation occurring.

13.4 These Terms of Sale and all obligations under them are binding on the Customer's personal representatives, successors and permitted assigns and will be for the benefit of VIKING's successors and assigns.

13.5 Where more than one Customer has entered into this agreement with VIKING for an accepted order and supply of Goods, then all the Customers shall be jointly and severally liable for all payments of the Price.

13.6 Cancellation

VIKING may cancel these Terms of Sale or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. VIKING shall not be liable for any loss or damage whatever arising from such cancellation.

13.7 Manufacturer's Warranty

For Goods not manufactured by VIKING the warranty shall be the current warranty provided by the manufacturer of the Goods. VIKING shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

13.8 Customer Disclaimer

The Customer hereby disclaims any right to rescind, or cancel the agreement or to sue for damages or to claim restitution arising out of any misrepresentation made to them by any servant or agent of VIKING and the Customer acknowledges that they buy the Goods relying solely upon their own skill and judgement and that VIKING shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by a manufacturer of Goods, which warranty shall be personal to the Customer and shall not be transferable to any subsequent purchaser or customer.

13.9 Further Assurances

The parties must sign such documents and do anything else which may be necessary or desirable to give full effect to these Terms of Sale.

13.10 The obligations on the part of a party which is a company or other corporate body under the previous Clause extend to requiring such party to procure that its officers, agents and employees sign such documents and do anything else which may be necessary or desirable, to give full effect to these Terms of Sale.

13.11 Non-Merger of Provisions

A provision of these Terms of Sale which can and is intended to operate after the termination or expiration of the contractual relationship between VIKING and the Customer will remain in and continue to have full force and effect.

13.12 Waiver

A waiver by VIKING of the Customer's default under these Terms of Sale, will not constitute a release of the Customer's obligation to observe and perform all of its obligations under these Terms of Sale in the future.

13.13 Entire Agreement

These Terms of Sale embody the entire agreement and understanding between VIKING and the Customer concerning its subject matter and succeed and cancel all other agreements and understandings concerning the subject matter of these Terms of Sale.

13.14 Jurisdiction

These Terms of Sale are to be governed by and construed in accordance with Victorian law.

13.15 Amendment

These Terms of Sale may not be varied, discharged or abandoned by the Customer unless VIKING agrees and signs a document to that effect.

- 13.16 VIKING may vary these Terms of Sale by notice in writing to the Customer, which notice may be given via the VIKING website, and in respect of such variation, the Customer agrees that Goods delivered and/or ordered after the date of the notice of variation will be subject to the variation and acceptance of the Goods or the placing of the order will be deemed to be an acceptance of such varied Terms of

14 INTELLECTUAL PROPERTY

- 14.1 Where VIKING has designed or drawn the Goods for the Customer, then the copyright in those designs and drawings shall remain vested in VIKING, and shall only be used by the Customer at VIKING's discretion.
- 14.2 Conversely, in such situation, where the Customer has supplied drawings, VIKING in its Terms of Sale conditions may seek an indemnity from the Customer (for the specifications and design of the Goods including, any copyright, design, moral rights or other intellectual property rights in them) and as between the parties the copyright of the Goods shall be the property of VIKING. Where any designs or specifications have been supplied by the Customer to manufacture by or to the order of VIKING then the Customer warrants that use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

15 SUB-CONTRACTING

- 15.1 VIKING reserves the right to sub-contract the manufacture and/or supply of the Goods or any part of them to a third party.

16 SECURITY AND CHARGE

- 16.1 Notwithstanding anything to the contrary contained herein or any other rights which VIKING may have howsoever:
- 16.1.1 where the Customer and/or Guarantors (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to VIKING or its nominee to secure all amounts and other monetary obligations payable under the Terms of Sale. The Customer and/or the Guarantor agree and acknowledge that VIKING (or its nominee) shall be entitled to lodge a caveat where appropriate, which caveat shall be released once all payments and other monetary obligations payable by the Customer hereunder have been met.
- 16.1.2 Should VIKING elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify VIKING from and against all of VIKING's costs and disbursements including legal costs on a solicitor and own client basis.

16.1.3 Power of Attorney

To give effect to the above sub-clauses of Clause 16.1, the Customer and/or Guarantors (if any) do hereby irrevocably nominate, constitute and appoint VIKING or its nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as VIKING or its nominee shall think fit in their absolute discretion against the joint and/or several interest of Customer and/or Guarantor in any land, realty or asset in favour of VIKING and in the Customer's and/or Guarantor's obligations and indebtedness to VIKING and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in VIKING's absolute discretion, which may be necessary or advantageous to give effect to the provisions of this Clause.

17 CERTIFICATE

- 17.1 A statement in writing signed by VIKING's Credit Manager or by other duly authorised officer (the "Certificate") stating all or any of the following matters, facts or things:
- 17.1.1 the amount due at any date for all Goods provided by VIKING to the Customer;
- 17.1.2 the amount due at any date for interest on the money due;
- 17.1.3 the amount due at any time for legal costs actually incurred by VIKING including the costs of and incidental to any litigation, stamp duties and other expenses payable on these Terms of Sale, or any credit application, guarantee or other security documents signed by the Customer together with any collection costs or dishonoured cheque fees;
- 17.1.4 the date of making default in performing or observing any of these Terms of Sale, covenants or agreement to be performed or observed by the Customer;
- 17.1.5 whether such default has continued between specified dates; or
- 17.1.6 anything else relevant to the establishment of any right or remedy of VIKING or of the liability of the Customer,

and the Certificate will be conclusive evidence of all such matters, facts and/or things stated in it.

18 INTERPRETATION

- 18.1 In the interpretation of these Terms of Sale, unless specified to the contrary:
- 18.1.1 words importing the singular include the plural and *vice versa*;
 - 18.1.2 words importing any gender includes both genders;
 - 18.1.3 a reference to any matter or thing includes the whole and each part of it separately;
 - 18.1.4 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
 - 18.1.5 a reference to a natural person including a company or other corporate body and *vice versa*;
 - 18.1.6 a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
 - 18.1.7 the obligations imposed by these Terms of Sale of a party who is a natural person includes his heirs, executors, administrators and assigns;
 - 18.1.8 the obligations imposed by these Terms of Sale on or in favour of a party which is a company or other corporate body includes its successors and assigns; and
 - 18.1.9 use of the word “**including**” is to be read and construed without limitation.
- 18.2 In the interpretation of these Terms of Sale, time will be of the essence. However, if something must be done on or by a specified day which is not a Business Day, it is to be done instead on or by the next Business Day.
- 18.3 These Terms of Sale are to be interpreted so that they comply with Victorian law, although if any provision does not comply, then that provision is to be read down so as to give it as much effect as possible. However, if it is not possible to give the provision concerned any effect at all, then it is to be severed from these Terms of Sale, in which case the remainder of these Terms of Sale will continue to have full force and effect.
- 18.4 The legal doctrine of *contra proferentum* does not apply to these Terms of Sale, which means that a provision in these Terms of Sale must not be construed to the disadvantage of VIKING merely because it was responsible for the preparation of these Terms of Sale.
- 18.5 The Clause headings are for ease of reference only and are not intended to affect the construction or interpretation of these Terms of Sale.