

**\*IMPORTANT\***

**Vacublast Pty Ltd**

**(ABN:95 613 302 131)**

**Treloar Nominees Pty Ltd T/A Vacublast Services**

**(ABN: 78 925 161 585)**

## **TERMS AND CONDITIONS OF SALE**

### **APPLICATION OF THESE TERMS AND CONDITIONS**

These Terms and Conditions apply to all supplies of goods and/or services or any part of either of them provided to the customer unless otherwise agreed in writing by a duly authorised representative of Vacublast Services (Hereafter referred to as The Company).

#### **1. QUOTATIONS**

(A) Any quotation given by The Company will only be binding if given in writing by post on Company Letterhead or via email by a duly authorised representative of the Company and the quotation has not expired. The basis of any written quotation may include any, or all of, the following:

- (i) Samples and materials provided by the customer
- (ii) On-site measurements and tests conducted by The Company representative(s)
- (iii) Instructions provided by the customer

The Company reserves the right to amend any quotation given to reflect any incomplete, inaccurate or changed instructions or samples or materials given by the Customer. Any verbal quotation is an estimate only and will not be binding unless and until confirmed by The Company in writing. Any quotation is valid for a period of 14 days only from its date of issue by The Company, (provided that The Company has not previously withdrawn it and subject to the provisions of condition 3 below) and shall be deemed to be an offer by The Company to provide goods and/or services upon these terms and conditions to the Customer. Any order made in respect of a written quotation shall be deemed to be an acceptance of the offer set out in that written quotation by the Customer.

(B) The Customer must ensure that any quotation it wishes to accept, its order and any applicable specification are complete and accurate. The quantity and description of the goods or services shall be as set out in The Company's written quotation or the Customer's order as accepted.

(C) Subject to condition 5(A) a Business Customer (a Customer who is dealing with The Company in the course of its business) may not cancel an order which The Company has accepted except with the agreement in writing of The Company and any Customer cancelling any order hereby agrees to indemnify The Company in full against all losses (including loss of profits), costs (including the costs of all labour and material used until the date of cancellation), damages, charges and expenses incurred by The Company as a result of the cancellation.

The Company may cancel an order at any time prior to delivery upon notice to the Customer whereupon a refund of any monies paid for the relevant goods and/or services will be promptly made.

(D) All quotations given, and all orders accepted, are subject to The Company's Terms And Conditions of Sale and The Company is not bound by any other representations provided by its personnel or Agents stipulated or incorporated or referred to by the Customer, whether in the order or in any negotiations.

**(E) The Customer acknowledges that there are no representations outside these conditions which have induced the Customer into this contract and these conditions and the terms of the quotation constitute the entire understanding between the parties and supersede all previous arrangements between the parties.**

**(F) Any modification of these conditions is ineffective unless made by an express written agreement between the parties. The signing by The Company of any of the Customer's documentation does not imply a modification of these conditions.**

## **2. SPECIFICATIONS**

**All specifications, drawings and particulars of weights and dimensions submitted with the quotation are approximate only, and the descriptions and illustrations contained in The Company's catalogues, price lists and other advertising material are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract.**

## **3. PRICE**

**(A) The price payable will (subject to condition 3) be as stated in The Company's written quotation and/or the order as accepted subject to a minimum call out fee of \$498 exclusive of GST.**

**(B) The price payable (unless specifically stated otherwise) is exclusive of:**

- (i) any costs of packaging and carriage of goods; and**
- (ii) any sales tax or other applicable goods & services tax or duty;**

**which shall be added to the sum in question**

## **4. PRICE VARIATIONS**

**(A) If there is any increase or decrease in the cost to The Company in fulfilling the order due to:**

- (i) any factor beyond the reasonable control of The Company, this includes (without limitation) increase in the cost of materials and other production cost;**
- (ii) any change in delivery, dates, quantities or specifications for the Order requested by the Customer;**
- (iii) any delay caused by any instructions of the customer or failure of the customer to give The Company adequate information or instructions or where services are required to be performed at Customer work sites any delays caused by restricted access to site works;**
- (iv) any corrections, amendments and alteration in style or content to material provided by the Customer, other than typographical errors;**
- (v) additional costs incurred as a result of materials provided by the Customer proving unsuitable;**

**The price/quotation shall be recalculated to take account of the resulting increased or decreased cost of meeting/fulfilling the order.**

**(B) Notwithstanding the provisions of condition 4(A) above: the relevant price/quotation shall only be adjusted upwards if, before The Company has incurred the additional cost, it has notified the Customer in writing of such increase and the Customer has agreed to the increase in writing. If the parties are then unable to agree any such increase to the price, then the order shall be cancelled, and The Company shall be entitled to invoice the Customer for all works services or supplies carried out and/or made before the date of such cancellation.**

## **5. PROOFS AND ERRORS**

**(A) Proofs are available for the Customer's approval on request. No responsibility or liability will be accepted by The Company for:**

- (i) any errors not corrected by the Customer after inspecting the specifications, drawings, proofs or quote where the Customer declines to make such request; or**
- (ii) any work for which the Customer has given instructions which requires or allows The Company to exercise a choice in design or technique; and the Customer shall not be entitled to reject such work although The Company shall rectify any such error at the Customer's cost.**

## **6. DELIVERY AND PAYMENT**

**(A) Any dates specified by The Company for delivery of the goods or performance of the services are approximate only and may not be made of the essence unless specifically agreed by The Company as such in writing. If no dates are specified, delivery will be within a reasonable time.**

**(B) The company's payment terms are strictly 14 days for an approved trade credit account customer and C.O.D for non-trade customers. Late payments may incur a 15% fee on any outstanding balance if payment is not made by the due date, at the discretion of The Company.**

## **7. NON-DELIVERY**

**In the event that The Company is prevented from delivery of the services by reason of the Customer's instructions or lack of instructions, or by strikes, lock-outs, industrial disputes, fires, accident, adverse weather conditions, defective materials or non-delivery by a third party, shortage of fuel, default by or illness of any sub-contractor, inability to obtain materials, embargo or any cause whatsoever beyond the Company's control, whether existing at The Company's works or elsewhere then the delivery period shall be extended by such period as is reasonable in all the circumstances of the case and the estimated delivery date for such goods shall be recalculated accordingly. In no circumstances shall The Company be liable to compensate the Customer in damages or otherwise, for non-delivery or late delivery of the goods/services or any part of them or any loss, consequential or economic, arising thereof.**

## **8. WARRANTIES**

**(A) The Company warrants that (subject to the other provisions of these terms and conditions) upon delivery:**

**(i) any goods will be of satisfactory quality within the meaning of the Relevant Trade Practices Legislation; and**

**(ii) any services will be performed by appropriately qualified and trained personnel, with reasonable care and diligence.**

**(B) Upon delivery the Customer shall be required to check the goods and/or services immediately for any immediately apparent defects. The Company shall not be liable for a breach of the warranty in condition 8(A) unless the Customer gives written notice of any apparent defect to The Company within 7 days of the date of delivery and The Company is given a reasonable opportunity after receiving the notice of firstly verifying and subsequently rectifying any such defect.**

**(C) If the Customer makes a valid claim against The Company based on a defect in the quality of service, The Company shall at its option repair or rectify the defect or refund the price of such goods/services at the relevant proportion of the price paid or payable. If The Company complies with this condition, it shall have no further liability for a breach of warranty in condition (A) in respect of the quality of such goods and services.**

**(D) To the maximum extent permissible in law, all conditions and warranties which are implied by statute or otherwise by general law into this contract in relation to goods or services or supplies are hereby excluded.**

**The Company shall not be liable to the Customer by reason of any representations (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), cost, expenses or other claim for compensation whatsoever (whether caused by The Company's negligence or otherwise) which arise out of or in connection with the supply of goods or services or supplies.**

**(E) The total liability of The Company to the Customer in contract, tort (including negligence or breach of statutory duty), statute or otherwise, in connection with the performance or contemplated performance of the order shall be limited to the quoted price.**

## **9. CUSTOMER'S OWN MATERIALS**

**(A) The Company may reject any unsuitable materials supplied or specified by the customer and The Company reserves the right to refuse to undertake any works, services or use supplies which in its ultimate discretion may put at risk the Health & Safety of its staff or contractors.**

(B) Any Customer's other materials supplied to The Company remain at the Customer's risk and The Company accepts no liability for damage, destruction or loss thereof. In the case of Consumer customers, The Company agree to take reasonable care of such materials while the same are in their possession although it is the responsibility of the Customer to ensure that such items are covered by their own insurance.

## 10. SERVICES PERFORMED AT CUSTOMER WORK SITES

(A) The Company reserves the right to refuse to undertake any works or services at Customer Work Sites where it deems that prevailing site conditions and safety standards (or lack thereof) may put at risk the Health & Safety of its staff or contractors.

(B) Where responsibility for on-site safety and/or site containment, including but not limited to provision of scaffolding, temporary pedestrian access, containment barriers or protective encapsulation, has been expressly assigned to the Customer or its representatives, The Company accepts no liability for and the Customer agrees to indemnify The Company against, any damage, destruction, loss (including loss of profit) or liability claim (either public or private) howsoever caused in the performance of its services where such loss or damage is consequent upon any failure or omission on the part of the Customer to adequately contain the site and ensure a safe and hazard free working environment.

(C) It is incumbent on the Customer to inform The Company before it commences work at Customer Work Sites of any potentially hazardous materials, including but not limited to asbestos, lead paint and toxic or inflammable fumes and/or gas that may be exposed by, or come into contact with, its contractors or staff in the performance of their duties. The Company reserves its right to refuse any work where in its ultimate discretion it considers the risk of exposure to such hazardous materials poses an unacceptable risk to its staff or contractors.

(D) Prior to the commencement of site works, The Customer must notify The Company of any known council regulations, planning and building permit conditions or any other overlays or by-laws effecting the site or its buildings (the "notifications") that may potentially impact the site works. The Company accepts no liability for and the Customer agrees to indemnify The Company against any damage, destruction or loss that may give rise to a liability claim against The Company and where such loss or damage may have been avoided but for the failure of The Customer to provide the notifications.

## 11. PERFORMANCE

(A) The Company shall accept no liability for failure to attain any performance expectations quoted by The Company unless The Company has specifically guaranteed them.

(B) The Company reserves the right to alter, without notice, the specification, design or condition of supply of all its products and services.

(C) Subject to the other provisions of these conditions The Company shall have no liability to the Customer for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods and/or provision of the services.

(D) Any delay or failure in delivery or performance will not entitle the Customer to cancel the order unless and until the Customer, has given 7 days written notice to The Company requiring delivery or performance to be made within a reasonable period (and in the case of consumer customers if they have given reasonable notice to The Company requiring delivery or performance to be made within a reasonable period) and The Company has not fulfilled the delivery or performed within that period. If the Customer cancels the order in accordance with this condition, then:

- (i) The Company will refund to the Customer any sums which the Customer has paid to The Company in respect of that order (or part of order) which has been cancelled; and
- (ii) the Customer will be under no liability to make any further payments under condition 11(F) in respect of the order (or part of order) which has been cancelled.

(E) If the Customer fails to take delivery of goods or services when they are ready for delivery or to provide any instructions, documents or authorisations required to enable the goods or services to be delivered on time (except where The Company is at fault) risk in relation to those goods and services will pass to the Customer and the goods and services will be deemed to have been delivered

(F) The Company may invoice the Customer:

- (i) for goods provided when or at any time after notifying the Customer that the delivery of goods is completed;
- (ii) for services provided on or at any time after performance of the services or their commencement;
- (iii) notwithstanding the provisions in conditions 11(F) (i) and (ii), in the event that an order is suspended or delayed as a result of any act or omission on the part of the Customer for a period in excess of thirty days, for any part of the order which has been processed/delivered and/or performed.

(G) The Company's standard terms of business for an approved credit account customer, is net 14 days from date of invoice and applies to all credit accounts unless otherwise agreed in writing. Payment for non-credit customers is by pro-forma invoice prior to delivery or provision of service unless otherwise agreed in writing.

(H) The Company may deliver goods in separate instalments and/or perform any services in stages. Each separate instalment or stage shall be invoiced and paid for in accordance with the provisions of these terms and conditions. Each instalment or stage shall be a separate contract and no cancellation or termination under clause 11(D) of any one contract relating to an instalment or stage shall entitle the customer to repudiate or cancel any other contract, instalment or stage.

(I) All sums payable to The Company under any order shall become due immediately upon termination/cancellation of the order.

(J) All payments to be made by the Customer under the order shall be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim unless expressly agreed upon in writing by The Company.

(K) If the Customer fails to make any payment when payment is due then without prejudice to any other right or remedy available to The Company, The Company shall be entitled to:

- (i) cancel the order or suspend any performance of the order;
- (ii) appropriate any payment made by the Customer as The Company may think fit (notwithstanding any purported appropriation by the Customer);
- (iii) charge the Customer with all costs and expenses involved in collecting the overdue payment together with interest (both before and after any judgement) on the amount unpaid at the rate of 10% per annum from the due date until payment in full is made (applied monthly with any part month being treated as a full month for the purpose of calculating interest).

## 12. TERMINATION

If the Customer is in breach of any of its obligations under these terms and conditions then The Company may without prejudice to any of its other rights immediately suspend the performance of any order placed by the Customer and shall be entitled to charge the Customer, and the Customer shall immediately become liable to pay, for any works, services and supplies already carried out (whether completed or not) including the cost of any materials purchased on behalf of the Customer.

## 13. WAIVER

Failure or delay by The Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at time or times thereafter.

## 14. INDEMNITY

The Customer shall indemnify The Company in respect of all damage or injury occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith for which The Company or its Agents may become liable in respect of the goods and or services sold under this contract in the event that the damage or injury shall have been occasioned by the negligence of The Company or its servants or agents.

## 15. ILLEGALITY AND SEVERANCE

If any provision of these terms and conditions is held by a competent authority to be invalid or unenforceable in whole or in part then that provision shall, to the extent required, be severed from the order

and shall be ineffective without as far as possible modifying any other provision or part of the order and this shall not affect any other provisions of the order which shall so far as is reasonably possible remain in force and effect.

#### **16. ENTIRE AGREEMENT**

These provisions constitute the entire agreement between The Company and the Customer and replace all prior agreements, understandings, statements and communications between The Company and the Customer.

#### **17. FORCE MAJEURE**

The Company will make every effort to carry out the Customer's instructions and the order but shall be under no liability if unable to carry out any provision of the order for any reason beyond The Company's reasonable control (without limiting the foregoing) including the inability to secure labour, materials or supplies, breakdown of machinery, or as a result of the Act of God, war, labour dispute, fire, flood, drought, legislation, failure of power supply or any other cause beyond The Company's reasonable control. During the continuance of such instance of Force Majeure the Customer may by notice in writing to The Company elect to terminate the order and pay for works, services and/or supplies provided or used up to such notice, but subject thereto shall otherwise accept delivery when available.

#### **18. SUB-CONTRACTING**

The Company may assign, license or subcontract all or any part of its rights or obligations under the order.

#### **19. GOVERNING LAW**

The formation, existence, construction, performance, validity and all aspects whatsoever of the order or of any term of the contract shall be governed by the laws of New South Wales.