

In these Terms, unless the context otherwise requires:

"us" or "we" means **Vinidex Pty Limited** (A.C.N. 000 664 942) and "our" has a corresponding meaning.

"you" means the purchaser or proposed purchaser or offeree of any goods from us, and "your" has a corresponding meaning.

"goods" shall mean any goods offered, sold or supplied by us.

#### 1. **General**

Unless otherwise agreed in writing by us, any agreement for the sale or supply of any goods by us shall be subject to and shall incorporate our terms of sale effective at the time the agreement is made, to the exclusion of any terms or conditions stipulated in any manner by you whether at the time of ordering any goods, at the time of accepting any offer for any goods or accepting any goods, or otherwise.

#### 2. **Formation of Contract**

An agreement for the sale of goods between us and you shall not come into existence if an order placed by you for the goods is not accepted by us. Any order for any goods must be accompanied by sufficient information to enable us to proceed with the order.

#### 3. **Description**

Any description of the goods contained overleaf or in any other document is provided by way of identification only and the use of that description shall not constitute a description under any contract of sale by description. Any description of any goods in any brochure, document or other sales literature used by us may be approximate and is for general information only and shall not form part of any agreement between us and you.

Any performance figures given by us are based on our experience but we shall have no liability if those figures are not obtained, unless they are specifically guaranteed in writing by us.

#### 4. **Offers, Quotations and Tenders**

Any offer, quotation and tender by us will be open for acceptance until it is withdrawn by us at any time (notwithstanding that the offer, quotation or tender does not state this right elsewhere), or if not withdrawn, for not more than 30 days from the date of issue, unless otherwise specified in writing by us.

All prices contained in any offer, quotation or tender are subject to alteration by us without notice, unless otherwise specified in writing by us. Commissioning and installation are not included in any quotation, tender or price list.

#### 5. **Prices**

The prices for any goods to you shall be as stated in a valid and current quotation from us, or if none, in our price list current on the date or dates that we despatch your order. GST is included in the total price unless a product is exempt from GST. Any other applicable taxes are not included in prices offered or quoted or in price lists but will be separately charged to you, unless not applicable. If we incur expenses in supplying the goods which are not anticipated or provided for in our offer, quotation or price list, owing to any circumstances whatsoever beyond our reasonable control, those additional expenses shall be added to the price and must be paid by you accordingly.

#### 6. **Payment**

Subject to the following provisions of this paragraph, all payments must be made strictly net cash on delivery of the goods. Time shall be of the essence. We may at our sole discretion elect to allow you credit or refuse to allow you credit. We might allow you credit if we have received a credit application properly completed by you and we receive any information that we may require from time to time. Where credit is allowed, the maximum period of credit on any purchase is 30 days after the date of the invoice for that purchase.

Notwithstanding any granting of credit, we reserve the right at any time to withdraw credit, or to require payment earlier than the time allowed in any credit arrangement, or require cash on delivery. All export sales are subject to the prompt provision by you of an irrevocable letter of credit satisfactory to us, in our favour. You may not set-off any amount you claim from us against any amount you owe us.

If you fail to make full payment by the due date, without prejudice to our other rights, we shall be entitled to:

- (a) charge you interest on any outstanding amount (before and after any judgment) at an annual rate of 2% above the highest overdraft rate from time to time charged by Commonwealth/ANZBank in Wollongong, accruing daily from the date the amount became due to the date of payment and shall be payable on demand, and
- (b) suspend or discontinue further performance under any contract with you, and
- (c) claim from you all the costs and expenses incurred in seeking to collect payment from you or otherwise enforcing our agreement with you.

We shall have no liability to you arising out of or in connection with any suspended or discontinued performance. You shall also be liable to us for any loss (including loss of profit) suffered by reason of your failure to pay any amount.

#### 7. **Delivery**

We will deliver the goods ex store at our place of business. If we arrange freight to you, you must pay our charges on account of freight, unless otherwise agreed. Any delivery dates or periods stated, quoted or agreed by

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us shall be approximate or estimates only and shall only run from receipt by us of a written order complete with all information necessary to enable us to perform. We shall not be liable for any consequences of any delays. We reserve the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment shall not entitle you to terminate any agreement with us.

#### 8. **Force Majeure**

We shall not be liable in respect of any loss or damage arising from any delayed performance or non-performance occasioned by any acts of God, floods, storms, fire, strikes, combination of workmen, industrial action, lockouts, mechanical breakdowns, difficulty in procuring suitable materials or articles or substances required in the manufacture of the goods, significantly increased costs of materials to be used in the manufacture of the goods, shortage of stocks, lack or shortage of labour, delays in transportation or in transit, governmental or legal prohibitions or restrictions, armed hostility, civil commotion or other impediments whatsoever (whether similar in nature to the foregoing or not) reasonably beyond our control. You shall not be relieved from accepting the goods notwithstanding any delay.

#### 9. **Risk**

All risk in relation to the goods shall pass to you and will be borne by you from the earlier of the time that the goods are placed at your disposal at our premises or the time that the goods leave our premises. This shall apply even if we agree at any time to transport or deliver the goods (or arrange for same) to you at any other place.

#### 10. **Property**

10.1 We shall remain the sole and absolute owner of the goods until the price for the goods and all other goods in the same consignment has been received in full by us from you.

10.2 Until we have received the price for the goods and all other goods in the same consignment in full:

- (a) you shall be bailee of the goods for us and shall at your own expense store them upon your premises separately from your own goods or those of any other person and shall store them in a manner enabling them to be readily identifiable as our goods;
- (b) we shall have the right at any time to enter your premises and retrieve the goods;
- (c) you shall not sell or dispose of any of the goods or any interest in the goods without our prior written consent.

10.3 If we consent in writing to the sale or disposal, or if any sale or disposal is made in breach of paragraph 10.2 and notwithstanding such breach:

- (a) you shall inform any person to whom you propose to sell or dispose of the goods or any interest in the goods (the Acquirer) of our interest;
- (b) any sale or disposal shall be made as our agent (including as agent exceeding its authority, where appropriate);
- (c) you shall ensure that the terms of the sale or disposal to the Acquirer includes a term which is identical to this paragraph 10 except that references to "us" shall be references Metal Manufactures Limited and references to "you" shall be references to the Acquirer;
- (d) notwithstanding that payment of the price for the goods would not otherwise have been due by you, you shall be immediately obliged to pay the price for the goods to us immediately you receive any payment from the Acquirer;
- (e) you shall hold all your rights against the Acquirer and any proceeds you receive in trust for us;
- (f) you agree that we shall be entitled to trace all and any proceeds arising from any sale or disposal of the goods until you pay the full price for the goods to us; and
- (g) you shall at our request assign your claims against the Acquirer and you agree irrevocably to appoint us and each of our officers as your attorney to give effect to and complete that assignment.

10.4 Until the price for the goods and all other goods in the same consignment has been received by us in full from you, you shall act at all times in a fiduciary capacity of the utmost good faith toward us.

10.5 Where -

- (a) you make a new object from the goods, whether finished or not;
  - (b) you mix the goods with other articles; or
  - (c) the goods becomes part of another product,
- you agree with us -
- (d) that the ownership of the new object, other article or other product immediately passes to us; and
  - (e) until payment of all amounts owing to us, whether under this or any other contract, that you will hold them as a fiduciary for us.

10.6 For the purposes of removing doubt, the ownership of the new object, article or other product passes to us at the beginning of the single operation or event by which the goods are converted into a new object, are mixed or becomes part of another thing (the "New Goods").

10.7 Where we have not been paid in the manner required by these terms, you agree with us to keep the New Goods as a fiduciary for us and, unless otherwise required by us, to store the New Goods in a manner that clearly shows our ownership of them.

#### 11. **Packing**

The price quoted includes our standard packing where applicable. The cost of any special packing required by you or any special or export packing which may in our opinion be required, shall be an additional charge to you.

## 12. **Purported Variation or Cancellation by Purchaser**

If you cancel, vary or suspend any order or offer, or purport to do any such thing, you must compensate and indemnify us for all our costs, losses and expenses incurred, suffered or anticipated including, but not limited to, loss of gross profits.

## 13. **Returns**

We will not accept any returns unless they have been authorised by us and are returned in the same condition as that in which they were despatched. Any authorised returns must be sent to us at our address on the invoice with freight pre-paid by you and will be subject to a restocking fee. If the freight on authorised returns has not been pre-paid by you, we reserve the right to refuse the returns or the right to pay the freight and charge you for the freight and an administration fee.

## 14. **Entire Terms**

Except only to the extent that additional terms have been agreed by us in writing, these terms of sale constitute the entire terms and conditions of the agreement of sale between us and you. All representations, conditions or warranties (whether expressed or implied) not contained herein are expressly excluded. All terms, conditions, warranties and obligations otherwise implied or included in the agreement between us and you by any legislation or statute or rule is excluded to the fullest extent allowable by law. The agreement between us and you shall not be varied except in writing by us.

## 15. **Claims and Limitation of Liability**

15.1 Nothing in these terms and conditions shall exclude, restrict or modify rights and remedies you have under any applicable legislation in Australia which, pursuant to that legislation, cannot be excluded, restricted or modified by agreement ("preserved rights and remedies").

15.2 Except only to the extent that you have preserved rights and remedies:

- (a) we will accept no claim in respect of the goods and shall not be liable to you and the goods will be deemed to comply with the agreement between us and you unless we receive a claim in writing from you within 7 days after delivery in sales within Australia or within 21 days of the date of arrival of the goods at the port of destination in export sales;
- (b) we shall be under no liability to you at law or in equity or pursuant to the provisions of any statute, rule or regulation or otherwise for any claims, demands, losses, damages, costs or expenses arising out of or connected with any performance or non-performance by us including, without limiting the generality of the foregoing, any act or omission of us, our officers, servants, agents, contractors or other representatives.

15.3 If any condition, warranty or obligation is included in the agreement between us and you or imposed on us by virtue of any applicable legislation in Australia, then to the extent to which our liability in respect of that condition, warranty or obligation cannot lawfully be or is not otherwise excluded, restricted or modified by these terms and conditions, our liability in respect of that breach shall to the fullest extent allowable by law be limited to any one or more of the following, at our option:

- (a) replacing the goods with equivalent goods; or
- (b) repairing the goods; or
- (c) paying the cost of repairing the goods or of replacing the goods with equivalent goods; or
- (d) refunding the price paid in respect of the goods, less an amount reflecting the amount of use you have had of the goods.

Subject only as aforesaid in this paragraph, in no event shall we be liable whether in tort or in contract or otherwise for any special, indirect or consequential damages, including, but not limited to damage for loss of revenue or sales, costs incurred in connection with substitute facilities, any loss suffered by any third party, or the loss of any actual or anticipated profits.

## 16. **Errors, Omissions and Manifest Discrepancies,**

We reserve the right to correct errors or omissions in quotations, acknowledgments, orders, invoices or other documents relating to the goods or the agreement between us and you, whether or not the expression "E&OE" is contained in the document.

## 17. **Licences, Permits, Patents and Other IP**

All goods are sold on the understanding that all requisite licences and permits under all relevant statutes, regulations, ordinances and rules have been obtained by you. Without limiting the generality of the foregoing, where we have followed a design or instruction furnished or given by you or any person, company or other entity on your behalf of or at your request, you indemnify us against all liability, damages, penalties, costs and expenses to which we may become liable by reason of any work being required to be done in accordance with those instructions involving an infringement of any patent, trade mark, registered design, copyright, common law right or any other right of any person.

## 18. **Special Orders**

You also warrant as a fundamental condition of your agreement with us that all drawings and specifications and other design information supplied by you to us are accurate in all respects. Goods manufactured to your special order shall in no circumstances be returnable to us, nor shall you be entitled to claim any rebate or refund of the price thereof notwithstanding that the same may not comply precisely with your specification.

### 19. **Subcontracting**

We reserve the right to sub-contract any obligation on us.

### 20. **Disclaimers**

We do not hold ourselves out as a designer of any systems utilising any goods or as a consultant in relation to the use of any goods. All advice and information contained in our published literature and given by our staff is compiled from the best information available to us, but we accept no responsibility whatsoever for their accuracy or for any results which may be obtained by you. If you rely upon any such advice or information, you do so entirely at your own risk and we will not be liable for any loss or damage thereby suffered notwithstanding any want of care on our part or our staff in compiling or giving any advice or information.

### 21. **Non-Waiver and Waivers**

Failure by us to insist upon strict performance of any term or condition shall not be construed as a waiver thereof or a waiver of any rights we may have. Any waiver of any rights in respect of any breach shall not be construed as a waiver of any rights in relation to any other or subsequent breach of any term.

### 22. **Notices**

Notices to us shall be transmitted by prepaid registered mail to our address stated on our invoice and marked for the attention "The Directors". No notice or payment transmitted to us shall be deemed to have been given or made until it is actually received by us.

### 23. **Termination**

If a "termination event" (defined below) occurs, we may at our discretion, and notwithstanding any waiver of any default or failure to enforce any right, and without prejudice to our other rights under these terms or otherwise, forthwith terminate our agreement with you, or suspend our agreement with you or any unfulfilled part thereof, or make partial deliveries, or require payment in cash before or on delivery of any goods, notwithstanding any other terms. In the event of any such action by us, we shall not be liable for any loss, damages, costs or expenses suffered or incurred by you or of any other person howsoever arising from that action. A "termination event" occurs if you fail to make any payment promptly as required by these terms or as specifically agreed by us, or you otherwise fail to carry out the terms of the agreement between you and us, or you become insolvent or bankrupt or commit any act of insolvency or bankruptcy, or you stop payments of your debts, or you call a meeting of or enter into any composition with or make any assignment for the benefit of your creditors, or a receiver, receiver and manager, administrator or provisional liquidator is appointed to your undertaking or assets or any part thereof, or a petition for your winding up is presented, or any resolution is passed for the appointment of an administrator or for your winding up, or you breach or commit any default under any mortgage, charge or other encumbrance by which you are bound, or if any mortgagee, chargee or other encumbrancee of yours becomes entitled to enforce a mortgage, charge or other encumbrance, or you fail to pay promptly any judgment debt, or you default under any other agreement with us or under any other agreement with anyone else.

### 24. **Governing Law, Jurisdiction and Arbitration**

The agreement between us and you shall be governed by the laws of New South Wales (excluding the whole of the United Nations Convention on Contracts for the International Sale of Goods, where it would otherwise have applied) notwithstanding the place in which the goods or any of them are to be delivered. You submit to the exclusive jurisdiction of the courts in New South Wales. However, if any dispute arises as to (1) the characteristics of any goods, (2) the performance or non-performance of any goods, (3) the suitability for any purpose of any goods, (4) any defect of any goods or (5) any contractual provision or other representation about any of the foregoing, then that dispute is to be referred to arbitration by a single arbitrator, acting under the UNCITRAL Rules. If we and you cannot agree on the arbitrator within 21 days after the notification of a dispute falling under this paragraph, the arbitrator shall be a person nominated by the President for the time being of the New South Wales Law Society.

### 25. **Copyright: Use and Restrictions**

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