



GENERAL TERMS AND CONDITIONS OF TRADE

The supply of Goods by the Seller is subject to the below conditions (unless expressly waived by the Seller in writing) and those conditions shall apply to any contract resulting from instructions by the Client to the Seller to supply the Goods and shall override all inconsistent provisions in tender documents, specifications, orders, acceptances, contracts and agreements and which shall be expressly embodied in or shall be deemed to be embodied in all contracts or agreements (formal or informal) expressed or implied.

1. Definitions

- 1.1 "Seller" shall mean [VULK Group Trust T/A VULK Pty Ltd] its successors and assigns or any person acting on behalf of and with the authority of [VULK Group Trust T/A VULK Pty Ltd]
- 1.2 "Client" shall mean the purchaser or purchasers of the Goods (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Seller to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean [Concrete treatment products, tools and consumables] supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) as described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.5 "Services" shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations.
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Client subject to these terms and conditions.
- 1.7 "PPSA" shall mean the Personal Property Securities Act 2009 (Cth) and includes all amendment, replacement and successor provisions or legislation.
- 1.8 "ACL" shall mean the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth).
- 1.9 "Security Interest" shall mean:
 - (a) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
 - (b) a security interest as defined in the PPSA; or
 - (c) any document to grant or create anything referred to in either Clause 1.9(a) and 1.9(b) and any other thing which gives priority to any other creditor with respect to the Goods.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Client in connection with the supply of Goods and/or the Client's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all liabilities of the Clients under these terms and conditions, including payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client (including by under clause 2.1) the terms and conditions are binding and can only be amended with the written consent of the Seller.

3. Price And Payment

- 3.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or
 - (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days, as notified by the Seller to the Client invoices, quotation, work authorisation or any other forms.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 At the Seller's sole discretion a non-refundable deposit may be required.
- 3.4 At the Seller's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Clients shall be made by instalments in accordance with the Seller's payment schedule as notified by the Seller to the Client invoices, quotation, work authorisation or any other forms.



- 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoices, quotation, work authorisation or any other forms. Subject to clause 3.6 if no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 At the Seller's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at the Seller's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier),as notified by the Seller to the Client invoices, quotation, work authorisation or any other forms.
- 4.2 At the Seller's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account,as notified by the Seller to the Client and/or as stated in the invoices, quotation, work authorisation or any other forms.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.4 The failure of the Seller to deliver the Goods shall not entitle either party to treat these terms and conditions as repudiated.
- 4.5 The Seller shall not be liable for any loss or damage whatsoever due to or arising from the failure by the Seller to deliver the Goods (or any of them) promptly or at all and the Client releases the Seller from any liability relating to or arising from such as failure.

5. Risk

- 5.1 Regardless if the Seller retains ownership of the Goods in accordance with clause 6 under these terms and conditions, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6. Title

- 6.1 The Seller and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
 - (a) the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and
 - (b) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.

7. Personal Property Securities Act 2009 (PPSA)

- 7.1 The PPSA applies to these terms and conditions.
- 7.2 The Client must:



- (a) do anything (including making amendments to these terms and conditions or executing a new security document) for the purpose of:
 - (i) ensuring that a Security Interest created or arising under, or provided for by, these terms and conditions:
 - (a) attaches to the collateral that is intended to be covered by that Security Interest;
 - (b) is enforceable, perfected, maintained and otherwise effective; and
 - (c) has the priority contemplated by these terms and conditions;
 - (ii) enabling the Seller to prepare and register a financing statement or financing change statement if the Seller in its absolute discretion deems necessary;
 - (iii) enabling the Seller to exercise any of its powers in connection with any Security Interest created under or provided by these terms and conditions; and
 - (b) provide any information requested by the Seller in connection with these terms and conditions to enable it to exercise any of its powers or perform its obligations under the PPSA; and
 - (c) whilst the Seller has a Security Interest in the Goods, keep the Goods in its own possession and control and must not assign, transfer nor be entitled to create a lien or any other security interest over the Goods;
- 7.3 The Client agrees that a Security Interest arises under these terms and conditions in all present and future Goods supplied by the Seller to it and all present and after-acquired proceeds of or derived from the Goods, in the form of a purchase money security interest and that the Client must not deal with the Goods or the proceeds in any way which may be adverse to the Seller.
- 7.4 The Security Interest arising under this Clause 7 attaches to the Goods when the Goods is collected by the Client or delivered to the Client at the Client's premises and not at any later time.
- 7.5 Whilst the Seller has a Security Interest in the Goods, the Client must not change its name (including but not limited to any entity name or trading name), address, place of incorporation or any other details required to be contained in a financing statement under the PPSA without the Seller's prior written consent.
- 7.6 Except if section 275(7) of the PPSA applies, the parties agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available and the Client agrees not to provide any authorisation for the disclosure of such information.
- 7.7 The Client agrees that:
 - (a) the Seller is under no obligation to dispose of or retain any personal property it seizes within a reasonable time under section 125 of the PPSA;
 - (b) it shall not complain of any damage, cost or inconvenience caused by the Seller in taking apparent possession of any personal property under section 126 of the PPSA;
 - (c) following a default, it has no rights to redeem the personal property under section 142 of the PPSA; and
 - (d) it has no rights to reinstate these terms and conditions following a default under section 143 of the PPSA.
- 7.8 The Client waives its rights to receive:
 - (a) a notice of the Seller's proposal to remove personal property which has become an accession under section 95 of the PPSA;
 - (b) a notice of the Seller's proposal to exercise its rights in accordance with land law under section 118(1)(b) of the PPSA;
 - (c) a notice of the Seller's action (such action arising under section 120(2) of the PPSA) in relation to an interest in collateral under section 121(4) of the PPSA;
 - (d) a notice of the Seller's seizure of certain personal property under section 123(2) of the PPSA;
 - (e) a notice of the Seller's proposal to dispose of any personal property under section 130 of the PPSA;
 - (f) details of the amounts paid to other secured parties in a statement of account provided by the Seller under section 132(3)(d) of the PPSA;
 - (g) a statement of account under section 132(4) of the PPSA;
 - (h) a notice of the Seller's proposal to retain personal property under section 135 of the PPSA; and
 - (i) A copy of, or notice of, any verification statement confirming registration of a financing statement or a financing change statement relating to any Security Interest under, or provided for by these terms and conditions.
- 7.9 The Client waive any rights it may have to:
 - (a) object to the Seller's proposal to purchase personal property under section 129(2)(b) of the PPSA; and
 - (b) object to the Seller's proposal to retain personal property under section 134(2)(b) of the PPSA.
- 7.10 Anything that is required by the Seller to be done under this Clause 7 must be done by the Client at the Client's own expense or, at the Seller's option, by the Seller at the Client's expense. The Client agree to reimburse the Seller's costs in connection with any action taken by the Seller under or in connection with this Clause 7.
- 7.11 The terms **attaches**, **collateral**, **financing change statement**, **financing statement**, **perfected**, **purchase money security interest** and **personal property** as used in this Clause 7 have the meaning given to them in the PPSA.



8. Client's Disclaimer

- 8.1 The Client hereby disclaims any right to rescind, or cancel the terms and conditions or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

9. Returns

- 9.1 Returns will only be accepted by the Seller provided that:
- (a) the Seller has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

10. Competition and Consumer Act 2010 (Cth)

- 10.1 These terms and conditions shall be read subject to the Competition and Consumer Act 2010 (Cth) and to any implied terms, conditions or warranties imposed by that Act or any other Commonwealth, Territory or State legislation insofar as such legislation may be applicable and prevents either expressly or impliedly the exclusion or modification of any such term, condition or warranty, and our liability shall be limited to the maximum extent permitted by law.
- 10.2 The Client agrees that it has inspected and tested any Goods supplied by prior to purchase, and that at time of purchase it was of the view that the Goods was of acceptable quality.
- 10.3 The Client accepts that facilities for the repair of Goods will not be available unless otherwise notified by the Seller, and that it was aware of this fact at the time of purchase of the Goods.

11. Exclusion of implied warranties

- 11.1 The only conditions and warranties binding on the Seller in respect of the state, quality or condition of the Goods supplied by the Seller to the Client are those imposed and required by law to be binding on the seller (including the *Competition and Consumer Act 2010 (Cth)* and applicable State fair trading laws). All other conditions and warranties, whether express or implied by law, in respect of the Goods which may apart from this clause be binding on the Seller, are hereby expressly excluded and negated.

12. Limitation of liability

- 12.1 To the fullest extent permitted by law, the Seller's liability (if any) arising from a breach of any applicable conditions or warranties shall, at the Seller's option, be limited to, and completely discharged by either the supply by the Seller of equivalent Goods or the repair or replacement by the Seller of the Goods supplied to the Client.
- 12.2 Except to the extent already set out in this clause, the Seller will have no liability (including liability for negligence or recklessness) to any person for any loss or damage (consequential or otherwise) suffered or incurred by any person in relation to any Goods supplied by the Seller. Without limiting the generality of this limitation, the Seller will have no liability for any loss or damage resulting from any failure, defect or deficiency of any kind in the Goods.
- 12.3 The Seller shall not be liable for any loss of profit or special, indirect or consequential damages of any kind or any damages not ordinarily arising from a breach of the terms and conditions.
- 12.4 Any valid claim by the client against the seller must be presented in writing to the seller within a reasonable time, and in no event longer than 60 days after the after the relevant breach. No action may be maintained by the client against the seller unless a timely written claim has been given under this clause, and unless such action is commenced in court within 9 months after the after the relevant breach.

13. Default & Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until and including the date of payment, at a rate of 6% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 13.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation under these terms and conditions (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be



liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.

- 13.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
 - (d) any other breach of these terms and conditions by the Client.

14. Cancellation

- 14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

- 15.1 The Client and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to any credit provided by the Seller.
- 15.2 The Client and/or the Guarantor/s agree that the Seller may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 15.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

16. Unpaid Seller's Rights

- 16.1 Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:



- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Seller is in possession of the item;
 - (c) a right to sell the item.
- 16.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- 17. Payment disputes**
- 17.1 At the Seller's sole discretion, if there any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2009 may apply
- 17.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2009 of South Australia, except to the extent permitted by the Act where applicable.
- 18. General**
- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the non-exclusive jurisdiction of the courts of South Australia.
- 18.3 In the event of any breach of these terms and conditions by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods unless the Client is a consumer, in which case nothing in these terms and conditions shall restrict, limit or modify the Client's rights or remedies as against the Owner for failure of a statutory guarantee under the ACL.
- 18.4 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.
- 18.5 The Client may not assign, license or sub-contract all or any part of its rights and obligations without the Seller's consent.
- 18.6 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.
- 18.7 The Seller shall not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of the Seller.
- 18.8 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.