



## Customer Trading Terms and Conditions

### 1. Application

- 1.1 These Terms apply whenever Goods or Services are quoted for, sold, supplied or Delivered by the Supplier to the Customer.
- 1.2 Requesting or accepting a Quotation from, placing an Order with or accepting a supply or Delivery of Goods or Services from the Supplier by a Customer constitutes acceptance by the Customer of these Terms.
- 1.3 These Terms supercede any terms and conditions of the Customer's purchase order (if any) and no prior or subsequent understanding, agreement, term, condition or trade custom which is inconsistent with these Terms will be binding on the Supplier.
- 1.4 Where the Supplier and a Customer enter into a supply agreement or a series of supply agreements for Goods and Services, these Terms will continue to apply to the extent that they are not inconsistent or expressly excluded.
- 1.5 Except as expressly set out in these Terms, and subject to any terms, warranties or conditions that by law may not be excluded, all conditions, warranties, terms and obligations expressed or implied by law or otherwise relating to the performance of the Supplier's obligations under these Terms or any goods or services supplied or to be supplied, by the Supplier under these Terms, are excluded and the rights as set out in these Terms are the sole and exclusive remedies of the Customer with respect to any defective Goods.

### 2. Definitions and Interpretation

- 2.1 For the purpose of these Terms, unless the context otherwise necessarily requires

**Contract** means any agreement between the Customer and the Supplier for the supply of Goods.

**Customer** means a person or entity seeking or accepting a Quotation for, placing an Order or accepting the supply or Delivery of Goods or Service from the Supplier and includes that person's or entity's employees, agents, contractors, sub-contractors, successors, substitutes (including persons taking by novation), assigns and any person, entity claiming under or through that person or entity.

**Delivery** includes:

- (a) the collection of Goods from the Supplier's Premises;
- (b) pre-agreed delivery of Goods to Customer's requested Job Site; and
- (c) acceptance of Goods by the Customer (irrespective of whether the parties have reached a concluded agreement about all the terms of the Delivery including but not limited to the price payable for the Goods).

**Event of Default** means any of the following Events:

- (a) the Customer fails to pay for the Goods;
- (b) the Customer fails to pay any overdue interest;
- (c) the Customer is in breach of any term set out in these Terms;
- (d) if the Customer is a company:
  - an order is made or a resolution is passed for the winding up of the Customer;
  - a liquidator, provisional liquidator, an official manager, manager, receiver, receiver and manager or other similar encumbrancer is appointed to the Customer or to any of the assets and undertaking of the Customer;
  - the Customer makes any compromise or arrangement within the meaning of the Corporations Act with its creditors or any of them for an order summoning a meeting of creditors of the Customer;
- (e) if the Customer is a natural person:
  - an order is made for the Customer's bankruptcy;
  - the Customer dies or becomes mentally or physically incapable of managing his or her affairs;
- (f) the Customer ceases or threatens to cease carrying on the Customer's business.

**Force Majeure Event** means an event or circumstance which is beyond the reasonable control (and without the fault or negligence of the party affected) and which unreasonably interferes with or prevents the performance by party affected including an act of God, industry-wide strike or lock-out, war, act of public enemy, terrorism, riot, civil commotion, fire, earthquake, explosion, epidemic and pandemic events, state and government lockdowns and similar unavoidable event BUT this expression excludes:

- (a) the inability of a Party, for whatever reason to pay money it is obliged to pay; or
- (b) the inability of either Party to perform one or more of its obligations due to its own negligent act or omission.

**Goods** means such goods specified in the Quotation and/or Order which the Supplier has agreed to supply to the Customer on the Terms as specified herein.

**GST** has the same meaning as in *A Tax System (Goods and Services Tax) Act 1999* (Cth).

**Job Site** means any site nominated by the Customer for the Delivery.

**Master Carrier Rate** means the cost of delivery as charged by the Unipod supplier of freight services

**Order** means any request for the supply of Goods received by the Supplier from the Customer.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and if a term is used in these Terms has a particular meaning in the PPSA, it has the same meaning in that clause.

**Price** means the **Ruling Price** payable by the Supplier to the Customer for the Goods.

**Related Entity/ies** means any corporation or other entity related or connected with the Supplier and includes (without limitation) trusts, holding companies and subsidiaries.

**Ruling Price** means the price the Supplier is agreeable to supply the Goods calculated as at the time of the Customer's placement of an Order. For the avoidance of future dispute, Ruling Price may or may not equate with the price as set out in prior Quotation for the Goods. Ruling Price will be subject to such fluctuations including (but not limited to) the price of raw material, utility costs, exchange rates but excluding Delivery Costs.

**Schedule** refers to a schedule to these Terms.

**Services** means services provided by the Supplier to the Customer in relation to any goods supplied by the Supplier including (where relevant):

- (a) collection of waste Goods;
  - (b) recycling;
  - (c) such other services the parties may agree in writing from time to time,
- which Services the Customer acknowledges, may be subject to separate charges.

**Supplier** means **UNIPOD (VIC) PTY LTD** ACN 123 302 509 (ABN 33 123 302 509), its successors and assigns.

**Terms** means these trading terms and conditions.

**Variation** means any variation to the Contract agreed to by the Supplier.

**Working Documentation** means any architectural drawings, structural drawings and construction drawings, specifications and reinforcement schedules or such other documents which are provided by the Customer to the Supplier together with any subsequent variation, amendment or site instruction.

### 3. Order and Supply

3.1 The Customer warrants and confirms that:

- (a) All information contained in the Working Documentation and any other document supplied by the Customer to the Supplier is accurate and complete and that the Supplier may rely on such information provided by the Customer in the course of its supply of the Goods (or Services);
- (b) The Supplier bears no responsibility for the correctness or accuracy of the Working Documentation; and
- (c) the Supplier is supplying the Goods to the Customer as manufacturer /supplier of such Goods AND as such is not to be construed as being a sub-contractor of the Customer in any manner whatsoever.

3.2 A contract will be created or deemed created upon:

- (a) receipt by the Supplier of an oral, written or online Order from the Customer for the supply of the Goods; and
- (b) confirmation of acceptance of that Order by the Supplier.

For clarification, the mere provision of a Quotation for Goods does not constitute acceptance by the Supplier and the Supplier may at any time (in its absolute discretion) amend or withdraw any Quotation provided for any Goods.

3.3 Notwithstanding clause 3.2 above, the Customer acknowledges that the Supplier may by written notice to the Customer refuse to accept the Order or terminate any supply of the Goods to the Customer (with or without assigning any reason for the refusal (or termination) of supply.

- 3.4 Any Order placed by the Customer for the supply of Goods must comply with the following requirements:
- (a) subject to any waiver issued by the Supplier, all Orders must be in writing and be signed by an authorised representative of the Customer;
  - (b) the Order must clearly identify the Goods ordered including both description and quantity;
  - (c) any Order for quantity of consumables (such as spacers and interlocks etc) must be rounded up to suit package quantity;
  - (d) all Orders are deemed to be subject to these Terms and such additional terms as the Supplier may in its absolute discretion confirm in writing;
  - (e) the Order must specify the required date of delivery;
  - (f) provide contact details for Delivery or Job Site.
- 3.5 Upon placement of the Order, the Customer may not vary, amend or cancel any order made unless agreed to in writing by the Supplier and the Customer acknowledges that the Price (including other costs) of the Goods may change in conjunction with any variation or amendment requested by the Customer.
- 3.6 The Customer notes that for the supply of “pods”, there must be a minimum of 30 hours written notice to the Supplier for any proposal to vary or to cancel any Order.
- 3.7 Any proposed variation or cancellation to any Order will not be valid until due acceptance by the Supplier.
- 3.8 If any proposed variation to an Order is accepted, the Customer acknowledges that the Supplier will have an automatic extension of the time for delivery of the Goods equal to the delay caused by the variation.
- 3.9 Any technical information or assistance the Supplier or its associates provide to the Customer in the course of placement of an Order or Delivery of Goods is given and accepted at the Customer’s risk and is not to be considered a warranty or a specification from the Supplier.

#### 4. Price / Payment

- 4.1 All Quotation/s by the Supplier will expire on the date specified in such Quotation as the “Expiry Date”. If no expiry date is specified, the quotation expires 30 days after the date of the Quotation.
- 4.2 Unless otherwise agreed to in writing by the Supplier, all Goods are sold to the Customer at the Ruling Price (exclusive of GST).
- 4.3 Unless credit terms are agreed between the parties, the Customer must pay the Ruling Price to the Supplier in full before the Order is processed.
- 4.5 The Customer acknowledges that all outstanding payments due to the Supplier will accrue interest at a rate of 2.5% per calendar month calculated on from the date payment becomes due until the date of actual receipt of such payment.
- 4.6 The Customer acknowledges that all payments made by the Customer **may** be applied by the Supplier in the following order of priority:
- (a) towards settling any accrued interest due by the Customer to the Supplier or any other Related Entities of the Supplier;
  - (b) towards set-off of any balance outstanding and due to the Supplier for all account/s, transaction/s and dealing/s as between the Customer and the Supplier or as between Related Entities of the Supplier; and
  - (c) lastly towards the Ruling Price of the last accepted Order made by the Customer.
- 4.7 A statement signed by the Supplier certifying any amount payable by the Customer to the Supplier and/or any other Related Entities of the Supplier (including any costs, interests or other claims) shall in the absence of manifest error, be prima facie evidence of any amount due by the Customer to the Supplier.
- 4.8 If more than one Customer has entered into a Contract, then each Customer shall be jointly and severally liable for the payment of the Price to the Supplier.
- 4.9 All Prices are exclusive of all applicable taxes and charges. The Customer shall indemnify the Supplier in respect of any GST which may be payable as a result of any supply of Goods by the Supplier to the Customer.

- 4.10 Prices quoted are based on the full quantities specified and do not necessarily operate pro rata for any greater or less quantities.
- 4.11 Unless otherwise agreed, all Prices do not include:
- (a) the cost of delivery of the Goods including but not limited to cost incurred by the Supplier arising out of late notification by the Customer of a change to agreed Delivery schedule;
  - (b) storage charges where the Goods are not collected on designated date/s;
  - (c) demurrage costs incurred by the Supplier; and
  - (d) such other costs, charges or expenses as set out in these Terms.
- 4.12 The Customer hereby irrevocably agrees and acknowledges that the Customer will not withhold payment for the whole or any part of an amount payable to the Supplier under these Terms by way of retention or set-off for whatever reason (including where there is a pending dispute between the parties in relation to the supply of Goods).
- 4.13 The Customer agrees to indemnify and keep the Supplier indemnified for all loss, damage, cost and expenses (including legal costs on a solicitor-client basis) for any breach by the Customer of the payment terms as set out in these Terms.

## **5. Credit**

- 5.1 If the Customer wishes to purchase Goods on credit terms from the Supplier, then it must first apply for such credit with the Supplier, which application the Supplier may, in its sole discretion, refuse.
- 5.2 Credit will only be provided on such terms as the Supplier may in its absolute discretion determine and the Supplier may request the provision of personal guarantee or bank guarantee or such other securities for the grant of credit.
- 5.3 Subject to clause 5.4 below, where the Supplier agrees to extend credit to the Customer, the Supplier shall submit to the Customer an invoice for the Goods (or any part thereof) delivered to the Customer and the full amount of each invoice together with any additional charges (as provided for in clause 6 below) will be paid by the Customer to the Supplier no later than the date for payment specified on the invoice and if no payment date is specified within 14 days from the date the Goods were delivered to the Customer.
- 5.4 Notwithstanding any date for payment which may be specified on any invoice issued by the Supplier or otherwise provided for in these Terms, the Customer shall at all times ensure that the total amount outstanding from time to time remains within the pre-determined credit limit set by the Supplier.

## **6. Additional Charges**

- 6.1 In addition to the Price, the Customer agrees to pay to the Supplier such additional charges:
- (a) all taxes, stamp duty or other statutory charges or levies payable in relation to the supply of Goods;
  - (b) all cost of storage where Goods are not collected on such agreed Delivery Date as agreed between the parties or as set out on the Supplier's invoice;
  - (c) all demurrage costs or charges incurred by the Supplier for attendance at a Job Site after the expiration of one (1) hour for a rigid vehicle and two (2) hours for a semi vehicle, with such demurrage charges to be calculated upon then current Master Carrier Rates; all legal costs (on a solicitor/client basis) and disbursements incurred by the Supplier in relation to the supply of Goods or the breach of any Terms as set out herein;
  - (d) all costs, charges, expenses or any other outgoings incurred by the Supplier with respect to any variation of Contract; and all costs and expenses incurred by the Supplier with respect to the recovery or return of Goods from the Customer.
- 6.2 If any tests or inspections of the Goods, or (where applicable) products or materials used in relation to the manufacture of the Goods is required by the Customer prior to delivery, such tests or inspections shall be conducted at the cost of the Customer. The Supplier shall have no responsibility whatsoever for the quality or accuracy of the tests conducted under the supervision of the Customer.
- 6.3 Where a delivery of Goods cannot be effected for what ever reason, the Customer will pay to the Supplier a delivery and return fee calculated in accordance with the then applicable Master Carrier Rates.

## 7. Risk and Title to Goods

- 7.1 All risks in the Goods will pass to the Customer immediately upon Delivery.
- 7.2 The Customer agrees that legal and equitable title to the Goods is retained by the Supplier until the Supplier receives payment in full from the Customer for the Goods and all other monies owing by the Customer to the Supplier at any time.
- 7.3 Prior to title in the Goods passing to the Customer, the Customer:
- (a) must hold the Goods as bailee and fiduciary agent of the Supplier;
  - (b) where the Customer processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold such part of the new goods (**Processed Goods**) on trust for the Supplier as bailee and fiduciary agent of the Supplier;
  - (c) must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of the Supplier;
  - (d) must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;
  - (e) must not sell the Goods except with the prior written consent of the Supplier or in the ordinary course of the Customer's business, provided that any such sale is at arms' length and on market terms;
  - (f) any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for the Supplier in a separate account; and
  - (g) must not create any encumbrance over the Goods which is inconsistent with the Supplier's title and ownership of the Goods.
- 7.2 For purpose of this clause 7, "such part" means an amount equal in dollar terms to the amount owing by the Customer to the Supplier at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods.
- 7.3 If the Customer is in breach of these Terms including, without limitation, failure by the Customer to make payment for the Goods by the date specified by the Supplier to the Customer or in the Supplier's reasonable opinion the payment of any amount in respect of the Goods supplied by the Supplier is in jeopardy, the Customer must return the Goods to the Supplier immediately on demand.
- 7.4 If the Customer does not return the Goods to the Supplier on demand under this clause, the Customer irrevocably authorises representatives of the Supplier to enter upon any site or property where the Goods are located to take possession of the Goods without prior notice, and the Customer indemnifies the Supplier for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Supplier in connection with the retaking possession of the Goods or the exercise by the Supplier of its rights under this clause, and the Customer shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- 7.5 Notwithstanding any term as set out in these Terms, the parties agree that the right of the Customer to deal with the Goods will immediately cease upon the occurrence of an Event of Default as defined.

## 8. Application of the PPSA

- 8.1 The Customer and the Supplier acknowledge that these Terms constitute a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of the Supplier over the Goods supplied or to be supplied to the Customer (as Grantor) pursuant to these Terms and that the Goods supplied or to be supplied under these Terms.
- 8.2 The Customer acknowledges and agrees that the Supplier as Secured Party may apply to register a Security Interest in the Goods at any time before or after delivery of the Goods. The Customer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 8.3 If the Customer defaults in the performance of any obligation owed to the Supplier under these Terms or any other agreement for the Supplier or other Related Entities to supply Goods to the Customer, the Supplier may enforce its security interest in any Goods by exercising all or any of its under these Terms and/or the PPSA.

- 8.4 To the maximum extent permitted by law, the Customer and the Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 8.5 The Customer agrees and undertakes to promptly do anything as required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- 8.6 Nothing in this clause 8 is limited by any other provisions of these Terms or any other agreement between the parties.

## 9. Additional security

- 9.1 The Customer further agrees to mortgage and/or charge all of its interest (whether proprietary, legal, equitable or beneficial) any land or asset to the Supplier as security for all amounts payable to the Supplier by the Customer.
- 9.2 The Customer acknowledges and agrees that the Supplier shall be entitled to lodge a caveat over any land to which clause 9.1 applies.
- 9.3 The Customer hereby irrevocably appoints the Supplier as the Customer's attorney to execute any mortgage or charge (whether registerable or not) against the interest of the Customer in any land or asset in favour of the Supplier in order to give effect to this clause 9.

## 10. Delivery

- 10.1 Subject to clause 10.2 below, the Customer must provide the Supplier with a minimum of 10 business days prior notice of the delivery date (**Delivery Date**) by which the Customer requires the Goods to be delivered to it.
- 10.2 The Supplier is not bound to accept any Delivery Date notified by the Customer. The parties acknowledge that all delivery times provided are estimates only and are not binding on the Supplier.
- 10.3 Save and except for "**Pods**", "**Panels**" and "**Blocks**" and unless otherwise agreed in writing by the Supplier, the following provisions will apply to all Delivery:
- (a) all Goods will be delivered to the Supplier's premises during normal business;
  - (b) regional deliveries, will be delivered on an 'anytime' basis (i.e. Not time specific), on day of delivery. 48 hours' notice is required from placement of order for these jobs.
  - (c) the Customer acknowledges that the Supplier is not required to deliver any Goods to the Customer unless the Customer has paid all monies owing to the Supplier in full;
  - (d) where the Supplier agrees to deliver Goods to a Customer nominated Job Site, the Customer must provide the Supplier with the address for the Job Site at least 2 business days prior to the scheduled Delivery Date;
  - (e) the Supplier may, at its sole discretion, refuse to deliver any Goods to a Job Site. Should the Supplier refuse to deliver the Goods to the Job Site, then the Goods will be delivered to the Supplier's Premises;
  - (f) the Customer must ensure that the Job Site can be accessed by vehicle on properly constructed roadway;
  - (g) the Supplier may, in its absolute discretion, unload the Goods at the Job Site or as close to the Job Site as traffic conditions may allow.
- 10.4 For **Pod customers**, unless otherwise expressly agreed, all Orders within metropolitan area must be placed and acknowledged receipt by the Supplier by 12.00pm (AEST) on the business day prior to the nominated Delivery Date. Orders placed after this time will be delivered on next available shipment. Requests for same day Delivery may incur additional costs.
- 10.5 For **Panel and Block customers**, unless otherwise expressly agreed, all Orders within metropolitan area, must be placed and acknowledged receipt by the Supplier at least 72 hours prior to nominated Delivery Date.

Orders placed after this time will be delivered on next available shipment. Requests for same day Delivery may incur additional costs.

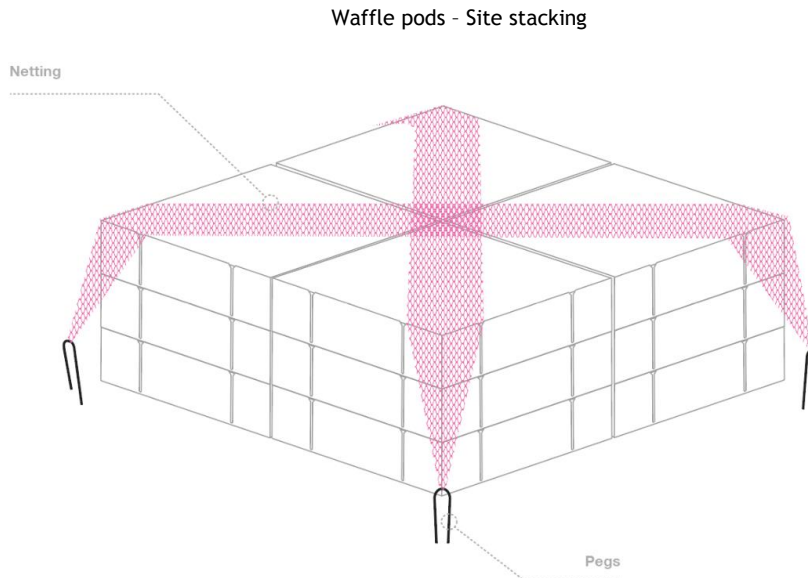
- 10.6 Unless otherwise agreed prior to Delivery or where impractical without Customer assistance (in order to prevent a Delivery being cancelled during delivery occurrence), unloading of goods at the job site shall be the responsibility of Supplier and shall be undertaken at the Customer's cost and in the event that Customer or its agent is not in attendance at the job site when the goods are delivered the Supplier reserves the right to unload the goods and will not be responsible for any claims, damages, expenses or costs resulting or arising there from.
- 10.7 Where Goods are collected from the Supplier's premises by the Customer or its agent, delivery shall be deemed to occur upon the earlier of either the actual collections of goods or the provision of notice of delivery (signature on delivery advice) to the Customer.
- 10.8 Where delivery is other than at Supplier's premises, delivery shall be deemed to occur upon the arrival of the goods at the Job Site.
- 10.9 Quality, description, date, time, and place of delivery of goods as indicated on Supplier's invoice or delivery docket or copies thereof ("the consignment note") shall be conclusive evidence of quality, description, date, time and place of delivery of goods.
- 10.10 Where Delivery cannot be effected, a delivery fee based on Master Carrier Rates + handling fee + administration fee will be charged to the Customer. Examples of when this would apply are:
- (a) Where there are accessibility restrictions at site;
  - (b) Where the site not being ready;
  - (c) Severe or unfavourable weather conditions;
  - (d) where the Supplier's delivery driver deemed the unloading at site to be unsafe.
- 10.11 If a second delivery is required because of lock out, unsuitable site conditions, etc... a handling fee and re-delivery charge will be required.
- 10.12 Supplier can only drop goods on the designated site. It is an offence to drop goods onto nature strips, adjacent lots, paths, etc...The purchaser has full liability if they direct supplier to unload anywhere but on site. The supplier will attempt to place pods beside the slab area. If this is not possible, the pods will be placed on the slab area unless Unipod receives directions stating otherwise from purchaser. \*it is the responsibility of the purchaser to provide this information, in writing, before the delivery is attempted.
- 10.13 The Customer takes full responsibility for assessing any suitable places for the delivery and/or unloading of Goods including all requirements for traffic management associated with a Delivery and for putting in place all traffic management measures which the Customer ought reasonably to know are required in all the circumstances of the Delivery.
- 10.14 The Customer must provide a safe and clear access to any nominated delivery site for Delivery to take place.
- 10.15 Where the Customer requires the Supplier or its agent to enter onto the Customer's property for the purpose of unloading Goods, the Suppliers shall not be liable for any damage to person/s or property/ies.

**Paragraphs 10.16 to 10.28 are applicable to the sale of pods:**

- 10.16 Tie downs will be done at one location on site only.
- 10.17 The Customer acknowledges that the Supplier will only be responsible for the effectiveness of tie downs (i.e keeping the pods in the place they are positioned) for a maximum of four (4) hours after tie downs are installed. After this time, the responsibility for the tie down becomes that of the Customer.

- 10.18 A tie down charge will be payable if the Supplier is requested to return to relevant site to re-secure the Goods.
- 10.19 If the Customer requests goods to be picked up from site and returned to Supplier, a retrieval fee equal to Master Carrier Charges plus handling fee shall be applied. A credit for goods picked up minus damages will be raised by the Supplier.

Tie down will be done as per diagram below.

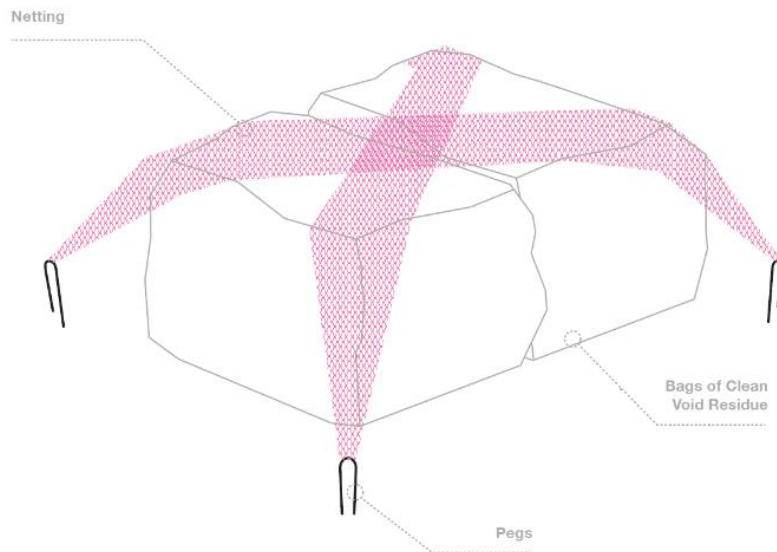


### Waste collection- Pod Sales

- 10.20 Waste pickups are completed under the guidelines as specified in Industry Code of Practice.
- 10.21 The Supplier will drop recycle bags at site during delivery of goods.
- 10.22 The Customer must provide clear and safe access to relevant site/s.
- 10.23 Once slab is poured, scrap EPS must be collected by the builder/ concreter and placed into bags provided by the Supplier. The bags must be tied down securely, free from any contamination and located at the front of the designated lot. Failure to meet these requests will result in a non-compliance report being lodged, scrap not being picked up, a separate handling/ sorting fee or a second collection charge being required.
- 10.24 If the Supplier is requested to go to site and the goods waste is not ready (i.e. Pods have not been consumed) or access to site is blocked for any reason (including concrete pour, framework and so on) Supplier will invoice the attempt to pick up. Another purchase order for a 2nd pick up will have to be raised.
- 10.26 As evidence that a waste pick up has been conducted the Supplier, where requested, will provide photographs of the site.
- 10.27 The Supplier will not be liable for any dumping of waste after original waste pick up has been completed
- 10.28 Both the netting and pegs needs to be used by the concreter to tie down EPS waste bags in preparation for collection.



## Waffle pod - Waste collect



## 11. Inspection of Goods

- 11.1 The Customer must inspect the Goods immediately upon Delivery.
- 11.2 Unless the Customer could show otherwise, the Supplier's delivery docket (consignment note) is conclusive evidence as to the description and quantity of Goods delivered.
- 11.3 Any claim for:
- (a) a shortage of Goods;
  - (b) damage to the Goods;
  - (c) defects of fault in the Goods,
- must be notified to the Supplier within 2 hours of delivery of those Goods.
- 11.4 The Supplier conducts in-house quality testing to determine product quality. Supplied goods deemed by the Customer to be of poor quality shall be reviewed by Supplier to determine appropriate action.
- 11.5 The Supplier reserves the right to inspect the Goods and to seek its own assessment of the Goods notified in accordance with clause 11.3.
- 11.6 If the Customer fails to advise the Supplier of any shortage, fault, damage or failure of the Goods within 2 hours of delivery, the Customer shall be deemed to have accepted that the Goods were not faulty or damaged at the time of Delivery and generally accord with the Order.

## 12. Limitation of Liability

- 12.1 Pursuant to sections 64 and 276A of the Australian Consumer Law, the following clause 12.2 applies in respect of any Goods and/or Services supplied under these Terms which are not of a kind ordinarily acquired for personal, domestic or household use or consumption unless the Consumer establishes that the Supplier's reliance of that clause would not be fair or reasonable in this commercial context.
- 12.2 The Supplier's liability in respect of breaches of expressed or implied terms and conditions, warranties and guarantees (other than the guarantees under section 51 (title). Section 52 (undisturbed possession) and section 53 (undisclosed securities) of the Australian Consumer Law is limited to the GST exclusive aggregate Price paid by the Customer for the specific Goods and/or services that gave rise to the claim.

- 12.3 The Supplier will not be liable for any damages arising out of or in connection with the loss of revenue, loss of profits, special or consequential or indirect loss, damage, cost, expense, harm or injury suffered or incurred by the Customer from or in connection with the supply of the Goods and these Terms.
- 12.4 To the extent that these Terms cannot, by law, operate to exclude the liability of the Supplier for any claims, liabilities, loss, expense, damage or defect arising from or in connection with the supply of the Goods and these Terms, then the liability of the Supplier is limited to either:
- (a) the repair or replacement of the Goods; or
  - (b) the refund of the Price paid by the Customer for the affected Goods; or
  - (c) the payment of an amount equal to the cost of replacing the affected Goods.
- 12.5 With exception of these Terms, any terms implied by operation of Australian law, all terms, conditions and warranties are hereby excluded.

### **13. Default & Termination**

If the Customer commits an Event of Default or if the Supplier in good faith determines that the Customer is likely to commit an Event of Default:

- (a) the Supplier shall be entitled to cancel all or any part of any Order which remains unperformed and all amounts owing to the Supplier will, whether or not due for payment, become immediately payable; and
- (b) the Supplier may terminate any Contract as between the Customer and the Supplier (and may cause any Contract as between the Customer and any Related Entities of the Supplier to be terminated).

### **14. Force Majeure**

- 14.1 If a Party's ability to undertake or perform its obligations under these Terms is affected, or likely to be affected, by a Force Majeure Event:
- (a) that Party must immediately give to the other notice of that fact, including:
    - (i) full particulars of the Force Majeure Event;
    - (ii) an estimate of its likely duration;
    - (iii) the obligations affected by it and the extent of its effect on those obligations; and
    - (iv) the steps taken to rectify it; and
  - (b) the parties collectively agree that their respective obligations under these Terms are suspended to the extent to which they are affected by the Force Majeure Event as long as the Force Majeure Event continues.
- 14.2 A Party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

### **15. Privacy Act 1988**

- 15.1 The Customer agrees to the Supplier obtaining from a credit-reporting agency a credit report on the Customer containing personal credit information in relation to credit provided by the Supplier.
- 15.2 The Customer agrees that the Supplier may exchange information about the Customer with any credit providers named in any report issued by a reporting agency for the following purposes:
- (a) to assess an application for credit by the Customer; and
  - (b) to notify other credit providers of a default by the Customer.

### **16. General**

- 16.1 The Supplier and any authorised representative of the Supplier can give a demand or notice to the Customer. A demand or notice can be served on the Customer either by post (at the last known address of the Customer), by facsimile or by email.

- 16.2 The Customer hereby agrees to the Supplier serving any court documents filed by the Supplier with any court of competent jurisdiction on the Customer at the Customer's last known address.
- 16.3 The Supplier may assign or license any or all of its rights and obligations as set out in the Contract to any third party without the Customer's consent.
- 16.4 Any variation to these Terms must be in writing and signed by the Supplier.
- 16.5 These Terms shall be constituted by the laws of the State of Victoria. The parties submit to the jurisdiction of the courts in the State of Victoria.
- 16.6 If there is any inconsistency between these Terms and any other document, agreement or understanding as between the parties, then these Terms shall apply.
- 16.7 If any part or clause of these Terms is held illegal or unenforceable then that clause or part may be severed with the remaining clauses or parts remaining in force.

**ACCEPTANCE:**

**By the Customer –**

\_\_\_\_\_

Authorised Representative / Director

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

For \_\_\_\_\_ [insert Name of Customer + ABN]

**By the Supplier –**

\_\_\_\_\_

Authorised Representative / Director

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE - ESTIMATE STANDARD CHARGES AS AT \_\_\_\_\_**