

**IN THE MATTER OF AN ARBITRATION**  
**UNDER THE RULES OF THE MILAN CHAMBER OF ARBITRATION**

**CAM Case No. 5225/ARB**

**STATEMENT OF CLAIM AND COUNTERCLAIM**

**VIMERCATI S.p.A.**

*- Respondent and Counterclaimant -*

**vs.**

**Ms. Luisa Piera GALLO**

**Ms. Barbara GALLO**

**Ms. Clorinda ARNO**

**Mr. Aldo GALLO**

*-Claimants and Respondents to the Counterclaim-*

**Filed on behalf of the Respondent and Counterclaimant, Vimercati S.p.A.**

## I. PRELIMINARY STATEMENTS

1. This Statement of Claims is submitted on behalf of the Respondent and Counterclaimant, Vimercati S.p.A. (“**Vimercati**”), in support of its counterclaim against the Claimants and Respondents to the Counterclaim (collectively, the “**Sellers**”). It expands upon the statement of claim and counterclaim (the “**Counterclaim**”) filed pursuant to Procedural Order No. 1 and sets out in detail the factual and legal basis for the relief sought.
2. Vimercati brings this Counterclaim to remedy a profound deception.
3. Vimercati was induced to acquire Progind S.r.l. (“**Progind**” or the “**Company**”) based on a series of coordinated and fraudulent misrepresentations by the Sellers concerning the Company’s financial health, profitability, asset value, and indebtedness.
4. The Sellers constructed a fiction of a robust and valuable enterprise; the reality was a struggling business laden with undisclosed debt and in desperate need of the very investment the Sellers swore was unnecessary.
5. This brief will establish that the Sellers’ conduct constitutes fraudulent misrepresentation under Article 1439 of the Italian Civil Code, justifying the full annulment of the Share Purchase Agreement dated 1 July 2021 (the “**SPA**”).
6. In the alternative, the Sellers’ actions represent a fundamental and material breach of the SPA’s warranties, entitling Vimercati to terminate the agreement and/or receive full compensation for the extensive damages it has suffered.

## II. PROCEDURAL HISTORY

7. These proceedings were initiated by the Sellers, who filed a Request for Arbitration (“**RFA**”) on or around 11 April 2025.
8. In their Request, the Sellers seek a negative declaration that they have no indebtedness towards Vimercati, alongside claims for damages allegedly arising from Vimercati’s enforcement of a bank guarantee in July 2024.
9. On 30 May 2025, Vimercati filed its Reply to the Request for Arbitration and Counterclaim (the “**Reply**”).
10. In its Reply, Vimercati denied the Sellers’ claims in their entirety, asserting that its actions were contractually justified. Vimercati also put the Sellers on notice of its intention to bring a substantial counterclaim based on the Sellers’ fraudulent inducement and breach of the SPA.
11. The Arbitral Tribunal was duly constituted in accordance with the Rules of the Milan Chamber of Arbitration.
12. Following its constitution, the Arbitral Tribunal held a preliminary hearing and subsequently issued Procedural Order No. 1 on 18 September 2025.
13. Pursuant to that Order, the Tribunal has directed Vimercati to file its comprehensive Statement of Claim in respect of its Counterclaim by 27 October 2025.
14. This brief is submitted in compliance with that directive.

### **III. DEFENCES TO THE CLAIMS IN THE REQUEST FOR ARBITRATION**

15. Before setting out its Counterclaim, Vimercati reiterates its comprehensive defence against the baseless claims brought by the Sellers. The Sellers’ Request for Arbitration is a tactical manoeuvre designed to pre-emptively shield them from the consequences of their own misconduct.

***The Lawfulness of the Enforcement of the Bank Guarantee. The Sellers' Smokescreen Regarding the Bank Guarantee.***

16. The Sellers' primary claim concerning the bank guarantee is a tactical smokescreen, designed to portray themselves as victims and distract the Tribunal from the core issue of their fraud. Vimercati's actions were at all times lawful and fully justified under the SPA to secure its rights against clear evidence of breaches. Crucially, the Sellers' RFA **conveniently omits any mention of the subsequent "*Variation Agreement*"** (see Doc. no 16 filed by the Sellers), which fully and finally settled this specific matter between the parties. The fact that they now attempt to resurrect this settled issue in their RFA is further evidence of their bad faith and renders their claim for damages entirely moot.
17. As stated in our Reply, Vimercati's actions concerning the bank guarantee were at all times lawful and fully justified under the terms of the SPA. The guarantee was put in place precisely to secure the Sellers' indemnification obligations. Faced with clear evidence of breaches of warranty, Vimercati was entitled to enforce its rights. In any event, the matter was fully resolved between the parties by a subsequent "*Variation Agreement*," which renders the Sellers' claim for damages moot and demonstrates a lack of any prejudice.

***The Groundlessness of the Claim under Art. 96 ICCP:***

18. The Sellers' request for damages for frivolous litigation under Art. 96 of the Italian Code of Civil Procedure is not only unfounded, it is a reflection of their own litigation strategy. The present Counterclaim, detailed and substantiated by

extensive evidence, demonstrates the seriousness of Vimercati's position. In truth, the real evidence of bad faith litigation lies in the Sellers' own RFA - a pre-emptive and tactical maneuver filed to seek a negative declaration before the full extent of their fraud had even been formally pleaded. This is a textbook example of an attempt to abuse the process to shield oneself from legitimate claims.

***The Timeliness and Correctness of the Notice of Dispute:***

19. The Sellers' procedural objection regarding the notification of the indemnity claim is pretextual and without merit.
20. Without prejudice to all arguments set forth in the Reply in this connection, which we intend to keep on fully relying to, we note that Clause 8.15 of the SPA requires that notice be "***given***" by the Buyer within the specified term, not "**received**." The relevant date is the date of sending. Vimercati dispatched the claim letter by registered mail on 19 July 2024 (Doc. 5), well within the deadline.
21. Furthermore, it is indisputable that the Sellers had timely and actual knowledge of the claim, as proven by the read-receipt from Ms. Luisa Gallo's email dated 22 July 2024 (doc. 4). Under Italian law, an act is valid if it achieves its intended purpose (i.e., to inform the Sellers of the existence of the claim), which the notice clearly did.

**IV. FACTUAL BACKGROUND OF THE COUNTERCLAIM**

**A. The 2021 Acquisition: A Transaction Built on Falsehoods**

22. In late 2020, Vimercati, a strategic industrial buyer of Progind, entered into negotiations to acquire Progind. The transaction was of significant importance to

Vimercati, and its decision to proceed was contingent upon a thorough due diligence process.

23. The Sellers and their advisors, including Nash Advisory, controlled the entirety of the information flow during this critical phase.
24. They presented Vimercati with a detailed Information Memorandum in December 2020 (Doc. 1) and provided access to a virtual data room containing supporting documentation (Doc. 2). These materials were not presented as estimates or opinions, but as the factual basis for the transaction. They were designed to be relied upon, and Vimercati did, in fact, rely upon them.
25. The narrative woven by the Sellers through these documents was one of a healthy, growing, and highly valuable company. Specifically, the Sellers made the following core representations, which formed the basis of Vimercati's valuation and decision to acquire Progind:-

25.1 ***Financial Performance:*** that Progind was on a trajectory of significant and sustainable growth, supported by detailed financial projections that were held out as being reasonable, achievable, and diligently prepared.

25.2 ***Operational Efficiency & Synergy:*** that Progind possessed significant untapped production capacity, such that its output could be nearly doubled without the need for any significant new capital expenditure (CAPEX). This was the cornerstone of the strategic rationale for Vimercati, which intended to consolidate its own substantial production needs within Progind, achieving critical synergies and moving away from a fragmented network

of third-party suppliers, which Vimercati had been using to rely on for the so called molding and tooling business. .

25.3 ***Asset Value***: that the Company's real estate assets held a firm market value of €3.8 million at least, a figure that substantially bolstered the Company's balance sheet and justified a higher enterprise value.

25.4 ***Financial Position***: that the Company's Net Financial Position (NFP) was accurately stated as of 30 April 2021, providing a reliable and warranted baseline for the calculation of the final Purchase Price.

26. Trusting in the veracity of these representations and in the legal protection afforded by the specific warranties that enshrined these points in the SPA (see in detail our Reply, §17), Vimercati executed the agreement on 1 July 2021 and proceeded to Closing on 21 July 2021.

## **B. The Post-Acquisition Discovery of the Fraud**

27. The reality that confronted Vimercati immediately upon taking control of Progind was catastrophically different from the one the Sellers had represented. The fiction they had carefully constructed unraveled with alarming speed.

28. The Company's actual industrial and financial performance bore no resemblance to the Sellers' projections. The forecasted exponential growth was revealed to be an invention, unsupported by any real customer orders or a credible sales pipeline.

29. Critically, the representation of untapped production capacity was false.

30. In particular, Vimercati discovered that Progind's production capacity was already at its absolute limit before Vimercati's take over. As a result, the central strategic

benefit of the acquisition was nullified. Vimercati could not consolidate its production needs and was forced to continue relying on third-party suppliers, achieving none of the anticipated synergies. Meanwhile, Progind's rigid fixed-cost structure, which had not been disclosed, prevented it from adapting to market changes, further compounding its financial difficulties.

31. This operational failure was later discovered to be a direct result of a deliberate decision by the Sellers to neglect essential maintenance.
32. In 2025, inspections by the competent authorities (ASL of Turin and the Inspectorate of Labour) revealed serious safety anomalies on a large portion of Progind's machinery. These reports, which are produced under doc. 11, document defects that were, in all probability, already present at the time of the acquisition.
33. They prove that the required investments were not for growth, but for basic operational safety and legal compliance.
34. As Vimercati delved deeper into the Company's affairs, the full extent of the deception was uncovered. A proper valuation of the real estate revealed a value of approximately €2.4 million, not the €3.8 million represented.
35. Most critically, a review of the Company's finances as of the Closing Date revealed that the NFP had been understated by €2,164,747, meaning Vimercati had unknowingly acquired over €2 million in hidden debt.
36. Upon discovering the scale of these falsehoods, Vimercati acted diligently to protect its rights.
37. It formally notified the Sellers of its indemnity claims by registered mail and email on 19 July 2024 (Doc. 5), well within the three-year period stipulated by Clause 8.15



of the SPA. The evidence confirms the Sellers' timely receipt of this notice (Doc. 4).

### ***The Scheme of Deception***

38. ***The Sellers' Deception and the Admissions by Omission in their RFA.*** The Sellers' Request for Arbitration is notable not for what it says, but for what it omits. It is entirely silent on the substantive and fraudulent misrepresentations concerning the Business Plan, the mandatory CAPEX, the Net Financial Position, and the real estate value that are at the heart of this dispute. This silence is a deafening admission. The Sellers' conduct constitutes a classic case of fraudulent misrepresentation (*dolo*) under Article 1439 of the Italian Civil Code.
39. This was not a case of commercial optimism, but a calculated scheme of deception (*raggiri*) designed to induce Vimercati into a contract it never would have signed had it known the truth.
40. The Counterclaim is founded upon three fundamental pillars of misrepresentation. Each pillar represents a distinct and material falsehood that would, on its own, be sufficient to justify the annulment of the SPA. However, when these pillars are viewed together, they reveal a coordinated and comprehensive scheme of deception, meticulously designed to induce Vimercati into this transaction based on a completely false reality.

### ***Pillar 1: The Fabricated Business Plan: Fabricated Projections and the Illusion of Production Capacity***

41. The Business Plan presented to Vimercati was not a good-faith forecast based on reasonable assumptions; it was a work of fiction. The document, which the Sellers

warranted in the SPA that it had been prepared with the diligence of a prudent manager (*diligenza del buon padre di famiglia*), was in fact a collection of invented figures that had no basis in the Company's actual commercial reality, its order book, or any credible sales pipeline. The Sellers did not merely project optimistic growth; they fabricated it. In other words, the projected exponential growth was entirely detached from the Company's actual order book or any credible sales pipeline. The Sellers did not merely present an optimistic view; they invented a reality that did not exist.

42. ***The Irrefutable Proof of Deception in Document 15.*** To demonstrate the sheer scale of the Sellers' fabrication, Vimercati now files a comparative spreadsheet, attached as **Doc. 15**. This document sets out, line by line, the catastrophic failure of the Business Plan's forecasts when compared to the actual financial results of the Company. The document reveals discrepancies that are not minor deviations or good-faith forecasting errors attributable to market changes. They are immediate, systemic, and of such a massive scale that they defy any rational commercial explanation. The chasm between the promised figures and the subsequent reality is so profound and so immediate that it cannot be attributed to unforeseen events or mismanagement. It can only be explained as the direct and inevitable result of the Sellers having fabricated the initial projections in their entirety, in clear breach of their duty of diligence and good faith. Vimercati is now able to file with these proceedings a spreadsheet containing the forecast under the Business Plan and the actual discrepancies (doc. 15), to which any bona fide reader will be appalled about.

43. ***An example of Smoking Gun": The €3.3 Million 'Tooling' Revenue Forecast<sup>1</sup>.***

The most egregious and undeniable proof of this fabrication is the forecast of over €3.3 million in revenues from “tooling” business for the 2021 fiscal year, i.e. 1 January 2021 – 31 December 2021.

44. To be perfectly clear, this was not a long-term, speculative estimate. It was a short-term projection for the current year, a period over which the Sellers, as the managers of the Company, had perfect and granular visibility. The year-end financial results for 2021 show that the actual 'tooling' revenue was less than €2 million. This means that on this single line item, there was a shortfall of over €1.3 million. It is commercially and logically inconceivable that the Sellers, in mid-2021, could have been unaware that this forecast was a complete fantasy. This was not a mistake; it was a deliberate falsehood.

45. **The Fraudulent Misrepresentation of Immediately Exploitable Capacity.** A core pillar of the entire strategic rationale for the acquisition was the Sellers' explicit representation that Progind was operating at only 50% of its total production capacity, and such representation was supported by due diligence information (doc. 1.1.3 of the data room, doc. 2 and doc 14). Crucially, this was presented as capacity that was **immediately exploitable**, meaning it could be utilized by Vimercati forthwith, without the need for any new capital expenditure, to achieve the planned production synergies. This promise of immediate, cost-free synergy was a decisive factor in Vimercati's valuation of the deal.

***The Reality: A Nullified Strategic Benefit.***

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<sup>1</sup> i.e., The revenue generated from designing, manufacturing and selling tools, molds, dies, jigs and fixtures.

46. ***The Reality: A Nullified Strategic Benefit and Quantifiable Financial Loss.*** The Sellers' representation of 50% spare, immediately exploitable capacity was not merely a supporting detail of the transaction; it was the **linchpin of the entire strategic rationale** for the acquisition. The promise was that Vimercati could, from day one, begin integrating its substantial moulding and tooling business, transforming Progind into its primary in-house production hub and achieving massive, immediate cost synergies. This promise was shattered immediately upon takeover. The representation was demonstrably and completely false. Vimercati discovered the truth the moment it attempted to act on the Sellers' promise: Progind's production capacity was, in fact, already exhausted and had been so even before the acquisition. The promised synergy was not merely delayed or reduced; **it was a complete fiction. It never existed.** This was not a theoretical loss of a future opportunity; it was a direct, unavoidable, and immediate financial hemorrhage for Vimercati. With no spare capacity at Progind, Vimercati had **no alternative** but to continue outsourcing its essential production to its existing network of third-party suppliers. This resulted in a staggering **€24,265,339** in revenue that should have been captured within the consolidated group by Progind. The specific amounts spent externally, which represent the direct value of the lost synergy, were:

a) **€ 8,721,687 in 2022;**

b) **€ 7,716,019 in 2023;**

c) **€ 7,827,633 in 2024.**

Applying a conservative 15% profit margin to this lost internal revenue, the direct and foreseeable damage suffered by Vimercati, solely as a consequence of this

single misrepresentation, amounts to approximately **€3,639,800**. This sum is not an estimate; it is the precise, calculated monetary value of the synergy that the Sellers fraudulently marketed as a key, existing asset of the transaction. This was a fundamental misrepresentation of the asset's current, revenue-generating state, and it goes to the very heart of the fraud perpetrated against Vimercati.

47. ***Pillar 2: The Concealment of Mandatory and Grossly Underfunded CAPEX***

48. The Sellers' deception extended to the Company's critical capital expenditure (CAPEX) needs. The above mentioned fundamental misrepresentation of the plant's current, immediately available capacity was compounded by a second, distinct falsehood concerning its future development. The Sellers represented that an annual CAPEX investment of only **€500,000** for each of 2022, 2023 and 2024 (see Business Plan) was sufficient not only for all ordinary and extraordinary maintenance but also for the acquisition of the new machinery required to achieve the exponential growth projected in the Business Plan.

49. The fraudulent nature of the Sellers' conduct is proven by their own words in the Information Memorandum.

50. On page 40, they admit that: "*The analysis of the Company's historical data reveals significant annual investments. For this reason, further investments were planned over the next few years [rectius: past years]. During 2020, however, a cut in planned investments was implemented due to the health emergency.*"

51. This statement is an admission of two critical facts: first, that the Sellers represented the Company required "*significant annual investments*" for ordinary replacement and maintenance; and second, that these investments had already been carried out

over the previous years, well before Vimercati's take over, although with a conscious decision to "cut" during the pandemic emergency in 2020. Instead of disclosing this critical funding gap, they presented the "cut" as a temporary measure while fraudulently representing that the business could achieve exponential growth post Vimercati acquisition and nearly double its capacity without investment.

52. The fraudulent nature of this concealment is laid bare by the recent findings of the Italian safety authorities (doc. 11)
53. The inspection reports carried out by the Italian Authorities from 2025 the Company machinery was not merely "obsolete" but non-compliant with applicable laws and dangerous. The Sellers therefore did not just pass on a commercial need for upgrades; they passed on a hidden, urgent, and non-discretionary liability for significant safety-related CAPEX.
54. ***A Mathematical and Commercial Impossibility.*** This representation was a material falsehood. The allocated sum of €500,000 of CAPEX over 2022, 2023 and 2024 was grossly and dangerously inadequate to cover what the Sellers knew were mandatory, non-discretionary costs required simply to bring the existing machinery into compliance with basic safety regulations( as the subsequent inspection reports from the authorities prove this beyond doubt) but also for the purposes of acquiring new assets essential to achieving the fantasy growth targets set forth in the Business Plan.
55. In particular, even setting aside the significant, unbudgeted costs required simply to bring the existing plant into initial legal and safety compliance, the ongoing annual CAPEX budget of €500,000 for each of the years 2022, 2023, and 2024 was a commercial and mathematical impossibility. It is a matter of simple logic that this

single sum, repeated for each of those years, could not possibly cover three distinct and significant cost categories simultaneously: (1) all routine and extraordinary maintenance for the existing machinery; (2) the mandatory safety upgrades themselves; and (3) the acquisition of the new assets essential to achieving the targets set forth in the Business Plan. Therefore, the Sellers were not presenting a credible investment plan for the future in this connection; they were actively concealing a significant, undisclosed, and urgent liability—a hidden debt that was certain to materialize.

56. ***A Systemic Deception.*** This raises the fundamental question that the Sellers must now answer before this Tribunal: on what basis were these figures prepared? What specific orders, signed contracts, or credible commercial prospects supported this broader exponential growth of sales promised for the following years or, just simply, €3.3 million of forecasted tooling production in 2021? The deception was systemic and not limited to revenue. The cost projections were equally baseless. For example, post-acquisition data shows that in years where revenue fell, the cost of raw materials did not decrease proportionally, as one would logically expect. While there were market price increases, they alone cannot justify this lack of correlation. This demonstrates a fundamental misrepresentation of the Company's entire operational and financial structure, in direct breach of the warranties of diligence and accuracy provided in the SPA.

### ***Pillar 3: The Fraudulent NFP***

57. ***The Hidden Debt in the Net Financial Position (NFP).*** The financial deception was completed by the fraudulent understatement of the Company's debt. The SPA

(page 43) established the reference Net Financial Position as of 30 April 2021 to be €4,169,654. This figure was a critical component in calculating the final purchase price for the equity. However, just a few weeks later, at the closing date on 24 June 2021, the *actual* Net Financial Position had ballooned to €6,334,401. To be perfectly clear, this means that the Sellers transferred a company with an additional €2,164,747 of debt that was not declared or accounted for in the purchase price calculation. This entire sum was passed directly to Vimercati, representing a direct and immediate financial loss.

***Pilar 4: The Real Estate Valuation Trap***

58. ***The Deception Regarding the Real Estate Value.*** The Sellers represented in the Information Memorandum that the Company's real estate portfolio had a market value of €3.8 million. However, the Company's own 2021 balance sheet recorded the assets at a book value of €2.4 million. A subsequent independent valuation confirmed that the true market value was, in fact, approximately €2.4 million.
59. ***The "Partial Appraisal" Trap.*** The Sellers' anticipated defence - that they acted in good faith by placing a real estate appraisal in the data room - is disingenuous and, in fact, further evidence of their fraudulent intent. The appraisal they refer to value a selection of assets at €2.4 million, but it was knowingly and materially incomplete. As confirmed by the comprehensive notarial report prepared by Notary Cignetti dated 28 June 2021 (doc. 12), the appraisal in the data room omitted a significant portion of Progind's actual real estate portfolio.
60. Faced with this partial valuation of €2.4 million on the one hand, and the Sellers' overarching representation of a total value of €3.8 million in the Information



Memorandum on the other, Vimercati was reasonably induced to believe that the €1.4 million difference represented the value of the remaining properties not covered by the appraisal. This was a sophisticated trap. By providing a partial truth (an incomplete appraisal), the Sellers created a misleading narrative designed to lend false credibility to the inflated €3.8 million figure. This conduct is an affirmative act of deception (*raggiro*).

61. This was not a minor discrepancy or a good-faith difference in valuation opinion; it was a deliberate deception that exploited standard accounting conventions to mislead Vimercati. The Sellers were acutely aware that any prudent buyer would see the €2.4 million book value as a conservative, historical accounting figure. By presenting a separate, unsubstantiated "market value" of €3.8 million in their sales materials, they knowingly created the false impression of €1.4 million in unrealized capital gains, artificially inflating the Company's asset base and justifying a higher Purchase Price.
62. ***Questionable Financial Statements.*** The improbable equivalence of the true market value and the historical book value raises grave questions about the integrity of the financial statements themselves, which the Sellers explicitly warranted as "true and correct" in the SPA. A balance sheet where the book value of a long-held real estate asset happens to be identical to its market value is highly unusual and suggests that the financial statements were presented in a manner to conceal the absence of any real market uplift, in direct contradiction to the representations made in the Information Memorandum.

## V. LEGAL SUBMISSIONS ON THE COUNTERCLAIM

**A. Annulment of the SPA for Fraudulent Misrepresentation (Art. 1439, Italian Civil Code)**

63. Article 1439 of the Italian Civil Code provides for the annulment of a contract where one party was induced to enter it by the fraudulent "machinations" (\*raggiri\*) of the other, and where, without such fraud, the first party would not have consented.
64. The above mentioned Sellers' conducts meets this standard precisely.
65. This was not a case of commercial optimism; it was a calculated deception (*"raggiro"*).

**B. Termination for Material Breach of the SPA (Art. 1453 & 1218, Italian Civil Code)**

66. The very facts that constitute fraud also constitute grave and material breaches (*inadempimento di non scarsa importanza*) of the Sellers' contractual warranties under the SPA.

***Breach of Express Warranties:***

67. The Sellers provided specific, contractual promises in Schedule 6 of the SPA, all of which were breached. As stated in our Reply (§17),
- 67.1 Clause 7.2 & 7.3 (Accuracy of Information): The due diligence information was warranted to be "*true, accurate, complete and not misleading.*" As demonstrated, it was false, inaccurate, incomplete, and profoundly misleading.

67.2 Clause 22.5 (Net Financial Position): The warranty as to the maximum NFP was breached by over €2.1 million. This is a clear, quantifiable, and undeniable breach of a core financial term.

67.3 Clause 23.2 of Schedule 6 (Diligence of Business Plan): The warranty that the Business Plan's assumptions were defined with the "proper diligence of a good father of a family" was breached. The assumptions were reckless and lacked any reasonable foundation.

***Materiality of the Breaches:***

68. These are not minor or excusable breaches. They materially go to the heart of the commercial bargain. Vimercati contracted to buy a company with a specific, warranted financial profile and strategic potential. The company delivered was fundamentally different and substantially less valuable. This failure of performance is so significant that it justifies the termination of the SPA pursuant to art. 1453 ICC.

**C. Subsidiary Claims: Damages for Culpable Misrepresentation (Art. 1218 or 1440, ICC)**

69. Subsidiarily, should the Tribunal conclude that the fraud was not material as to justify the annulment or the termination of the SPA, the Sellers' misrepresentations and breaches of warranties, nonetheless, are unquestionably determinative of the sale price.

70. The SPA provides for a Sellers' indemnity obligation in case of breaches of the Reps&Warranties set forth therein, parallelly, article 1440 ICC provides for price

readjustment and damages where a party, acting in bad faith, uses deceit to induce a contract on terms less favorable than would otherwise have been agreed.

71. Had the true industrial condition and financial position of Prokind been properly represented by the Sellers', Vimercati would not have proceeded with the acquisition at the agreed conditions but at a substantially lower price.
72. The Purchase Price would have been reduced to account for, at a minimum, the €2.1 million in undisclosed debt, the €1.4 million in overstated asset value, and a significant downward adjustment of the Enterprise Value to reflect the realistic (and negative) earnings outlook and the complete lack of strategic synergies.
73. The Sellers' bad faith in providing false information directly caused Vimercati to overpay for the asset.

## **VI. ANALYSIS OF DAMAGES AND LOSS**

74. As a direct and foreseeable result of the Sellers' fraudulent and wrongful conduct, Vimercati has suffered extensive and multi-layered damages. Vimercati forcefully claims full compensation for all losses incurred.

### ***Restitution upon SPA annulment or termination:***

75. Under its primary claims for termination or annulment, Vimercati is entitled to be restored to its pre-contractual position. This requires the Sellers to:

- 75.1 Reimburse the full Purchase Price paid by Vimercati.

- 75.2 Compensate Vimercati for all costs associated with the transaction under reference, reasonably quantified at € 93,000 in advisory, legal, tax and fiscal consultancy services (Doc. 13).
- 75.3 Reimburse Vimercati for all post-acquisition funding injected into Progind to keep it solvent, which constitutes direct reliance loss. These sums include €2,000,000 in equity contributions (Doc. 6a, 6b), €1,841,535.26 in payments for moulds (anticipi su forniture stampi) (Doc. 7), and € 232.187.- for the cost of a sales manager, Mr. Alessandro Zani, seconded to Progind and paid by Vimercati: and
- 75.4 plus interest at the conventional rate of 5% p.a.

***Damages for Breach of Contract or willful deception:***

76. Under its subsidiary claims, Vimercati is entitled to be placed in the position it would have occupied had the warranties been true. The damages would be calculated to compensate for the difference in value between the Company as warranted and the Company as delivered, including:
- 76.1 Direct Loss on NFP: €2,164,747, plus interest at the conventional rate of 5% p.a.
- 76.2 Direct Loss on Real Estate Value: At least €1,400,000, plus interest at the conventional rate of 5% p.a..

- 76.3 Loss of Value on Enterprise Value: A sum to be determined by expert analysis, reflecting the impact of the negative EBITDA and the absence of strategic synergies on the valuation multiple used for the Purchase Price.
- 76.4 Consequential Losses: (a) €3,639,800, or such other amount as the Arbitral Tribunal deems just and equitable, as additional cost incurred by Vimercati due to the lack of synergies (please see § 46 above); (b) all costs and/or loss of profits borne by Vimercati post-closing as a direct result of the Sellers' breaches, which are not already been taken into account under § 76.3.

### **VIII. PRAYER FOR RELIEF**

Based on the foregoing and without prejudice to the Respondent and Counterclaimant right to fully develop its defense and/or amend the relief sought herein upon receipt of the Claimant's full Statement of Claim, the Respondent respectfully requests the Tribunal to:

1. dismiss the Claimant's claims in their entirety;
2. assess and declare the termination of the SPA pursuant to Article 1453 of the ICC due to the Sellers' serious and material breach, along with holding the Sellers and the Guarantors jointly and severally liable for the reimbursement of the Purchase Price as well as for damages compensation and/or (as the case may be) pursuant to Art. 2041 ICC, for the following amounts prudently quantified at: € 93,000 (ninety threethousand) as transaction costs; € 2,000,000.- (two million) as equity contributions made by Vimercati in favour of Progind; € 1.841.535,26 as *Anticipi su furniture stampi* paid by Virmecati, and € 232,187.- for cost borne for the sales manager Mr. Alessandro Zani, seconded to the Company and paid by Vimercati

- from Nov 2022 to April 2024, or in such other amount, whether higher or lower, as the Arbitral Tribunal deems appropriate. Additionally, contractual interest at a rate of 5% per annum (as stipulated in Clause 21 of the SPA) shall be applied to the obligation to refund the purchase price, effective from 23 July 2021, and on the other above listed amounts from the date of payment till the date of reimbursement to the Buyer;
3. or, as a subsidiary request, annul the SPA pursuant to and for the effects of Article 1439 ICC, along with an order condemning the Sellers and the Guarantors, jointly and severally, to compensate the Respondent for damages or according to Art. 2041 ICC and interest for the amount stated at n. 2 above;
  4. or, as a second subsidiary request, condemn the Sellers and the Guarantors, jointly and severally, to compensate the Respondent, pursuant to Article 1218 ICC, as detailed under § 76;
  5. or, as a third (and final) subsidiary request, condemn the Sellers and the Guarantors, jointly and severally, to compensate the Respondent pursuant to Article 1440 ICC, for the amount stated at n. 4 above;
  6. in any case, order the Sellers and the Guarantors, jointly and severally, to reimburse all legal costs and expenses incurred by the Respondent and Counterclaim in connection with these arbitration proceedings.

## **IX MEANS OF EVIDENCE**

In light of the Sellers' complete denial of liability and the evasive nature of their Request for Arbitration, which fails to provide any substantive explanation for the discrepancies at issue, a thorough evidentiary phase is essential. For the purpose of proving the facts

underlying the present Counterclaim, the Respondent and Counterclaimant respectfully requests the Honourable Arbitral Tribunal to admit the following means of evidence;-

***Order for the Production of Documents ((ordine di esibizione)pursuant to Art. 210 of the Italian Code of Civil Procedure)***

It is requested that the Honourable Arbitral Tribunal order the Respondents, pursuant to Art. 210 of the Italian Code of Civil Procedure, to produce in these proceedings all documentation, in any format including electronic, that was used as a basis to prepare and elaborate the revenue forecasts contained in the 2020 Business Plan, including, but not limited to: (a) the order book and any signed contracts existing as at the date of the Business Plan; (b) binding commercial offers sent to clients and any letters of intent received that would justify the growth forecasts; (c) any market analysis, industry study, or internal report used to formulate the projections; (d) minutes of management meetings and/or internal correspondence in which said forecasts were discussed, analysed, and approved: all document sent to the Sellers financial advisors, Nash Advisory for the purposes of elaborating the Business Plan.

***Witness examination (Interrogatorio formale e prova per testi)***

The Respondent and Counterclaimant requests the admission of the formal examination (*interrogatorio formale*) of Ms. Barbara Gallo and Ms. Maria Luisa Gallo and, following their examination, the admission of evidence by testimony on the following proof articles (*prova per testi sui seguenti capitoli*).

1. *Is it true that, at the time the 2020 Business Plan was prepared and presented to Vimercati, Progind did not have in its possession any signed contracts, binding*



- letters of intent, or a portfolio of firm offers that could concretely justify the forecast of over €3.3 million in 'tooling' revenues for the 2021 fiscal year?"*
2. *"Is it true that the exponential revenue growth projected for the years 2022-2025 in the Business Plan was not supported by any internal market analysis, documented sales pipeline, or specific commercial strategy that had been approved by the Board of Directors?"*
  3. *"Is it true that you represented to Vimercati, both verbally and through the due diligence documentation, that Progind's production plant had approximately 50% of unused capacity?"*
  4. *"Is it true that, in the twelve months prior to the closing of the SPA, the main production lines of Progind were already operating at or near their maximum technical and operational capacity, such that it would have been impossible to absorb significant new production volumes without major investments?"*
  5. *"Is it true that, prior to the sale to Vimercati, you were aware, also through internal reports from your plant managers, of the existence of potential safety non-compliance issues on the Company's machinery that required mandatory and urgent investment?"*
  6. *"Is it true that you were aware that the annual CAPEX budget of approximately €500,000, as indicated in the Business Plan, was manifestly insufficient to simultaneously cover ordinary maintenance, the mandatory safety upgrades, and the acquisition of new machinery necessary to achieve the growth targets?"*
  7. *"Is it true that you represented that the total market value of Progind's entire real estate portfolio in 2021 was €3.8 million?"*

8. *"Is it true that the appraisal placed in the data room, which showed a value of €2.4 million, covered only a portion of the Company's total real estate assets, and that you were aware of this incompleteness?"*
9. *"Is it true that you were aware, at the time of the negotiations, that the true market value of the entire real estate portfolio, including the assets that were excluded from the partial appraisal, was not €3.8 million but was in fact approximately €2.4 million?"*

The following individuals are named as witnesses: Lorenzo Pincelli (Vimercati CFO) and Alessandro Zani (Progind sale manager in 2022-2024).

***Expert determinato (Consulenza Tecnica d'Ufficio, CTU)***

It is requested that the Honourable Arbitral Tribunal appoint a Tribunal-Appointed Expert (*Consulente Tecnico d'Ufficio*) in accounting and real estate matters, with proven experience, to be entrusted with a mandate to answer the following questions:

On the Net Financial Position (NFP):

*"The Expert shall, having examined the accounting records, financial statements, bank statements, and any other relevant document of Progind S.r.l., ascertain the actual Net Financial Position (NFP) of the Company as at 24 June 2021, calculated in accordance with the same criteria and accounting principles used for the determination of the reference NFP set out in the Share Purchase Agreement (SPA). The Expert shall then quantify the difference between the NFP so ascertained and the NFP warranted by the Sellers under the contract."*

On the Value of the Real Estate Portfolio:

*"The Expert shall, based on a market analysis and in accordance with prevailing valuation standards, determine the most probable market value of the real estate portfolio owned by Progind S.r.l. as at the date of the Information Memorandum (December 2020). The Expert shall then specify the difference between the market value so determined and the value of €3.8 million represented by the Sellers in the aforementioned document."*

On the Reasonableness of the Business Plan:

*"The Expert shall, having reviewed the Information Memorandum, the 2020 Business Plan, and the underlying Company data available to the Sellers at the time, perform a technical analysis and provide a reasoned opinion on the following: a) whether the financial projections contained in the Business Plan were prepared with the diligence expected of a prudent manager and were supported by a reasonable and factually substantiated basis; b) specifically, whether the forecast of over €3.3 million in revenues from 'tooling' for the year 2021 was credible and achievable based on the information and commercial reality known to the Company in late 2020. c) the Expert shall quantify the actual 'tooling' revenue for 2021 and provide a technical opinion as to whether the variance between the forecast and the actual result is of a magnitude that would be consistent with a good-faith forecasting error."*

Technical Assessment of Production Capacity, Lost Synergies, and Resulting Damages:

*"The Expert shall, having reviewed the relevant due diligence documents (in particular Doc. 1.1.3 #1), the Business Plan, the Company's production logs for the period 2020-2021, and the accounting records of both Progind and Vimercati, provide a technical*

*opinion on the following questions: (a) on the **Actual Production Capacity**: Determine the actual production capacity utilization rate (tasso di saturazione) of Progind's machinery park as of the closing date (June 2021). Specifically, ascertain whether there was approximately 50% of spare, immediately exploitable capacity, as represented by the Sellers. (b) on the **Feasibility of Synergy**: assess whether, given the actual utilization rate determined in point 1, Progind's plant had sufficient spare capacity to absorb the moulding and tooling production volumes that Vimercati outsourced to third-party suppliers in the years 2022, 2023, and 2024, without requiring significant new capital expenditure or major operational reorganization; (c) on the **Quantification of Damages**: (i) verify, by examining Vimercati's accounting records and invoices, the total amounts spent by Vimercati for moulding and tooling services with suppliers other than Progind for the years 2022 (€ 8,721,687), 2023 (€ 7,716,019), and 2024 (€ 7,827,633). (ii) determine whether a 15% profit margin is a reasonable and conservative parameter to apply to the verified outsourced revenues to calculate the lost profit (lucro cessante) that Progind would have generated had it been able to perform those services in-house, thereby confirming the quantum of damages claimed”.*

In support of the foregoing submissions, and in addition to the evidence already on file, the Respondent and Counterclaimant herewith produces the following exhibits. For the sake of clarity and to ensure a consistent record for the Arbitral Tribunal, the numbering of these documents continues sequentially from the last exhibit filed with Vimercati's Reply to the Request for Arbitration and Counterclaim of 30 May 2025.

Doc. 11 - Inspection Reports from the Turin Public Health and Safety Authority (ASL);

Doc. 12 - Notarial Report of Notary Cignetti dated 28 June 2021;

Doc. 13 - Invoices for negotiation and transaction costs;

Doc. 14 - Data Room Document 1.1.13, concerning machinery utilisation rates;

Doc. 15 - Comparative spreadsheet of Progind's Business Plan forecasts versus actual financial results;

Doc. 16 - Documents evidencing costs related to Mr. Alessandro Zani;

Doc. 17 - Summary of Vimercati's third-party supplier costs for moulding and tooling services (2022-2024);

Doc. 18 - Vimercati's individual and consolidated financial statements for the years 2022, 2023, and 2024.

\* \* \*

Respectfully submitted.

Avv. Marco Pocci



Avv. Emanuele Alemagna

Avv. Giovanni Tranchida

Milan: 27 October 2025