

STANDARD T&Cs OF PURCHASE ORDER

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1). INTRODUCTION

1.1 In this Agreement, except where the context requires otherwise, the following terms shall have the meanings shown:

- a) "Agreement" means the Purchase Order and these Conditions.
- b) "Client" means where relevant, the other party to DM Composites Pty Ltd's head contract in respect to the project of which the Goods and Works form part, as stated in the Purchase Order.
- c) "Completion" is that stage when all of the Goods have been provided as required by the Agreement
- d) "Conditions" means the Standard Terms and Conditions of Purchase Order set out in this document.
- e) "Date of Delivery" means the last date when the Goods were delivered at the Delivery Point.
- f) "Date for Delivery" means the Required Date(s) specified in the Purchase Order by which the Supplier shall deliver the Goods at the Delivery Point, and where the context admits, as the date or dates may be changed in accordance with the Agreement.
- g) "Delivery Point" means the place specified in the Purchase Order to which the Goods are to be delivered by the Supplier.
- h) "Direction" includes agreement, approval, assessment, authorisation, certification, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement but does not include command or control of how the work in respect to the Goods is to be performed.
- i) "Encumbrance" means and includes any interest or equity of any person or any mortgage, charge, pledge, lien or assignment, or any other encumbrance, priority or security interest or arrangement of whatsoever nature over or in the relevant property.
- j) "Goods" means the machinery, plant, equipment, materials, Vendor Data or other items of any kind (including any part thereof), whether or not fixed or incorporated, described in the Agreement and which are to be provided by the Supplier, and where the context admits, includes any work which the Supplier does, or is required to do, in connection with the manufacture, preparation, assembly, delivery, supply, installation and commissioning thereof.
- k) "Intellectual Property Rights" means all industrial or intellectual property rights including patent rights, copyrights, registered design, design rights, trademarks, service marks, confidential information and trade secrets, moral rights and other similar proprietary rights, all rights of whatever nature in computer programs, firmware, micro-code and other computer software and data, and all intangible rights and privileges of a nature similar to any of the foregoing.
- l) "DM Composites Pty Ltd" means the DM Composites entity shown in the Purchase Order.
- m) "Premises" means the place or places made available by the Supplier (and any Sub-supplier) where the Goods are to be manufactured or assembled
- n) "Price" means the values shown in the Purchase Order.
- o) "Purchase Order" is the document bearing that title, (including any attachments) and which together with these Terms and Conditions, forms the Agreement.
- p) "Site" means the places (if any) stated in the Purchase Order where the Goods are to be installed together with any other places made available to the Supplier by DM Composites Pty Ltd for the purposes of this Agreement, and where the context admits, includes the Delivery Point.

q) "Specification" includes any design, plans, drawings, calculations, data or other information relating to the Goods;

r) "Sub-supplier" means any supplier or contractor of the Supplier who supplies materials, equipment, sub-assemblies or services to the Supplier in connection with the Goods.

s) "Supplier" means the addressee in the Purchase Order, being the party responsible for providing the Goods.

t) "Vendor Data" means any specifications, calculations, drawings or other similar information which are to be submitted by the Supplier prior to manufacture of the Goods or at any time during the course of manufacture or execution, or to bring to completion the performance of its obligations to execute and/or deliver the Goods.

u) "Writing" or "written" includes facsimile transmission and email.

1.2 Words in the singular include the plural, and vice versa.

1.3 Any reference in this Agreement to a statute or a provision of a statute shall be construed as reference to the statute or provision as amended, re-enacted or extended at the relevant time.

1.4 Headings may be used to interpret the provisions of these Conditions where there is uncertainty or ambiguity.

1.5 If any provision of the Agreement is, is deemed to be or becomes, void, unenforceable, severed or illegal, the remaining portions of the Agreement shall continue to have full force and effect.

1.6 In the interpretation of the Agreement, no rules of construction apply that would disadvantage a party because that party was responsible for drafting the Agreement or part of the Agreement.

1.7 In the event that the Supplier discovers any discrepancies between the various documents that comprise the Agreement, the Supplier shall refer the discrepancies to DM Composites Pty Ltd and DM Composites Pty Ltd shall issue directions to resolve such discrepancies.

1.8 References to a Clause, is a reference to a Clause of these Conditions.

2). ACCEPTANCE

2.1 The Supplier shall be deemed to have accepted the Agreement upon the earlier of:

a) Signature by the Supplier of the Agreement, or some other written acknowledgement;

b) Delivery of the Goods by the Supplier to the Delivery Point;

c) Submission to DM Composites Pty Ltd by the Supplier of an invoice for payment in respect of the Goods, or

d) The Supplier does not notify DM Composites Pty Ltd of its non-acceptance of the Purchase Order or any part thereof, within 7 days of the Supplier's receipt of the Purchase Order.

3). SPECIFICATIONS

3.1 The quantity, quality and description of the Goods shall be as specified in the Purchase Order or as may otherwise be agreed in writing by DM Composites Pty Ltd.

3.2 In the event the Supplier discovers any ambiguity or discrepancies in any Specification, the Supplier shall immediately notify DM Composites Pty Ltd thereof and shall comply with the determination of DM Composites Pty Ltd as to such ambiguity or discrepancy.

3.3 The Supplier shall within the time limits which may be specified in the Purchase Order, submit any Vendor Data as required by the Agreement, or such other Vendor Data as is reasonably required by DM Composites Pty Ltd.

4). INTELLECTUAL PROPERTY RIGHTS

4.1 The Supplier warrants that any design, materials, equipment, documents and/or methods of working provided by the Supplier shall not infringe any Intellectual Property Rights. The Supplier hereby grants to DM Composites Pty Ltd an unlimited, irrevocable, royalty-free and assignable Intellectual Property Rights license in respect of all its design, goods, material, equipment documents and/or methods of working used in or forming a part of the Goods, which DM Composites Pty Ltd may make by like grant to the Client.

4.2 Where relevant, the Supplier shall also not infringe any moral rights in respect of identification, attribution and derogatory treatment of authorship in accordance with the Australian Copyright Amendment (Moral Right) Act, 2000 (Cth).

5). ENTIRE AGREEMENT

5.1 The Agreement constitutes the entire agreement between Supplier and DM Composites Pty Ltd as at the date of acceptance by Supplier and supersedes any Request for Quotation, Supplier's quotation, all negotiations and/or previous agreements either written or oral with respect to the subject of the Agreement made prior to the date of acceptance of the Agreement, other than as these have been expressly incorporated into the Agreement.

5.2 Any variation of the Agreement shall be effective only if made in writing and signed by DM Composites Pty Ltd.

6). CORRESPONDENCE NOTICES AND DOCUMENTATION

6.1 All documentation, notices and correspondence relating to the Agreement, including delivery orders, invoices, packing lists, containers, delivery notes, airway bills and bills of lading, shall show the Purchase Order Number. Documentation, notices and correspondence shall be transmitted to the relevant representative of the Party nominated for such purpose in the Purchase Order, to the postal or email address shown, or as this may otherwise be advised in writing.

7). PRICE OF GOODS

7.1 Unless otherwise expressly excluded in the Agreement, the Price shall be deemed to be inclusive of all labour, plant, materials, equipment, machinery, vehicles, tools, facilities and services, overheads, profit and all ancillary and other works, expenditure, risks, overtime and contingencies, required or necessary to be undertaken, for the Goods to be provided. DM Composites Pty Ltd shall not be responsible for providing any services, other than those (if any) expressly stated in the Purchase Order.

8). PAYMENT

8.1 Unless otherwise specified in the Purchase Order, the Supplier shall submit to DM Composites Pty Ltd, not earlier than the Date of Delivery (and if earlier, shall be deemed to have been submitted on the said date), an invoice for the Goods, subject to any other requirements elsewhere in the Agreement.

8.2 Unless otherwise stated in the Purchase Order, DM Composites Pty Ltd shall pay the Supplier the amount properly due within 45 days after the end of the month in which receipt of the Supplier's properly completed invoice occurs. Any payment certified by DM Composites Pty Ltd as being payable to the Supplier, or any payment made to the Supplier, shall be provisional or on account only, and is not an admission of liability or

an acknowledgement that the Goods (or any part thereof) have been provided in accordance with the Agreement.

8.3 The Supplier's invoice(s) shall be sent to the address shown on the Purchase Order, and contain not less than the following particulars:

- a) Name and Address of DM Composites Pty Ltd's Representative as set out in the Purchase Order;
- b) Name and Address of the Supplier;
- c) Purchase Order Number;
- d) The date of the invoice and the total amount claimed;
- e) Description of each item of Goods supplied and work done in accordance with the Agreement, the quantity delivered and unit price for each item; and
- f) The amount of any applicable goods and services tax/value added tax.

8.4 All invoices and correspondence regarding payments shall be signed by the Supplier's Representative and forwarded to DM Composites Pty Ltd's Representative at the address specified in the Purchase Order, or as this may be otherwise advised in writing.

8.5 If so directed, the Supplier shall provide to DM Composites Pty Ltd documentary evidence to DM Composites Pty Ltd's satisfaction that all workers who have been employed by the Supplier or any Sub-supplier have been paid all monies due and payable to them in respect of their employment on the work under the Agreement and that all mandatory contributions to be made for, or in respect to, workers, and any industry levies, have been made; these include contributions to a relevant superannuation scheme and any industry worker benefit schemes or industry levies.

8.6 (a) Notwithstanding Clause 8.2, DM Composites Pty Ltd shall be entitled to deduct and set-off from any moneys otherwise owing to the Supplier under the Agreement or otherwise, the amount of any claim for loss, damages, costs or expense, which has been, or may be, incurred by DM Composites Pty Ltd, by reason of any breach of, or failure to observe the provisions of, the Agreement by the Supplier, or which is otherwise owed to DM Composites Pty Ltd, or which is awarded to DM Composites Pty Ltd in any arbitration or litigation in connection with the Agreement or otherwise.

(b) Any amount set-off under Clause 8.6(a) is without prejudice to the rights of DM Composites Pty Ltd in any subsequent negotiations, arbitration or litigation to seek to vary the amount set-off.

(c) DM Composites Pty Ltd's right to set-off shall be cumulative and in addition to any other rights and remedies which it may have at law or in equity.

8.7 Purchase Order Limit

An invoice must not exceed the remaining approved Purchase Order value. Any invoice submitted for an amount exceeding the approved Purchase Order value without prior written approval and, where applicable, a revised or additional Purchase Order may be rejected and returned to the Supplier without processing. Costs incurred above the approved Purchase Order value without prior written approval will be considered unauthorised expenditure.

9). CURRENCY

9.1 Payment for the Goods shall be made in the currency specified in the Purchase Order.

10). EXAMINATION OF SITE

10.1 In so far as it is necessary for the performance of this Agreement, the Supplier shall be deemed to have examined the Site and the Delivery Point and their surroundings, and to have fully satisfied itself of the relevant physical conditions of the Site and Delivery Point, the climatic conditions in the locality of the Site and Delivery Point, the nature of and access to the Site and Delivery Point and how they may be affected by prior, concurrent or subsequent work carried out by others, the nature, quality, extent and amount of labour, plant, materials, equipment, machinery, vehicles, tools, facilities and services required, and all other matters which can in any way affect the delivery of the Goods.

10.2 The Supplier hereby acknowledges it has not and shall not rely on any information given, or statement made to it, by DM Composites Pty Ltd in respect of the condition or future condition of the Site or Delivery Point, other than as this is included in the Agreement or is otherwise provided in writing by DM Composites Pty Ltd.

11). SAFETY AND PERFORMANCE

11.1 In the performance at the Site of its obligations under the Agreement, the Supplier shall maintain strict discipline and good order among its workmen and the workmen of its Sub-suppliers (hereinafter called the "Workmen"). Without prejudice to the generality of the foregoing, the Supplier shall ensure that its employees, agents and Sub-suppliers comply with DM Composites Pty Ltd's Safety Rules and any other work directions issued by DM Composites Pty Ltd from time to time which apply to working on the Site, including but not limited to, attending, participating in and giving effect to, any workshops or other formal activities conducted by, or on behalf of, DM Composites Pty Ltd or the Client, in respect to health, safety or the environment. DM Composites Pty Ltd shall be entitled to require the Supplier to remove a Workman who is incompetent, unreliable, unfit or has misbehaved or contravened any rules or directions and the Supplier shall forthwith replace any Workmen removed with suitable Workmen approved by DM Composites Pty Ltd. If the Supplier is a single person, DM Composites Pty Ltd shall be entitled to terminate the Agreement in the event the Supplier is incompetent, unreliable, unfit or has misbehaved or contravened any rules or regulations aforesaid, and the provisions of Clause 28.2 shall, mutatis mutandis, apply.

11.2 The Supplier shall place the highest importance and priority on safety, occupational health and protection of the environment during the performance of the Agreement. Notwithstanding the foregoing, the Supplier shall, prior to beginning any work on the Site, submit to DM Composites Pty Ltd for review a detailed Safety Management Plan setting out the Supplier's proposed procedures for ensuring that work on Site under the Agreement is conducted safely. The Supplier shall comply with its Safety Management Plan. Any approval, acceptance, review or agreement by DM Composites Pty Ltd of the Suppliers own Safety Management Plan, shall not diminish the Supplier's obligations or liabilities under this Clause 11, nor relieve the Supplier of the responsibility to comply with the Agreement or the law.

11.3 The Supplier shall not permit a hazardous, unsafe, unhealthy or environmentally unsound condition or activity over which it has control. If the Supplier becomes aware of any such condition or activity, it shall promptly take all necessary steps (including engaging a competent person) to abate or eliminate such condition or activity.

11.4 Upon the occurrence of any hazardous, unsafe, unhealthy or environmentally unsound condition or activity at the Site, DM Composites Pty Ltd may serve notice to that effect on the Supplier requiring the Supplier to stop work and to abate or eliminate such condition or activity within the time stipulated in the notice, failing which DM Composites Pty Ltd may by itself or by its contractors or agents do the same at the cost of the Supplier. Any failure by DM Composites Pty Ltd to serve such notice shall not relieve the Supplier of its responsibility to otherwise abate or eliminate such conditions.

11.5 The Supplier shall not do or permit to be done any act or thing which may become a nuisance to, or give cause for complaint by, the occupiers of neighbouring premises or sites.

11.6 The Supplier undertakes to take all precautions and provide all protection to prevent damage, injury or loss to:

- a) DM Composites Pty Ltd, its personnel, and all other occupiers and users of the Site; and
- b) all buildings, structures, fittings, fixtures, equipment, rolling stock and other property at the Site and adjacent thereto including trees, shrubs, lawns, pavements, roadways, rail infrastructure and utilities.

11.7 The Supplier shall be liable for all costs and expense incurred by DM Composites Pty Ltd to make good any damage caused by the Supplier, its employees, agents or Sub-suppliers to the Site or any other property and shall indemnify DM Composites Pty Ltd for any loss, injury or damage to any person or property caused by any act, default or negligence of the Supplier, its employees, agents or Sub-suppliers.

11.8 The Supplier shall at all times keep the Site and the Premises clean and shall clear away and remove all surplus materials, rubbish and work of any kind as may be occasioned by the work or the Suppliers' performance of its obligations under the Agreement.

11.9 Within seven days from the Completion Date or such other date as DM Composites Pty Ltd may direct, the Supplier shall remove all of its personnel, plant and equipment and surplus materials from the Site, and shall leave this and its environs clean and tidy.

11.10 For the avoidance of doubt and notwithstanding anything else contained in this Agreement, the Supplier has control of, and ultimate responsibility for, the health and safety of the Suppliers employees, and the health and safety of others who may be affected by the activities of the Supplier in carrying out the work, and nothing in this Agreement relieves the Supplier of this obligation. Compliance by the Supplier with the requirements of this Clause 11, shall be at the Supplier's cost.

12). COMPLIANCE WITH LAWS

12.1 The Supplier shall at its own expense comply in all respects with the provisions of all applicable laws, statutes, regulations or other enactment in respect of the manufacture, packaging, packing and delivery of the Goods and the execution of work, and shall keep DM Composites Pty Ltd indemnified against all penalties and liabilities of any kind arising as a result of breach of any laws.

12.2 The Supplier shall prior to the commencement of performance of the Agreement and as and when necessary, at its own cost, obtain from governmental and other competent authorities all necessary approvals, consents, licences and permits whatever which may be from time to time required for or in connection with any matter relating to or arising out of the Agreement, and shall at its own cost, keep current and promptly renew from time to time all such necessary approvals, consents, licences and permits and promptly deliver to DM Composites Pty Ltd on demand certified true copies of all such approvals, consents, licences and permits and documentary evidence of payment of all fees, duties and or impositions levied by the relevant authorities.

13). PROPERTY

Subject always to clause 20.12;

13.1 The property in any Goods shall pass to DM Composites Pty Ltd upon delivery at the Delivery Point, unless, and to the extent, payment therefore (whether in whole or in part) is made prior to delivery, when it

shall pass to DM Composites Pty Ltd once such payment has been made. Where progress or instalment payments are made, the property in the Goods in respect of which a progress or instalment payment is made, shall pass to DM Composites Pty Ltd once such payment has been made.

13.2 The property in any Goods delivered to the Delivery Point shall re-vest in the Supplier to the extent that surplus Goods may be found to exist upon Completion and handing over of the Goods. All Goods delivered to the Delivery Point shall not be removed from the Delivery Point without the consent of DM Composites Pty Ltd, except that if the Goods are surplus to the requirements of the Agreement, the Supplier shall remove the same, upon the property in such surplus re-vesting to the Supplier.

13.3 The Supplier warrants that it has the right to sell, and that DM Composites Pty Ltd shall acquire good clear title to, all Goods free of any Encumbrance, on the date when property in such Goods under the terms herein, passes to DM Composites Pty Ltd.

13.4 DM Composites Pty Ltd may require the Supplier to establish to DM Composites Pty Ltd's satisfaction that the Supplier has or will, on the date for making the payment of the progress or instalment payment, or on delivery to the Delivery Point, have good clear title to and ownership of such Goods. If the Supplier shall fail to satisfy DM Composites Pty Ltd as aforesaid, DM Composites Pty Ltd may require the Supplier to provide additional security in form and substance acceptable to DM Composites Pty Ltd prior to making any payment.

13.5 The Supplier shall ensure that any Goods in which property has passed to DM Composites Pty Ltd, but which remain in the possession of the Supplier or its Sub-suppliers, are clearly marked and identified as DM Composites Pty Ltd's property, and kept separate from other goods or property of the Supplier and any third party and be properly stored, protected and insured.

13.6 DM Composites Pty Ltd shall be entitled at any time by its servants or agents to require the Supplier to deliver up to DM Composites Pty Ltd any such Goods in which property has passed, and if the Supplier fails to do so forthwith, to enter upon any premises of the Supplier or any third party where such Goods are stored and remove such Goods. The Supplier hereby irrevocably grants to DM Composites Pty Ltd and its authorised agents a licence to enter the Supplier's premises for the purposes aforesaid and will procure that such third party will grant to DM Composites Pty Ltd a similar licence.

13.7 The Supplier warrants and undertakes with DM Composites Pty Ltd that it will not, in any contract with a Sub-supplier for the purchase or supply of goods or materials relating to the Goods, agree to or accept any condition providing for the Sub-supplier's reservation of title or property in any Goods to be supplied by the Sub-supplier. If so required by DM Composites Pty Ltd, the Supplier shall produce for DM Composites Pty Ltd's inspection all Agreements (other than in respect to price) with Sub-suppliers which relate to the Goods.

14). RISK

14.1 Risk of damage to or loss of the Goods shall pass to DM Composites Pty Ltd upon acceptance of delivery by DM Composites Pty Ltd in accordance with the Agreement.

14.2 The Goods, whether located at the Site, the Premises or the premises of any third party, supplied by the Supplier or all goods or materials, if any, supplied by DM Composites Pty Ltd for the Supplier's use, shall remain, until handing over of the completed Goods in accordance with the Agreement, at the risk of the Supplier, who shall make good at its own expense and without payment, any accidental or other loss or damage thereto howsoever caused (including theft or act of third parties) save only loss or damage caused by any wilful act of DM Composites Pty Ltd. The Supplier shall protect the Goods and shall insure the Goods and all such goods and materials as aforesaid unless otherwise expressly stated in the Agreement.

14.3 The plant, tools, equipment or other property belonging to or provided by the Supplier, its servants agents or Sub-suppliers shall be at the sole risk of the Supplier, and any loss or damage to the same or caused

by the same shall, except for any loss or damage due to any wilful act of DM Composites Pty Ltd, be the sole liability of the Supplier, who shall indemnify DM Composites Pty Ltd against any loss, claim or proceedings in respect thereof.

15). INSURANCE

15.1 The Supplier shall at his own expense, keep in force during the entire period of performance of the Agreement, the following insurances:

a) unless otherwise agreed, comprehensive public and products liability insurance in an amount not less than AUD\$10million, to cover bodily injury or death and damage to property in respect of claims by third parties (with no limit on the number of claims during the period of insurance) with a combined single limit of liability to a value acceptable to DM Composites Pty Ltd per occurrence; and

b) workmen's compensation insurance in accordance with the provisions of any applicable laws and employer's liability insurance at general law providing coverage to cover all workmen from time to time engaged by it.

c) (where a motor vehicle is used in providing the Goods) statutory Third Party insurance covering Supplier's motor vehicles.

15.2 As and when required to do so by DM Composites Pty Ltd, the Supplier shall produce for inspection by DM Composites Pty Ltd, documentary evidence that the insurances required by, or referred to in, the Agreement are properly effected and maintained (including where required the policy or policies and premium receipts in question)

15.3 The taking out of any insurance as herein provided shall not relieve the Supplier of any of its obligations under the Agreement or at common law or pursuant to any statute, rule, regulation or other enactment.

16). QUALITY INSPECTION AT PREMISES

Where so required by the Purchase Order, the Supplier shall establish and maintain quality systems acceptable to DM Composites Pty Ltd. Unless otherwise shown in the Purchase Order, the Supplier's quality systems shall comply with the current version of AS/NZS ISO 9001 'Quality management system – requirements.

16.1 DM Composites Pty Ltd and the Client shall be entitled at any time during the Supplier's normal business hours to make on-site visits to the Premises and to inspect and test any Goods during manufacture, processing, or storage at the Premises and may inspect, witness, or expedite any tests carried out by the Supplier.

16.2 If as a result of inspection or testing DM Composites Pty Ltd is not satisfied that the Goods will comply in all respects with the Agreement, and DM Composites Pty Ltd so informs the Supplier, the Supplier shall take such steps as are necessary to ensure compliance.

16.3 For the purposes of conducting any visits, inspections, or tests pursuant to this Clause 17, DM Composites Pty Ltd shall, and shall procure that its Sub-suppliers will, grant to DM Composites Pty Ltd and its authorized representatives (including the Client) full access to all Premises and provide all tools, testing equipment, and manpower, and render all necessary assistance to DM Composites Pty Ltd.

16.4 The Supplier's obligations to supply conforming Goods shall not in any way be affected by any inspection (including final inspection) or testing or attendance at Supplier's' testing or otherwise, or the issue of an Inspection Release, or failure on DM Composites Pty Ltd's part to inspect or test.

16.5 Wherever it is practicable to do so the Supplier shall, at the request of DM Composites Pty Ltd, furnish DM Composites Pty Ltd with any necessary supporting evidence or information confirming that the Goods, whether fixed or unfixed, comply with the requirements of the Agreement.

17). QUALITY INSPECTION AT SITE

17.1 DM Composites Pty Ltd shall be entitled at any time to inspect and test any Goods during installation, commissioning, or maintenance at the Site and may inspect, witness, or expedite any tests carried out by the Supplier at the Site.

17.2 DM Composites Pty Ltd may direct the opening up or inspection of any work covered up, or the carrying out of tests or investigations of any goods, materials, or executed work, or the postponement of further work until the results of the tests or investigations are known. If such direction is reasonable and prudent in the circumstances, including (but not limited to) where there is evidence that some of the work is, or is likely to be, defective, or there has been defective work by the Supplier or a breach of contract or negligence or omission on the part of the Supplier or any Sub-supplier, then, the Supplier shall comply with the direction at its own expense, and shall not be entitled to an extension of time, notwithstanding that no further defective work or breaches of contract are subsequently disclosed thereby, but in other cases, the Supplier shall be entitled to reasonable compensation for any additional expenditure resulting from compliance with such instructions, and to an appropriate extension of time, unless defective work or other breaches of contract are disclosed thereby, in which event it shall not be entitled to such compensation or extension of time.

17.3 Without prejudice to any rights or remedies of DM Composites Pty Ltd, DM Composites Pty Ltd may direct the removal or demolition of any work, goods, or materials which form part of the Goods, whether fixed or unfixed, which are not in accordance with the Agreement, and for their reconstruction or replacement in exact accordance with the Agreement. Provided that DM Composites Pty Ltd may, but shall not be bound to, accept any work containing defects not remedied and without removal or replacement, in which event the provisions of Clause 22.3(b)(i) shall apply.

17.4 No failure by DM Composites Pty Ltd to exercise any powers in this Clause shall prejudice any subsequent claim by DM Composites Pty Ltd against the Supplier at any time in respect of work which is not in accordance with the Agreement.

18). PACKING, MARKING, AND DESPATCH

18.1 A delivery docket or packing list must accompany each delivery or consignment of the Goods and must be displayed prominently. Unless otherwise specified in the Purchase Order or notified by DM Composites Pty Ltd, the delivery docket or packing list shall contain as a minimum the Purchase Order Number, DM Composites Pty Ltd's name, and the Supplier's name.

18.2 Unless the quantity is clearly stated on the packing list, DM Composites Pty Ltd's count shall be deemed to be final, conclusive, and binding on the Supplier. The Supplier will standardize the count multiples used in shipments.

18.3 All Goods shall be clearly marked in accordance with applicable regulations or requirements of the carrier or shipper, if any.

18.4 The Supplier shall ensure that all Goods are adequately lubricated, packed, protected, and secured in accordance with industry standards to prevent loss, damage, or deterioration during transit to the Delivery Point, loading and unloading, and temporary storage at DM Composites Pty Ltd's premises or elsewhere at any time prior to installation and commissioning.

18.5 Large items or boxes shall be suitably lugged, battened, or packed so as to permit loading and unloading using cranes and slings. The gross weights and preferred lifting points shall be clearly and conspicuously marked on the package.

18.6 Miscellaneous small items shall be packed in containers suitable for ease of handling, identification, and storage.

18.7 The Supplier shall bear the cost of any loss, damage, or deterioration to the Goods arising from inadequate marking, packing, or protection and indemnify DM Composites Pty Ltd against all loss, damages, costs, and expenses suffered or incurred by DM Composites Pty Ltd, arising from such loss, damage, or deterioration.

19). VARIATIONS

19.1 For the purposes of this Agreement, a "variation" shall mean any change to the Goods, which change shall include:

- a) increase, decrease, or omit any part;
- b) change the character or quality of any material or goods;
- c) change the levels, lines, positions, or dimensions of any part;
- d) execute additional work;
- e) accelerate the manufacture, delivery, installation, or commissioning, where instructed in writing by DM Composites Pty Ltd to do so, or
- f) demolish or remove material, goods, or work, whether part of the Goods or otherwise.

The Supplier shall be entitled to make variations to the Agreement only upon DM Composites Pty Ltd's written direction. DM Composites Pty Ltd may at any time direct variations to the Goods, and the Supplier shall promptly comply with such direction. No variation, whether of addition or omission, shall vitiate the Agreement. Where the Supplier receives a written direction which is not stated to be a variation but which the Supplier believes to be a variation, the Supplier shall forthwith so advise DM Composites Pty Ltd before complying with that direction. Should the Supplier fail to so advise DM Composites Pty Ltd, such direction shall be deemed to not constitute a variation; at its sole discretion, DM Composites Pty Ltd may waive its right to rely on this deeming. Where work is omitted, DM Composites Pty Ltd may, without incurring any obligation of cost or other liability to the Supplier, perform this work itself, or have the work carried out by others.

19.2 The value of all variations made or allowed shall be determined in accordance with the following rules:

- a) The schedule of rates or other method upon which the original Price was based (including any Bills of Quantity), shall be used to determine the valuation of extra work of a similar character, executed under similar conditions as work priced therein.
- b) The said rates where the extra work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of valuations for the same so far as may be reasonable, failing which a fair valuation thereof shall be made by DM Composites Pty Ltd.
- c) The prices in the said schedule of rates or other method upon which the original Price was based, shall determine the valuation of items omitted; provided that if omissions substantially vary the conditions under which any remaining items of work are carried out, the prices for the remaining items shall be valued on a

fair and reasonable basis by DM Composites Pty Ltd. Any deductions shall include a reasonable amount for profit but shall not include any amount for overheads to the extent they continue to be incurred.

d) Where DM Composites Pty Ltd considers extra work cannot properly be measured and valued using the rates or prices in the Agreement, DM Composites Pty Ltd may direct that the work be done:

(i) at day work rates or the prices prevailing when such work is carried out; (in each case, to be reasonably determined by DM Composites Pty Ltd) or

(ii) at the reasonable extra cost to the Supplier of its materials, transport, and labor for the work concerned, plus a reasonable percentage which percentage shall be deemed to compensate adequately the Supplier in respect of all costs of (but not limited to) ordinary plant, tools, existing scaffolding, jigs, or temporary works, supervision, overheads, and profit.

Provided that as a condition precedent to payment based on time-related rates, written records specifying the time daily spent upon the work (and if required by DM Composites Pty Ltd, the Workmen's names), and any plant, equipment, or materials employed, shall be delivered for verification to DM Composites Pty Ltd not later than one working day following that in which work has been executed. The Supplier shall not be entitled to rely on any records which were not provided to DM Composites Pty Ltd as required unless DM Composites Pty Ltd has otherwise acknowledged and accepted those records in writing.

19.3 Purchase Order Value

The value stated on the Purchase Order is the maximum authorised expenditure by DM Composites Pty Ltd under the Agreement. The Supplier must not exceed the approved Purchase Order value without prior written approval from DM Composites Pty Ltd.

19.4 Monitoring of Expenditure

The Supplier is responsible for monitoring all expenditure against the Purchase Order, including labour, plant, materials, quantities, daily rates, hourly rates, unit rates and other variable charges.

19.5 80% Notification

Where expenditure reaches, or is reasonably expected to reach, approximately 80% of the Purchase Order value, the Supplier must notify DM Composites Pty Ltd in writing and provide the current expenditure, remaining balance and estimated cost to complete.

19.6 Exceeding the Purchase Order Value

If the Supplier becomes aware that the Goods or Works are likely to exceed the approved Purchase Order value, the Supplier must immediately notify DM Composites Pty Ltd in writing and must not incur additional expenditure above the approved Purchase Order value unless DM Composites Pty Ltd has approved such expenditure in writing and, where applicable, issued a revised or additional Purchase Order.

19.7 Unauthorised Additional Work

No additional work, variation, additional quantity, additional personnel, additional plant, extension of site attendance or other additional cost is authorised unless approved in writing by DM Composites Pty Ltd. Verbal instructions, site discussions or continuation of existing Works do not constitute authority to exceed the Purchase Order value unless confirmed in writing.

19.8 Exhaustion of Purchase Order Value

If the approved Purchase Order value is reached and no revised or additional Purchase Order has been issued, the Supplier must cease further chargeable work and immediately seek direction from DM Composites Pty Ltd, except where stopping work would create an immediate health, safety or environmental risk.

20). DELIVERY AND PROGRESS

20.1 The Supplier shall carry out the Agreement with diligence and due expedition at all times. The Supplier shall commence work under the Agreement promptly upon receipt of the Purchase Order and continue with the work until Completion.

20.2 The Goods shall be ready for handing over to DM Composites Pty Ltd at the Delivery Point on the Date for Delivery according to the delivery terms specified in the Purchase Order or within the period stated in the Purchase Order, in either case during DM Composites Pty Ltd's usual business hours, subject to any extension of the period granted in accordance with Clause 20.7.

20.3 Where the Date for Delivery is to be specified after the placing of the Purchase Order, the Supplier shall give DM Composites Pty Ltd reasonable notice of the specified date, which date shall be consistent with DM Composites Pty Ltd's program requirements, as these may have been advised to the Supplier.

20.4 Within 7 calendar days from award of the Agreement, and if so required by DM Composites Pty Ltd, the Supplier shall submit to DM Composites Pty Ltd two copies of the production program for the Goods (the "Programme"). The Programme shall list all activities including where applicable, engineering, procurement, manufacture, assembly, testing, preparation for shipment, delivery, installation, and commissioning, together with any other activities, showing planned durations for each activity and their interrelationships. Significant milestones, including those upon which any agreed progress payments may be contingent, are to be indicated on the Programme together with the planned dates.

20.5 At 7-day intervals thereafter, or as may be required by DM Composites Pty Ltd, the Supplier shall resubmit the Programme with actual progress clearly shown against each activity. The Programme shall be accompanied by a brief written report for any deviations from planned activities together with the remedial steps being taken by Supplier to restore the Programme so that the Date for Delivery will be maintained.

20.6 Where DM Composites Pty Ltd so directs, a brief report on production status and delivery forecast is required to be provided to DM Composites Pty Ltd weekly.

20.7 The Date for Delivery may be extended by such time as may in all the circumstances be fair and reasonable if work on the Goods is delayed in the following events:

- a) by any wrongful or negligent act of default, or delay, or breach of this Agreement, by DM Composites Pty Ltd, its servant or agents;
- b) suspension of performance of the Agreement by DM Composites Pty Ltd pursuant to Clause 27; or
- c) by force majeure in accordance with Clause 29.

and the Date for Delivery is unable to be achieved as a result.

20.8 As a condition precedent to such extension of the Date for Delivery, the Supplier shall as soon as such delay becomes apparent, forthwith give written notice of the cause and likely duration of delay to DM Composites Pty Ltd and provided also that the Supplier shall constantly use its best endeavours to prevent delay and shall do all that may reasonably be required by DM Composites Pty Ltd to proceed with the Goods. Provided that, absent notice from the Supplier, DM Composites Pty Ltd may at its sole discretion and in its own interests, grant such extensions of time as it may consider fair and reasonable.

20.9 If the Goods are to be delivered by instalments, the Agreement will be treated as a single Agreement and not severable.

20.10 The Supplier shall supply DM Composites Pty Ltd in good time with information required to enable DM Composites Pty Ltd to accept delivery of the Goods and performance of any work on the Site.

20.11 DM Composites Pty Ltd may at any time, by written notice which is expressly identified as an acceleration direction, direct the Supplier to accelerate the execution of the work. Unless the acceleration is necessitated by the failure of the Supplier to proceed with the work in a diligent and competent manner or otherwise cause progress of the work to be delayed (in which case the cost of such acceleration shall be to the Supplier's account), DM Composites Pty Ltd shall pay the Supplier its direct reasonable costs (if any), directly attributable to the acceleration.

20.12 Notwithstanding any other provision of the Agreement, and as a fundamental condition hereof, at any time, and whether or not DM Composites Pty Ltd has terminated the Agreement, DM Composites Pty Ltd may in writing direct the Supplier to immediately release and make available to DM Composites Pty Ltd any of the Goods (whether completed or not), and do all things necessary to enable DM Composites Pty Ltd to remove such Goods from the Supplier's (and Sub-supplier's) places of work. The Supplier hereby grants to DM Composites Pty Ltd an irrevocable license to enter upon the property of the Supplier to give effect to this provision, and shall do all that is necessary to retrieve any Goods from its Sub-suppliers. The Supplier shall promptly thereafter, submit to DM Composites Pty Ltd a claim for payment in respect only to the Goods removed by DM Composites Pty Ltd, which claim shall be regarded as a claim made under Clause 8.1, and which shall be valued as though only that part of the work had been terminated pursuant to Clause 28. Property in the Goods shall be deemed to reside in DM Composites Pty Ltd upon the direction being given to the Supplier to release the Goods. Any Goods not included in DM Composites Pty Ltd's direction shall continue to be subject to the Agreement. Any failure of the Supplier to comply with this Clause 20.12 shall be a fundamental breach of the Agreement, and in the event that DM Composites Pty Ltd makes an application to a court to enforce its rights under this Clause 20.12, this Clause is agreed by the Supplier to constitute a complete bar and defence to any application, defence, or counterclaim that the Supplier may raise at such, or related, proceedings in challenge of such rights of DM Composites Pty Ltd. This Clause 20.12 shall survive the termination of the Agreement.

21). ACCEPTANCE OF WORK

21.1 DM Composites Pty Ltd shall be entitled to reject any Goods delivered which are not in accordance with the Agreement, and shall not be deemed to have accepted any Goods until DM Composites Pty Ltd has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

21.2 DM Composites Pty Ltd shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by DM Composites Pty Ltd.

22). GOODS WARRANTY

22.1 Save where otherwise expressly stated in the Agreement, the Supplier warrants to DM Composites Pty Ltd that all Goods will:

- a) be the best of their described kinds;
- b) be in exact conformity with any Specifications, Vendor Data, sample or other agreed description;
- c) be new, fit and free from defects in design, material, and workmanship;

d) be of merchantable quality and fit for any purpose held out by Supplier or made known to Supplier in the Agreement, or which would be reasonably expected, including that they will function and operate satisfactorily in the environmental and climatic conditions to which they are to be exposed, (including altitude, and operational conditions such as exposure to dust, atmospheric corrosion, corrosive chemicals and fluids and rough handling); and

e) will comply with all statutory requirements and regulations of the countries in which the Goods are to be manufactured, installed, executed, packaged, packed, delivered, sold, used or operated.

22.2 The Supplier warrants to DM Composites Pty Ltd that the Goods will be manufactured, and where relevant, installed, by appropriately qualified and trained personnel, with due care, skill and diligence and to the highest standard of quality.

22.3 Without prejudice to any other right or remedy available to DM Composites Pty Ltd, if any Goods are not supplied or performed in accordance with the Agreement, or a defect appears in the Goods (whether or not as a result of a breach of warranty under Clauses 22.1 and 22.2 or any other undertaking or condition or otherwise), then DM Composites Pty Ltd shall be entitled:

a) to require the Supplier to repair or replace the defective Goods within seven (7) days; or

b) at DM Composites Pty Ltd's sole option, and whether or not DM Composites Pty Ltd has previously required the Supplier to repair or replace the Goods or Works;

(i) to accept the defective Goods, and be entitled to recover from the Supplier, the greater of all damages, losses, costs and expenses suffered or incurred by DM Composites Pty Ltd, as a result of such defective Goods, or the benefit to the Supplier (including any Sub-supplier) of not having to rectify the defective Goods, or

(ii) where the Supplier fails to repair or replace the defective Goods as required by paragraph (a) above, to treat the Agreement as repudiated by the Supplier's breach and to accept such repudiation or to terminate the Agreement for the Supplier's breach, and require the repayment of any part of the Price which has been paid, and compensation for all damages, losses, costs and expenses suffered or incurred by DM Composites Pty Ltd.

22.4 The Supplier shall be liable for all damages loss, costs and expense incurred or suffered by DM Composites Pty Ltd, and shall indemnify DM Composites Pty Ltd against all liabilities, damages, costs and other compensation awarded against or paid by DM Composites Pty Ltd, in connection with any third party claims arising out of or as a result of or in connection with breach of any warranty given by the Supplier in relation to the Goods or any noncompliance with the Agreement, and all legal or other expenses incurred by DM Composites Pty Ltd in or about the defense or settlement of any such claims.

22.5 Repairs and replacements shall themselves be subject to the same warranties as contained in Clauses 22.1 and 22.2.

22.6 All express warranties of the Supplier set forth in the Agreement are additional to any warranties or conditions implied by statute or common law.

22.7 It is expressly agreed by the Supplier that the warranties given to DM Composites Pty Ltd by this Clause 22, together with any further warranties that may be provided to DM Composites Pty Ltd by the Supplier, shall simultaneously be for the benefit of the Client, who may call upon the Supplier to honor such warranties, whether or not this Agreement has been assigned or novated to the Client pursuant to Clause 30.

23). CONFIDENTIALITY

23.1 In this Clause, “Confidential Information” shall mean that information:

- a) disclosed to or obtained by the Supplier at any time prior to the signing of the Agreement by the Supplier or in connection with or during the course of performance of the Agreement and which relates to DM Composites Pty Ltd’s past, present or future business and activities, or those of the Client; and
- b) all items prepared for or submitted to DM Composites Pty Ltd for the purposes of performance of the Agreement, including any Vendor Data or other Specification, drafts and associated materials and works carried out under the Agreement.

But shall not apply to Confidential Information that:

- (i) is or becomes publicly available without breach of the Agreement or other legal obligations by the Supplier; or
- (ii) is released for disclosure with the prior written consent of DM Composites Pty Ltd.

23.2 The Supplier undertakes not to divulge or communicate to any person, firm or company any Confidential Information without the prior written consent of DM Composites Pty Ltd except to employees, agents or Sub-suppliers who are engaged in the performance of the Agreement and (if requested by DM Composites Pty Ltd) have signed a Confidential Undertaking having the same effect as the provisions contained in this Clause, and then only to the extent necessary for the performance of the Agreement.

23.3 The Supplier shall take all reasonable precautions in dealing with any Confidential Information so as to prevent any unauthorized person from having access to such Confidential Information.

23.4 If so required by DM Composites Pty Ltd, the Supplier shall simultaneously with delivery of the Goods or handing over of the Works, at its own expense, deliver up to DM Composites Pty Ltd all documents, papers and property containing any Confidential Information which may be in the possession or under the control of the Supplier, its employees, agents or Sub-suppliers.

23.5 The Supplier shall not disclose the existence of the Agreement or mention DM Composites Pty Ltd’s name or that of the Client, in any publicity release or announcement or publicity material or other similar communication without DM Composites Pty Ltd’s prior written consent.

23.6 The provisions of this Clause shall survive the termination or expiry of this Agreement for any reason.

23.7 direct communication with clients

The Supplier must not, without the prior written consent of DM Composites Pty Ltd, directly contact, communicate with, approach or correspond with any Client of DM Composites Pty Ltd in relation to:

- a) outstanding invoices, payment disputes or payment status;
- b) commercial disputes between the Supplier and DM Composites Pty Ltd;
- c) claims, variations, contractual disagreements or alleged breaches by DM Composites Pty Ltd;
- d) complaints concerning DM Composites Pty Ltd, its personnel, management, project delivery or commercial practices; or
- e) any matter which may reasonably be expected to adversely affect DM Composites Pty Ltd’s commercial relationship or reputation with the Client.

All such matters must be directed to the Supplier’s nominated DM Composites Pty Ltd representative.

23.8 Communication with other suppliers and subcontractors

The Supplier must not directly contact, approach or communicate with other suppliers, subcontractors, consultants or service providers engaged by DM Composites Pty Ltd for the purpose of:

- a) discussing or complaining about outstanding invoices, payment disputes or commercial disagreements with DM Composites Pty Ltd;
- b) encouraging or coordinating claims, disputes, complaints or other action against DM Composites Pty Ltd;
- c) making statements which are false, misleading, defamatory or reasonably likely to damage the reputation or commercial relationships of DM Composites Pty Ltd; or
- d) interfering with DM Composites Pty Ltd's management of the project, its suppliers, subcontractors or Client relationships.

Nothing in this clause prevents normal project coordination between suppliers or subcontractors where such communication is required for the proper performance of the Works.

23.9 non-disparagement

The Supplier must not make or publish any false, misleading, defamatory, malicious or disparaging statement concerning DM Composites Pty Ltd, its directors, employees, representatives, Clients, suppliers, subcontractors or projects.

Any commercial concern, complaint, dispute or grievance must first be raised directly with DM Composites Pty Ltd through the appropriate project or commercial representative.

23.10 Permitted Communications

Clauses 23.7 to 23.9 do not prevent the Supplier from:

- a) complying with any applicable law, court order or lawful requirement of a government or regulatory authority;
- b) raising a genuine health, safety, environmental or legal compliance concern with an appropriate authority;
- c) obtaining independent legal or professional advice; or
- d) pursuing any formal dispute resolution rights available under this Agreement.

24). INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

24.1 The Supplier shall be liable for all damages loss, costs and expense incurred or suffered by DM Composites Pty Ltd, and shall indemnify DM Composites Pty Ltd against all liabilities, damages, costs and other compensation awarded against or paid by DM Composites Pty Ltd, in connection with any infringement or alleged infringement arising from or occasioned by or in relation to the use of any Intellectual Property Rights in any Goods by DM Composites Pty Ltd pursuant to the Agreement, and all legal or other expenses incurred by DM Composites Pty Ltd in or about the defence or settlement of any infringement claim.

25). INDEMNITY

25.1 The Supplier hereby indemnifies and saves harmless DM Composites Pty Ltd from and against all liabilities, loss, damages, costs and expenses (including legal expenses on an indemnity basis) awarded against or paid or suffered or incurred by DM Composites Pty Ltd arising out of or as a result of or in connection with any breach of duty or negligence, or any act or omission, of the Supplier, its employees, agents or Sub-suppliers in connection with the performance of the Agreement.

26). TERMINATION FOR CONVENIENCE

26.1 DM Composites Pty Ltd shall be entitled, at any time prior to delivery of the Goods, to cancel the Agreement in respect of all or any part of the Goods by giving notice in writing to the Supplier. Upon receipt of such notice, the Supplier shall immediately cease to incur expenses in respect of the Agreement or the part thereof which has been cancelled.

26.2 The Supplier shall take all steps to mitigate costs to DM Composites Pty Ltd of such cancellation, and the provisions of Clause 20.12 shall, mutatis mutandis, apply. Upon such cancellation, DM Composites Pty Ltd's sole liability shall be to pay to the Supplier (after allowing for any previous payment):

- a) the value of the Goods delivered to DM Composites Pty Ltd at the Delivery Point;
- b) where there is no ready market for the Goods, the value of any Goods manufactured but not delivered at the date of such determination; and
- c) where there is no ready market for the unfixed goods or materials for incorporation in the Goods, the value of any unfixed goods and materials (wherever located) properly ordered for which the Supplier shall have paid or of which it is legally bound to accept delivery.

26.3 On payment by DM Composites Pty Ltd for any Goods, the property in such Goods so paid, if not already passed to DM Composites Pty Ltd, shall pass to DM Composites Pty Ltd.

26.4 Where there is a ready market for any Goods, the Supplier shall not be entitled to any payment therefore, save for its reasonable costs of handling and any bona-fide short-fall in recovering its reasonable costs of the Goods, whether or not property has passed to DM Composites Pty Ltd. If property has passed to DM Composites Pty Ltd, property shall re-vest in the Supplier and (if the Goods are in the possession or custody of DM Composites Pty Ltd) DM Composites Pty Ltd shall re-deliver the same to the Supplier at DM Composites Pty Ltd's premises.

26.5 The Supplier shall not be entitled to any payment for any Goods, under Clause 26.2 unless they are in all respects in accordance with the Agreement. The Supplier shall not be entitled to any loss of profit on the remaining parts of the Goods or any other compensation.

27). SUSPENSION

27.1 DM Composites Pty Ltd shall be entitled at any time to suspend performance of the Agreement in respect of all or any part of the Goods by giving notice in writing to the Supplier. Upon receipt of such notice, the Supplier shall immediately cease to incur expenses in respect of the Agreement or the part thereof the performance of which has been suspended. The Supplier shall take all steps to mitigate costs to DM Composites Pty Ltd of such suspension.

27.2 The Supplier shall immediately resume performance of the Agreement upon notice in writing from DM Composites Pty Ltd to the Supplier to do so.

27.3 Save that the Date for Delivery may be extended and recalculated by such further period and until such further date as may be reasonable to reflect any delay in Completion (an extension of time) which, notwithstanding due diligence and the taking of all reasonable steps by the Supplier to avoid or reduce the same, has been caused by any suspension by DM Composites Pty Ltd under Clause 27.1. The Supplier shall not be entitled to any additional payment or any adjustment to the Price arising from any such suspension unless such suspension was caused by the negligent or willful conduct of DM Composites Pty Ltd, in which case the Supplier shall be entitled to be reimbursed its reasonable costs directly attributable to the suspension. Provided always that the Supplier shall not be entitled to any extension of time or the payment

of any costs if the suspension was due to any act or omission of the Supplier, its servants or agents or Sub-suppliers, but shall be entitled to an extension of time where the suspension is caused otherwise.

27.4 It shall be a condition precedent to an extension of time under this Clause that the Supplier shall within 14 days of the date of receipt of notice to resume performance, notify DM Composites Pty Ltd in writing of any claim for an extension of time and/or costs, together with a full statement of the reasons to justify such claim; any claims made otherwise are barred.

28). TERMINATION FOR DEFAULT

28.1 DM Composites Pty Ltd shall be entitled to terminate the Agreement forthwith by giving notice to the Supplier at any time if:

a) the Supplier ceases, or threatens to cease, to carry on business, becomes bankrupt or makes a composition or arrangement with its creditors or having a proposal in respect of its company for a voluntary arrangement for having a composition of debts or scheme or arrangement approved by, or having an application made in respect of its company to, the court for the appointment of an administrator, or having a winding-up order made (except for the purposes of amalgamation or reconstruction) or a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of its business or undertaking duly appointed, or having an administrative receiver appointed, or having possession taken, by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge, or DM Composites Pty Ltd reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly (in any of the events aforesaid, the Supplier shall be deemed to be in breach of the Agreement); or

b) the Supplier commits a breach of any of its obligations under the Agreement.

In the case of a default referred to in Clause 28.1(b), other than a default in respect of on-Site safety, in which case DM Composites Pty Ltd may terminate the Agreement without notice, DM Composites Pty Ltd shall not be entitled to terminate the Agreement unless it has served on the Supplier a notice advising of the breach and allowing the Supplier not less than seven days in which to remedy the breach or otherwise show good cause why DM Composites Pty Ltd should not terminate the Agreement, and the Supplier fails to do so.

28.2 Upon termination for breach, the Supplier shall be liable for all damages, loss, costs and expense which may be suffered or incurred by DM Composites Pty Ltd arising out of such termination and shall indemnify DM Composites Pty Ltd against all liabilities, damages, costs and other compensation awarded against or paid by DM Composites Pty Ltd in connection with any third-party claims and all legal expenses and costs incurred by DM Composites Pty Ltd in the defense or settlement of any such claims, arising out of, or as a result of, or in connection with, such termination. DM Composites Pty Ltd's only liability to the Supplier, subject to DM Composites Pty Ltd's right of set-off, shall be to make payment of (or allow as credit) the Price of all Goods delivered or handed over to DM Composites Pty Ltd in accordance with the Agreement.

29). FORCE MAJEURE

29.1 If either party to the Agreement is prevented or delayed in the performance of any of its obligations under the Agreement by force majeure, and provided that such party has given written notice thereof to the other party specifying the matters constituting force majeure, together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then such party shall be excused from the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

29.2 For the purpose of Clause 29.1, "force majeure" shall be deemed to be any cause affecting the performance of the Agreement arising from or attributable to causes which are not reasonably foreseeable

and beyond the reasonable control of the party affected and without limiting the generality thereof shall include the following:

- a) strikes, lock-outs, or other industrial actions (excluding strikes by Supplier's employees);
- b) civil commotion, riot, invasion, war threat, or preparation for war;
- c) fire, explosion, storm, flood, earthquake, subsidence, epidemic, or other natural physical disaster;
- d) impossibility of the use of railways, shipping, aircraft, motor transport, or other means of public or private transport; or
- e) Political interference with the normal operations of any party provided always that the Supplier shall not be excused from performance hereunder where alternate sources of supply of Goods or goods or materials for incorporation into the Goods are available.

29.3 If the force majeure in question prevails for a continuous period in excess of one month, the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable provided that either party may terminate the Agreement (insofar as it is affected by the force majeure) if no such alleviation or alternative can be agreed.

30). ASSIGNMENT OR SUBLETTING

30.1 The Supplier shall not assign or sub-let- the performance of the Agreement (or any part thereof) without the prior consent in writing of DM Composites Pty Ltd. The Supplier shall at all times be responsible to DM Composites Pty Ltd for the acts or omissions of any assignee or Sub-supplier. When requested, an unpriced copy of the Supplier's contracts with an approved Sub-supplier shall be furnished to DM Composites Pty Ltd promptly after receipt of DM Composites Pty Ltd's consent.

30.2 The Supplier accepts that DM Composites Pty Ltd may be entering into the Agreement for and on behalf of the Client (whether or not made known to the Supplier). DM Composites Pty Ltd may freely assign or novate all its rights and obligations under the Agreement to any such Client. The Supplier hereby irrevocably consents to any such assignment or novation in the form required by such Client and to the release of DM Composites Pty Ltd upon any such assignment or novation, of all further obligations under the Agreement and agrees to execute any instrument or other document to give effect to any such assignment or novation and release.

30.3 DM Composites Pty Ltd may, upon written notice to the Supplier and without its consent, assign all or any part of its rights and benefits hereunder or transfer all or any part of its obligations hereunder to a related corporation, who upon receiving such an assignment or transfer will thereafter be liable solely for the performance of the obligations hereunder.

31). APPROVAL NOT TO RELIEVE SUPPLIER OF LIABILITY

31.1 No approval or consent of DM Composites Pty Ltd shall relieve the Supplier of any liability arising out of or in any way connected with the performance of its obligations under the Agreement.

31.2 Except as provided at law or in equity or elsewhere in the Agreement, none of the terms of the Agreement shall be varied, waived, discharged, or released except with the written consent of the parties, which shall not be continuing unless expressed to do so and further shall not constitute a waiver, discharge, or release of any other term.

32). LIEN

32.1 The Supplier hereby waives any and all rights of lien against any of the Goods or any work of which the Goods form part or the Site (or part thereof) to the fullest extent consistent with the law. In the event an employee of the Supplier, or a Sub-supplier or a worker employed by them, institutes action to place a lien on the Site (or part thereof), the Supplier will take whatever action is necessary to avoid the lien being registered or to have the lien removed forthwith (as the case may be), and shall indemnify DM Composites Pty Ltd against costs, losses, or damages whatsoever, that DM Composites Pty Ltd may suffer as a result of the registration or proposed registration of such lien.

33). WAIVER

33.1 A failure by DM Composites Pty Ltd to enforce or exercise any rights conferred upon it under the Agreement or at law shall not be deemed to be a waiver of any such rights (unless made in writing by DM Composites Pty Ltd) or operate so as to bar the exercise or enforcement thereof at any subsequent time or times. No waiver in respect of any breach of the Supplier shall operate as a waiver in respect of any subsequent breach.

34). CUMULATIVE RIGHTS

34.1 The rights and remedies hereby conferred shall be cumulative and in addition to any and all other rights and remedies now or hereafter existing at law or in equity.

35). SURVIVAL OF TERMS

35.1 The termination or cessation otherwise of the Agreement howsoever caused shall be without prejudice to any obligations or rights of either party which have accrued prior to such termination or cessation and shall not affect any provision of the Agreement which is expressly or by implication provided to come into effect on or to continue in effect after such termination or cessation.

36). PROPERTY FURNISHED BY DM COMPOSITES PTY LTD

36.1 Without prejudice to Clause 23.4, any tools, tooling, drawings, plans, papers, documents, tape, diskettes, materials and other property furnished by DM Composites Pty Ltd for use by the Supplier shall be identified and shall remain the property of DM Composites Pty Ltd and shall be used by the Supplier only for the purpose of the performance of the Agreement. The Supplier shall ensure that any such property is clearly marked and identified as DM Composites Pty Ltd's property, and kept separate from other property of the Supplier or any third party and properly stored and protected.

36.2 All property aforesaid shall be delivered to DM Composites Pty Ltd forthwith upon DM Composites Pty Ltd's request to a destination specified by DM Composites Pty Ltd, in their original condition except for normal wear and tear.

37). INDEPENDENT CONTRACTOR

37.1 For the purposes of the Agreement, the Supplier is an independent contractor and not an agent or employee of DM Composites Pty Ltd.

38). GOVERNING LAW

38.1 The Agreement shall be governed by and construed in all respects in accordance with the laws (and be subject to the courts) of:

a) where the Delivery Point is in Australia, the place where the Delivery Point is situated;

- b) where the Delivery Point is in New Zealand, New Zealand; and
- c) where the Delivery Point is not in Australia or New Zealand, New South Wales.

39). DISPUTE RESOLUTION

39.1 In the event that any dispute, controversy, or difference of any kind whatsoever arising out of or in connection with the Agreement (including the validity or enforceability of the Agreement or any part thereof) or the carrying out of the Agreement, shall arise, either Party may notify the other in writing that a dispute has arisen and giving full details of the dispute.

39.2 Within 14 days of the date of notification of a dispute, Senior Executives of DM Composites Pty Ltd and the Supplier shall confer in good faith and attempt to settle the dispute amicably or agree a method for settlement.

39.3 If the parties are unable to resolve the dispute by negotiation or agree a method of settlement, within 30 days of notification of the dispute, the dispute may be referred by either party to arbitration by a single arbitrator to be appointed by agreement or (failing agreement within 14 days after receipt of notification by one party to the other of the intended reference) by a single arbitrator to be appointed on the written request of either party by the President of the chapter of the Australian Institute of Mediation and Arbitration in the place of the governing law, but only where the matter being referred in DM Composites Pty Ltd's opinion does not give rise to a claim by DM Composites Pty Ltd against the Client under DM Composites Pty Ltd's contract with the Client, in which case Clause 39.7 will apply.

39.4 The place of arbitration shall be:

- a) where the governing law under this Agreement is the laws of New Zealand, a city in New Zealand as agreed by the parties; and
- b) where the governing law under this Agreement is not the laws of New Zealand, the capital city of the place of the governing law.

Unless otherwise agreed, the arbitration shall be conducted in accordance with, and subject to The Institute of Arbitrators and Mediators Australia, 'Rules for Conducting Expedited Arbitration'. The decision of the arbitrator shall be final and binding upon DM Composites Pty Ltd and the Supplier. The parties expressly and irrevocably agree, that any statutory proportionate liability regimes that may otherwise apply, are, to the maximum extent permitted, hereby excluded from operation in respect to any dispute, claim, action or matter whatsoever arising in connection with the Agreement.

39.5 Notwithstanding the existence of a claim or dispute, the parties must continue to perform their respective obligations under this Agreement.

39.6 All documents, correspondence, drawings, and data relating to the Agreement or any dispute are to be in the English language.

39.7 Where in DM Composites Pty Ltd's opinion, the matter being referred to in Clause 39.1 gives rise to a claim by DM Composites Pty Ltd against the Client under its contract with the Client and DM Composites Pty Ltd intends to pursue that claim through arbitration or other formal dispute resolution protocol under that contract, DM Composites Pty Ltd shall upon the expiry of the 30 days indicated in Clause 39.3 give notice to the Supplier informing the Supplier of its intention to pursue the matter under the contract with the Client in which case the following shall apply.

- a) The Supplier shall give DM Composites Pty Ltd all reasonable assistance in the prosecution of DM Composites Pty Ltd's claim or dispute and shall make available all relevant information, documents, and evidence within its possession or control.
- b) DM Composites Pty Ltd shall prosecute its claim or dispute with due diligence.
- c) The Supplier shall be bound by the findings of fact and by the decision or decisions made in respect of DM Composites Pty Ltd's claim or dispute to the extent that the same involves any issue or issues which are the same or substantially the same as issues which are relevant to the Supplier's claim, and the Supplier's claim shall be determined in a manner consistent with all such findings and decisions.
- d) The Supplier shall indemnify DM Composites Pty Ltd to the extent of the Supplier's interest in respect of the claim or dispute, against all costs and expenses incurred by DM Composites Pty Ltd by reason of the operation of this Clause.
- e) The Supplier shall lodge with DM Composites Pty Ltd reasonable cash or other security against such costs and expenses DM Composites Pty Ltd may reasonably incur, and any monies DM Composites Pty Ltd may recover shall be to the benefit of the Supplier to the extent of the Supplier's interest in the claim or dispute, save that DM Composites Pty Ltd shall be entitled to withhold from any such moneys an amount representing DM Composites Pty Ltd's unrecovered costs of conducting the claim, in the proportion that the Supplier's entitlement bears to the total award.

40). CODE COMPLIANCE (Australia only – NSW & Qld)

40.1 Definitions:

- a) The Agreement adopts the definitions provided by the Code of Practice for the Building and Construction Industry (State Codes) and Implementation Guidelines to the Code of Practice for the Building and Construction Industry (State Guidelines) in New South Wales and Queensland (as applicable).
- b) Code Regulator means the Queensland Building Construction Compliance Branch or the New South Wales Code Compliance Unit (as applicable).

40.2 The Supplier:

- a) must comply with, and meet any obligations imposed by, the State Code and the State Guidelines;
- b) must notify the Code Regulator, DM Composites Pty Ltd, and the Principal of any alleged breaches of the State Code or Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach;
- c) where the Supplier is authorized to engage a subcontractor or consultant, and it does so, must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this section 40, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the State Code and Guidelines;
- d) must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the State Code or Guidelines.

40.3 Access and Information:

- a) The Supplier must maintain adequate records of compliance with the State Code and Guidelines by it, its subcontractors, consultants, and related entities.

b) The Supplier must allow, and take reasonable steps to facilitate, the Code Regulator and its authorized personnel to:

- (i) enter and have access to sites and premises controlled by the Supplier, including the project site;
- (ii) inspect any work, material, machinery, appliance, article, or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the project;
- (v) have access to personnel;
- (vi) interview any person; and
- (vii) as necessary for the authorized personnel to monitor and investigate compliance with the State Code and Guidelines, by the Supplier, its subcontractors, consultants, and related entities.

c) The Supplier, and its related entities, must agree to, and comply with, a request from the Code Regulator or such other authorized Government personnel for the production of specified documents by a certain date, whether in person, by post, or electronic means.

40.4 Sanctions:

a) The Supplier warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the State Code or Guidelines that would have precluded it from tendering for work to which the State Code and Guidelines apply.

b) If the Supplier does not comply with, or fails to meet any obligation imposed by, the State Code or Guidelines, a sanction may be imposed against it in connection with the State Code or Guidelines.

c) Where a sanction is imposed:

- (i) it is without prejudice to any rights that would otherwise accrue to the parties;
- (ii) the State (through its agencies, Ministers, and Code Regulator) is entitled to:
- (iii) record and disclose details of non-compliance with the State Code or Guidelines and the sanction; and
- (iv) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the State Code and Guidelines apply.

40.5 Compliance:

a) The Supplier bears the cost of ensuring its compliance with the State Code and Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the State Guidelines. The Supplier is not entitled to make a claim for reimbursement or an extension of time from DM Composites Pty Ltd, the Principal, or the State Government for such costs.

b) Compliance with the State Code and Guidelines does not relieve the Supplier from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the State Code and Guidelines.

c) Where a change in the contract or works is proposed, and that change would, or would be likely to, affect compliance with the State Code and Guidelines, the Supplier must immediately notify DM Composites Pty Ltd and the Principal (or nominee) of the change, or likely change and specify:

- (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the State Code and Guidelines will, or is likely to be, affected by the change;
 - (iii) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan),
 - (iv) and the Principal will direct the Supplier as to the course it must adopt within 5 Business Days of receiving notice.
- d) Without limiting and notwithstanding any other provision of this Agreement, the Supplier hereby indemnifies and saves harmless DM Composites Pty Ltd from and against all liabilities, loss, damages, costs and expenses (including legal expenses on an indemnity basis) awarded against or paid or suffered or incurred by DM Composites Pty Ltd arising out of or as a result of or in connection with any breach of duty or negligence, or any act or omission, of the Supplier, its employees, agents or Sub-contractors in connection with the State Code and Guidelines and its obligations under this clause 40.

41). PRIORITY OF TERMS AND CONDITIONS

41.1 The terms and conditions (T&Cs) specified in this agreement shall always prevail over any other T&Cs agreed upon beforehand between DM Composites Pty Ltd and the Supplier, including but not limited to any T&Cs provided by the Supplier, whether written or verbal.

42). AMENDMENT OF TERMS AND CONDITIONS

42.1 DM Composites Pty Ltd reserves the right to amend the terms and conditions specified in this agreement at any time without notifying the Supplier. Such amendments shall be effective immediately upon being updated in the agreement document, and it is the Supplier's responsibility to regularly review the agreement for any changes.