

Purchasing Terms & Conditions

1. INTERPRETATIONS AND GENERAL MATTERS

1.1 Definitions

"Contract" means the Goods and, if any, Services specified in the Purchase Order and supplied by the Supplier.

"Day" means a calendar day.

"Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Purchaser by the Supplier under the Purchase Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

"Goods and Services Tax (GST)" means any tax impost or duty on goods or services imposed by the Commonwealth of Australia, its State or Territories or any similar or like tax and whether imposed before or after the date of this Order;

"Purchaser" means Matrix Composites & Engineering Limited (ABN 54 009 435 250).

"Purchase Order" means the purchase order requisition form and supporting documents issued by the Purchaser to the Supplier which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase Order.

"Purchase Order Price" means the price stated in the Purchase Order Form which is fixed and not subject to price escalation and which is the full amount that the Purchaser will pay to the Supplier as full and complete consideration for its obligations under the Purchase Order.

"Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase Order.

"Services" means the services as set out and further detailed in the Purchase Order.

1.2 Entire Agreement

The Purchase Order when properly signed and bearing an order number constitutes the entire agreement between the Purchaser and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

1.3 Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal

instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties. For the avoidance of doubt verbal instructions do not create any obligation or commitment upon the Purchaser unless and until confirmed in writing and should not be taken by the Supplier as authority to commence works or take any action.

1.4 Licences and Laws

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services, including without limitation all occupational health and safety laws.

1.5 Audit

The Supplier shall maintain a complete and correct set of records pertaining to all aspects of the Purchase Order, including the performance hereof by the Supplier. The Purchaser shall, in order to verify that all transactions between Purchaser and Supplier satisfy all of the terms and conditions of the Purchase Order, have the right, by audit to inspect those records of Supplier pertaining to the Purchase Order hereunder within a period of four (4) years from the provision of Goods and/or Services.

2. CONTRACT & ACKNOWLEDGEMENT

2.1 The Purchase Order when properly signed and bearing the order number.

- (a) Shall be the only authority by the Purchaser for charging Goods to its account, and;
- (b) Constitutes the entire terms and conditions of the Contract.

2.2 Any terms and/or conditions stipulated by the Supplier when submitting a quotation, or accepting or acknowledging the Purchase Order, whether provided prior to, or after the receipt by the Supplier of the Purchase Order, and whether purporting to exclude any or all of the terms and conditions of the Contract shall have no legal or equitable effect as against the Purchaser and the terms and conditions of the contract shall prevail.

2.3 The Supplier shall not subcontract nor assign all or any part of the Purchase Order without the Purchaser's prior written consent. Approval of the Purchaser to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase Order.

2.4 The terms and conditions of the Purchase Order shall only be varied in writing signed on behalf of the Supplier and Purchaser.

2.5 The Supplier shall provide written acceptance of the Purchase Order by way of order acknowledgement on the Suppliers letterhead quoting the Purchase Order number within three (3) days of receipt. In the absence of such acknowledgment, the performance of the Purchase Order by Supplier shall constitute acceptance of the Purchase Order. The order acknowledgement is to include:

- (a) Confirmation of the fixed price;

- (b) Confirmation of the period the price will be fixed for;
- (c) Confirmation of the quantity ordered;
- (d) Confirmation of the delivery date;
- (e) Confirmation of acceptance of the terms and conditions stated herein; and
- (f) A description of any known issues that may affect supply or result in a breach by the Supplier of any of the terms, conditions and warranties of the Purchase Order, which may delay the completion of the Purchase Order.

3. TIME FOR PERFORMANCE

3.1 Time shall be of the essence of the Purchase Order and the Supplier must perform the Services or deliver the Goods to the Delivery Address by the due date specified in the Purchase Order.

4. TITLE AND RISK

4.1 Title in the Goods passes to the Purchaser upon payment of the Purchase Order Price.

4.2 Risk in the Goods remains with the Supplier until such time as the Goods are delivered to the Delivery Address specified in the Purchase Order or in relation to provision of Services when the scope of such Services have been completed in full. Where the Goods are supplied in accordance to a specification risk shall not pass until documentary evidence of the satisfaction of the required specification is provided to the Purchaser.

5. PRICE AND PAYMENT

5.1 Unless otherwise stated in the Purchase Order, prices shall be fixed, in Australian (AUD) or US dollars (USD) as agreed with the Purchaser and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.

5.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services. The Purchase Order Price will be deemed to be inclusive of all such taxes, duties and charges.

5.3 Unless otherwise specified in the Purchase Order, invoices for payment must be submitted to the Purchaser for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Purchaser no later than thirty (30) days from the last day of the month in which the invoice was received, PROVIDED THAT the Goods and/or Services provided by the Supplier conform to the Purchase Order and comply strictly with every aspect of the specifications contained in the Purchase Order.

5.4 Upon delivery of the Goods and/or completion of the Services, the Supplier must provide to the Purchaser a valid tax invoice for the purposes of Australian GST legislation which must include:

- (a) A reference to the Purchase Order and the relevant Contract (if any) including the line items on the Purchase Order and number;
- (b) A detailed description of the Goods or performed Services, including the date of delivery, delivery docket reference number and/or period of Services in respect of which the invoice relates and relevant quantity;
- (c) The Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
- (d) Duty, excise, overseas taxes or other government charges required to be charged by the supplier must be stated separately;
- (e) The amount of any applicable GST; and
- (f) Purchaser contact name.

5.5 If the Purchaser requests, the Supplier must provide the Purchaser with all relevant records to calculate and verify the amount set out in any invoice.

5.6 The Purchaser reserves the right to return all incorrect invoices.

6. GOODS AND SERVICES TAX

6.1 If a Goods and Services Tax (GST) is imposed on any supply made by the Supplier under or in connection with the Purchase Order, the Supplier may recover from the Purchaser and amount equal to the GST payable in respect of the supply.

6.2 The Supplier must provide the Purchaser with a valid tax invoice for the purposes of GST legislation before the Purchaser will pay the GST amount to the Supplier.

7. HAZARDOUS MATERIALS

7.1 The Supplier is responsible (including cost) to ensure that all Supplier personnel involved in transportation of dangerous goods pursuant to the Purchase Order (which includes any packing, loading and unloading) have proper, adequate and appropriate training, instruction, supervision and personal protection equipment required in connection with such tasks in accordance with all applicable Laws, codes, guidelines and other legal and government requirements and authorisations, plus all requirements of the Purchaser and the Supplier.

7.2 Material Safety Data Sheets (MSDS) prepared in accordance with the "National Code of Practice for the Preparation of Material Safety Data Sheets" must be submitted to the Purchaser and must be provided to all personnel providing Services on all occasions when such chemicals or hazardous materials are being used as part of the provision of Services.

8. INSURANCE, INDEMNIFICATION AND LIABILITY

8.1 The Supplier shall maintain, at its own expense, all necessary insurance cover for its liabilities to cover all events that may cause loss of, or damage to property, or injury to, or death

of a person arising out of, or in course of, or by reason of the supply of Goods, Liability, Products Liability and Goods in Transit until delivered to the Purchaser.

8.2 In relation to the Services, the Supplier shall effect and maintain (at its own expense):

(a) public liability insurance to the minimum value of \$10 million;

(b) workers compensation insurance as required by law;

(c) motor vehicle third party damage insurance;

(d) motor vehicle insurance including death or injury cover as required by State and Federal legislation; and

(e) such other insurances required by the Purchaser or required by law,

(f) upon terms acceptable to the Purchaser.

8.3 In relation to the Goods and or Services, the Supplier shall effect and maintain any policies of insurance specified in the Purchase Order or required by law.

8.4 The Supplier must indemnify and keep indemnified the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by the Purchaser and its officers, employees and agents arising as a result of any act, neglect or default of the Supplier, its employees or agents related to its obligations under the Purchase Order.

8.5 The Purchaser will not be liable to the Supplier for any indirect or consequential loss under the Purchase Order, in tort, in equity or otherwise at law.

8.6 The maximum sum for which the Purchaser may be liable to the Supplier under the Purchase Order, in tort, in equity or otherwise at law, is limited to the Purchase Order Price.

8.7 The Supplier shall, prior to performing any obligation hereunder, furnish the Purchaser with certificates of insurance in accordance with the coverages required in clause 8.2. The Supplier shall provide within thirty (30) days prior written notice to Purchaser of any reduction, material change, non-renewal, or cancellation of any coverage.

9. PERFORMANCE AND QUALITY

9.1 Conformance to Purchase Order and Specifications

The Supplier shall ensure that the Goods are in accordance with, and comply strictly with the Purchase Order, and every aspect of specifications, drawings, samples or other description (if any) furnished by the Purchaser to the Supplier with the Purchase Order.

9.2 Materials and Workmanship

All Services and/or Goods shall be suitable for the purpose for which they are required. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship must be of a high quality and standard. The work must be carried

out in accordance with good engineering practice and comply with all applicable Australian and International standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety. Goods supplied must meet all applicable Australian and International standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

9.3 Testing and Inspection

9.3.1 The Goods and/or Services must be tested in accordance with the requirements of the Purchase Order, including any Specification. Unless otherwise stated in the Purchase Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Purchaser in writing.

9.3.2 The Purchaser or its nominated representative shall be entitled to access during its normal working hours, including but not limited to during manufacture, to expedite or inspect, examine or witness test of Goods, workmanship and performance at the Suppliers and/or the Suppliers subcontractor's premises.

9.3.3 The Purchaser shall be entitled to carry out its own inspection on receipt of Goods.

9.3.4 The Services and/or Goods will not be accepted by and risk will not transfer to the Purchaser until inspected and approved by the Purchaser. Any inspection or test carried out pursuant to the clause does not relieve the Supplier from, any of its obligations under this Purchase Order in relation to provision of Goods and will in no way impair the Purchaser's right to require subsequent correction or re-performance of non-conforming Services and/or Goods at the Supplier's cost.

9.4 Quality

9.4.1 The Goods and/or Services must match the description and must comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.

9.4.2 The Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

9.4.3 The Goods and/or Services must be fit for the purpose for which the Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose the Purchaser specifies.

9.4.4 The Goods must be of merchantable quality and, unless otherwise specified in the Purchase Order, must be new.

9.5 Defects and Warranty

9.5.1 The Supplier warrants that the Goods shall:

(a) Be new and made to the specified quality (unless otherwise specified).

- (b) Be free from liens, charges, encumbrances, mortgages or other defects in title; and
- (c) The Supplier has good title thereto.

The Supplier warrants that the Services & Goods shall

- (d) Be free from defects in design, materials and workmanship.
- (e) Conform to its description, the conditions and specifications of the Purchase Order.
- (f) Conform to all applicable laws and regulations to which the Services or Goods are subject.
- (g) Be performed in accordance with any performance standard specified in the Purchase Order.

The Supplier warrants that it will comply with any of the Purchasers policies notified by the Purchaser to the Supplier from time to time, including without limitation any of the Purchaser's privacy policies.

9.5.2 The warranties noted in clause 9.5.1 above are in addition to any statutory warranties applicable to the Services and/or Goods.

9.5.3 Unless otherwise stated, the warranty period in relation to the Goods shall expire twelve (12) months after the date of first placing the Goods into service.

9.5.4. During the warranty period, the Purchaser may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Purchaser:

- (a) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Purchaser; or
- (b) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Purchaser.

9.5.5 If the Supplier fails to correct any defects and failures, of which it has been notified by the Purchaser, within the time specified in the notice (which must not be unreasonable), the Purchaser will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred in repairing, performing or making good (as the case may be) any defective Goods and Services will be a debt due and payable on demand by the Supplier to the Purchaser, and which may be deducted from moneys otherwise owing to the Supplier by the Purchaser.

9.5.6 Any Services re-performed or rectified and/or any Goods repaired under warranty will be subject to a further full Warranty Period commencing on the date of completion of any such re-performance, rectification or repair.

9.5.7 These warranties are in addition to any other warranty specified in the Purchase Order it implied by law including, but not limited to, standard trade, manufacturers or Purchaser specified assigned warranties.

10. DELIVERY/DELAY

10.1 The Supplier must deliver the Goods to the Delivery Address by the Delivery Date (due date) specified in the Purchase Order and provide written confirmation of delivery by way of a delivery docket referencing the Purchase Order Number.

10.2 Unless otherwise specified in the Purchase Order, Goods must be delivered free into store, suitably packaged and protected to avoid damage in transit or in storage.

10.3 The Goods must be packaged in accordance with appropriate engineering drawings and the packages must be marked with the Purchase Order number, item number(s), part number(s), destination, contents, quality, date and method of dispatch and weight of each package.

10.4 The Supplier must make available to the document controller prior to shipping all supporting documentation each referencing the Purchase Order Number including, Certificates of Conformance, Certificates of Analysis, Batch Certificates and Calibration Certificates.

10.5 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Purchaser may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:

(a) the delay is caused by any reason completely beyond the control of the Supplier, including any Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood.

(b) the Supplier has notified the Purchaser in writing within twenty one (21) days (or seven (7) days for local suppliers), prior to shipment, of the delay occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time. The Purchaser shall not be liable for any extension of time claim that is not lodged in writing with the Purchaser within the specified time period, prior to shipment, of the delay occurring.

10.6 If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), the Purchaser may terminate the Purchase Order either in whole or in part for default, in accordance with the provisions of Clause 12.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Purchaser's damages and not as a penalty, the amount specified in the Purchase Order, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.

11. VARIATIONS

11.1 The Purchaser may vary the work under the Purchase Order or any condition thereof and the Supplier must carry out any such variation as directed by the Purchaser. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Services and/or Goods will be agreed between the Purchaser and Supplier prior to the Supplier carrying out any such variation.

11.2 The Supplier must not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Purchaser in writing. No variation will invalidate the Purchase Order.

12. SUSPENSION/TERMINATION

12.1 Suspension

The Purchaser may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must preserve and maintain the Goods so as to be in a position to continue the supply at the conclusion of the suspension period. The Supplier must recommence the work under the Purchase Order within forty eight (48) hours of being directed to do so by the Purchaser.

12.2 Termination by Default

In the event of a substantial breach by the Supplier of any of the terms, conditions and warranties of the Purchase Order, which in the opinion of the Purchaser may significantly delay the completion of the Purchase Order and which is not remedied within seven (7) days of the Purchaser notifying the Supplier in writing of any such breach, the Purchaser may terminate the Purchase Order in whole or part.

12.3 Termination for Insolvency

If, in the opinion of the Purchaser, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, the Purchaser will be entitled to terminate the Purchase Order.

12.4 Termination at Purchaser's Option

Notwithstanding any other provisions of the Purchase Order, the Purchaser reserves the right to terminate the Purchase Order by giving fourteen (5) days written notice to the Supplier, without prejudice to any other rights or remedies it may have at law, inequity or under statute.

12.5 Supplier's Rights and Obligations on Suspension /Termination

12.5.1 In the event of suspension of the Purchase Order, the Supplier will not be entitled to payment by the Purchaser for any costs it may incur as a result of any such suspension.

12.5.2 In the event of insolvency of the Supplier or its default under Clause 12.2, the Purchaser shall immediately suspend any further payment to the Supplier. Any additional monies required by the Purchaser to complete the Purchase Order in excess of what the Purchaser would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Purchaser.

12.5.3 In the event of termination by the Purchaser under Clause 12.4, and provided the Supplier is not in default, the Purchaser shall pay the Supplier for work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Purchaser prior to termination. The Purchaser shall not otherwise be liable for any other costs of the Supplier in respect of the termination.

13. RELATIONSHIP

In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in the Purchase Order will be construed so as to constitute the Supplier as an employee of the Purchaser or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

14. INTELLECTUAL PROPERTY

14.1 Any intellectual property in any sketches, plans, drawings, designs, chemical mixes, reports or documents prepared by the Supplier in the provision of the Services under the Purchase Order, will upon its creation vest in the Purchaser. Any intellectual property owned by the Supplier prior to the execution of the Services under the Purchase Order will remain the property of the Supplier, although such intellectual property may be used by the Purchaser pursuant to a royalty-free license whilst the Services are being performed.

14.2 The Supplier shall ensure that all design, documents, materials and methods of working used by them (or by those for whom they are responsible) shall not infringe or contribute to the infringements of any patent, registered design, trade mark or name, copyright or other protected right of any third party, or the disclosure of confidential information.

14.3 The Supplier shall indemnify the Purchaser and its successors in title against all actions, claims, demands, costs (including but not limited to legal costs), charges, damages and expenses arising from or incurred by reason of any infringement of letters patent, registered designs, trademarks, copyright or disclosure of confidential information resulting from the sue or sale or intended use or sale of the Goods supplied by the Supplier to the Purchaser.

15 Confidentiality

15.1 The Supplier shall keep secret and confidential and shall not disclose to any third party without the prior written consent of the Purchaser (except as required by compulsion of law) any engineering data, information, specifications, chemical mixes, drawings, reports, accounts or other documents made available by the Purchaser to the Supplier which is noted as, or which is by its nature, confidential.

15.2 Unless otherwise provided in the Purchase Order all plans, drawings and specifications prepared or supplied by or on behalf of the Purchaser and any documents made there from shall be, and remain the property of the Purchaser and shall be used by the Supplier only in performance of the Purchase Order, and shall be returned to the Purchaser by the Supplier on completion of the Purchase Order.

15.3 Supplier agrees not to alter, decompose, disassemble, reverse engineer, or otherwise modify (except with purchaser's prior written consent) or directly or indirectly disclose any Confidential Information. Without limiting the scope of the foregoing, supplier agrees to limit its internal distribution of purchaser's confidential information to its employees who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Suppliers employees and agents of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Supplier use less degree of care that it uses to protect its own information of like kind, but in any event not less than reasonable care, to prevent the unauthorised use or disclosure or Purchaser Confidential Information. Supplier further agrees not to use purchaser's confidential information except in the course of performing hereunder and

will not use this information for its own benefit or for the benefit of anyone other than the Purchaser. The mingling of the Purchaser Confidential Information with information of Supplier shall not affect the confidential nature or ownership of the same as stated hereunder. Supplier agrees not to design or manufacture any products which incorporate Purchaser's Confidential Information, except at the request of the Purchaser.

15. The obligations under this Clause shall be continuing obligations and shall survive the completion or termination of the Purchase Order for a period of 3 years from the completion or termination of the Purchase Order.

The Supplier must not issue any information which includes details about the Services and/or the Goods and/or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Purchaser.

16. DISPUTES

16.1 Disputes or differences arising between the Purchaser and the Supplier must be settled quickly and by negotiation.

16.2 In the event of any unresolved dispute between the Purchaser and the Supplier, the Supplier must ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.

16.3 The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Purchaser and the Supplier.

16.4 If the Parties cannot resolve any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination within twenty one (21) business days of when the dispute is first raised by the Parties, the Parties agree that the dispute must then be referred to arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Perth, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one. The decision of the arbitrator(s) (which shall be a reasoned opinion rendered in writing) shall be final, non-appealable and binding upon the Parties and may be enforced in any court of competent jurisdiction.

16.5 Neither party may litigate until the procedures in clauses 16.1 to 16.4 above have first been complied with.

17. WAIVER

Failure of the Purchaser to exercise any of its rights pursuant to these conditions shall in no way constitute a waiver of those rights nor shall such failure excuse the Supplier from any of its obligations under the Purchase Order

18. SEVERANCE

If part or all of any clause of these conditions is illegal, invalid or unenforceable

(a) it will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable, but if that is not possible.

(b) it will be severed from these conditions and the remaining provisions of these conditions will continue to have full force and effect, and the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' original intention in relation to the subject matter severed.

19. APPLICABLE LAW

Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the laws in place in the State or Western Australia. The Purchaser and the Supplier submit to the non-exclusive jurisdiction of the courts of the said State.

By acceptance of this Purchase Order, the Supplier accepts the terms and conditions stated above.