

## Perma Composites<sup>®</sup> Ltd Terms and Conditions

The following terms and conditions apply to the supply of the Products by Perma Composites Pty Ltd (Perma) to the Client.

### 1. Definitions

1.1. **Acceptance** means the Client's acceptance of the terms set out in the Offer Document whether by email or other form of writing or by the provision of a purchase order or similar document (subject to clause 2 below) or by oral communication (provided that such oral communication is accepted by an authorized representative of Perma).

1.2. **Client** means the party identified as the Client in the Offer Document.

1.3. **Force Majeure** means: any event outside of the control of a party which prevents the party performing its obligations including but not limited to strikes, lockouts, war, civil disturbance, transport or shipping delays embargoes, escalation in the wholesale cost of the Products between the date of the Offer Document and the date of manufacture by more than 5%.

1.4. **Offer Document** means the quotation, proposal or other document which sets out the details of the Products to be supplied and the commercial terms.

1.5. **Products** means any goods and any related services to be supplied by Perma to the Client as described in the Offer Document and any other goods or services which Perma agrees to supply to the Client from time to time.

1.6. **Perma** means Perma Composites Pty Ltd (ACN 100 854 108).

### 2. Formation of Agreement

2.1. An agreement is formed between Perma and the Client on Acceptance of the Offer Document by the Client. Perma may withdraw the Offer Document at any time before Acceptance.

2.2. An Offer Document automatically lapses within 30 days of it being provided to the Client (except where Perma agrees in writing to extend the time for Acceptance).



2.3. Where the Client provides a purchase order or similar document, the terms attached to such purchase order or similar document do not apply (except to the extent agreed in writing by an authorized representative of Perma). These terms override any conflicting terms in the Client's purchase order unless agreed otherwise in writing by Perma.

### 3. Supply of the Products

- 3.1. Perma agrees to deliver the Products to the Client at the location specified in the Offer Document.
- 3.2. Risk in the Products passes on delivery.
- 3.3. The Client may not cancel an Agreement or any order for Products made by the Client pursuant to this agreement.
- 3.4. The Client must take delivery of the Products ordered within 7 days from being notified the product is available for delivery or the date set out in the offer document unless otherwise agreed, failing which Perma shall be entitled to charge for storage
- 3.5. The Products to be delivered and other particulars of the agreement are described in the Offer Document. Any variations or changes requested by the Client are not binding until accepted in writing by an authorized representative of Perma.
- 3.6. The Client must inspect any Products delivered within 5 working days of delivery
- 3.7. The Products will be deemed to have been accepted by the Client unless written notice is given by the Client to Perma within 5 working days of inspection specifying any defect or non-conformance with the Products as described in the Offer Document

### 4. Payment

- 4.1. Unless otherwise stated, the amounts payable by the Client do not include GST or other taxes or duties. If applicable, such taxes or duties are payable by the Client in addition to the amounts payable to Perma as specified in the Offer Document.
- 4.2. Perma will provide the Client with a tax invoice for all payments to be made by the Client.
- 4.3. Interest is payable on amounts due from Client to Perma at a rate equal to the lesser of 1.5% per month calculated in daily rests or the maximum allowed by law. Interest runs from the date on which the payment is due until paid in full. If the Client defaults in payment of any invoice when due, the Client shall indemnify Perma from and against all Perma costs and disbursements including legal costs on a solicitor and own client basis and in addition all Perma nominee's costs of collection.

## 5. Retention of title

- 5.1. Perma retains ownership of all Products until paid for in full. The Client acknowledges that it is in possession of the Products as bailee for Perma until payment in full is made.
- 5.2. If the Client fails to pay for the Products or is subject to any form of insolvency event (including, without limitation, appointment of an administrator, receiver or other person to manage the affairs of the Client, or winding up or bankruptcy of the Client, or deemed insolvency of the Client, or the Client's inability to pay its debts as and when due) the Client will immediately deliver up the Products to Perma and Perma may enter on the premises of the Client for the purpose of taking possession of the Products.
- 5.3. Until the Products are paid for in full, the Client must keep and store them separately from other goods (identifying Perma as the owner of the Products) and not use them or incorporate them into other goods.
- 5.4. The rights given to Perma may be registered as a security interest on the Personal Properties Securities Register at any time. The Customer will provide such information as is necessary for the purpose of such registration. The Customer will notify Perma if there are any changes that may affect Perma's security Interest.

## 6. Intellectual property

- 6.1. Perma retains ownership of all intellectual property rights in relation to the Products including (without limitation) any patent, design right, copyright, confidential or proprietary information, know how, trademark, or other right.

## 7. Warranties

- 7.1. Perma warrants that the Products to be supplied by Perma to the Client:
  - a Will be free from defects in design, manufacture, and workmanship for a period of 7 years from the date of supply
  - b Will be reasonably fit for their intended purpose.
- 7.2. Perma warrants that any services supplied by Perma to the Client:
  - a Will be rendered with due care and skill.
  - b Will be reasonably fit for their intended purpose.

8. Non-excludable rights

8.1. Where any law or statute implies or imposes a term into this agreement, or confers a right or remedy, which cannot be excluded, the liability of Perma is limited to the maximum extent allowed under the applicable law or statute.

9. Remedy for breach

9.1. Subject to any relevant law or statute, Perma's liability, and the Client's remedy for breach of any express warranty, or any guarantee, condition, warranty or right or remedy imposed or conferred by law, is limited to, at Perma's option, one or more of:

9.2. In the case of any goods:

- a replacement of the goods or supply of equivalent goods;
- b repair of the goods;
- c payment of the cost of replacing the goods or acquiring equivalent goods; or
- d payment of the cost of repairing the goods.

9.3. In the case of any services:

- a supplying the services again; or
- b payment of the cost of having the services supplied again.

10. Force Majeure

10.1. Perma shall not be liable for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from a Force Majeure Event.

10.2. In the event of a Force Majeure Event.

- a The affected party shall promptly notify the other party in writing, providing details of the nature and expected duration of the Force Majeure Event and any actions taken to mitigate its effects.
- b Perma shall be excused from its obligations under this Agreement to the extent and for the duration that such performance is prevented by the Force Majeure Event, provided Perma takes reasonable steps to resume performance as soon as practicable.

10.3. If the Force Majeure Event continues for a period exceeding 60 days, either party may terminate the Agreement by providing written notice to the other party without penalty or further obligation, except for any accrued payment obligations.

10.4. Nothing in this clause shall excuse the Client from its obligation to pay for Products already delivered or for services already rendered.

## 11. Consequential loss

11.1. Subject to any law or statute which prohibits the exclusion, limitation, restriction or modification of any guarantee, condition, warranty or remedy, Perma will be under no liability to the Client (whether for breach of contract, negligence or otherwise) for any special, incidental, indirect, or consequential damages whatsoever (including, without limitation, damages for loss of revenue, business or profits, loss resulting from business interruption, loss of business information, loss resulting from any claim by any third party or any other pecuniary loss) arising out of the supply or availability of the Products or any use of the Products, even if Perma has been advised of the possibility of such damages.

## 12. Third party goods or services

12.1. Subject to any law or statute which prohibits the exclusion, limitation, restriction, or modification of any guarantee, condition, warranty or remedy, Perma will be under no liability to the Client (whether for breach of contract, negligence or otherwise) for any loss or damage suffered by reason of the acts or omissions of third parties in relation to the supply, installation or use of the Products including (without limitation):

- a Failure of a third party to install or use the Products properly or in accordance with instructions given by Perma;
- b Failure or defects of any goods or services supplied by the third party for use with the Products.

## 13. Resources and Access

13.1. The Client will provide at its own cost any resources, access, co-operation and assistance required by Perma or any subcontractor for the purpose of the supply of the Products including any specific requirements set out in the Offer Document.

#### 14. Compliance with laws

14.1. The Client must comply with any law, legislation, regulation, or code of practice applicable to the Products and their use. Perma is not responsible for, and excludes liability for, any breach of any applicable law, legislation, regulation, or code of practice by Client in relation to use of the Products.

#### 15. Indemnity

15.1. The Client will indemnify Perma and keep Perma indemnified against any loss or damage suffered by Perma (including any legal costs incurred) which arises out of circumstances where the Client is in breach of any of these terms and conditions, including (without limitation) where a claim is brought against Perma by any other person because of a breach of these terms and conditions by the Client.

#### 16. Termination

16.1. Perma may terminate an Agreement for the supply of the Products, by giving notice to the Client if:

- a the Client is in breach of an Agreement and the breach is not capable of being remedied.
- b the Client is in breach of the Agreement and, in the case of a breach which is capable of being remedied, the Client fails to remedy the breach within 30 days of receipt of written notice of the breach;
- c the Client fails to pay any amount due to Perma within 14 days of receiving a written demand for payment;
- d the Client is subject to any application for winding up or liquidation, or for the appointment of a receiver or manager, or is subject to any other form of insolvency event.

16.2. On termination all payments due to Perma must be made within 21 days.

#### 17. Confidentiality

17.1. Each party will keep confidential any confidential information belonging to the other party disclosed pursuant to this agreement. Confidential information belonging to Perma includes the unpublished content and methodology of the Products, dealings with the Client and any other information relating to the business, operations, or products of Perma, other than information in the public domain or information which subsequently enters the public domain (except because of a breach of an obligation of confidence).

## 18. Severance

18.1. If any term or part of these Terms are, or becomes, for any reason invalid or unenforceable at law, that term will be and is hereby deemed to be severed from these Terms without affecting the remainder of these Terms which will continue to be valid and enforceable.

## 19. Assignment

19.1. These Terms are personal to the Client and may not be assigned or otherwise transferred by the Client to any third party except with the prior written consent of Perma

19.2. Perma may assign the benefit of an Agreement to a third party on giving notice to the Client.

19.3. Perma may subcontract the supply of the Products.

## 20. Entire agreement

20.1. These Terms and the terms of any Offer Document constitute the entire agreement between the parties in respect of the supply of the Products. These Terms supersede all prior representations, warranties, agreements, understandings, negotiations, and discussions whether oral or written, express or implied, collateral or otherwise, by or between the parties pertaining to the subject matter of this agreement. In the event of any inconsistency between these Terms and any Offer Document the Offer Document shall prevail to the extent of the inconsistency.

## 21. Notices

21.1. Any notice given under these Terms must be in writing and authorised by the party giving the notice. A notice may be given by email provided that such email is received by the intended recipient of the email.

## 22. Governing law and Jurisdiction

22.1. These Terms are governed by and is to be construed in accordance with the laws of Western Australia. Each party irrevocably and unconditionally submits to the non---exclusive jurisdiction of the courts of Western Australia.



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