The following general terms and conditions of sale (Terms) apply where Alucoil supplies Products to a Customer. These Terms are also available to the Customer at www.alucoili.com.au.

1. DEFINITIONS

In these Terms:
- Alucoil means Alucoili Composites Pty Ltd, ACN 169 038 005;
- Alucoil’s Account means the bank account details for Alucoil which are set out in its Invoice;
- Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any other equivalent legislation (such as the Fair Trading Acts or equivalent legislation) in each State and Territory;
- Confidential Information has the meaning given to it in clause 15;
- Consequential Loss means any loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of the use of money, the future repayment of publicity, loss of use, loss of interest, damage to credit rating, or loss of opportunity or any other loss or damage suffered by a party or any other person which is indirect or consequential;
- Consumer has the meaning given to it in section 3 of the Australian Consumer Law;
- Contract means the contract between the Customer and Alucoil, which consists of the Credit Application (if any), these Terms, and any accepted Orders;
- Credit Application means an application for credit completed by the Customer, in a form approved by Alucoil;
- Customer means the person or entity who is buying the Products from Alucoil, the details of which are set out in the Order;
- Defective Products means Products that are defective in design, performance or workmanship;
- Delivery means delivery of the Products by any of the methods set out in clause 6 and Deliver has a corresponding meaning;
- Delivery Destination means the destination for Delivery set out in the Order;
- Discrepancy has the meaning given to it in clause 10(a);
- Domestic law means the law of Australia;
- Event of Insolvency means the happening of any of these events:
  (a) a party suspends payment of its debts generally, or is incapable of paying its debts within the meaning of the Corporations Act 2001 (Cth);
  (b) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
  (c) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party’s prior consent;
  (d) a party goes bankrupt; or
  (e) a party ceases, or threatens to cease, to carry on a business;
- Intellectual Property Rights means:
  (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or technologies;
  (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
  (c) confidential information and trade secrets;
  (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- Particular Conditions mean any conditions included by Alucoil in the Order in which they apply in respect of the supply of Products;
- Products mean all products supplied by Alucoil to the Customer;
- Premises means and includes all fixed and movable assets of a party except for any other premises where the Customer holds the Products or the premises in which the Customer operates its business;
- Price means the price for the supply of the Products as provided for in clause 8;
- Proposal means a proposal submitted by Alucoil under clause 3(b);
- PPASA means the Personal Property Security Act 2009 (Cth);
- Related Body Corporate has the meaning given to that term in the Corporations Act 2001 (Cth); and
- Representative means officers, employees, agents, representatives, contractors or subcontractors of the relevant party.

2. GENERAL

(a) The Contract:
  (i) supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements between the supply of the Products including, but not limited to, any cost and arrangements for the performance of the Products or the results that ought to be expected from using the Products;
  (ii) overrides any quotes, invoices, accepted or modified Orders and the Customer’s terms and conditions of purchase (if any), exchanged between the parties whether or not such documents expressly provide that they override this Contract or any part of it.

(b) Unless Alucoil otherwise agrees in writing, the Contract comprises the only terms which shall apply to all Products supplied by Alucoil;

(c) To the extent that there is any inconsistency between these Terms and any Particular Condition, the Particular Condition will prevail to the extent of the inconsistency.

3. ORDER PROCESS

(a) Prior to placing an Order, the Customer must by email or facsimile, request a Proposal from Alucoil, in respect of the Customer’s Product requirements which may include the following information:
  (i) Product description;
  (ii) project measurements and dimensions;
  (iii) Product volume;
  (iv) Product quality;
  (v) Product specifications;
  (vi) Method of preparation and application; and
  (vii) Requested date for Delivery.

(Proposal Request)

(b) Alucoil may at its sole discretion respond to the Proposal Request by submitting a Proposal setting out its indicative costs in response to the Proposal Request.

(c) Any Orders placed by a Customer in response to a Proposal are not binding on Alucoil unless Alucoil provides the Customer with a confirmation of the Order (which may contain Particular Conditions that Alucoil wishes to impose on the Customer, including the Delivery Destination) (Proposal Confirmation) and the Customer complies with its obligations in clause 3(b). Alucoil has sole discretion to accept or reject any Order, part of any Order, or any variation, at any time, without cause.

(d) The Customer must sign and return a copy of the Confirmation Order within 2 days after it receives the Confirmation Order to confirm that it has accepted the terms of the Order (including any Particular Conditions and the terms of Delivery).

4. CANCELLATION AND MODIFICATIONS

Alucoil has sole discretion to accept or reject any Order cancellation or modification request by the Customer. The Customer must submit a request to cancel or modify an Order in writing within 7 days after Alucoil accepts the Customer’s Order, in order for the request to be considered by Alucoil. If a cancellation or modification request is accepted by Alucoil, the Customer will be liable for any Loss incurred by Alucoil in respect of that Order.

5. METHODS OF DELIVERY AND RISK

(a) The methods of Delivery will be clearly set out in the Order being one of the following options:
  (i) Customer arranged freight: in which case the Customer will arrange for its freight services provider to transport the Products from the Premises to the Delivery Destination within 48 hours after Alucoil advises the Customer that the Products are ready for pick up;
  (ii) Customer pick up: in which case the Customer must pick up the Products at the Premises within 48 hours after Alucoil advises the Customer that the Products are ready for pick up;
  (iii) Seller Delivery: in which case Alucoil will Deliver the Products to the Delivery Destination in accordance with clause 6.

(b) Risk passes to the Customer:
  (i) in the case of Delivery under clause 5(a)(i) when the Products are picked up by the Customer’s freight services provider;
  (ii) in the case of Delivery under clause 5(a)(ii) when the Products are Delivered to the Customer’s premises;
  (iii) in the case of Delivery under clause 5(a)(iii) when the Products are Delivered to the Customer’s premises.

(c) Where Products are being Delivered under clause 5(a)(ii) or (iii) Alucoil is not responsible for any damage to the Products until the Products are delivered to the Customer’s premises and the Customer’s freight services provider accepts the Products. If any part of the Products are damaged in the process of delivery, Alucoil will not be liable for any damage or loss to the Products and the Customer will be responsible for the delivery of the damaged or lost Products to the Customer in connection with any such loading activities and the Customer hereby indemnifies Alucoil and its Representatives for any Loss incurred or suffered by them in connection with any such loading activities.

6. DELIVERY TERMS

(a) Alucoil will use all commercially reasonable efforts to Deliver the Products (or have them ready for pick up as the case may be) for which it has accepted an Order by the delivery date specified in the Order.

(b) Alucoil may Deliver the Products (or have the Products ready for pick up as the case may be) by separate partial Delivery. Each separate partial Delivery will be invoiced and paid in accordance with these Terms on a separate basis.

(c) Delivery of the Products to a third party nominated by the Customer is deemed to be Delivery or supply to the Customer for the purposes of these Terms.

(d) The failure of Alucoil to Deliver the Products does not entitle either party to treat these Terms or the Contract as repudiated.

7. TITLE

(a) Legal and equitable title in and to the Products shall not pass to the Customer until payment in full for all Products is made.

(b) Alucoil’s rights under this clause 7 secure (i) Alucoil’s right to receive the price of the Products and (ii) all other amounts owing to Alucoil under any other contract.

(c) All payments received from the Customer must be applied by Alucoil in accordance with section 149J of the PPASA.

8. PRICE & PAYMENT

(a) The Price for the Products is the price set out in the Order Confirmation.

(b) Alucoil shall submit its Invoice to the Customer:
  (i) when the Products are ready for pick up where Delivery is effected under clauses 5(a)(i) and 5(a)(ii);
  (ii) when the Products leave Alucoil’s Premises under clauses 5(a)(iii), (iii) Alucoil may invoice by fax/email, email, post or personal delivery.

(c) Time for payment for the Products is as follows:
  (i) Subject to clause 10, the Customer agrees to pay the Price in advance of Delivery, in full by direct bank transfer to Alucoil Account.

(d) Unless otherwise agreed in writing, and in accordance with the Particular Conditions, the Customer must pay to Alucoil the Price in advance of Delivery by direct bank transfer to Alucoil Account as follows:
  (i) 50% of the total Price, within 15 days after the Customer receives confirmation of the accepted Order.

(e) The Customer may pay the Price for Products by credit card (plus any charges that may be applicable), bank transfer to Alucoili Account, Bank Cheque, Bank Draft, Banker’s Draft, Money Order, Demand Draft, by Documentary Letter of credit or in any other way that Alucoil directs in the Particular Conditions.

(f) Payment by cheque or other negotiable instrument if permitted is not regarded as received until it is cleared.

(g) Without prejudice to any other rights or remedies of Alucoil, if the Customer fails to make (whether in full or in part) any payment required under these Terms on or before the due date for payment, then...
to cover the administrative costs and other losses and expenses incurred by Alucoil and/or its related bodies corporate, in connection with any business that will necessarily be incurred by them as a result of having to handle such payments outside their automated receivables payment systems, Alucoil may charge the Customer (A) a one-off payment of 4% of the unpaid invoice amount which must be paid by the Customer on demand by Alucoil; and
(B) in addition to the payment referred to in paragraph (A), interest on the unpaid invoice amount at 3% per annum above bank rate as determined under the Penalty Interest Rate 1983 (ASC) and such interest will accrue from the date the payment was due to the date payment is made, which will be calculated and payable monthly and must be paid by the Customer upon demand by Alucoil.
(ii) Alucoil may also recover from the Customer in addition to the payments referred to in paragraph (i) an amount to cover all legal costs and disbursements on a full indemnity basis incurred by Alucoil arising from or as a result of Alucoil exercising or enforcing or seeking to exercise or enforce a right under these Terms;
(iii) Alucoil may, at its option and without affecting any other lawful remedy, change the terms of the Customer’s payment in respect of any Order, or both, until Purchaser provides security or other assurances for performance as demanded by Alucoil; and
(iv) Alucoil may exercise any rights that it has under clause 12.

9. GST AND OTHER TAXES AND DUTIES

Despite any other clause in the Contract, to the extent that any supply made under or in connection with the Contract is not taxable supply under the GST Law, the Customer must pay to Alucoil, in addition to the consideration provided for under these Terms for that supply (unless it expressly includes GST), an amount (additional amount) equal to the amount of that consideration (or the GST-exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The Customer must pay to Alucoil the additional amount at the same time as the consideration is payable under these Terms.

10. ACCEPTANCE AND PRODUCT DISCREPANCIES

(a) The Customer must accept the Products as soon as possible after Delivery of the Products, check whether there are any shortages in the number of Products Delivered, or whether the Products Delivered are Defective Products or are subject to any other discrepancy.
(b) The Customer must report a Discrepancy to Alucoil within 30 days after receipt of Delivery (Discrepancy Notice).
(c) If Alucoil does not receive a Discrepancy notice under clause 15.6., the Products will be deemed to accord with the relevant Orders.
(d) Subject to clause 15.6., Alucoil’s liability in respect of Products which are subject to a Discrepancy Notice, is as follows:

(i) remedy the Discrepancy by providing the correct number, quality or type of Products or replacing product, or
(ii) provide a refund or credit in respect of the Products which are the subject of the Discrepancy.

11. CLAIMS AND LIMITATION OF LIABILITY

(a) The Customer must:

(i) promptly inform Alucoil of all complaints or claims relating to any of the Products;
(ii) not admit liability on behalf of Alucoil in respect of any complaint or claim relating to any of the Products;
(iii) not receive or settle any complaint or claim relating to any of the Products which may result in Alucoil incurring any liability or cost for the Customer; and
(iv) promptly report any complaints or claims relating to any of the Products, which will not result in Alucoil incurring any liability.

(b) Subject to clause 15.1(i),

(i) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to credit provided by Alucoil; and
(ii) no warranty or condition applies in respect of the Products
(iii) if any breach of the Contract by Alucoil is late in the payment of an invoice by more than 5 days;
(iv) Alucoil determines that the PPSA applies, or will at a future date determine that the PPSA applies.

The Australian Consumer Law provides Consumers with a number of consumer guarantees, as that term is used in the Australian Consumer Law (Consumer Guarantees) that cannot be excluded or limited. The limitation of liability as the consideration is payable under these Terms. However where the Customer requests that the minimum available for a breach of a Consumer Guarantee, Alucoil may limit its liability in the Particular Conditions in the manner permitted under the Australian Consumer Law.

12. TERMINATION

(a) Alucoil may terminate:

(i) the terms of credit provided to the Customer;
(ii) any Order;
(iii) the Contract in its entirety, by written notice to the Customer if the Customer:

(A) is late in the payment of an invoice by more than 5 days;
(B) fails to pick up the Products where Delivery is being effected under clauses 5(a) or 5(b);
(C) breaches these Terms in a material respect (in any manner not covered by paragraph (A) and (B)) and Alucoil in its reasonable opinion of Alucoil, breaches the breach of this clause;
(D) cannot be remedied; or
(E) cannot be remedied, but is not remedied by Alucoil within 5 Business Days after Alucoil gives the Customer notice of the breach;
(F) suffers an insolvency Event.

(b) The Customer may terminate an Order or the Contract if Alucoil:

(i) breaches these Terms in a material respect and, in the reasonable opinion of the Customer, the breach of this clause;
(ii) cannot be remedied;
(iii) cannot be remedied, but is not remedied by Alucoil within 5 Business Days after the Customer gives Alucoil notice of the breach; or
(iv) suffers an insolvency Event.

(c) The Customer must, within 5 Business Days after the date of expiry or termination:

(i) pay Alucoil all amounts owed under a law, whether at that time or not; and
(ii) return all goods and/or accessories to Alucoil.

(d) Termination or expiration of an Order, terms of credit or the Contract does not affect any party’s accrued rights and remedies, which remain unaffected.

13. FORCE MAJEURE

(a) Alucoil is not liable for any failure to perform any of its obligations under these Terms as a result of any event beyond its reasonable control (without limitation, including under clause 13(b) and 13(b) are therefore subject to, and will not apply to the extent that they limit or exclude, such Consumer Guarantees applicable to Consumer Guarantees to the extent that they limit or exclude, such Consumer Guarantees applicable to Consumer Guarantees to the extent that the Customer is liable in a breach of the Consumer Guarantees, Alucoil may limit its liability in the Particular Conditions in the manner permitted under the Australian Consumer Law.

(b) The parties acknowledge and agree that nothing in the Contract affects any of the Intellectual Property Rights held by Alucoil (including any trade marks or other marks held by Alucoil). Other than for the sole purpose of supply or use of the Products in the ordinary course of the Customer’s business, the Customer must not use Alucoil’s Intellectual Property Rights or any part of Alucoil’s express or implied instructions that are required for the Customer to use Alucoil’s Intellectual Property Rights for the sole purpose of supplying or using the Products, or to represent in any way that the Customer is associated with or in any way acts on behalf of Alucoil (whether as agent, dealer, reseller or otherwise).

Where Alucoil has designed or drawn Products for the Customer, then the copyright in those designs and drawings remains vested in Alucoil, and may only be used by the Customer at Alucoil’s discretion. Where designs or specifications have been supplied by the Customer for manufacture by or to the order of Alucoil then:

(i) the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Products does not infringe the rights of third party (including their intellectual property rights);
(ii) Alucoil does not assume any responsibility or liability for any claim or infringement brought against or by the Customer, whether the infringement is associated with or in any way acts on behalf of Alucoil (whether as agent, dealer, reseller or otherwise).

24. ENFORCEMENT OF SECURITY INTEREST

Subject to section 275(7) of the PPSA Act, neither party will disclose information of the kind mentioned in section 275(7) of the PPSA Act.

25. CONFIDENTIALITY & PSPA

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under the Contract, the Customer agrees that the following provisions of the PPSA will not apply:

(a) section 95 (notice of removal to accessor);
(b) section 121(4)(e) (enforcement of liquid assets – notice to Grafer);
(c) section 130 (notice of disposal);
(d) section 130(3)(d) (contents of statement of account after disposal);
(e) section 131(3)(a) (statement of account if no disposal);
(f) section 136 (notice of retention);
(g) section 142 (redemption of charge); and
(h) section 143 (novation of security agreement).

26. NOTICES UNDER THE PSPA

Alucoil does not need to give the Customer any notice under the PSPA (including a notice of a verification statement) unless the notice is required by the PSPA and that requirement cannot be excluded.

27. BENEFIT OF CONTRACT

Alucoil holds the benefit of the Contract for itself and on trust for each of its Representatives and any Related Bodies Corporate.