



# DNL EPOXY FLOORS

## ~ Terms & Conditions of Trade ~



### 1. Definitions

- 1.1 "Client" means the person/s buying the Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.2 "Services" means all services supplied by DNL to the Client at the Client's request from time to time.
- 1.3 "DNL" means D.J HART & L.M HART ABN: 99 473 781 797 trading as "DNL EPOXY FLOORS", its successors and assigns or any person acting on behalf of and with the authority of DNL.
- 1.4 "Price" means the Price payable for the Services, as agreed between DNL and the Client in accordance with clause 4 below.
- 1.5 "Terms" means the terms and conditions contained in this document.

### 2. Acceptance

- 2.1 DNL agrees to supply the Services to the Client in accordance with the Terms of this document, subject to any other special conditions, caveats or provisos that may be notified to the Client relating to the Services, or particular quotation.
- 2.2 The Client is deemed to have accepted and is immediately bound, jointly and severally by these Terms, and DNL's quotation on these Terms along with any supplemental conditions contained in the quotation or otherwise notified to the Client, if it does any of the following:
- (a) places an order for Services;
  - (b) signs and returns a copy of any quote or order, or the Terms and Conditions of Trade
  - (c) Communicates acceptance of a quotation in writing (whether any requested deposit has been paid or not);
  - (d) allows the Services to be undertaken;
  - (e) pays any deposit to DNL required in a quotation; or
  - (f) makes any request or does any other action to cause DNL to proceed with providing the Services.
- 2.3 These Terms may only be amended with DNL's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and DNL.

### 3. Quotation and Deposits

- 3.1 Where DNL provides a quotation for the supply of Services to the Client, the scope of the Services is limited to those described in the quotation only. DNL may provide an amended quotation if the Client requests a change to the scope of the Services.
- 3.2 DNL may at any time vary the quotation for increases in tax, duty or any other Government charges relating to the Services sold which come into effect after the date of the quotation. In the event such increases in tax, duty or government charges become applicable after acceptance of a quotation then the quotation and Price are deemed to be varied such that the Price is increased to include all such increases.
- 3.3 The Client must pay a 20% deposit before the commencement of the Services, on such terms indicated in the quotation, which is non-refundable unless otherwise indicated in the quotation.
- 3.4 DNL is not obligated to supply the Services until the deposit is paid by the Client and DNL confirms acceptance to the Client in writing.
- 3.5 Unless otherwise stated within a quotation, via direct communication to the Client, or otherwise agreed in writing, a quotation is valid for sixty (60) days from the date of its issue, and may be withdrawn any time at DNL's discretion.

### 4. Price and Payment

- 4.1 At DNL's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by DNL to the Client; or
  - (b) DNL's quoted price (subject to clause 4.2).
- 4.2 DNL reserves the right to change the Price if:
- (a) a variation to DNL's quotation is requested by the Client;
  - (b) the availability or cost of materials or labour changes compared to those prevailing as at the date of the quotation;
  - (c) if the complexity of circumstances underlying the need for the Services requested to be performed have not been reasonably and properly disclosed to DNL;
  - (d) other circumstances outside of DNL's control.
- 4.3 Unless the invoice or quote requires otherwise or otherwise agreed by DNL at its sole discretion, a deposit equal to 20% of the total Price is required for all Services before the commencement of the Services. DNL will provide the deposit invoice before the scheduled date for Delivery of the Services.
- 4.4 Time for payment of the Services is of the essence.
- 4.5 The final invoice will be provided on Delivery and the Price, or any balance owing of it, will be payable in full by the Client upon Delivery (completion)

of the Services. DNL may, at its discretion, offer or require payment on the below basis:

- (a) before commencement of Services;
  - (b) by way of instalments/progress payments in accordance with DNL's payment schedule determined by DNL under any quotation or agreed by DNL in communication supplementing a quotation;
  - (c) some other date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is twenty-eight (28) days following the date of any invoice given to the Client by DNL.
- 4.6 DNL will render its final tax invoice for the Services provided to the Client shortly before or upon completion of the Services.
- 4.7 Payment may be made by cash, *bank* cheque (not personal cheque), direct credit to account details provided for on the invoice, or by any other method as agreed to between the Client and DNL. All payments must be made free from any set-off, deduction, exchange or claim whatsoever.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to DNL an amount equal to any GST DNL must collect for any supply by DNL under this or any other agreement for the sale of the Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes in accordance with clause 3.2 that may be applicable in addition to the Price, except where they are expressly included in the Price.
- 4.9 The Client acknowledges that the Services and materials associated with Services may be of substantial size/quantity and that storage of the same may be a significant burden to DNL. Accordingly, the Client hereby authorises DNL to utilise third party storage facilities to store the materials if storage is required under this clause and the Client agrees to be responsible for all reasonable costs incurred as a result of storage and freight of the materials. The Client agrees it is liable to pay for storage and freight costs charged to DNL, at rates determined by DNL if:
- (a) the Services are not able to be undertaken for any reason arising due to the actions of the Client;
  - (b) materials required for the performance of the Services are not utilised by the anticipated time due to delay in performing the Services caused by the Client.
- 4.10 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by DNL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.11 For new concrete, products often require a minimum moisture content of 4% prior to any application being carried out. This is generally achieved after 28 days curing (or longer depending on humidity and other weather conditions). If the project requires the application of Services to accelerate the project program the application of a moisture barrier may be considered (subject to technical considerations). This application will be charged as an additional cost. Curing compound is not to be applied to new concrete that is to receive any coating as this will prevent adequate bonding of the coating to the concrete. Additional charges may apply for the subsequent removal of any such compounds or other contaminants. Where a specific curing compound with supporting technical data to contradict the above, the responsibility for any subsequent failure rests entirely with the Client.
- ### 5. Completion of Services
- 5.1 In relation to completion of Services, these are deemed to have been delivered and finalised for the Client upon notification by DNL to the Client once DNL considers the Services to have been completed and fully performed as set down in a quotation ("**Delivery**").
- 5.2 DNL may perform the Services incrementally or in stages, as set down in a quotation or communication by DNL to the Client. Each separate instalment/increment/stage shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.3 Any time or date given by DNL to the Client is an estimate only. The Client must still accept or facilitate Delivery of the Services even if late, and DNL will not be liable for any loss or damage incurred by the Client as a result of Delivery being late by:
- (i) Direction or instruction from the client to delay, stop or suspend work;
  - (ii) Delays caused by other contractors or consultants engaged by the client;
  - (iii) Where, rather than re-schedule service, the client has instructed DNL to remain on site in conditions (e.g. heavy rain) that reasonably prevent or impede the safe, efficient and quality provision of services; and
  - (iv) Delays caused by unsatisfactory site conditions due to the client's noncompliance with other sections of these terms and

- conditions, where such noncompliance both/either prevents or impedes the safe, efficient and quality provision of services and/or is outside the control of DNL.
- 5.4 The Client must:
- (a) Take and acknowledge Delivery whenever they are notified as being delivered by DNL;
  - (b) ensure all surfaces to which Services are to be performed/applied are free from defect, including such as water ingress, rising damp, rust, rot, old paint or finishing layers;
  - (c) facilitate Delivery and provide uninterrupted and exclusive access and occupation to the physical locations where Services are required to be performed;
  - (d) provide:
    - (i) unobstructed, clean and clear access to the work area;
    - (ii) the surfaces in a clean state, free from dust, insects, wildlife or flies, debris and growths, including clean and unobstructed surface joints;
    - (iii) the area in a pruned and landscaped condition, out to a distance of at least 50cm from the edges of the surface areas to which services are to be undertaken;
    - (iv) adequate shelter or means of preventing foreign material from entering the work area, including from overhanging plants, pets or other sources;
    - (v) adequate lighting;
    - (vi) relevant power (240 volt and / or 3 phase – 32 amp) and water within 15 meters of the work area. We do not allow for generator provision or the contracting of an electrician unless specifically itemised with the quote.
  - (e) Ensure all smoke detectors, pilot lights, naked flames are to be isolated prior to DNL commencement of works. Inhaling of the vapour of coating materials could be harmful and may cause lung irritation and asthma like respiratory reaction and irritation to skin and eyes. Please refer to the Materials Safety and Technical Data Sheets.
  - (f) remove from the physical location where Services are to be Delivered any rubbish, furniture, personal effects or other property or peoples likely to impede DNL's performance in Delivery.
- in order to minimise delays, risk of injury or any possible damage. In the event that the Client is unable to take delivery of the Services as arranged, then DNL shall be entitled to charge a reasonable fee for redelivery and/or storage as described in clause 5.5.
- 5.5 If the Client does not comply with clause 5.4, then DNL may at its discretion:
- (a) charge to the client a re-delivery/re-booking fee of \$150.00 per day the Client does not comply with clause 5.4, which shall be payable in addition to the Price; and/or
  - (b) delay delivery, waiting for uninterrupted access and any other circumstances required under clause 5.4 to be provided;
  - (c) undertake such preparatory and precautionary works as DNL is willing to undertake, remove items or rubbish from the Delivery location to complete the requirements under clause 5.4, and, unless such tasks or delay were specifically included in the scope of the Services, charge the Client a delay / preparation fee which shall be payable in addition to the Price and be calculated by multiplying the time of the delay or that such preparation takes by an hourly rate of \$120.00 plus GST with a minimum charge of 1/2 hour; and/or
  - (d) if noncompliance causes hired equipment to be unused or wasted or additional period of hire to be undertaken then DNL may charge an amount equal to the loss suffered by DNL to cover any associated costs.
- 5.6 DNL shall be entitled to conduct a standard site induction for the safety of its workers, the client, and anyone else who may be in proximity to the worksite, and to inspect the site before commencement of any Services. The client hereby warrants that it will make the site available to DNL for induction and inspection prior to commencement of Services. The price of this induction is, unless otherwise stated, included in the quotation price.
- (a) Any alterations or deviations from the agreed quotation, specification, scope of works or project documents will be executed only upon further written instruction and may result in additional charges over and above the amount quoted.
  - (b) If the Client requires or is required to conduct its own site-specific induction for any reason, including but not limited to;
    - (i) characteristics of the site that may make performance of services by DNL nonstandard or unusual to a not-insignificant extent;
    - (ii) nonstandard layout that may impede access to the site;
    - (iii) any reason related to limitation of liability;
    - (iv) any other reason;
 the cost of same shall be charged in the final invoice at a rate of \$150.00 plus GST per hour, per worker.
- 5.7 Unless agreed otherwise in writing, all Services are performed during DNL's normal business hours between 8am-6pm Monday to Friday and 8am to 12pm on Saturdays. However, DNL may offer to undertake work during additional hours at DNL's discretion.
- 5.8 The Client will ensure that they provide means for rubbish disposal on site unless nominated on the quotation.
- 5.9 The Client must ensure that the area to which Services have been completed are not utilised or disturbed until such time that the surface coats have set and cured which the Client acknowledges will be at least 24 hours after DNL confirms completion of the Services and handover of the work area back to the Client, unless the Client is notified of some other time frame by DNL.
- 6. Risk & Liability**
- 6.1 Risk of damage to or loss of the finalised product of Services shall at no time pass to DNL and to the extent which DNL is required to take on any such risk then this shall re-pass to the Client on Delivery. Upon request by the Client, DNL may at its discretion repair any staining, scratches and/or holes not specifically associated with the Services at the expense of the Client.
- 6.2 DNL shall not be responsible for any damage to the floor during the installation and curing stage before Delivery as a result of any insects, wildlife or flies damaging the floors or materials utilised in the performance of Services. It is the Client's responsibility to ensure the area to where the Services are being undertaken is free from and secure against such deleterious things before and after Delivery.
- 6.3 If there is any damage or destruction to materials utilised in Services but prior to Delivery, DNL is entitled to receive all insurance proceeds payable for the Services and/or materials utilised in performance of Services. The production of these terms and conditions by DNL is sufficient evidence of DNL's rights to receive the insurance proceeds without the need for any person dealing with DNL to make further enquiries.
- 6.4 If the Client requests DNL to:
  - (a) leave materials outside DNL's premises for collection; or
  - (b) deliver the materials to or perform Services at an unattended or unsupervised location,
 then such materials shall be deemed Delivered once left at and shall be at the Client's sole risk and all Services performed shall be deemed performed once DNL undertakes them and gives notice to the Client. DNL shall in no event be liable for damage or loss which occurs once Delivered at an unattended or unsupervised location.
- 6.5 The Client acknowledges that DNL shall not be responsible for any defects in the materials used in the Services, or any loss or damage howsoever arising, from the Client not adhering to:
  - (a) The manufacturer's recommended maintenance methods and regimes; and
  - (b) Any of DNL's recommendations via written communications or terms sheets.
- 6.6 DNL is not liable for and offers no guarantee against cracking and/or lifting of the Services which may result from structural movement, poor substrates or other pre-existing defects whether they are readily apparent or not and the Client releases DNL from any such liability or claim on this basis.
- 6.7 Excluding the negligence of DNL, the Client releases DNL from all liability to the Client for any cost, loss or damage (direct, indirect, consequential, economic, physical or otherwise, including loss of profits) of any nature arising in any way:
  - (a) from any defect or failure of the Services which are supplied to the Client.
  - (b) incurred by the Client or any third party by reason of any delay in Delivery of the Services.
- 6.8 Should DNL be delayed in or prevented from Delivering due to any cause beyond its control, DNL shall be entitled to cancel or suspend Delivery without incurring any liability to the Client for any cost, loss or damage whatsoever arising therefrom.
- 6.9 Notwithstanding anything to the contrary, the liability of DNL for any cost, loss, damage, or injury whatsoever shall be limited to the Price of the Services, and DNL shall not be liable for any consequential or indirect damage or loss of any kind whatsoever.
- 6.10 Where guards are included in the Services quoted for, there is no express or implied term or warranty given by DNL that such guards will comply with any safety requirements which may be applicable, and it shall be the sole responsibility of the Client to ensure that the guards meet those safety requirements.
- 6.11 The Client indemnifies DNL against all and any claims including all costs and expenses associated with, made by any third persons for any loss, injury or damage of any nature whatsoever arising from the use of those things arising from the Services on and from Delivery, including use in any manner in contravention of any recommendation made by the manufacturer or DNL.
- 6.12 Where the site to which Services are to be completed is unsecured and unoccupied, the Client:
  - (a) Will ensure that access to the site is readily provided for all times required for the Services to be completed within the anticipated time frame;
  - (b) Will ensure have an independent person on site to monitor the Client's personal property; and
  - (c) Releases DNL from any claims associated with unsecured property or damage of property at the site.
- 6.13 Some systems can yellow and chalk on exposure to UV radiation (sunlight). Areas indoors that receive direct sunlight exposure for some intervals during the day, such as those adjacent to doorways and windows may experience some discolouring if you have chosen a system without a

- UV resistant sealer. It is the responsibility of the client to review technical datasheets to ensure suitability of product for any given project. DNL can advise and assist in product selection.
- 7. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 7.1 DNL requires that the Client to conduct an inspection of the Delivery once notice of Delivery is given ("Inspection").
- 7.2 The Client must within two (2) days of the Inspection notify DNL in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. Upon such notification the Client must allow DNL to inspect the Services.
- 7.3 Unless the Client gives notice of defect within the time period described in clause 7.2, all Services provided by DNL are deemed to be suitable and accepted by the Client. This shall extend to the acceptability of any degree of non-slip finish applied in relation to Services.
- 7.4 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 7.5 DNL acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees, which shall prevail to the extent of any inconsistency.
- 7.6 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DNL makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services requested. DNL's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 7.7 If the Client is a consumer within the meaning of the CCA, DNL's liability is limited to the extent permitted by section 64A of Schedule 2.
- 7.8 If DNL is required to replace the items associated with Services performed under this clause or the CCA, but is unable to do so, DNL may refund any money the Client has paid for the Services.
- 7.9 If the Client is not a consumer within the meaning of the CCA, DNL's liability for any defect or damage in the products Delivered by the Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by DNL at DNL's sole discretion;
  - (b) limited to any warranty to which DNL is entitled, if DNL did not manufacture the materials utilised in performance of the Services;
  - (c) otherwise negated absolutely.
- 7.10 Subject to this clause 7, DNL is not liable to provide remediation unless:
- (a) the Client has complied with the provisions of clause 7.1 and 7.2; and
  - (b) DNL has agreed that the Services performed are defective; and
  - (c) Notification of the defective Services is made within the timeframe noted at clause 7.2:
- 7.11 Notwithstanding clauses 7.1 to 7.10 but subject to the CCA, DNL shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain the finished products arising from the Services;
  - (b) the Client using the finished product arising from the Services for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the finished product arising from the Services after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by DNL or any manufacturer's specifications or recommendations;
  - (e) fair wear and tear, any accident, or act of God or any other such act or other thing outside of the control of DNL.
- 7.12 Notwithstanding anything contained in this clause if DNL is required by a law to provide remedial services then DNL will only do so on the conditions imposed by that law.
- 8. Default and Consequences of Default**
- 8.1 Notwithstanding any other right of DNL under these Terms or at law, if the Client fails to make payment of DNL's tax invoice by its due date then DNL is entitled to charge default interest to the Client. The Client is liable to pay such default interest and acknowledges that the default interest will be a rate of 10% per annum or, should that be determined not to be enforceable by a court of competent jurisdiction then at the rate charged by DNL's financier for overdraft interest rate for unsecured overdrafts in excess of \$100,000 plus 2% per annum.
- 8.2 Interest shall be calculated on a daily basis from the due date to the date of payment in full.
- 8.3 Interest will capitalise at the end of each calendar month such that the interest then forms part of the monies owed and will itself bear interest in addition to the monies already unpaid. This clause does not merge upon any judgment obtained by DNL against the Client, unless waived by DNL in its sole and absolute discretion. Interest is immediately due and payable as a liquidated debt to DNL from the date that it accumulates.
- 8.4 If the Client owes DNL any money the Client shall indemnify DNL from and against all costs and disbursements incurred by DNL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, DNL's contract default fees, and bank dishonour fees).
- 8.5 Without prejudice to any other remedies DNL may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions DNL may suspend or terminate the supply of the Services to the Client. DNL will not be liable to the Client for any loss or damage the Client suffers because DNL has exercised its rights under this clause.
- 8.6 Without prejudice to DNL's other remedies at law DNL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to DNL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to DNL becomes overdue, or in DNL's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 9. Cancellation**
- 9.1 DNL may cancel any contract to which these terms and conditions apply or cancel Delivery of Services:
- (a) at any time before Services are commenced; or
  - (b) in the event of default by the Client then from the date of such default, by giving written notice to the Client. On giving such notice DNL shall repay to the Client any money paid by the Client for the Services except in the event of default by the Client. DNL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 In the event that the Client wishes to cancel orders for Services, notice of same must be given no later than seventy-two (72) hours before commencement of Services.
- 9.3 Cancellation of orders for Services made to the Client's specifications, or for non-stocklist items, cannot not be accepted once production has commenced, or an order has been placed.
- 9.4 In the event that the Client cancels an order for Services without adequate notice or that clause 9.3 applies, the Client shall be liable for any and all loss incurred (whether direct or indirect) by DNL as a direct result of the cancellation and supply of the Services to the date of cancellation, including but not limited to any loss of profits, expenditure on wages and other business expenses and materials that were allocated to the Services. DNL shall be entitled to deduct all such costs from any deposit paid and the Client will also be liable for travel costs at a rate of \$50.00 plus GST a day for travel that is anything over 50 km's to 70 kms from DNL's business office and \$100.00 plus GST a day for any travel over 70kms from DNL's business office
- 10. Building Industry Fairness (Security of Payment) Act 2017**
11. At DNL's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.
- 11.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 except to the extent permitted by the Act where applicable.
- 12. General**
- 12.1 The failure by DNL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect DNL's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the territory or state in which DNL has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 12.3 DNL may license or sub-contract all or any part of its rights and obligations without the Client's consent how this does not reduce or diminish DNL's obligations under these Terms.
- 12.4 The Client agrees that DNL may amend these terms and conditions at any time. If DNL makes a change to these terms and conditions, then that change will take effect from the date on which DNL notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for DNL to provide Services to the Client.
- 12.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 12.6 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 12.7 The Client shall give DNL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice) should the Services not yet have been Delivered. The Client shall be liable for any loss incurred by DNL as a result of the Client's failure to comply with this clause.

**13. Force Majeure & product risks**

- 13.1 Any agreement to undertake Services are subject to the absence of any circumstances or conditions outside of the control of DNL. This may include common event impacting ability to undertake the Services such as strike, accidents, thermal conditions, natural disasters, acts of god, terrorism, weather and/or other delays beyond DNL's control.
- 13.2 Correct completion of the Services requires conducive weather and environmental conditions, which are not within the control of DNL. DNL reserves the right to delay completion of the Services or any stage of them until such time that suitable weather and environmental conditions are prevailing. If the Client requests that DNL undertake the Services notwithstanding the absence of necessary weather or environmental conditions, then the Client directs completion at their own risk, accepts that any Services then completed may be subject to circumstances that will void the warranty the Client may otherwise benefit from, and releases DNL from any claim the Client may have arising from such circumstances.
- 13.3 The Client releases DNL for any claim that it may have or damages incurred as a result of delays or damage arising from circumstances described in clause 13.1.
- 13.4 The Services typically involve the use of powerful and toxic chemicals. While precautions are taken, no responsibility will be accepted for injury to any person or loss of damage of any property arising from reasonable performance of the Services. By accepting and/or instructing DNL to undertake Services, the Client agrees to release and indemnify DNL from any liability or any such injury, loss or damage.
- 13.5 Many of the Services require DNL to grind and coat the surface. DNL does not undertake or offer levelling services and unless specifically included in any Quote, no Services shall be deemed to include any works to make the surfaces level in any way. The coating will follow any imperfections of the surface, many of which may be imperceptible, or difficult to see, when the surface is uncoated. Such imperfections are likely to be highlighted by the coating products (particularly gloss finishes). These imperfections may include differences in finished floor levels across the slab, cracks and holes, rain-effected concrete, etc. and DNL shall in no event be responsible for:
- (a) remedying the imperfections prior to completion of Services; or
  - (b) remedying the imperfections after completion of the Services whether the Services make the imperfections more readily apparent or not.

**14. Security and Charge**

- 14.1 In consideration of DNL agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies DNL from and against all DNL costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DNL rights under this clause.
- 14.3 The Client irrevocably appoints DNL and each director of DNL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

**15. Intellectual Property**

- 15.1 Where DNL has designed, drawn or developed products, or photographed or recorded procedures or finished results arising from the Services for the Client, then the copyright in any designs, drawings, documents and photographs shall remain the property of DNL, and shall only be used by the Client at DNL's discretion. The Client agrees that DNL shall be entitled to utilise any photographs or recordings of the procedure or finished product for its own marketing purposes, without the Client's further consent or approval.
- 15.2 The Client warrants that all designs, specifications or instructions given to DNL will not cause DNL to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify DNL against any action taken by a third party against DNL in respect of any such infringement.
- 15.3 The Client agrees that DNL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or product arising from the Services which DNL has created for the Client.
- 15.4 The Client indemnifies DNL against all claims, proceedings, cost and expenses incurred or resulting from the breach of this clause or infringement of any registered design or pending or registered patent by any product, design or method of manufacture supplied by the Client to DNL.

