

## Terms of Trade

By submitting a credit application and/or ordering goods ("Products") or services ("Services") from Precast, the Customer agrees that the following terms trade ("Conditions") will apply to the supply.

Precast is not bound by the Customer's terms of purchase or any other conditions the Customer seeks to impose on, or that purport to apply to, the purchase of Products or Services by the Customer from Precast. The parties must not amend these Conditions unless recorded in writing and signed by an authorised Precast representative.

### 1. INTERPRETATION

**"ACL"** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended.

**"Agreement"** means these Terms of Trade and any Schedules.

**"Anti-Corruption Law"** means any law prohibiting or relating to bribery, corruption, kickbacks, secret commissions or money laundering, including without limitation, the Foreign Corrupt Practices Act 1977 (US), the Bribery Act 2010 (UK), the Criminal Code Act 1995 (Cth), the Crimes Act 1961 (NZ), the Secret Commissions Act 1910 (NZ), and any anti-corruption regulations and provisions applicable in the European Union or in any other locations in which any Precast carries on business.

**"Consumer"** means a consumer as that term is defined in the ACL.

**"Consumer Contract"** means a contract for the supply of Products or Services to an individual whose acquisition of the Products or Services is wholly or predominantly for personal, domestic or household use or consumption. However, if the relevant parts of the definition of 'Consumer Contract' under the ACL are amended at any time, this definition is also amended accordingly.

**"Customer"** means the party named in the Schedule, or, if no party is named, the party to whom Precast provides this Agreement.

**"Delivery"** means Delivery of Products or Services at or to a Site.

**"GST"** means the Products and Services Tax as defined in *A New Tax System (Goods and Services Act) 1999* (Cth) as amended.

**"Order"** means a request by the Customer to purchase Products or obtain Services from Precast.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) as amended.

**"Precast"** means Precast Civil Industries Pty Ltd (ACN 615 726 924) trading as Tellam Civil Products, BCP Precast, Toowoomba Tanks, C-M Concrete Products, MC Pipes, Icon Septech-Vic, Cooke Precast Concrete, and Civilmart or any other business name under which Precast trades and

Related Bodies Corporate including Rocla Pty Ltd (ACN 000 032 191).

**"Products"** means any Products which Precast sells or provides to the Customer from time to time.

**"RBA"** means the Reserve Bank of Australia.

**"Related Bodies Corporate"** has the meaning in the Corporations Act 2001 (Cth);

**"Standard Prices"** means the prices for Products and Services charged from time to time by Precast.

**"Schedule"** means the schedule on the front page of or attached to this Agreement.

**"Services"** means any services which Precast sells or provides to the Customer from time to time including but not limited to the Delivery of Products to Customers.

**"Site"** means any location to which the Customer requests that Products be delivered or at which Services are to be performed.

**"Small Business Contract"** means a contract for the supply of Products or Services where:

- (a) at the time the contract is entered into, at least one party to the contract is a business that employs fewer than 20 persons; and
- (b) either of the following applies:
  - (i) the upfront price payable under the contract does not exceed \$300,000;
  - (ii) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000.

However, if the relevant parts of the definition of 'Small Business Contract' under the ACL are amended at any time, this definition is also amended accordingly.

**"Special Orders"** means any Order for Products which are custom made by Precast for the Customer pursuant to Working Documents provided by the Customer to Precast or any Order which is for Products not usually sold by Precast and sourced only by Precast because of an Order placed by the Customer with Precast.

**"Working Documentation"** means architectural drawings, structural drawings, construction drawing, specifications, schedules or such other documents which are provided to Precast together with any subsequent variation, amendment or instruction.

## **2. INTERPRETATION**

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- a) "Including" is not a term of limitation.
- b) Where the context admits or requires, words importing the singular number will include the plural number, those denoting a given gender will include all other genders and those denoting natural persons will include corporations.
- c) The headings used do not form part of the Conditions and are for convenience only.

## **3. ENTIRE AGREEMENT**

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- a) The contract between the Customer and Precast is constituted by: (i) the Conditions; (ii) the terms of any credit agreement between the Customer and the Supplier ("Credit Terms"); and (iii) the extent to which the Supplier accepts an Order in accordance with clause 5b) (each a "Contract"). The Conditions, the Credit Terms and the extent to which the Supplier accepts the Order govern all contracts for the supply of goods and/or Services by the Supplier to the Customer and constitute the entire agreement in connection with the supply of goods and/or Services between the Supplier and the Customer. All prior representations, trade custom or previous dealings between the Supplier and the Customer are excluded and are not applicable in the interpretation of the contract. No modification or variation to the Conditions or the Credit Terms, any additional terms or conditions or any terms inconsistent with the Conditions or the Credit Terms provided by the Customer (whether put forward in the Order, the Customer's specification or otherwise) will bind the Supplier, unless expressly and specifically agreed to in writing by the Supplier. The Conditions and the Credit Terms supersede any terms and conditions which have previously governed a contract for the sale of goods or Services by the Supplier to the Customer. The Conditions and Credit Terms will prevail to the extent of any inconsistency between them and any quotation, Order or other documents from the Customer. The Conditions and Credit Terms bind the Customer even if the Supplier or the Customer do not sign them promptly or at all.
- b) Subject to clause 7, Precast may vary the Contract by notice in writing to the Customer. If the Contract is a Consumer Contract or a Small Business Contract, then the Customer may consider the variation and, if not acceptable, may elect not to proceed with the purchase of the Products or Services ordered before the date of the variation but which are intended to be subject to the variation. If the Contract is not a Consumer Contract or a Small Business Contract, the Customer agrees that Products delivered and Services performed and/or ordered after the date of the notice of the variation will be subject to the variation and acceptance of the Products or Services or the placing of an Order will be deemed to be an acceptance of such varied terms and conditions.
- c) All obligations under any Contract will be binding on the Customer's personal representatives, successors and permitted assigns and will be for the benefit of the Supplier's successors and assigns

## **4. TERM OF AGREEMENT**

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This Agreement shall cover all dealings between the parties until it is replaced by an alternate written agreement or is terminated in accordance with its terms.

## **5. SUPPLY OF THE PRODUCTS AND SERVICES**

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- a) The Customer may Order from Precast from time to time such quantities of Products and Services it requires, with Orders to be in such format (whether written or otherwise) as Precast shall prescribe from time to time.
- b) A quotation by the Supplier is an estimate only and will not constitute an offer to sell Products or Services to the Customer. Orders are not accepted until notification from Precast of the acceptance of the Order (whether written, including an order acknowledgment or otherwise by overt act of acceptance) in relation to that Order.
- c) Precast retains the absolute discretion at all times to refuse to accept any Order made by the Customer for Products or Services, including but not limited to circumstances where Products are unavailable for any reason, the Customer has failed to make payment for previous Orders or payment has been made outside payment terms or where the Customer is otherwise in breach of this Agreement. Precast may make its acceptance of an Order conditional upon it receiving a satisfactory credit assessment of the Customer.
- d) Any period or date for Delivery of Product or Services stated by or on behalf of Precast shall be regarded by the Customer as an estimate only and not a contractual commitment. Precast shall not be liable therefore for any delays in delivery. Precast will not in any circumstances be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated delivery of Products or performance of Services.
- e) Precast shall be entitled to deliver Products in instalments and the Customer shall not be entitled to terminate or cancel the Contract or to any claim, loss or damage howsoever arising from any failure by Precast to deliver any instalments on or before the estimated date of Delivery.
- f) The Customer must make all arrangements necessary to take delivery of the Products when they are tendered for delivery. Where a Customer proposes to delay delivery of Products beyond the estimated delivery date, the Customer must immediately notify Precast. Precast is under no obligation to agree to any extension of the estimated delivery date. Precast may, as a condition of its approval to the new delivery date, vary the prices specified on Precast's quotation or invoice (as relevant) to include any additional costs to Precast including to reflect Precast's current prices and charges as at the new delivery date and any temporary storage fees.
- g) The Customer acknowledges that Precast may engage agents or subcontractors in the manufacture and/or supply of Products and Services or any part thereof to the Customer.
- h) The Customer will notify Precast in writing of any change in its structure or senior management including any change in directorship, majority shareholding, change in partnership or trusteeship within seven days of the date of any such change and indemnifies Precast against any loss or damage incurred by it as a result of Purchasers failure to notify Precast of any such change.

- i) The Customer agrees that -
  - i. each Contract shall be deemed to include a representation by the Customer and the person placing the Order for the Customer that the Customer is solvent and able to pay all of its debts as and when they fall due; and
  - ii. when an Order is placed, the Customer shall inform Precast of any facts, which might reasonably affect any decision by Precast to accept the Order and or grant credit.

## **6. SITE REQUIREMENTS AND DELIVERY**

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- a) Where Delivery is provided by Precast, the Customer shall provide suitable and practical means of access to the Site and ensure that the Site is suitable to allow the efficient and safe Delivery. In the event that the Site is unsafe for Delivery, Precast reserves the right to refuse to deliver the Products and the Customer shall be charged for all expenses (if any) incurred as a result of an unsafe Delivery Site including but not limited to the cost of Precast delivering to another Site.
- b) The Customer shall advise Precast in advance of Delivery if there are any potential hazards, risks or difficulties which may be encountered either at, or close to, the Site including but not limited to narrow roads, low hanging electrical wires, traffic islands and a lack of parking. Precast reserves the right to refuse to deliver to the Customer at a Site designated by the Customer in the event that it is unsuitable and it will be the Customer's responsibility to provide an alternative suitable location for Delivery and the Customer shall be charged for all expenses (if any) incurred as a result of such a change.
- c) For the sake of certainty, the Customer shall not be entitled to cancel any Contract in the event that the Delivery is not made pursuant to this clause 6. The Customer will not be relieved of any obligation to accept or pay for the Products or Services by reason of any delay in delivery or performance.
- d) For the sake of certainty and without limiting any other clause in this Agreement, the Customer acknowledges that any amount charged by Precast for Delivery to the Site originally nominated by the Customer will still be charged where Precast is unable to access the Site and that Precast shall be entitled to charge additional reasonable amounts where the Site is changed due to Precast refusing to deliver to the Site nominated at the time of the Contract or if through no fault of Precast, time delays in dropping off the Products occur at the Site.
- e) Delivery shall be kerbside to the address of the Site unless otherwise agreed between the parties. In the event that Delivery is within the Site, (that is, beyond the kerbside), the Customer accepts all responsibility and liability for any damage, loss, injury or claim of any sort which results from Precast being instructed to deliver the Products within the Site including where such damage, loss, injury or claim is made/suffered by Precast. Precast shall be entitled to charge additional reasonable amounts in respect to delays caused in accessing the site including but not limited to by reason of induction requirements.
- f) The Customer warrants that it is the owner of the Site, or, if it is not, that it is authorised by the owner to allow for Services being performed at the Site and/or for Products to be installed or delivered to the Site.
- g) The Customer shall ensure that any other parties performing works at the Site do not interfere with or otherwise hinder Precast's provision of the Products or

Services, including Delivery. In this regard to the Customer shall provide to Precast any information reasonably required by it in respect to the activities or proposed activities of any other party performing works at the Site.

- h) The Customer shall ensure that either the Customer or the Customer's agent are present at the time of the Delivery to receive the Products or Services. In the event that the Customer or the Customer's agent are not present but have consented to Precast delivering the Products or Services in their absence, the Customer acknowledges that without limiting the application of any other terms of this Agreement, clause 14(a) of these terms applies to such deliveries.
- i) At no time does Precast take or accept any responsibility for the Site and all risk and liability in and relating to the Site remains with the Customer at all times.
- j) Precast shall not be obliged to obtain a signed receipt or other acknowledgment at the place of delivery. However, if a signed receipt or other acknowledgment of delivery is obtained by a person at the place of delivery who appears to be authorised by the Purchaser to sign or otherwise take delivery, then, to the extent permitted by law, such signed receipt or other acknowledgment shall be conclusive evidence of delivery, the quantity of Products delivered and otherwise compliance with the Contract.
- k) Products will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer. If no such address is nominated then delivery will be deemed to occur at the time when the Products are ready for collection at Precast's premises.
- l) The Customer will pay to Precast packing (other than the standard packing of Precast), crating and delivery charges in accordance with Precast's current rates, as at the date of dispatch. If there is no current rate then Precast may charge a reasonable amount to the Customer. Precast may charge a reasonable amount for storage if delivery instructions are not provided by the Customer within 14 days of a request by Precast for such information.
- m) The Customer authorises Precast to deliver Products to the place nominated by the Customer and to leave the Products at such place whether or not any person is present to accept delivery. Precast will not be liable on any basis whatsoever for loss suffered by the Customer after delivery.

## **7. PRICING AND PAYMENT**

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- a) Unless the Customer has been provided with a fixed quote (which must be in writing), the Customer shall be charged for the Products and Services at Precast's Standard Prices at the time of the Customer placing an Order for Products and or Services. Details of the Standard price for a particular product or service are available to the Customer upon request.
- b) Any quotation provided by Precast to the Customer shall be valid only for 30 days from the time it was made and may be withdrawn at any time by Precast within that period.
- c) Except where expressly agreed otherwise, at any time prior to delivery Precast may, upon giving the Customer not less than 30 days prior written notice, vary the prices specified on Precast's quotation or invoice (as applicable) to reflect its new updated price list.
- d) The Customer may consider any variation referred to in clause 7c) and, if not acceptable, may elect not to proceed with the purchase of the Products or Services

ordered before the date of the variation, but which are intended to be subject to the variation.

- e) Precast may, at its sole discretion, agree to grant the Customer credit up to a nominated amount however without limiting the application of any other clause in this Agreement, Precast shall be entitled to revoke such credit facility at any time with any Orders placed after such revocation to be subject to any revised payment terms advised by Precast to the Customer prior to such further Orders. Where Precast agrees to extend credit to the Customer, the Customer shall make payments when so required to ensure the total amount outstanding from time to time remains within the credit limit and terms determined by Precast.
- f) Any credit amount must be approved by Precast in writing prior to any Orders being placed pursuant to such credit amount. Precast may at its discretion require the provision of personal guarantees or other security prior to agreeing to provide credit.
- g) The terms of payment shall be , unless otherwise agreed in writing, 30 days from end of month of Delivery, save that Precast shall be free at any time, at its sole discretion, to revoke payment terms in regard to any future Orders and require payment in advance of supply of further Product or Services.
- h) Payment by cheque is not deemed to have been made unless and until the proceeds of the cheque have cleared.
- i) The Customer shall be liable for, and expressly undertakes to pay, all fees (including an administration fee in an amount to be set from time to time by Precast) for all costs incurred for any cheque being dishonoured for whatever reason.
- j) All prices are in Australian Dollars (AUD) and unless otherwise stated quotes for Products or Services (including Delivery) are exclusive of GST and any other applicable taxes or duties. In addition to the price for the Products and Services the Customer shall also pay any applicable GST, taxes or duties.
- k) If GST is imposed on any supply made under or in accordance with any Contract, the recipient of the taxable supply must pay to Precast an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Contract, subject to the provision of a tax invoice.
- l) In the event that the Customer seeks to alter the scope of the Products or Services to be provided after an Order has been placed, Precast shall be free, if it agrees to the alterations, to charge additional reasonable amounts over and above the quoted amount to take into account the alterations, including any additional labour and materials required. Such additional amounts shall be communicated to the Customer prior to Precast agreeing to such alterations. Precast shall not however be obliged to agree to any requested variation
- m) In respect of payments required to be made by the Customer under each Contract, time shall be of the essence.
- n) The Customer shall not seek to withhold or set off from money payable to Precast any amounts it alleges to be owing by Precast to it unless the money said to be owing by Precast to it is owing pursuant to a court order.

## **8. SPECIAL ORDERS**

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- a) The Customer warrants that all Working Documentation and other design information provided to Precast for the manufacture of Special Orders are accurate and correct and that Precast shall not be liable in any way for any claim of any kind by the Customer in relation to Products supplied pursuant to a Special Order where Precast has made the Special Order in accordance with the Working Documentation and shall indemnify Precast in respect of any claim of any kind made by the Customer or any third party in respect of Products made according to Working Documentation.
- b) Without limiting the application of any of Precast's policies, any Products manufactured pursuant to a Special Order where such Products are not ordinarily sold by Precast shall not be returnable to Precast.
- c) Special Orders shall not be altered or varied at any stage after the placing of such an Order unless Precast, at its sole discretion, agrees to such an alteration or variation in writing. If such a variation or alteration is not agreed to, the Customer shall remain liable for payment of the Special Order and shall not be entitled to cancel the Special Order. Precast shall be entitled to charge any reasonable additional amounts for any variation or amendment to any Special Order where Precast has agreed to such a variation which shall be communicated to the Customer at the time of any variation being agreed to between the parties.

## **9. BREACH BY CUSTOMER**

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- a) Interest shall be payable on any amounts outstanding outside payment terms by the Customer to Precast at the RBA cash rate plus 7% per annum. By way of example if the RBA cash rate at a particular time is 1.5% then interest shall be payable at that time by the Customer on outstanding amounts at 8.5% per annum.
- b) Precast shall be free to suspend or cancel any Contract in circumstances where the Customer has failed to make any payment within the payment terms.
- c) The Customer hereby indemnifies Precast in respect of any costs incurred by Precast (including legal costs on an indemnity basis) as a result of any breach of this Agreement by the Customer, including any breach of terms of payment for Products or Services. Such costs include but are not limited to the costs of any demands made of the Customer to remedy any breach, and any legal proceedings to recover unpaid money.

## **10. DIRECTOR'S GUARANTEE**

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The Customer, if a company, agrees that it will, if called upon at any time by Precast to do so, procure from any one or more of its directors or other interested party (as directed by Precast) a personal guarantee and or indemnity of the Customer's obligations pursuant to this Agreement in a form acceptable to Precast, with such guarantee to cover both future liabilities and any liabilities of the customer to Precast which predate the signing of the guarantee.

## **11. RETENTION OF TITLE TO PRODUCTS**

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- a) Until Precast receives full payment (in the form of clear funds) for any Products or Services supplied by it to the Customer together with any other amounts owing by the Customer to Precast:



- (i) Title and property in all of the Products yet to be paid for remains vested in Precast and does not pass to the Customer;
  - (ii) The Customer must hold the Products as bailee for Precast;
  - (iii) The Customer must store the Products on the premises separately and must ensure the Products are kept in the same condition as when they were delivered to the Customer;
  - (iv) The Customer must keep the Products fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of Precast including against damage, fire or theft;
  - (v) Unless expressly authorised, the Customer shall not sell or otherwise dispose of the Products. If in breach of this clause the Customer does sell the Products, it does so as agent of Precast although it shall not represent to any third party that it is acting in any way on behalf of Precast and Precast shall not be bound by any contracts entered into by the Customer with third parties to which Precast is not an express party;
  - (vi) The Customer must hold the proceeds of any sale of the Products on trust for Precast;
  - (vii) Precast may issue proceedings for the amount of the Products sold to the Customer notwithstanding that ownership of the Products may not have passed to the Customer; and
  - (viii) In addition to its rights under the PPSA Precast may in the event of default in payment by the Customer, without notice, enter any premises where it suspects that the Products are and remove them, and for this purpose the Customer irrevocably licenses Precast or its agents to enter onto such premises and also indemnifies Precast from and against all costs, claims, demands or actions by any party arising from such action.
- b) Nothing in this clause or these terms generally shall be interpreted as requiring Precast to register any security interest on the Personal Property Security Register would it not be otherwise be required to do so.

## 12. PERSONAL PROPERTY SECURITY ACT

- a) The Customer acknowledges that by assenting to these Conditions, the Customer grants a security interest to Precast in all Products (and their proceeds) now or in the future supplied by Precast to the Customer (or to its account).
- b) The Customer undertakes to do anything that is required by Precast:
  - (i) so that Precast can acquire and maintain one or more perfected security interests under the PPSA in respect of the Products and their proceeds;
  - (ii) to register a financing statement or financing change statement; and
  - (iii) to ensure that Precast's security position, and rights and obligations, are not adversely affected by the PPSA.
- c) Unless the Customer has obtained Precast's prior written consent, the Customer undertakes not to:
  - (i) register a financing change statement in respect of a security interest contemplated or constituted by these Conditions; and
  - (ii) create or purport to create any security interest in the Products, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party.
- d) The Customer agrees that the Conditions may create a PMSI in the Products (and their proceeds) supplied presently and in the future by Precast to the Customer and a security interest in the personal property of the Customer.
- e) The Customer agrees that it will, if requested by Precast, sign any documents, provide any information or do anything else Precast requests, to ensure that any security interest created in Precast's favour by these Conditions is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
- f) The Customer will, upon demand, pay all of Precast's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of Precast's security interests and all other costs associated with protection and enforcement of Precast's security interests created by the Conditions or by undertaking an audit under the provisions of the PPSA.
- g) This PMSI does not lose its priority as a result of the renewal, refinancing, consolidation or restructure of the subject matter of the Conditions and any purchase money obligations.
- h) To the extent permitted by the PPSA, the Conditions exclude any provisions of the PPSA which may be excluded in Precast's discretion and which would otherwise confer rights on the Customer.
- i) The Customer further agrees that where Precast has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- j) The Customer's right to possession of Products still owned by Precast under the Conditions will cease if:
  - (i) where the Customer is an individual, the Customer commits an act of bankruptcy;
  - (ii) where the Customer is a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding-up of the Customer or the Customer enters into a Deed of Company Arrangement;
  - (iii) the Customer ceases or threatens to cease conducting business in the normal manner or applies for deregistration or receives a deregistration notice;
  - (iv) any cheque the Customer provides to Precast is dishonored for payment;
  - (v) the Customer fails to comply with any demand for payment issued by Precast; or
  - (vi) the Customer breaches any of the Conditions or is in default of any other agreement between Precast and the Customer.
- k) The Customer expressly and irrevocably agrees that, until such time as title in the Products passes to the Customer, Precast is entitled to enter any premises where the Products supplied by Precast are located in repossess, remove and sell such Products. The Customer (its successors and assigns, including any external manager or administrator) will not object to Precast, or its agents entering any premises for the purpose of this clause and agrees to indemnify and keep Precast indemnified in respect of any claims, actions and costs that may arise against Precast in relation to the removal, repossession and sale of the Products pursuant to the Conditions including any claims brought by third parties, except to the extent that Precast has been negligent or breached the Law or the Contract.
- l) The Customer agrees that repossession and retention of

the Products pursuant to the PPSA will only satisfy so much of the monies which may become payable to Precast by the Customer as is equivalent to Precast's estimation of the market value of the Products as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest Precast has on the value of the Products recovered.

- m) The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Precast by the Customer or the Customer's authorised representative.
- n) Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by Law to disclose such information.

### **13. CONTRACTING OUT OF PPSA**

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The Customer:

- a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under these Conditions;
- b) agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- c) agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

### **14. RISK INSURANCE AND LIABILITY**

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- a) The risk in the Products and all insurance responsibility for theft, fire or damage of any other kind shall pass to the Customer immediately upon Delivery of the Products to the Customer or upon collection by the Customer or their agent from the point of sale (whichever is applicable), regardless of whether there is any further work to be completed by Precast in regard to those Products.
- b) The Customer warrants that it has and will have at the time of making any Contract all necessary licenses or permits under all relevant laws and regulations to possess and use the Products.

### **15. RETURN OF PRODUCTS CONSUMERS**

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If the Customer is a Consumer, the provisions of this clause 15 apply.

- a) Unless agreed in writing by Precast, Precast will not accept the return of Products. Products accepted for return by Precast may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by Precast and recoverable from the Customer.
- b) The proof of purchase from the Customer must accompany all Products returned to Precast.
  - c) The Products and Services come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage in accordance with the ACL.

The Customer is entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure. The Customer is entitled to have Services re-supplied or be paid for the cost of having the Services re-supplied if the Services do not comply with the guarantees.

- d) The guarantees under the ACL are given by Precast.
- e) If the Customer believes the Products or Services do not comply with the statutory guarantees, they must contact Precast and the parties may make arrangements for the return of the Products. Any returned Products must be accompanied by proof of purchase. If Precast agrees that the Products or Services do not comply with the statutory guarantee Precast will refund the costs of returning the Products to Precast and, in all other respects, act in accordance with its obligations under the ACL.
- f) Subject to clause 15d), all other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by Law are expressly excluded to the maximum extent permitted by Law, unless agreed by Precast in writing. Precast does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between Precast and the Customer by Law.

### **16. RETURN OF PRODUCTS – NON-CONSUMERS**

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If the Customer is not a Consumer, the provisions of this clause 16 apply.

- a) Unless agreed in writing by Precast, Precast will not accept the return of Products. Products accepted for return by Precast may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by Precast, and debited to the credit account of the Customer.
- b) The proof of purchase from the Customer must accompany all Products returned to Precast.
- c) The Customer will ensure it has an authorised representative at the delivery site to check prior to unloading that the information shown on the delivery docket corresponds with the Order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket will represent acknowledgment by the Customer that the Products comply with the Order and have been supplied in accordance with the Contract.
- d) All claims for Precast's failure to comply with the Order whether due to shortfall, defect, incorrect delivery or otherwise must be made in writing on the delivery docket / receipt / manifest signed by the Customer and immediately returned with the cartage contractor. Where the point of delivery or collection is unattended, the Customer will give notice in writing to Precast, prior to installation, by giving written notice to Precast within seven (7) days (time being of the essence) from the date of delivery of Products or the performance of Services. If the Customer fails to provide such notice then the Customer will be deemed to have accepted the Products and Services. Precast will have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product must not be installed.

- e) All terms, representations, warranties and conditions that might otherwise be granted or implied by Law are expressly excluded to the maximum extent permitted by Law, unless Precast agrees in writing. Precast does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between Precast and the Customer by Law.
- f) Precast's liability for failure to comply with the Order whether due to shortfall, defect, incorrect delivery or otherwise, or for any other breach of the Contract or of a non-excludable condition or warranty, is in all cases limited at Precast's option to any one of the following:
  - i) the replacement of the Products or the supply of equivalent Products;
  - ii) the repair of the Products;
  - iii) the payment of the cost of providing replacement Products or of acquiring equivalent Products;
  - iv) the payment of the cost of having the Products repaired; or
  - v) in the case of Services, the re-supply of the Services or paying for the cost of re-supplying the Services.
- g) Subject to clause 16f) and to the extent permitted by Law, if the Contract is not a Consumer Contract or a Small Business Contract, Precast will not be liable to the Customer or any other person for any loss, cost, damage or expense whatsoever arising directly or indirectly as a result of or in connection with any Contract, including but not limited to loss, costs, damages or expenses arising directly or indirectly from the supply of the Products or Services by Precast, the use or performance of the Products, a breach of any Contract (including any implied warranty, representation, term or condition in relation to the Products), any failure to install the Products in accordance with their applicable installation instructions and manuals provided with the Products or to operate the Products in accordance with their operation instructions and manuals provided with the Products or the negligence or willful act of Precast (including its employees or agents), the Customer or any third party, including in relation to the installation of the Products.
- h) Despite any clause to the contrary in the Contract, neither the Customer or Supplier are liable to the other for:
  - i) any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every plaintiff in a like situation would suffer; and
  - ii) any loss of revenue, business or profits or any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property.

## **17. FITNESS FOR PURPOSE**

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- If:
- a) the Customer is not a Consumer; and
  - b) the Contract is not a Consumer Contract or a Small Business Contract,

then the Customer agrees that:

- c) it does not rely on the skill or judgment of Precast in relation to the suitability of any Products for a particular purpose; and
- d) any advice, recommendation, information or assistance provided by Precast is provided without any liability by Precast whatsoever.

If:

- a) the Customer is a Consumer; or
- b) the Contract is a Consumer Contract or a Small Business Contract,

then the Customer acknowledges and agrees that:

- c) it must install the Products in accordance with their applicable installation instructions and manuals provided with the Products or to operate the Products in accordance with their applicable operation instructions and manuals provided with the Products; and
- d) any advice, recommendation, information or assistance provided by Precast is provided in good faith, relying upon the accuracy and completeness of information provided by Customer to Supplier.

## **18. FORCE MAJEURE**

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Precast shall not be liable in any manner whatsoever to the extent that it has been prevented from performing any obligation under this Agreement by reason of matters beyond its control, including without limitation-

- a) inability to source Products, obtain equipment or supplies or other facilities that are not caused by a failure to pay;
- b) defaults by manufacturers or suppliers or other facilities that are not caused by a failure to pay;
- c) inability to access the site or part of the Site;
- d) power failure, lack of access to electricity or other required resources at the Site;
- e) lack of availability for whatever reason of staff or contractors;
- f) acts of God, accidents or machinery breakdown;
- g) acts or threats of terrorism or war;
- h) epidemics, panemics, including Covid-19, government actions or restrictions; or
- i) industrial disputes or strikes.

## **19. TERMINATION ON NOTICE**

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Either party may terminate this Agreement by giving the other party 30 days' notice of its intention to do so.

## **20. IMMEDIATE TERMINATION OF AGREEMENT**

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Precast may terminate this Agreement immediately by giving written notice to the Customer if the Customer:

- a) goes into liquidation;
- b) has an administrator or a receiver to its property or assets appointed;
- c) is made bankrupt;
- d) materially breaches its obligations under this Agreement where such breach is either not capable of remedy or, if capable of remedy, the other party fails to remedy such breach within 14 days after receipt of written notice of such breach by the other party; or
- e) engages in any conduct (which includes any conduct by employees of the Customer) which in the opinion of

- Precast is or might be damaging to the reputation of Precast or any of the Products and or Services; or
- f) contractual performance by either the Supplier or the Customer is delayed or prevented due to any Force Majeure Event.

## **21. EFFECT OF TERMINATION**

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The termination of this Agreement for whatever reason shall not in any way affect any obligations of the Customer accruing prior to the termination taking effect and Precast's rights in the event of default (including the ongoing accrual of interest and the right to indemnity for costs) shall continue beyond any termination.

## **22. CERTIFICATE**

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If the Contract is not a Consumer Contract or a Small Business Contract, a statement in writing signed by Precast's credit manager stating monies payable by the Customer to Precast will be prima facie evidence of the amounts so payable and binding on the parties in the absence of manifest error.

## **23. RETURNABLE PACKAGING**

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Unless otherwise stated in a Contract, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the products remain the property of Precast and must be returned in good order and condition to Precast within 30 days of the date of delivery. Any such packaging not returned by the due date will be paid for by the Customer at a price determined by Precast.

## **24. SAMPLES AND BLENDING**

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Any sample product or sample colour is provided to indicate only the general nature of the product. Precast provides no warranty or guarantee that the products supplied will correspond in colour, texture or blend with any sample or with any previous or future product supplied. Precast will not be liable for any failure of the Customer or others to blend the products.

## **25. NON-CONFORMING PRODUCT**

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Where a product is supplied on the basis of a description or marking such as "nonconforming", "second", "reject" or similar, no warranty or undertaking (express or implied) whatsoever is given by Precast. Notwithstanding the Conditions, Precast will not be liable in any way for the performance or use of, or any defect in, such a product.

## **26. FITTINGS**

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Unless otherwise stated in a Contract, cast in or similar fittings for handling the products are to be removed or finished by the Customer.

## **27. PRESSURE APPLICATIONS**

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Unless otherwise stated in a Contract, the products supplied are not warranted by Precast to be suitable for applications or use involving internal pressure.

## **28. ANTI-CORRUPTION**

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- a) The Customer agrees to comply with the Anti-Corruption Law and must not commit any act or omission which

causes or would cause it or Precast to breach, or commit an offence under, any Anti-Corruption Laws.

- b) The Customer warrants and represents that it has not been convicted of any offence, and has not been the subject of an investigation or enforcement proceedings by a governmental, administrative or regulatory body regarding any offence or alleged offence, under Anti-Corruption Laws.
- c) The Customer must, to the extent permitted by Law, promptly notify Precast in writing if it becomes aware at any time during the term of any Contract that any of the representations or warranties in clause 3327(b)(b) are, or might reasonably be expected to be, no longer correct.

## **29. TRUST AND TRUSTEES**

Where the Customer is a trustee:

- a) the Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by Precast; and
- b) the Customer warrants that it has full power and authority to enter into each Contract on behalf of the trust and that it will be bound by each Contract both personally and as trustee, irrespective of whether or not it discloses to Precast that it is a trustee at the time of entering into any credit agreement with Precast.

## **30. CHARGE**

- a) The Customer charges in favour of Precast all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with payment of all monies which are now or in the future become owing to Precast whether pursuant to these Conditions or otherwise until all such monies are paid in full by the Customer.
- b) The Customer charges in favour of Precast all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with payment of all monies which are now or in the future become owing to Precast whether pursuant to these Conditions or otherwise until all such monies are paid in full by the Customer.
- c) As security for the payment of the amount of its indebtedness to Precast from time to time, the Customer irrevocably appoints as its duly constituted attorney Precast's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat Precast may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is



no default by the Customer in carrying out its obligations hereunder).

- d) Where the Customer has previously entered into an agreement with Precast by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created by these Conditions and will secure all indebtedness and obligations of the Customer under this agreement. Precast may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein..

### **31. RELATIONSHIP OF PARTIES**

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Nothing in this Agreement shall give rise to a partnership or relationship of employment between the parties.

### **32. GENERAL**

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- a) Any failure or delay by Precast to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing.
- b) The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

### **33. READING DOWN OF AGREEMENT**

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If a clause in this Agreement is unenforceable it must be read down so as to be enforceable or, if it cannot be so read down, it must be severed from this Agreement without affecting the enforceability of the remaining terms of the Agreement.

### **34. JURISDICTION**

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This Agreement shall be governed by the laws of Victoria.

### **35. PRIVACY COLLECTION STATEMENT**

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- a) The Customer acknowledges and agrees that Precast may collect personal information and credit information about the Customer and its directors, officers, partners and the guarantors (each a Relevant Party). Pre-casts privacy policy, a copy of which is available online at <https://www.civilmart.com.au/privacy-policy/> or upon request to Precast, form part the Agreement.
- b) In accordance with the Privacy Policy, the Customer agrees that Precast may use or disclose information to within the Precast group and to third parties for the purpose of providing the Products and Services, providing information about Products and Services; sending information on Precast and its Services; performing the Precast's administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by Law; considering any other application the Customer may make to Precast; managing Precast's rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes; conducting market research or customer satisfaction research; developing, establishing and administering arrangements (including rewards programs) with other organizations' in relation to the promotion, administration and use of the Precast group's Products and Services; and developing and identifying Products and Services that may interest the Customer.
- c) The Customer warrants to Precast that it has obtained the consent of each of the Relevant Parties to the collection, use and disclosure of their personal information and credit information by Precast in accordance with this clause 35 and the Privacy Policy.
- d) Some parts of Precast's web site may be hosted, or some data may be stored, overseas for reasons of uniformity and convenience. All personal information and credit information derived from Australia will still be treated in accordance with Rocla's privacy policy while being stored overseas.

## Guarantee & Indemnity

This Guarantee is dated .....

### BETWEEN

.....(Guarantor)  
And

Precast Civil Industries Pty Ltd (ACN 615 726 924)..... (Precast)

### RECITALS

- A. At the request of the Guarantor, Precast has agreed to provide products and services to the Customer named in the schedule on terms which are contained in Precast's terms of trade agreement ("**Terms of Trade**") between the Precast and the Customer.
- B. The Guarantor, in consideration of Precast entering into the Terms of Trade or continuing to supply products or services pursuant to the Terms of Trade, is agreeable to guaranteeing to Precast that the Customer will perform all of its obligations pursuant to the Terms of Trade including the punctual payment of any amounts due to Precast from time to time.

### OPERATIVE PART

- 1. The Guarantor warrants that before execution of this guarantee he or she has sought such advice as he or she deems necessary to understand the full import of their responsibilities under this guarantee and in particular the financial impositions on him or her consequential on default by the Customer in payment of any monies due under the Terms of Trade. He or she has acquainted themselves with this documentation and sought such advice thereon as they deem necessary. He or she has satisfied his/herself as to the financial position of the Customer and their capacity to comply with the Terms of Trade.
- 2. The Guarantor hereby guarantees to Precast the due and punctual performance of all of the Customers' obligations under the Terms of Trade, including but not limited to the due and punctual payment of any money payable by the Customer to Precast for any reason at any time, and hereby indemnifies Precast against all losses, damages, expenditures, costs and expenses of whatever nature suffered or incurred directly or indirectly by the Precast in recovering any monies owing as a result of default in such performance.
- 3. The Guarantor shall be deemed to be jointly and severally liable with the Customer (in lieu of being merely a surety for it) for the payment of any money owing to Precast by the Customer and it shall not be necessary for Precast to make any claim or demand on or to take any action or proceedings against the Customer before calling on the Guarantor to pay the monies.
- 4. No time or other indulgence whatsoever that may be granted by Precast to the Customer shall in any manner whatsoever affect a liability of the Guarantor.
- 5. There is no limit to the value of the Guarantor's guarantee and indemnity.
- 6. This guarantee and indemnity is continuing and irrevocable and the obligations of the Guarantor is absolute and unconditional in all circumstances and must continue notwithstanding that there is any change in the name, style, constitution or otherwise of the Customer.
- 7. This guarantee continues despite the payment of any part of the amount owing and despite any time or other concession or compromise extended by Precast to the Customer or any other person.
- 8. The Guarantor hereby consents to any variation of the Terms of Trade by extension of the period for repayment of any amount owing.
- 9. This guarantee will not be affected:
  - (a) By Precast's neglect or omission to enforce any of its rights in relation to any security or release any security in whole or in part; or
  - (b) If the Customer goes into liquidation, administration, receivership or bankruptcy; or
  - (c) By any other Customer's obligation for any reason becoming unenforceable in whole or in part.
- 10. This guarantee is a principal obligation and is not to be treated as ancillary or collateral to any obligation to the intent that this guarantee will be enforceable even though any of the agreements and other obligations arising between Precast and the Customer are in whole or part unenforceable for any reason.
- 11. Precast need not first exercise its rights against the Customer or against the Customers' security before exercising its rights under this guarantee against the Guarantor.

## Guarantee & Indemnity Schedule

Customer:.....

**BETWEEN**

**SIGNED** by the Guarantor in the )  
presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name of witness

**SIGNED on behalf of** Precast in the )  
presence of: )

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name of witness