

Terms of Trade

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.

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

"**Non PDH Products**" means any Products which are not PDH Products.

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

"**PDH Products**" means any Products which, for the purpose of section 3(1) of the ACL, are goods of a kind ordinarily acquired for personal, domestic or household use or consumption.

"**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, Civilmart Bendigo and Civilmart or any other business name under which Precast trades.

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

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

"**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.

"**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. ACCEPTANCE OF AGREEMENT

The Customer may enter into this Agreement with Precast by either-

- Signing a copy of the Agreement; or
- Requesting Products or Services from Precast after having received a copy of this Agreement at some prior time.

3. ENTIRE AGREEMENT

- Subject to the following sub-clause, these terms shall constitute a full and complete statement of the agreement between Precast and the Customer and no variations or modifications of any term of the Agreement shall be binding unless agreed to in writing by Precast.
- In the event that any quote provided by Precast includes or refers to any additional terms and conditions, they shall be included in this Agreement for the purpose of that quote and, to the extent that they are inconsistent with these terms, shall take priority.
- Precast may vary or amend these terms by written notice to the Customer at any time. Any variations so made will only apply to Orders placed by the Customer after the time that the variation has been brought to the Customer's attention.

4. TERM OF AGREEMENT

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

- 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.
- Orders are not accepted until notification from Precast of the acceptance of the Order (whether written or otherwise) is given to the Customer in relation to that Order.
- Whilst Precast will use its best endeavours to ensure that it is able to provide Products and Services to the Customer when requested, it does not warrant or guarantee that it will be able to do so. Accordingly placement of an Order does not guarantee supply.
- 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.

- 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 shall be entitled to deliver Products in instalments and the Customer shall not be entitled to terminate or cancel the Order 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.
- The Customer shall notify Precast in writing within 7 days of Delivery if it holds any concerns whatsoever in regard to the quality, specifications or suitability of any Products. In the event of such notification the Customer shall provide Precast with reasonable and prompt access to the Products for the purpose of inspection and testing.
- Should the Customer fail to give written notice of any concerns in regard to the Products pursuant to and within the time frame referred to in clause 5(g) then, to the extent permitted by law, the Customer agrees to and is deemed to have waived any and all entitlement to bring a claim of any kind against Precast in respect of the concern related to the Products and the Products are deemed to have been accepted by the Customer.
- The Customer acknowledges that Precast may engage agents or subcontractors in the provision of Products and Services to the Customer.
- 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 the Supplier against any loss or damage incurred by it as a result of Purchasers failure to notify the Supplier of any such change.
- The Customer agrees that -
 - each Order 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
 - 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

- 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.
- 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.
- For the sake of certainty, the Customer shall not be entitled to cancel its Order in the event that the Delivery is not made pursuant to this clause 6.
- 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 Order in accordance with this Agreement or if through no fault of Precast, time delays in dropping off the Products occur at the Site.
- 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.
- 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.
- 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.

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- 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 goods delivered and otherwise compliance with the Order.

7. PRICING AND PAYMENT

- 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) The Customer acknowledges that the Standard Prices may be modified by Precast from time to time without notice throughout the currency of this Agreement and it shall be the responsibility of the Customer to check with Precast as to the availability and price of any particular Product or Service immediately prior to placing any Order.
- d) 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.
- e) 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.
- f) 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.
- g) Payment by cheque is not deemed to have been made unless and until the proceeds of the cheque have cleared.
- h) 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.
- i) 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.
- j) 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.
- k) In respect of payments required to be made by the Customer under this Agreement, time shall be of the essence.
- l) 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

- 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

- 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 Order 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

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

- 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 goods 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) For the purposes of the PPSA –
 - (i) terms used in this clause have the corresponding meaning to their use in the PPSA;
 - (ii) this Agreement constitutes a Security Agreement between Precast and the Customer and Precast has a Purchase Money Security Interest in all present and future Products supplied by Precast to the Customer and the proceeds of those Products;
 - (iii) the Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer to Precast at any particular point in time.

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- b) For the purposes of the PPSA, by executing this Agreement the Customer agrees to grant to Precast a Security Interest in the Products
- c) and Precast shall be entitled to register the Security Interest on the relevant Security Register.
- d) The Customer must do whatever shall be necessary in Order to give a valid Security Interest over the Products and their proceeds which is able to be registered by Precast on the Personal Property Securities Register. Without limiting the Customer's obligations under this clause, the Customer must immediately upon Precast's request –
 - (i) execute all documents and do any other things necessary to give effect to the Security Interest created under these terms; and
 - (ii) procure from any person considered by Precast to be relevant to its security position such agreements and waivers as Precast may require at any time.
- e) The Security Interest arising under this clause attaches to the Products when the Products are collected from or dispatched from Precast's premises and not at any later time.
- f) Precast shall be free to allocate sums received from the Customer in any manner Precast determines, including in any manner required to preserve any Purchase Money Security Interest or any other Security Interest it has arising by virtue of supply of Products to the Customer.

13. CONTRACTING OUT OF PPSA

- a) The Customer:
 - (i) waives its right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a Security Interest created under the Contract; and
 - (ii) waives its right to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in paragraph (b)).
- b) To the fullest extent permitted by the PPSA, the parties agree to the contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.

14. RISK INSURANCE AND LIABILITY

- 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 particular Order for Products all necessary licenses or permits under all relevant laws and regulations to possess and use the Products.
- c) The Customer agrees that they will not rely on any statements made by Precast as to the suitability of the Products for a particular purpose unless such statement is in writing.
- d) Unless in writing, Precast makes no express or implied statement, nor implied or express condition (other than those imposed by law) that the Products will be suitable for a particular purpose or end use by the Customer.
- e) If the Products are Non PDH Products or the ACL doesn't apply to the Customer's purchase of the Products, then (to the extent permitted by law) Precast expressly excludes all other warranties or guarantees, whether express or implied, in respect of the Products and Precast's liability to the Customer in relation to any claim relating to the Products is limited, at Precast's option, to-
 - i. the replacement of the Products or the supply of equivalent Products;
 - ii. the repair of the Products;
 - iii. the payment of the costs of replacing the Products or the cost of acquiring equivalent Products; or
 - iv. the payment of the cost of having the Products repaired.

15. CANCELLATION OF ORDERS

- a) No purported, return of Products or cancellation, variation or suspension of an Order for Products or Services (or any part of an Order for Products or Services) by the Customer shall be binding upon Precast once the Order has been placed with Precast unless Precast in writing and at its sole discretion accepts such cancellation, variation or suspension of an Order for Products or Services.
- b) In the event that Precast does agree to the Customer cancelling Delivery of Products and/or the provision of Services or to the return Products, the Customer shall be liable for any costs incurred by Precast up to the time of the cancellation and Precast's re-stocking fee.

16. FORCE MAJEURE

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;
- b) inability to access the site or part of the Site;
- c) lack of access to electricity or other required resources at the Site;
- d) lack of availability for whatever reason of staff or contractors;
- e) acts of God, accidents or machinery breakdown;
- f) acts or threats of terrorism or war; or

- g) industrial disputes or strikes.

17. TERMINATION ON NOTICE

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

18. IMMEDIATE TERMINATION OF AGREEMENT

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.

19. EFFECT OF TERMINATION

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.

20. RELATIONSHIP OF PARTIES

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

21. WAIVER

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 of the exercise of any other power or right. A waiver is not effective unless it is in writing.

22. READING DOWN OF AGREEMENT

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.

23. JURISDICTION

This Agreement shall be governed by the laws of Victoria.

24. PRIVACY COLLECTION STATEMENT

The Customer acknowledges having been made aware of Pre-casts privacy policy, a copy of which is available online at <https://www.civilmart.com.au/privacy-policy/>

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