

## Terms of Trade

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

The Supplier 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 the Supplier. The parties must not amend these Conditions unless recorded in writing and signed by an authorised the Supplier representative.

### 1. INTERPRETATION

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"**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended. "**Agreement**" has the meaning given to the term in clause 3a).

"**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 the Supplier carries on business.

"**Approvals**" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of the Supplier's obligations under this Agreement;

"**Claim**" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"**Confidential Information**" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

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

"**Consumer Contract**" has the same definition given to the term under the ACL.

"**Customer**" means the party named in the Schedule, or, if no party is named, the party to whom the Supplier 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.

"**Indirect Damage**" suffered by a party, means: (a) any loss which does not arise naturally or in the ordinary course of things from a breach by a party to this Agreement; (b) any loss or anticipated loss which constitutes or arises from or in connection with (even if such loss arises naturally or in the usual course of things); (i) loss of use, production, revenue, income, business savings, profit or opportunity; (ii) a loss of goodwill; (iii) a loss of business reputation, or (iv) business interruption or increased financing costs or (c) any Liability of the party to any third person, or any Claim, brought against the party by any third person, and any Liability in connection with the Claim.

"**Intellectual Property**" means all intellectual property and proprietary rights whether registered or unregistered (including business names, trade or service marks, any right to have information (including confidential information) kept confidential, patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, know how (in respect of the Business and including its customer and supplier information), logos, designs, design rights, copyright and similar industrial or intellectual property rights, and websites, landline and mobiles numbers and other digital property);

"**Liability**" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"**Modern Slavery**" means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like

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

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

"**Products**" means any Products which the Supplier 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 the Supplier.

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

"**Services**" means any services which the Supplier 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**" has the same definition given to the term under the ACL means a contract for the supply of Products or Services where:

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

"**Supplier**" means Precast Civil Industries Pty Ltd trading as Civilmart (ABN 78 615 726 924) or Infrastructure Products Australia Pty Ltd trading as Auspits (ABN 88 108 718 350).

"**Working Documentation**" means architectural drawings, structural drawings, construction drawing, specifications, schedules or such other documents which are provided to the Supplier 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 agreement between the Customer and the Supplier is constituted by: (i) these 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) (collectively the "**Agreement**") (each accepted Order being a separate Agreement). This Agreement applies to any supply of Products and Services by the Supplier to the Customer and supersedes any of the Customer's terms or conditions. All Orders are subject to this Agreement and the Supplier objects to any additional or different terms which may be contained in any invoice, acknowledgment, purchase order or other forms or correspondence from the Customer or third party. The Agreement binds the Customer even if the Supplier or the Customer do not sign them promptly or at all.

- b) Subject to clause 7, the Supplier may vary any Agreement by notice in writing to the Customer. If an Agreement 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 an Agreement 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 Agreement 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**

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**

- a) The Customer may Order from the Supplier from time to time such quantities of Products and Services it requires, with Orders to be in such format (whether written or otherwise) as the Supplier 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 the Supplier 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) The Supplier 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. The Supplier may make its acceptance of an Order conditional upon it receiving a satisfactory credit assessment of the Customer.
- d) The Customer is not entitled to cancel any Order or Agreement and must pay to the Supplier any reasonable costs associated with the Customer purporting to cancel any Order or Agreement. Where the Customer cancels an Order or terminates a Agreement in accordance with this Agreement, in addition to any accrued rights the Supplier might have, the Customer must pay the Supplier all costs, loss and damage foregone or incurred by reasons of the cancellation or termination including:
  - i. the value of all unpaid Products supplied in accordance with the Agreement prior to the date of termination; and
  - ii. the cost of Products manufactured or part manufactured, and materials reasonably ordered by the Supplier prior to the date of termination for the purpose of supplying the Products; and
  - iii. if the Products are made to order or non-stock items, the full replacement value of those Products to the extent that the Supplier is not compensated under clauses 5(d)(i) and (ii) above.

The Customer is responsible for collecting any Products at its own expense after the date of termination.

- e) Any period or date for Delivery of Product or Services stated by or on behalf of the Supplier shall be regarded by the Customer as an estimate only and not a contractual commitment. The Supplier shall not be liable therefore for any delays in delivery. The Supplier 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.
- f) The Supplier may deliver Products in instalments and the Customer shall not be entitled to terminate or cancel the Agreement or to any claim, loss or damage howsoever arising from any failure by the Supplier to deliver any instalments on or before the estimated date of Delivery.
- g) The Customer must make all arrangements necessary to take delivery of the Products when they are tendered for delivery. Where the Customer proposes to delay delivery of Products beyond the estimated delivery date, the Customer must immediately notify the Supplier outlining the reasons why the

Customer proposes to delay the Supplier's delivery of Products. The Supplier is under no obligation to agree to any extension of the estimated delivery date. The Supplier may, as a condition of its approval to the new delivery date, charge the Customer additional costs to the Supplier including any additional delivery charges as at the new delivery date and any temporary storage fees. In the event that the Customer delays delivery for more than 30 days from the original delivery date the Supplier may invoice the Customer for the Products excluding delivery on the following terms:-

- i. Upon payment, the Products will become the property of Customer.
  - ii. The Products will be stored separately and labelled as belonging to the Customer.
  - iii. The Customer may have access from time to time to undertake a stocktake of the Products and sign a delivery docket acknowledging delivery.
  - iv. Delivery will be undertaken at the direction of Customer, in accordance with the Customer's agreement.
  - v. Delivery will be invoiced separately upon delivery
- h) The Customer acknowledges that the Supplier may engage agents or subcontractors in the manufacture and/or supply of Products and Services or any part thereof to the Customer.
  - i) The Customer will notify the Supplier 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.
  - j) The Customer agrees that -
    - i. each Agreement 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 the Supplier of any facts which might reasonably affect any decision by the Supplier to accept the Order and or grant credit.

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

- a) Where Delivery is provided by the Supplier, 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, the Supplier 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 the Supplier delivering to another Site and the reasonable storage costs.
- b) The Customer shall advise the Supplier 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. The Supplier reserves the right to (acting reasonably) 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) The Customer shall not be entitled to cancel any Agreement 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) Without limiting any other clause in this Agreement, the Customer acknowledges that any amount charged by the Supplier for Delivery to the Site originally nominated by the Customer will still be charged where the Supplier is unable to access the Site and that the Supplier shall be entitled to charge additional reasonable amounts where the Site is changed due to the Supplier refusing to deliver to the Site nominated at the time of the Agreement or if through no fault of the Supplier, 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 the Supplier being instructed to deliver the Products within the Site including where such damage, loss, injury or claim is made/suffered by the Supplier. The Supplier 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 the Supplier's provision of the Products or Services, including Delivery. In this regard, the Customer shall provide to the Supplier 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 the Supplier delivering the Products or Services in their absence, the Customer acknowledges that without limiting the application of any other terms of this Agreement, clause 13(a) of these terms applies to such deliveries.
- i) At no time does the Supplier 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) The Supplier shall not be obliged to obtain a signed receipt or other acknowledgment at Delivery. However, if a signed receipt or other acknowledgment of delivery is obtained by a person at 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 Agreement.
- k) Products will be delivered or deemed to be delivered when they are delivered to the Site 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 the Supplier's premises.
- l) The Customer will pay the Supplier for packing (other than the standard packing of the Supplier), crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate then the Supplier may charge a reasonable amount to the Customer. The Supplier may charge a reasonable amount for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.
- m) The Customer authorises the Supplier 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. The Supplier will not be liable on any basis whatsoever for loss suffered by the Customer after Delivery.

## **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 the Supplier'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 the Supplier to the Customer shall be valid only for 30 days from the time it was made or as otherwise stated in the quote and may be withdrawn at any time by the Supplier within that period.
- c) Except where expressly agreed otherwise, at any time prior to Delivery the Supplier may, upon giving the Customer not less than 30 days prior written notice, vary the prices specified on the Supplier'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 by giving the Supplier a written notice within seven (7) days after the date of the variation. If the Customer fails to give the written notice within 7 days after the Supplier varies its prices, the Customer is deemed to have accepted the varied price.
- e) The Supplier 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, the Supplier 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 the Supplier to the Customer prior to such further Orders. Where the Supplier 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 the Supplier.

- f) Any credit amount must be approved by the Supplier in writing prior to any Orders being placed pursuant to such credit amount. The Supplier 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, 20 business days from receipt of invoice without deduction or setoff, save that the Supplier shall be free at any time, to revoke payment terms in regard to any future Orders and require payment in advance of supply of further Product or Services in the event that:-
  - a. The Customer fails to make payment in accordance with the agreed payment terms; or
  - b. In the Supplier's reasonable opinion, the Supplier considers the Customer to be a credit risk.
- 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 the Supplier) 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 Agreement, the recipient of the taxable supply must pay to the Supplier 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 Agreement, 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, the Supplier shall be free, if it agrees to the alterations, to charge additional reasonable amounts exceeding 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 the Supplier agreeing to such alterations. The Supplier 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 Agreement, time shall be of the essence.
- n) The Customer shall not seek to withhold or set off from money payable to the Supplier any amounts it alleges to be owing by the Supplier to it.

## **8. SPECIAL ORDERS**

- a) The Customer warrants that all Working Documentation and other design information provided to the Supplier for the manufacture of Special Orders are accurate and correct and that the Supplier shall not be liable in any way for a Claim of any kind by the Customer in relation to Products supplied pursuant to a Special Order where the Supplier has made the Special Order in accordance with the Working Documentation and shall indemnify the Supplier in respect of a 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 the Supplier's policies, any Products manufactured pursuant to a Special Order where such Products are not ordinarily sold by the Supplier shall not be returnable to the Supplier unless the Supplier is required by law to accept the return of such Products.
- c) Special Orders shall not be cancelled, altered or varied at any stage after the placing of such an Order unless the Supplier, 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. The Supplier shall be entitled to charge any reasonable additional amounts for any variation or amendment to any Special Order where the Supplier 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 the Supplier 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) The Supplier shall (acting reasonably) be free to suspend or cancel any Agreement in circumstances where the Customer has failed to make any payment within the payment terms.
- c) The Customer hereby indemnifies the Supplier in respect of any costs incurred by the Supplier (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, except to the extent that any such costs are caused or contributed to by the Supplier. 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. RETENTION OF TITLE TO PRODUCTS**

- a) Until the Supplier 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 the Supplier:
  - (i) Title and property in all of the Products yet to be paid for remains vested in the Supplier and does not pass to the Customer;
  - (ii) The Customer must hold the Products as bailee for the Supplier; The Customer must store the Products on its premises separately and must ensure the Products are kept in the same condition as when they were delivered to the Customer;
  - (iii) 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 the Supplier including against damage, fire or theft;
  - (iv) 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 the Supplier although it shall not represent to any third party that it is acting in any way on behalf of the Supplier and the Supplier shall not be bound by any contracts entered into by the Customer with third parties to which the Supplier is not an express party;
  - (v) The Customer must hold the proceeds of any sale of the Products on trust for the Supplier;
  - (vi) The Supplier 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
  - (vii) In addition to its rights under the PPSA, the Supplier 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 the Supplier or its agents to enter onto such premises and also indemnifies the Supplier 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 the Supplier to register any security interest on the Personal Property Security Register would it not be otherwise be required to do so.

#### **11. PERSONAL PROPERTY SECURITY ACT**

- a) The Customer grants a security interest to the Supplier in all Products (and their proceeds) now or in the future supplied by the Supplier to the Customer (or to its account).
- b) The Customer undertakes to do anything that is required by the Supplier:
  - (i) so that the Supplier can acquire and maintain one or more perfected security interests under the PPSA in respect of the Products and their proceeds;
  - (ii) to ensure that the Supplier's security position, and rights and obligations, are not adversely affected, including by the PPSA.
- c) Unless the Customer has obtained the Supplier's prior written consent, the Customer undertakes not to create or purport to create any security interest in the Products, nor register, or permit to be registered, a security interest in relation to the Products in favour of any 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 the Supplier to the Customer.
- e) The Customer will, upon demand, pay all of the Supplier's

expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the Supplier's security interests and all other costs associated with protection and enforcement of the Supplier's security interests created by the Conditions or by undertaking an audit under the provisions of the PPSA.

- f) 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.
- g) The Customer further agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- h) The Customer's right to possession of Products still owned by the Supplier 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 payment the Customer provides to the Supplier is dishonored;
  - (v) the Customer fails to comply with any demand for payment issued by the Supplier; or
  - (vi) the Customer breaches any of the Conditions or is in default of any other agreement between the Supplier and the Customer.
- i) The Customer expressly and irrevocably agrees that, until such time as title in the Products passes to the Customer, the Supplier is entitled to enter any premises where the Products supplied by the Supplier 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 the Supplier, or its agents entering any premises for the purpose of this clause and agrees to indemnify and keep the Supplier indemnified in respect of any Claims, actions and costs that may arise against the Supplier 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 the Supplier has been negligent or breached the Law or the Agreement.
- j) 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 the Supplier by the Customer as is equivalent to the Supplier'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 the Supplier has on the value of the Products recovered.
- k) 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 the Supplier by the Customer or the Customer's authorised representative.
- l) 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.

#### **12. CONTRACTING OUT OF PPSA**

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.

### **13. RISK INSURANCE AND APPROVALS**

- 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 the Supplier in regard to those Products.
- b) The Customer must, at the Customer's expense, obtain all Approvals, licenses or permits under all relevant laws and regulations necessary for and incidental to the supply of the Products and/or Services.

### **14. RETURN OF PRODUCTS – CONSUMERS**

If the Customer is a Consumer, the provisions of this clause 14 apply.

- a) Unless agreed in writing by the Supplier or otherwise subject to this clause 14, the Supplier will not accept the return of Products. Products accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier and recoverable from the Customer.
- b) The proof of purchase from the Customer must accompany all Products returned to the Supplier.
- 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 the Supplier.
- e) If the Customer believes the Products or Services do not comply with the statutory guarantees, they must contact the Supplier and the parties may make arrangements for the return of the Products. Any returned Products must be accompanied by proof of purchase. If the Supplier agrees that the Products or Services do not comply with the statutory guarantee, the Supplier will refund the costs of returning the Products to the Supplier and, in all other respects, act in accordance with its obligations under the ACL.
- f) Subject to clause 14d), 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 the Supplier in writing. the Supplier does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Supplier and the Customer by Law.

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

If the Customer is not a Consumer, the provisions of this clause 15 apply.

- a) Unless agreed in writing by the Supplier, the Supplier will not accept the return of Products. Products accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier, and debited to the credit account of the Customer.
- b) The proof of purchase from the Customer must accompany all Products returned to the Supplier.
- 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 Agreement.
- d) All claims for the Supplier'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 the Supplier, prior to installation, by giving written notice to the Supplier 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. the Supplier 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 the Supplier agrees in writing. The Supplier does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Supplier and the Customer by Law.
- f) Subject to clause 16, the Supplier'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 Agreement or of a non-excludable condition or warranty, is in all cases limited at the Supplier'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 15f) and to the extent permitted by Law, if the Agreement is not a Consumer Contract or a Small Business Contract, the Supplier will not be liable to the Customer or any other person for any Claim, loss, costs, damages or expenses arising directly or indirectly from the supply of the Products or Services by the Supplier, the use or performance of the Products, a breach of any Agreement (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 otherwise caused by any act, negligent or willful act, misuse or improper storage or handling by the Customer or any third party, including in relation to the installation of the Products.

### **16. LIABILITY**

- a) To the extent permitted by law, the Supplier's Liability in relation to this Agreement, any Agreement, and any supply of Products and/or Services (whether under statute, contract, tort, or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier as at the date of the Claim under the Agreement that is most proximate to the circumstances giving rise to the Claim.
- b) To the extent permitted by law, if the Customer is a Consumer or Small Business, then neither party will be liable to the other party for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any Indirect Damage.
- c) If the Customer is not a Consumer or Small Business, the Supplier is not liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any Indirect Damage.

### **17. FITNESS FOR PURPOSE**

If:

- a) the Customer is not a Consumer; and
- b) the Agreement 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 the Supplier in relation to the suitability of any Products for a particular purpose; and
- d) any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

If:

- a) the Customer is a Consumer; or
- b) the Agreement 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 the Supplier is provided in good faith, relying upon the accuracy and completeness of information provided by the Customer to the Supplier.

#### **18. FORCE MAJEURE**

No party is liable to the other party for any failure to perform, or delay in performing, its obligations under this Agreement if the failure or delay is due to any cause beyond the that party's reasonable control and if any such failure or delay continues for a period of 14 days, the other party may terminate any affected Contract with immediate effect by giving notice to the affected party. This clause does not apply to any obligation to pay money.

#### **19. IMMEDIATE TERMINATION OF AGREEMENT**

A party may terminate this Agreement immediately by giving written notice to the other party if the other party:

- 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) if the Customer engages in any conduct (which includes any conduct by employees of the Customer) which in the reasonable opinion of the Supplier is or might be damaging to the reputation of the Supplier 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 in accordance with clause 17 exceeding ninety (90) days.

#### **20. EFFECT OF TERMINATION**

The termination of this Agreement for whatever reason shall not in any way affect the rights or remedies a party may have accrued prior to the termination taking effect and the Supplier'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.

#### **21. CERTIFICATE**

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

#### **22. RETURNABLE PACKAGING**

Unless otherwise stated in an Agreement, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the Products remain the property of the Supplier and must be returned in good order and condition to the Supplier 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 the Supplier acting reasonably.

#### **23. SAMPLES AND BLENDING**

Any sample product or sample colour is provided to indicate only the general nature of the product. The Supplier 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. The Supplier will not be liable for any failure of the Customer or others to blend the products.

#### **24. NON-CONFORMING PRODUCT**

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 the Supplier. Notwithstanding the Conditions, the Supplier will not be liable in any way for the performance or use of, or any defect in, such a product.

#### **25. FITTINGS**

Unless otherwise stated in an Agreement, cast in or similar fittings for handling the Products are to be removed or finished by the Customer.

#### **26. PRESSURE APPLICATIONS**

Unless otherwise stated in an Agreement, the Products supplied are not warranted by the Supplier to be suitable for applications or use involving internal pressure.

#### **27. ANTI-CORRUPTION**

- 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 the Supplier 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 the Supplier in writing if it becomes aware at any time during the term of any Agreement that any of the representations or warranties in clause 27(b) are, or might reasonably be expected to be, no longer correct.

#### **28. 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 the Supplier; and  
b) the Customer warrants that it has full power and authority to enter into each Agreement on behalf of the trust and that it will be bound by each Agreement both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier.

#### **29. CHARGE**

- a) The Customer charges in favour of the Supplier 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 the Supplier 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 the Supplier 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 the Supplier 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 the Supplier from time to time, the Customer irrevocably appoints as its duly constituted attorney the Supplier'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 the Supplier 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 the Supplier 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. The Supplier 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.

#### **30. GENERAL**

- a) Nothing in this Agreement shall give rise to a partnership or relationship of employment between the parties  
b) Any failure or delay by the Supplier 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.

- c) The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

### **31. 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.

### **32. JURISDICTION**

This Agreement shall be governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of or exercising jurisdiction in Victoria.

### **33. PRIVACY COLLECTION STATEMENT**

- a. The Customer acknowledges and agrees that the Supplier may collect personal information and credit information about the Customer and its directors, officers, partners and the guarantors (each a Relevant Party). The Supplier's privacy policy, a copy of which is available online at <https://www.civilmart.com.au/privacy-policy/> or upon request to the Supplier, form part of the Agreement.
- b. In accordance with the Privacy Policy, the Customer agrees that the Supplier may use or disclose information to the Supplier's related companies and to third parties for the purpose of providing the Products and Services, providing information about Products and Services; sending information to the Supplier and its Services; performing the the Supplier'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 the Supplier; managing the Supplier'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 Supplier group's Products and Services; and developing and identifying Products and Services that may interest the Customer.
- c. The Customer warrants to the Supplier 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 the Supplier in accordance with this clause 35 and the Privacy Policy.
- d. Some parts of the Supplier's website 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 the Supplier's privacy policy while being stored overseas.

### **34. INTELLECTUAL PROPERTY**

- a) The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
- b) All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Products and/or Services will remain with the Supplier or its Related Body Corporate and will not be assigned to the Customer and no supply of Products and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Products and/or Services or such designs, drawings, technical information or documents.
- c) If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Products and/or Services, the Supplier grants the Customer a non-exclusive, non-transferrable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Products and/or Services.
- d) The Customer warrants that the Supplier's use of any designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

### **35. MODERN SLAVERY**

The Customer warrants that it shall throughout the course of this Agreement:

- a) not engage in Modern Slavery comply with all laws, codes and standards, regulations, legal requirements and directions relating to Modern Slavery;  
and
- b) notify the Supplier promptly upon becoming aware of any actual or anticipated complaint or allegation that the Customer has engaged in Modern Slavery or is charged with an offence in respect of Modern Slavery.

### **36. COMPLIANCE**

- a) The Customer shall comply with all relevant regulations, rules and laws relating to human rights (including section 1502 of the Dodd-Frank Act), health, safety and the environment and anti-bribery, anti-corruption, (including the UK Bribery Act and The US Foreign Corrupt Practices Act, where applicable) anti-slavery, economic sanctions, anti-money laundering and US, EU and UK trade sanctions requirements.
- b) The Customer shall indemnify the Contracting Party for any costs, damages and/or loss arising out of an identified breach of this clause 36.
- c) The Contracting Party shall be entitled to immediately cancel all or part of this Agreement if there is a breach of clause 36 by the Customer.

### **37. SECOND HAND GOODS**

The Customer acknowledges that any second-hand Products are sold on an "as is" basis, no refunds, replacement or credits will not be provided, must be thoroughly inspected prior to purchase to ensure the Customer is satisfied with the nature and condition of the Products, and the Customer releases the Supplier from any Claims in relation to those Products.

### **38. SILICA**

The Customer acknowledges that concrete products may contain silica and acknowledges that silica is a dangerous good and will obtain advice in relation to the handling of silica.

### **39. SPECIFICATIONS TOLERANCES & CHANGES**

Products will be deemed to comply with their Specifications if any variation is within the established industry tolerance. Unless we are manufacturing to a Specification provided by you, we may change or improve the Specification and will use reasonable endeavours to give you advance notice. If this change to our Specification occurs after your Order, you may cancel your Order without penalty within 5 Business Days of being advised of the change.