

## 1. CONTRACT

These general terms and conditions of sale form the contract between the Customer and Georgiou Group Pty Ltd t/a Georgiou Group Precast (hereinafter referred to as "Precast") and the contract does not include any terms or conditions varying or in addition to these general terms and conditions of sale unless such terms and conditions have been expressly agreed in writing by Precast. No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

## 2. CANCELLATION

- (1) The Customer may only cancel this contract with Precast's consent and only on the basis that the Customer meets all loss, damage, cost or expense, including loss of profits, incurred by Precast as a result of the cancellation of the contract.
- (2) Precast may suspend delivery, cease manufacture or cancel the contract if the Customer at any time:
  - (a) breaches any terms of the contract or any other contract with Precast;
  - (b) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or
  - (c) refuses or neglects to take delivery of the products described in the contract.

## 3. PRICE VARIATION

- (1) Unless otherwise stated in this contract Precast may vary the price stated in the contract to reflect any change in costs, taxes or duties to Precast after the date of this contract.
- (2) Where a list price applies to products supplied by Precast under this contract all prices listed:
  - (a) are subject to alteration without notice;
  - (b) are applicable to all deliveries on or after the effective date of any alteration;
  - (c) do not include sales tax, GST or other government impost unless specifically stated.

## 4. VARIATION TO SCOPE OF CONTRACT

The price is based upon;

- (a) the scope of the work as detailed in the information provided by the Customer to Precast for the purpose of this contract including, where applicable, plans specifications (including standards and finish), schedules, and nominated quantities; and
- (b) delivery arrangements in accordance with clause 7, and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitling Precast to vary the price stated.

## 5. SPECIFICATIONS

- (1) Where Precast manufactures or supplies products according to the Customer's specifications:
  - (a) Precast does not warrant the suitability or performance of the product; and
  - (b) the Customer shall provide to Precast accurate information sufficient to enable Precast to provide the products specified and the Customer warrants to Precast that the information and any products to be manufactured by Precast under the contract do not breach any copyright, registered design, patent or other right of any third party and the Customer shall indemnify Precast in relation to any such breach.
- (2) Unless otherwise stated in this contract materials supplied shall comply with the normal standard adopted by Precast for the class of materials ordered.

## 6. PAYMENTS

- (1) Precast may make claims for payment at any time by issue of a tax invoice.
- (2) Time for payment of the amount due to Precast shall be of the essence in this contract and the amount due includes the price, any variations to the price and any additional charges which Precast is entitled to make.
- (3) Subject to sub-clause (4) and (5) the Customer shall pay the amount due in accordance with the credit arrangements as agreed by Precast.
- (4) Where no credit arrangements have been previously agreed by Precast, but credit has been agreed by Precast as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.
- (5) Where no credit arrangements have been agreed by Precast, the Customer shall pay the amount due before the first delivery of the products.
- (6) Credit applications from Pty Ltd companies or Pty Ltd companies acting as a trustee for a trust shall be accompanied by an executed Director's Guarantee.
- (7) The Customer shall pay interest at the rate of 12% per annum calculated daily on any amount not paid by the due date.
- (8) Where price is stated on a volumetric basis, the required payment will be based on measurement of loose, uncompacted volume of material in the truck body at the place of loading.
- (9) The Customer shall pay all costs, including legal fees, associated with collection of overdue accounts as incurred by Precast.
- (10) Any dispute concerning the account must be conveyed in writing before the account becomes overdue.

## 7. DELIVERY

- (1) Subject to sub-clause (2) delivery shall be on reasonable notice from the Customer to Precast and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- (2) Where this contract includes a Delivery Schedule delivery shall be in accordance with the dates and other information contained in such Schedule.
- (3) Precast shall not be liable for any cost, expense, loss or damage whatsoever wholly or partly caused by or arising from any delay in delivery.
- (4) Where the Customer refuses or denies delivery, the Customers' obligation to pay for products, as set out in clause 6, remains unchanged. The Customer shall also pay any additional storage, freight, holding or handling charges incurred by Precast.
- (5) Precast reserves the right to deliver by instalments and failure to deliver any instalment shall not entitle the Customer to terminate the contract.
- (6) Deliveries are subject to suitable access, firm standing, storage, unloading and manoeuvring space, as determined by Precast. Precast shall not be liable for any damage caused to access ways or storage areas during delivery.
- (7) Additional costs incurred by Precast in delivering or unloading the products:
  - (a) outside the hours of 7.30a.m. to 4.00p.m. weekdays (excluding public holidays);
  - (b) due to delays at the site or an unsuitable site; or
  - (c) where less than full truckloads are required, shall be at the Customer's expense.

## 8. TITLE AND RISK

- (1) Title in the products shall not pass to the Customer until payment of the amount due in full together with any interest due, notwithstanding that any of those products are worked upon by the Customer or others or are otherwise incorporated into other products or works. Risk in the products shall pass to the Customer upon delivery and, in the event of a site being unattended, the delivery docket/manifest signed by the cartage contractor shall be prima facie evidence of delivery of the products.
- (2) If payment is overdue in whole or in part, Precast may (without prejudice to any of its other rights) recover or recall the products and may enter upon any premises where they are stored or where they are reasonably thought to be stored.
- (3) The Customer's right to possession of the products shall cease if the Customer, not being a company, commits an act of bankruptcy or if it, being a company, does anything which would entitle:
  - (a) a receiver to take possession of any assets, or
  - (b) any person to present a petition for winding up.

# PRECAST- GENERAL TERMS AND CONDITIONS

Precast may for the purpose of recovery of its products enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the products.

## 9. CHECKING OF MATERIALS ON DELIVERY

The Customer shall ensure it has an authorised representative at the delivery site who shall check prior to discharge, that the information shown on the delivery docket corresponds with the Customer's order. The Signature of the Customer's representative on the delivery docket shall represent acknowledgment by the Customer that the products comply with its order and have been supplied in accordance with this contract.

## 10. TESTING AND REPORTING

- (1) Where the Customer requires materials testing to be carried out by Precast, the Customer shall pay all costs of such testing and any associated sampling, handling, freight and storage charges.
- (2) Where testing is not carried out by Precast, any results shall be deemed to be invalid, unless:
  - (a) the material sampled for the purpose of testing is taken at the truck immediately after discharge; and
  - (b) the sampling, preparation and test procedures are carried out strictly in accordance with AS1141 as amended (or other specification subject to prior agreement by Precast); and
  - (c) all testing is performed by a N.A.T.A. registered testing facility.
- (3) The Customer shall provide Precast free of charge with copies of all test results, measurements and reports prepared by or for the Customer in relation to Precast's products.

## 11. LIMITATION OF LIABILITY

- (1) If products supplied are demonstrated to be not in accordance with this contract, after testing pursuant to clause 10 or checking pursuant to clause 9, Precast will resupply an equivalent quantity of conforming product, but Precast shall not be liable for the removal of any defective products or of the re-installation of any products or for any consequential losses or loss of profits.
- (2) Precast shall not be liable for any defect, loss, damage or injury to persons or property howsoever arising and the Customer shall indemnify and keep indemnified Precast against any claim, action, suit or liability whatsoever arising by reason of;
  - (a) a failure to use the products in a manner other than what is normally expected to be done with to or in relation to the products;
  - (b) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the products.
- (3) Any design or description of use, capacity, durability, colour, manner of installation information detail contained in drawings, data sheets, technical brochures or other documents provided by Precast are given as a general guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the products for the Customer's particular purpose, use or application and Precast shall not be liable in these respects.
- (4) Other than expressly provided in this contract Precast provides no other warranty to the Customer in relation to the products and this contract comprises the whole agreement between the parties.
- (5) Section 68A of the Trade Practices Act, 1974 ("the Act") enables Precast to limit its liability for breach of certain conditions and warranties implied by the Act. To the fullest extent permitted by that section and other similar legislation the liability of Precast for a breach of a condition or warranty (other than a condition or warranty implied by Section 69 of the Act) is limited to one of the following (selected at the option of Precast );
  - (a) the replacement of the products; or
  - (b) the repair of the products,unless the Customer is able to establish the matters set forth in sub-section 68A(2) of the Act.

## 12. LIEN

The Customer agrees that Precast has a lien over any products supplied by Precast under this contract for the price payable or any other amount due by the Customer to Precast and in the event of default in payment by the Customer Precast may sell such products after notice to the Customer and Precast reserves the right of disposal of the products after delivery of the goods to a carrier or other bailee for the purpose of transmission to the Customer.

## 13. AMENDMENTS AND WAIVER

Precast shall not be taken to have agreed to any amendment or waiver of any provision of these terms and conditions or of the contract unless the amendment or waiver shall be in writing signed by Precast. No terms and conditions referred by the Customer after the date of this contract shall form part of this contract unless expressly agreed in writing by Precast.

## 14. GOVERNING LAW

The contract is governed by the law for the time being of the State from which the products are to be supplied.

## 15. FORCE MAJEURE

Precast shall not be liable for any delay, loss, damage or injury arising by reason or any event beyond its control and without limiting the generality of the foregoing such events include industrial disputes, the unavailability of equipment of materials, fire, flood, inclement weather, machinery breakdown, civil disturbance, acts of God or government action.

## 16. SUBJECT TO STATUTE

The contract is subjected to the provisions of any statute applicable to it and which may not be varied by the terms of the contract. If any provision of the contract is void or unenforceable that provision shall be severed and the remaining provision shall continue with full force and effect.

## 17. NOTICES

All notices given under or in connection with this contract shall be in writing and given or delivered to the recipient at its address specified in this contract or at its registered office or principal place of business.

## 18. DISPUTES

- (1) In the event of a dispute, either party may notify the other in writing of the nature of the dispute. The parties agree that if the dispute is not resolved within 7 days of the date of such notice then the dispute shall be referred to arbitration. The arbitrator shall be appointed by agreement between the parties or by the Institute of Arbitrators and Mediators Australia.
- (2) In the event of a payment dispute as defined under the Construction Contracts Act 2004, the parties agree that the adjudicator shall be appointed by the Master Builders Association or the Australian Institute of Quantity Surveyors.

## 19. CONFIDENTIAL INFORMATION

If at any time Precast discloses to the Customer or the Customer becomes aware of confidential information of Precast including confidential information relating to products, material, procedures, tests or equipment, the Customer shall not use the information for any purpose not approved by Precast and shall not disclose that confidential information to any other person unless expressly agreed in writing by Precast.

## 20. ASSIGNMENT.

This contract is assignable by the Customer in whole or in part only with Precast's consent.